

## ATTACHMENT

Attached is the document you (or someone on your behalf) requested. As required by Section 12956.1(b) of the California Government Code, please take note of the following:

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

T-294427-DL

Assessor's Lots S2 & S3,  
Formerly Lot 27, Block 6543.

When Recorded Return To:

HERZIG & BERLESI  
414 Gough Street, Suite 5  
San Francisco, CA 94102



San Francisco Assessor-Recorder  
Doris H. Ward, Assessor-Recorder  
DOC- 2000-G815442-00

Root 3-FIRST AMERICAN Title Company  
Friday, AUG 18, 2000 08:00:00  
Tel Pd \$100.00 Nbr-0001454151

REEL H704 IMAGE 0161  
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OK

**DECLARATION OF RESTRICTIONS**

**FOR**

**672 CLIPPER STREET**

**a Condominium Project**

**Clipper Street Associates LLC, a limited liability company**

**Declarant**

**DECLARATION OF RESTRICTIONS****FOR 672 CLIPPER STREET****a Condominium Project****Recitals**

**THIS DECLARATION** is made by Clipper Street Associates LLC, a limited liability company, "Declarant," with reference to the following:

A. Declarant is the Owner of a tract of land located in the City and County of San Francisco, California, more particularly described in Exhibit A attached to this Declaration and incorporated into it by reference.

B. There exists on the land a building which is three stories over a basement in height and which contains two Units.

C. Declarant intends by this Declaration to create a Condominium project and to impose upon the Property *mutually beneficial restrictions under a general plan of improvement for the benefit of all the Condominiums and Owners of Condominiums*. Declarant intends by this Declaration to establish a Condominium Project under the provisions of California Civil Code Sections 1350 et seq., the Davis-Stirling Common Interest Development Act.

D. Declarant establishes by this Declaration a plan for the individual ownership of real property estates, consisting of an undivided interest in common in a portion of real property referred to as the Common Area, coupled with a separate interest in space, referred to as a Unit, the boundaries of which are described on the Condominium Plan.

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

**ARTICLE 1**  
**Definitions**

- 1.1 "Assessment" means that portion of the cost of maintaining, improving, repairing, rebuilding, operating and managing the Property which is to be paid by each Owner.
- 1.2 "Association" means the 672 Clipper Street Homeowners' Association, an unincorporated association.
- 1.3 "Bylaws" means the Bylaws of the Association as amended from time to time.
- 1.4 "Common Area" means all lands and improvements not located within any Unit. The Common Area includes, but not by way of limitation, all staircases (except for staircases located within a particular Unit) and light wells, roof, foundation, pipes and ducts for the mutual use of adjoining Units, flues, chutes, conduits, columns and girders to the unfinished surface thereof, all regardless of location within said Units.
- 1.5 "Common Expenses" means the actual and estimated expenses of operating the Property, any reasonable reserves for such purposes as determined by the Association, and all sums designated Common Expenses by the Governing Documents.
- 1.6 "Condominium" means an estate in real property consisting of an undivided interest in common in a portion of real property coupled with a separate interest in space called a Unit, the boundaries of which are described on the Condominium Plan.
- 1.7 "Condominium Plan" means the three dimensional description of the Project in sufficient detail to identify the Common Area and the Units pursuant to California Civil Code Section 1351(e) and which was recorded on August 17, 2000, in Condominium Map Book   , pages    to   , inclusive, in the Official Records of the County of San Francisco and any amendments and corrections to it. A copy of the Condominium Plan is incorporated into this Declaration by this reference.  
\*Document No. 2000-C814609-00
- 1.8 "Declarant" means Clipper Street Associates LLC, a limited liability company, and any successors and assigns, including the Association, who acquire Declarant's interest in the Property.
- 1.9 "Declaration" means this Declaration of Restrictions and any amendments and supplements to it.
- 1.10 "Exclusive Use Common Areas" means those portions of the Common Area designated for the exclusive use of the Owners and which are appurtenant to the Units.



1.11 "Expenditure" means a fine or penalty levied to bring a Member and his Condominium into compliance with the Governing Documents, or a charge levied to reimburse the Association for costs incurred by it in the repair of damage to the Common Area and facilities caused by the Member.

1.12 "Governing Documents" means this Declaration, any Exhibits attached to it, the Bylaws of the Association, and the rules and regulations for the Members, all as amended from time to time.

1.13 "Map" means the subdivision map entitled "Parcel Map of 672 Clipper Street, a Residential Condominium Project, being a Subdivision of Lot 27, Assessor's Block No. 6543, San Francisco, California," recorded on August 17, 2000, in Condominium Map Book       , pages        through       , inclusive, in the Official Records of the County of San Francisco, and any amendments and corrections to it.                                   \*Document No. 2000-G814609-00

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

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

1.16 "Owner" means the record holder of title to a Condominium in the Project. If a Condominium is sold under a recorded contract of sale to a purchaser, the purchaser rather than the seller shall be considered the Owner. "Owner" shall not include those persons having any interest merely as security for the performance of an obligation.

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

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

1.19 "Property" means the Project, and all real and personal property intended for or used in connection with the Project.

1.20 "Unit" means the elements of a Condominium which are not owned in common with other Owners or by the Association. The boundaries of each Unit are as shown and described on the Condominium Plan.

**ARTICLE 2**  
**Description of Project, Division of Property, and**  
**Creation of Property Rights**

**2.1 DESCRIPTION OF PROJECT.** The Project consists of the underlying real property, a residential building which is three stories over a basement in height and all other improvements located on the real property. The building is divided into two Units plus Common Area.

**2.2 DIVISION OF PROPERTY.** The Property is divided into the following separate freehold estates:

A. **Units.** Each of the Units as separately shown, numbered and designated on the Condominium Plan consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows and doors of the Unit. Each Unit also includes all fixtures, appliances, air heating, air conditioning, water heating equipment, alarm systems and ventilation fans, and the outlets thereof, wherever located, which are part of a discrete and complete system intended to serve only the Unit. The Unit does not include those areas and things defined as Common Area in Section 1.4. Each Unit is subject to any encroachments as may now exist or may be later caused or created in any manner referred to in Section 2.3D. In interpreting deeds and plans, the then existing physical boundaries of a Unit, whether in its original state or reconstructed in substantial accordance with the original plans, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or Condominium Plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the Plan or deed and those of the building.

B. **Common Areas.** The remaining portion of the Property, referred to as Common Area, shall include, without limitation, all of the elements set forth in Section 1.4. Each Owner shall own, as appurtenant to his Unit, an undivided interest in the Common Area as shown on the Condominium Plan. Each Owner may use the Common Area in accordance with the purposes for which it is intended without hindering the exercise of, or encroaching upon the rights of any other Owners.

C. **Exclusive Use Common Areas.** Portions of the Common Area, referred to as Exclusive Use Common Areas, are set aside and allocated for the exclusive use of the Owners. The Exclusive Use Common Areas consist of the parking areas (P-1 and P-2), storage areas (S-1 and S-2) and decks (D-2A and D-2B) as designated on the Condominium Plan. An easement for each of the above Exclusive Use Common Areas shall be granted in the deed to the Unit to which it is appurtenant. The Exclusive Use Common Areas also consist of internal and external wiring designed to serve a single Unit, fireplaces, windows, window frames, window boxes, screens, shutters, awnings, doorsteps, stoops, exterior doors, door frames and hardware. One parking space shall be appurtenant to each

Unit and shall not be transferred by the Owner separately from the Unit. No Owner may lease a parking space to any person who is not an Owner or a resident at the Project.

D. **No Separate Conveyance of Common Area.** The undivided interest in Common Area appurtenant to each Unit is permanent in character and cannot be altered without the consent of all the Owners affected, and their first Mortgagees, as expressed in an amended Declaration. The undivided interest in Common Area cannot be separated from the Unit to which it is appurtenant, and shall be deemed to be conveyed or encumbered with its respective Unit, even though the instrument of conveyance or encumbrance may refer only to the Unit.

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

A. **Owners' Nonexclusive Easements; Association Rights.** Every Owner has a nonexclusive easement of use, enjoyment, ingress, egress, and support in, to, and throughout the Common Area and any improvements or facilities on the Common Area. However, such nonexclusive easements shall be subordinate to, and shall not interfere with the right to use Exclusive Use Common Areas. Each such nonexclusive easement shall be appurtenant to the respective Condominium and shall pass with the title to the Condominium. Nonexclusive easements shall be subject to all of the rights and powers of the Association as described in Article 5, including, without limitation, the right to assign, rent, license or otherwise designate and control use of any parking spaces other than those which are Exclusive Use Common Areas appurtenant to a Unit.

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

i. The right of Declarant, or its agents, to enter upon any portion of the Project to construct the improvements Declarant intends to construct on the Property, to make repairs and to remedy construction defects, provided that such entry shall not interfere with the use or occupancy of any occupied Unit unless authorized by its Owner, which authorization shall not be unreasonably withheld.

ii. The right of the Association, or its agents, to enter any Unit to cure any violation or breach of this Declaration, the Bylaws or the Rules and Regulations, provided that at least thirty days prior written notice of such violation or breach (except in case of emergency) has been given to the Owner, and provided that, within the thirty day period, such Owner has not acted to cure substantially such violation or breach. The Association shall be entitled to levy an Expenditure for its costs of effecting such cure against the Owner in accordance with the procedures set forth in Section 5.5. The rights of entry and cure shall be immediate in case of

an emergency originating upon or threatening any Unit, whether or not its Owner is present.

iii. The right of the Association, or its agents, to enter any of the Units to perform its obligations and duties under this Declaration, including obligations or duties with respect to construction, maintenance, or repair of the Common Area, or for the benefit of the Owners in common. The rights shall be immediate in case of an emergency originating upon or threatening any Unit, whether or not its Owner is present.

iv. The right of any Owner, or Owner's agents, to enter the Unit of any other Owner for purposes of performing installations, alterations or repairs to mechanical or electrical services, including installation of television antennae and related cables, which are reasonably necessary for the use and enjoyment of his Unit, provided requests for entry are made in advance and that entry is at a time convenient to the Owner whose Unit is being entered. In case of emergency, the right of entry shall be immediate.

C. **Power to Grant Easements.** Declarant or the Association shall have the power to grant and convey in the name of all the Owners as their attorney-in-fact (or in the name of the Association as to any property to which the Association holds title) to any Owner or other party easements and rights-of-way in, on, over, or under the Common Area for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities. Each Owner, in accepting a deed to a Condominium, expressly consents to such easements and rights of way and authorizes and appoints the Association and Declarant (as long as Declarant owns one or more Condominiums) as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements or rights of way. However, no such easement can be granted if it would substantially interfere with the use, occupancy, or enjoyment by any Owner of his Unit or the Common Area of the Project unless approved by the vote or written consent of not less than sixty-seven percent (67%) of the Members and their first mortgagees.

D. **Encroachment Easements.** Each Condominium has an easement over all adjoining Units and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause as long as the encroachment exists. In no event shall a valid encroachment be created in favor of an Owner if it occurred due to his willful misconduct. In the event a structure is repaired or rebuilt, minor encroachments over adjoining Units and the Common Area shall be permitted and there shall be valid easements for the

maintenance of these encroachments as long as they exist. These encroachments shall not alter the rights and obligations of Owners.

**E. Ingress and Egress Easement.** There is an easement for ingress and egress, among other things, running along the northerly portion of the Project, as more fully described in the Declaration of Covenants, Conditions and Restrictions recorded by Declarant and as shown on the Map.

**2.4 PARTITION; POWER OF ATTORNEY.** Except as provided by California Civil Code Section 1359 and Sections 9.2 and 9.3 of this Declaration regarding damage and destruction and condemnation, there shall be no judicial partition of the Project or any part of it. Judicial partition by sale of a single Condominium owned by two or more persons and division of the sale proceeds is not prohibited, but partition of title to a single Condominium is prohibited. Whenever partition may be had pursuant to Civil Code Section 1359 or this Declaration, each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Project, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Project may be had under Civil Code Section 1359 and under the circumstances authorizing partition under this Declaration. The power of attorney shall (i) be binding on all Owners, whether they assume the obligations under this Declaration or not; (ii) be exercisable by the Association, subject to obtaining the prior vote or written consent of sixty-seven percent (67%) of the Owners and sixty-seven percent (67%) of all first Mortgagees; and (iii) be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under the authority of this Declaration. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

**2.5 FURTHER SUBDIVISION PROHIBITED.** No Owner shall further subdivide the space within his Unit or create a time-share project from any Condominium. A time-share project is one in which a purchaser receives the right in perpetuity, for life, or for a term of years, to the recurrent, exclusive use or occupancy of a Unit, annually or on some other periodic basis, for a period of time that has been or shall be allocated from the use or occupancy periods into which a Condominium has been divided.

### ARTICLE 3

#### Association, Administration, Membership and Voting Rights

**3.1 ASSOCIATION TO MANAGE COMMON AREA.** The Association shall manage and administer the Project in accordance with the provisions of the Governing Documents.

**3.2 MEMBERSHIP.** Each Owner of a Condominium shall automatically be a Member of the Association. He shall remain a Member until his ownership of a Condominium ceases, at which

time his membership in the Association shall also automatically cease. No Member may resign, transfer, pledge or alienate his membership in any way except by sale of the Condominium to which it is appurtenant and then only to the purchaser. Any prohibited transfer is void.

**3.3 ADMINISTRATION OF THE AFFAIRS OF THE ASSOCIATION.** Since the Project consists of only two Condominiums, the customary manner of allocating administrative responsibilities for the affairs of the Association to a Association of Directors is inappropriate.

Therefore, all powers and duties conferred on the Association shall be exercised by the unanimous vote of the Association. Each Condominium shall be allocated one vote. When a Condominium is owned by more than one person, all such persons shall be Members of the Association. The vote for the Condominium shall be exercised as the Owners determine, but not more than one vote shall be cast for any Condominium. If an Owner disputes the vote cast for his Unit by a co-Owner, the vote for that Unit shall be counted as if it were cast the same as the vote for the other Unit in the Project was cast.

If a vote of the Owners on any matter is not unanimous, upon request of any Owner the matter shall be determined in accordance with the mediation and arbitration provision contained in Section 10.1.

#### **ARTICLE 4 Assessments**

**4.1 CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.** Declarant agrees, for each Condominium in the Project owned by Declarant, and each Owner, by acceptance of a deed to a Condominium, whether or not it shall be expressed in the deed, is deemed to agree to pay to the Association Regular Annual Assessments, Special Assessments and Property Tax Assessments. Assessments shall be payable without deduction or offset for any claim the Owner may have against the Association. Assessments, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien upon the Condominium against which each Assessment is made. Each Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the Condominium at the time when the Assessment fell due. If more than one person is the Owner, the personal obligation to pay the Assessment shall be joint and several.

No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of use or enjoyment of any of the Common Area or abandonment of his Condominium.

**4.2 PURPOSE OF ASSESSMENTS; COMPLIANCE WITH CIVIL CODE SECTION 1366.** The Assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of all residents of the Project, and for the improvement and maintenance of the Ingress and Egress Easement and the Common Area, for the common good of the Project. The Regular



Annual Assessment, Special Assessments and Assessments for Emergency Purposes shall only be levied or increased in compliance with Civil Code Section 1366. In the event of any conflict between Civil Code Section 1366 and this Article, the provisions of Civil Code Section 1366 shall prevail.

**4.3 REGULAR ANNUAL ASSESSMENTS.** The Regular Annual Assessment is the total amount of funds necessary to defray the Common Expenses of the Association for the fiscal year. It shall include adequate reserve funds for contingencies and for maintenance, repairs, and replacement of the Common Area improvements that must be replaced on a periodic basis sufficient to satisfy the reasonable requirements of any first Mortgagee.

Until January 1 of the year immediately following the conveyance of the first Condominium, the Regular Annual Assessment shall be the amount determined by Declarant. At least forty-five days and not more than sixty days prior to the beginning of each subsequent fiscal year, the Association shall establish the Regular Annual Assessment for that fiscal year. The Association may not increase the Regular Annual Assessment by more than twenty percent above the Regular Annual Assessment for the previous year, nor decrease the Regular Annual Assessment more than ten percent below the Regular Annual Assessment for the previous year, without the vote or written consent of the Owners. If the Association fails to establish the Regular Annual Assessment for any fiscal year, the Regular Annual Assessment shall be the same as that of the prior fiscal year. If at any time during the year the Association decides that the amount of the Regular Annual Assessment is inadequate or excessive, it may revise the Assessment for the balance of the fiscal year, effective on the first day of the month following the date of the revision.

**4.4 SPECIAL ASSESSMENTS.** In any fiscal year, the Association may levy a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property, and for extraordinary expenses incurred by the Association.

**4.5 INCREASE FOR EMERGENCY PURPOSES.** The Association may increase Regular Annual Assessments and impose Special Assessments necessary for emergency situations. For purposes of this Section, an emergency situation is any one of the following:

- A. An extraordinary expense required by an order of a court.
- B. An extraordinary expense necessary to repair or maintain the Property for which the Association is responsible where a threat to personal safety on the Property is discovered.
- C. An extraordinary expense necessary to repair or maintain the Property for which the Association is responsible that could not have been reasonably foreseen by the Association in preparing and distributing the budget. However, prior to the imposition or collection of an Assessment under this Section 4.5C, the Association 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 Assessment.

**4.6 PROPERTY TAX ASSESSMENTS.** Until the Tax Collector segregates the property taxes applicable to each Unit into separate assessments, or if any taxes are assessed against the Common Area or the property of the Association rather than against the Units, the Association shall levy a Property Tax Assessment.

**4.7 SEGREGATION OF FUNDS.** Unless exempt from federal or state income tax, all proceeds paid for reserves or for any Special Assessment shall be segregated and deposited in a special account and shall be used solely for the purpose for which levied, or shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service or the California Franchise Tax Association in order to avoid, if possible, their taxation as income of the Association.

**4.8 DIVISION OF ASSESSMENTS.** The expenses for Regular Annual Assessments shall be divided between the Owners equally, except for Assessments for insurance and reserves for roof and paint, which shall be prorated to each Owner according to his percentage interest in the Common Area.

Special Assessments shall be divided between the Owners on the same basis as Regular Annual Assessments.

Unless otherwise agreed by the Owners, Property Tax Assessments shall be divided between the Owners according to each Owner's percentage interest in the Common Area.

**4.9 DATE OF COMMENCEMENT AND DUE DATES OF ASSESSMENTS; NOTICE TO OWNERS.** Regular Annual Assessments shall commence as to all Units on the first day of the month following the conveyance of the first Condominium from Declarant to an Owner. Regular Annual Assessments shall be payable in equal monthly installments unless the Association adopts some other basis for collection. If the first operating year of the Association is a partial fiscal year, the Regular Annual Assessment for that first operating year shall be based on the number of full calendar months in that fiscal year. Subject to the provisions of Section 4.3, the Association shall determine and fix the amount of the Regular Annual Assessment for each Condominium and send written notice of it, including the amount of any increase, to every Owner at least forty-five days and not more than sixty days prior to the beginning of each fiscal year. In addition, the Association shall send each Owner notice by first class mail of any increase in the Regular Annual Assessment or Special Assessment not less than forty-five days and not more than sixty days before the due date of the increased Assessment. The due date for the payment of installments of the Regular Annual Assessment shall be the first day of each month unless some other due date is established by the Association. The due date for payment of a Special or



Property Tax Assessment shall be the date specified in the notice of the Assessment and shall be at least thirty days after the date of delivery of the notice of the Assessment to the Owners.

**4.10 EFFECT OF NONPAYMENT OF ASSESSMENT.** Any Assessment or installment of an Assessment shall become delinquent if payment is not received by the Association within fifteen days after its due date. The Association shall impose a late charge of ten percent (10%) of the delinquent assessment or installment or \$10.00, whichever is greater, on all delinquent payments. A late charge may not be imposed more than once on any delinquent payment, shall not eliminate or supersede any charges imposed on prior delinquent payments, and shall constitute full compensation to the Association for any additional bookkeeping, billing, or other administrative costs resulting from the delinquent payment.

Interest also shall accrue on any delinquent payment at the rate of twelve percent (12%) per annum. Interest shall accrue commencing thirty days following the due date of the Assessment through and including the date full payment is received by the Association.

Any Owner who fails to pay a Property Tax Assessment on time shall be responsible to pay any penalty imposed by the Tax Collector.

**4.11 REMEDIES ON DEFAULT.** In the event of a default in payment of any Assessment or installment, and in addition to any other remedies provided by law or this Declaration, the Association or an Owner may enforce payment of the Assessment or installment in either of the following ways.

A. **By Civil Action.** Any judgment rendered in the action shall include the amount of delinquency, interest, late charges, costs of collection, court costs, and reasonable attorneys' fees. A civil action may be maintained without foreclosing or waiving lien rights.

B. **By Judicial Foreclosure or Power of Sale.** If any Assessment or installment is not paid within fifteen days after the due date, and before the Association may place a lien upon a condominium based upon a delinquent Assessment, the Association must give the Owner the notice required by California Civil Code Section 1367(a). The notice shall state (i) the fee and penalty procedures of the Association, (ii) provide a statement of the charges owed by the Owner, separately itemizing the principal owed, late charges and the method of calculation, and attorney's fees, and (iii) collection practices of the Association, including the right of the Association to the reasonable costs of collection. This notice must be delivered by certified mail.

After the expiration of 10 days following mailing of the notice described above, the Association may record a Notice of Delinquent Assessment in the office of the Recorder of the County of San Francisco. The Assessment described in the Notice shall constitute a lien upon the Condominium described in the notice effective on the date on which it is

recorded. The lien shall be in favor of the Association and shall be for the benefit of all Owners. The Notice of Delinquent Assessment shall conform to the requirements of California Civil Code Section 1367. The notice shall state the amount of the Assessment then due, including interest, late charges, and reasonable attorneys' fees and costs incurred in an effort to collect the delinquent Assessment. The Notice shall include the legal description of the Condominium against which the Assessment has been levied, name the record Owner of the Condominium and give the name and address of the trustee authorized by the Association to enforce the lien by foreclosure sale. The Notice of Delinquent Assessment shall be signed by a member of the Association. The notice shall be mailed in the manner set forth in California Civil Code Section 2924b to all record owners of the Condominium described in the notice within 10 calendar days after recordation.

After the expiration of 30 days following the recording of the Notice of Delinquent Assessment, the lien for unpaid Assessments may be enforced by sale of the Condominium, by judicial foreclosure or private sale, by the Association or other person authorized by the Association to make the sale. Any sale by private power of sale shall be conducted in accordance with the provisions of Sections 2924-2924h of the California Civil Code. The sale shall be conducted by the trustee whose name and address are stated in the Notice of Delinquent Assessment, or by a trustee substituted in accordance with the provisions of Civil Code Section 2934a.

The Association, acting on behalf of the Owners, shall have the power to bid for the Condominium at a foreclosure or trustee's sale and to acquire and hold, lease, mortgage and convey the Condominium. Each Owner hereby appoints the Association or its authorized agent to act as trustee in any action to enforce the lien. Each Owner hereby agrees that in any action to remove the Owner or his tenant from the Condominium, the Declaration and the deed to the foreclosed Condominium which is delivered to the buyer after a foreclosure or trustee's sale shall constitute a deed of trust for purposes of Code of Civil Procedure Section 1161a(b)(3).

The Association shall promptly record a Release of Notice of Delinquent Assessment upon payment of the amounts secured by the lien created pursuant to this Article and payment of the cost to the Association of preparing and recording the Release of Notice of Delinquent Assessment. The Release of Notice of Delinquent Assessment shall be signed by a Member of the Association.

C. **Owner's Right to Arbitrate.** In a dispute between an Owner and the Association regarding an Assessment, the Owner shall have the right to arbitrate the dispute, pursuant to Section 10.1, if the Owner does all of the following:

- i. pays in full to the Association the amount of the Assessment in dispute, late charges, interest, any fees and costs associated with the preparation and filing of

a Notice of Delinquent Assessment, including all mailing costs and attorney's fees not to exceed four hundred twenty-five dollars (\$425.00);

ii. gives written notice to the Association that the above amounts are paid under protest; and

iii. the written notice mentioned in ii. above is mailed to the Association by certified mail not more than 30 days from the recording date of the Notice of Delinquent Assessment.

An Owner does not have the right to resolve a dispute regarding an Assessment in accordance with this Section and Section 10.1 more than two times in any calendar year or more than three times in any five calendar years. However, an Owner and the Association, upon mutual agreement, may resolve any number of disputes regarding Assessments, in accordance with this Section and Section 10.1.

If it is determined that the Assessment levied by the Association was not levied correctly, the Owner may be awarded interest on the amounts paid to the Association pursuant to C. i. above.

**4.12 PRIORITIES.** When a Notice of Delinquent Assessment has been recorded, it shall constitute a lien on the Condominium prior to all other liens except all taxes, bonds, assessments and other liens which, by law, would be superior to it, and the lien of any first Mortgage of record. The lien for any Assessment shall not be affected by the sale or transfer of the Unit against which it is recorded.

**4.13 STATUS CERTIFICATE.** Within ten days of the mailing or delivery of a written request by an Owner, the Association shall provide the Owner with a written statement containing the following information: (i) whether, to the knowledge of the Association, the Owner or his Condominium is in violation of any of the provisions of this Declaration, the Articles, Bylaws, or the Rules and Regulations; (ii) the amount of Regular Annual Assessments and Special Assessments, including installments, paid by the Owner during the fiscal year the request is received; (iii) the amount of any Assessments levied against the Owner's Condominium that are unpaid as of the date of the statement, including any late charges, interest, or costs of collection that as of the date of the statement are or may be made a lien against the Owner's Condominium; and (iv) any change in the Association's current Regular Annual and Special Assessments and fees approved by the Association but not yet due and payable as of the date of the disclosure.

**4.14 WAIVER OF EXEMPTIONS.** Each Owner waives the benefit of any homestead or exemption laws of the State of California as to any Assessment liens created under this Article.

**ARTICLE 5**  
**Duties and Powers of the Association**

The Association shall have the power to do any lawful thing required or permitted to be done under the Governing Documents and necessary, appropriate or incidental to the exercise of the express powers or duties of the Association for the peace, health, comfort, safety and general welfare of the Owners, subject only to the limitations on those powers set forth in the Governing Documents. The duties and powers of the Association shall include, but are not limited to, the following.

**5.1 MAINTENANCE.** Except as otherwise provided in Section 10.4, the Association shall maintain in good condition, repair, replace and manage the Common Area, including all Exclusive Use Common Areas, all utility installations except those maintained by utility companies, equipment and landscaping located on the Common Area, the Ingress and Egress Easement and all furnishings and property acquired by the Association. The Association is responsible for the repair and maintenance of Common Area occasioned by the presence of wood-destroying pests and organisms in accordance with the procedure set forth in California Civil Code Section 1364. The Association shall maintain and repair exterior glass surfaces. The Association is not financially responsible for maintenance, repair or replacements caused by the willful or negligent act or omission of an Owner, or his guests or tenants, the cost of which is not covered by insurance. The repair or replacement of excluded items is the responsibility of the Owner. However, if an Owner fails to make required repairs or replacements, upon a vote of the Association, and after notice and hearing pursuant to Section 5.5, the Association shall make the repairs or replacements and charge the cost to the Owner as an Expenditure.

**5.2 INSURANCE.** The Association shall maintain the policies of insurance required by Section 9.1 of this Declaration.

**5.3 DISCHARGE OF LIENS.** The Association shall discharge any lien against the Common Area, and charge the cost to the Owner responsible for the existence of the lien.

**5.4 PAYMENT OF EXPENSES.** The Association shall pay all expenses and obligations incurred by it in the conduct of its business.

**5.5 ENFORCEMENT.** The Association and each Owner shall enforce this Declaration. In addition to any other remedies provided in this Declaration, the Association may impose fines, suspend voting rights, or take other disciplinary action against any Owner for failure to pay Assessments and Expenditures or for violation of any provisions of the Governing Documents. Before imposing any fine, suspending voting rights, or taking other disciplinary action, the Association shall provide notice to the Owner and a hearing before the arbitrator(s) as provided by Section 10.1 according to the following procedure:

A. at least fifteen days before a decision to impose discipline is made, the accused Owner shall be given notice and the reasons for the proposed discipline; and

B. at least five days before the decision to impose discipline is made, the accused Owner shall be given an opportunity to be heard.

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

**5.6 UTILITY SERVICE.** The Association shall have the authority to obtain, for the benefit of all of the Condominiums, all common water, gas and electric service, telephone and television service, refuse collection and janitorial service. The Association shall maintain all utility installations located in the Common Area, except those installations maintained by utility companies. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Units.

**5.7 EASEMENTS.** The Association shall have authority to grant easements as provided in Article 2.

**5.8 MANAGER.** Except as provided in Section 5.16, the Association shall have the authority to employ a manager or other persons, and to contract with independent contractors or managing agents to perform the duties and responsibilities of the Association.

**5.9 ADOPTION OF RULES.** The Association may adopt reasonable rules not inconsistent with this Declaration relating to the use of the Common Area and the conduct of the Owners and their tenants and guests with respect to the Property and other Owners. The Association shall furnish copies of the rules to all Owners.

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

**5.11 ASSESSMENTS.** The Association shall have the power to levy and collect Assessments in the amount necessary for the purposes for which levied in accordance with the provisions of Article 4.

**5.12 EXPENDITURES.** The Association shall have the power to levy and collect Expenditures. The Association shall impose an Expenditure upon an Owner only after notice and hearing in accordance with Section 5.5. An Expenditure is the personal obligation of the Owner against whom it is charged. If more than one person is the Owner, the personal obligation to pay the Expenditure shall be joint and several. Declarant agrees, for each Condominium in the Project owned by Declarant, and each Owner, by acceptance of a deed to a Condominium, is deemed to agree to pay to the Association Expenditures as provided in this Section 5.12.

An Expenditure is due fifteen days after receipt by the Owner of written notice from the Association of the imposition of the Expenditure. The Association shall impose a late charge of ten percent (10%) of the delinquent Expenditure or \$10.00, whichever is greater, on all delinquent Expenditures. A late charge may not be imposed more than once on any delinquent Expenditure, shall not eliminate or supersede any charges imposed on prior delinquent payments, and shall constitute full compensation to the Association for any additional bookkeeping, billing, or other administrative costs resulting from the delinquent Expenditure. Any Expenditure not paid within thirty days after the due date shall bear interest at the rate of twelve percent (12%) per annum through and including the date full payment is received by the Association.

In any action to collect an Expenditure, the Association shall be entitled to costs of collection and attorneys' fees. An Expenditure shall become a lien upon a Unit upon the recording of a Notice of Delinquent Assessment which contains the information set forth in Section 4.11B; however, the lien of an Expenditure may not be enforced by sale of the Condominium pursuant to Civil Code Sections 2924, 2924b and 2924c.

**5.13 ACQUISITION AND DISPOSITION OF PROPERTY.** The Association shall have the power to acquire, own, improve, operate, maintain, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with its affairs.

**5.14 LOANS.** The Association shall have the power to borrow money and 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.

**5.15 CONTRACTS.** The Association shall have the power to contract for goods and services for the Common Area or the Association.

**5.16 DELEGATION.** The Association shall have the power to delegate its authority and powers to committees, officers, independent contractors, managers, or employees of the Association.

The Association may not delegate the following powers, except to the arbitrator(s) as provided by Section 10.1:

- A. file litigation;



- B. record a lien or foreclose for failure to pay Assessments;
- C. make capital expenditures;
- D. impose discipline and levy Expenditures for violations of the Governing Documents;  
or
- E. hold hearings pursuant to Section 5.5.

**ARTICLE 6**  
**Architectural Control**

6.1 **GENERAL.** No building, fence, wall, balcony, screen, patio, tent, awning, carport, improvement, or structure of any kind may be erected or maintained upon the Common Area, nor shall any alteration, modification or improvement be made to the Common Area, until approved in writing by the Association. The approval of the Association shall not be unreasonably withheld. Plans and specifications showing the nature, shape, color, size, materials and location of any improvements, modifications or alterations shall be submitted to the Association for approval as to quality of workmanship, design, harmony of external design with existing structures, and location in relation to surrounding structures.

The Association shall not deny approval of any modification to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons, without good cause. Any such modification or alteration shall be paid for by the person who requests it. However, the Association may condition its approval of such modifications in accordance with the provisions of Civil Code Section 1360.

In the event the Association fails to approve or disapprove plans and specifications within thirty days after they have been submitted, they shall be deemed approved.

6.2 **ANTENNAS.** Installation or use of a video or television antenna, including a satellite dish ("antenna"), shall not be permitted, except as provided below.

An antenna that has a diameter or diagonal measurement of thirty-six (36) inches or less, may be installed under the following circumstances:

- A. The antenna is not visible from any street or the Common Area;
- B. The Owner has applied to and received the prior written approval of the Association, which shall not be unreasonably withheld, as to the location of the antenna.

C. To the satisfaction of the Association, the Owner has provided for adequate maintenance, repair or replacement of roofs or other building components that may be damaged by the installation, maintenance or use of the antenna; and

D. To the satisfaction of the Association, the installer of the antenna has agreed to indemnify or reimburse the Association for any loss or damage caused by the installation, maintenance or use of the antenna.

The Association may impose on the Owner any other reasonable restrictions that do not significantly increase the cost of the antenna, including all related equipment, or significantly decrease its efficiency or performance. The Association also may permit the installation of an antenna under less restrictive conditions than those set forth above, subject to conditions approved by the Association if, in the discretion of the Association, the installation is harmonious with the design of the Project.

The issuance of a decision by the Association on the Owner's application to install an antenna shall not be willfully delayed.

#### ARTICLE 7 Use Restrictions

In addition to all other restrictions contained in this Declaration, the use of the Property and each Condominium is subject to the following provisions.

**7.1 CONDOMINIUM USE.** All Condominiums shall be used for residential purposes. No trade or business may be conducted in any Condominium except for administrative and professional practice as allowed by local ordinance. No tent, trailer, garage or structure of a temporary character may be used at any time as a residence.

**7.2 USE OF PARKING SPACES.** Parking spaces shall be used solely for parking of bicycles and non-commercial passenger motor vehicles, which means automobiles, station wagons, pickup trucks, motorcycles and light vans. No person shall park a motor vehicle anywhere upon the Property other than his designated parking space or parking areas designated by the Association for temporary parking.

Repair or washing of any motor vehicle shall not be permitted anywhere on the Property, except an emergency repair. Each Owner shall keep his designated parking space neat and clean and shall immediately remove any oil, grease or other waste emitted from his vehicle. No vehicle shall be operated upon the Project which emits excessive grease or noise, as such levels may be determined by the Association. Any violation of this Section may be rectified by the Association causing the vehicle to be towed and stored at the Owner's expense, and each Owner, trespasser, licensee, and



invitee, shall indemnify, defend and hold the Association, its members, officers, manager and employees harmless for any damage to person or property which may result.

**7.3 NUISANCE.** No person may interfere with the quiet enjoyment of any other resident of the Project, or carry on any activity in any part of the Property which is noxious, illegal, seriously annoying or offensive to a person of reasonable sensibility. No activity may be carried on which increases the rate of insurance for the Project (unless such increase is paid by the Owner responsible for it), or causes any insurance policy to be canceled or not renewed, or which will impair the structural integrity of any building.

**7.4 SIGNS.** No signs may be displayed to public view on any portion of the Property except signs approved by the Association. "For Sale" or "For Rent" signs shall be allowed provided they do not exceed five square feet in size. "For Sale" or "For Rent" signs may be posted only on those parts of the Common Area easily viewed by the general public and designated by the Association. Project identification signs approved by the Association and signs maintained by Declarant in connection with Declarant's sales activities are excluded from the prohibition of this Section.

**7.5 ANIMALS.** No animals shall be kept in any Unit or Common Area except that domestic dogs and cats, not to exceed a total of two such animals per Unit, fish, and birds inside bird cages, may be kept as household pets in any Unit. Permitted animals shall not be kept, bred, or raised for commercial purposes.

Any dog in the Common Area other than an Exclusive Use Common Area appurtenant to its Owner's Unit shall be leashed. After making a reasonable attempt to notify the Owner, the Association or any Owner may cause any unleashed animal found within the Common Area to be removed to a pound or animal shelter by calling the appropriate authorities. The Owner may, upon payment of all expenses, repossess the animal.

Pet owners shall prevent their pets from soiling the Common Area except as allowed under rules about the keeping and control of pets in the Units and Common Area, as may be adopted by the Association from time to time. Pet owners shall clean up after their pets immediately. The Association can prohibit the keeping of any animal that in the sole and exclusive opinion of the Association constitutes a nuisance to any other Owner. Each person bringing or keeping a pet upon the Project shall be liable to other Owners, their family members, guests, invitees, tenants, and contract purchasers, and their respective family members, guests, and invitees for any damage to persons or property proximately caused by any pet brought upon or kept upon the Project by that person or by members of his family, his guests, or invitees.

**7.6 GARBAGE DISPOSAL.** All garbage and other waste shall be kept in sanitary containers and regularly removed from the Property. Equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition and shall be kept only on the portion of the Common Area designated by the Association.

**7.7 RIGHT TO LEASE.** No Owner may rent a Condominium for transient or hotel purposes, which shall be defined as rental for any period less than thirty days, or any rental if the occupants are provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen, and bellboy service. Subject to these restrictions, an Owner may lease his Condominium, provided the lease is in writing, is made subject to the Governing Documents, and a copy of the lease is sent to the Association. An Owner shall be responsible for a tenant's compliance with the Governing Documents.

**7.8 CLOTHES LINES.** No exterior clothes lines may be erected and there may be no outside laundering or drying of clothes.

**7.9 STORAGE.** Any obstruction of the Common Area is prohibited. Nothing may be stored in the Common Area without the prior consent of the Association, except in designated storage areas.

**7.10 WINDOW COVERING.** All window coverings visible from the street or Common Area shall be in a neutral color, unless otherwise approved by the Association.

**7.11 FLOOR COVERING.** Each hallway and room other than the kitchen and bathrooms in the lower level of Unit 2 shall have carpet and pad or other noise deadening materials approved by the Association in eighty percent of its square footage, in order to reasonably reduce noise. An Owner may not remove or replace carpet and pad or other flooring materials installed by Declarant or any Owner unless the replacement materials have an acoustical insulation value equal to or greater than the acoustical insulation value of the flooring materials which have been removed or replaced. Prior to removing or replacing any flooring materials, an Owner must provide to the Association information on the acoustical insulation value of the replacement materials.

## ARTICLE 8 Mortgage Protection Provisions

**8.1 MORTGAGE PERMITTED; VALIDITY OF MORTGAGE LIEN.** Any Owner may encumber his Condominium with a Mortgage. No breach of any of the covenants, conditions and restrictions nor the enforcement of any lien provisions contained in this Declaration, shall defeat or render invalid the lien of any first Mortgage made in good faith and for value, but all of the 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.

**8.2 NOTICE TO ELIGIBLE MORTGAGE HOLDER.** As used in this Article 8, "eligible mortgage holder", shall mean a first Mortgagee, or the insurer or governmental guarantor of a first Mortgage, who has requested notice of certain actions in accordance with this Section.

Upon written request to the Association, identifying the name and address of the eligible mortgage holder, and the Condominium number and address, an eligible mortgage holder shall be entitled to timely written notice of the following:

- A. Any condemnation loss or any casualty loss that effects a material portion of the Project or any Condominium on which there is a Mortgage held, insured, or guaranteed by an eligible mortgagee holder;
- B. Any delinquency in the payment of Assessments or Expenditures owed by an Owner subject to a Mortgage held, insured, or guaranteed by an eligible mortgage holder which remains uncured for a period of sixty (60) days;
- C. Any default in the performance of an obligation under the Governing Documents by an Owner subject to a Mortgage held, insured, or guaranteed by an eligible mortgage holder which remains uncured for a period of sixty (60) days;
- D. Any lapse, cancellation or material modification of an insurance policy or fidelity bond maintained by the Association; or
- E. Any proposed action which would require the consent of eligible mortgage holders, as specified in Sections 8.6, 8.7 and 8.8.

Any failure by the Association to give such notice of default shall not in any event relieve the Owner of responsibility to cure the default or prevent the Association from enforcing the performance of the defaulted obligations by any of the procedures provided for in the Governing Documents.

**8.3 NOTICE OF CONDEMNATION OR DESTRUCTION.** In the event of the total or substantial destruction of the Project or the commencement of eminent domain proceedings or other acquisition procedures by a condemning authority against the Project or any portion of it, Mortgagees of first Mortgages shall be given timely written notice of such destruction or proceedings.

**8.4 LIMITATION ON 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 any similar restriction in favor of the Association. In the event there is permitted a right of first refusal in favor of any other person or entity, it shall not impair the rights of a Mortgagee of a first Mortgage to foreclose or take title to a Condominium pursuant to the remedies provided in the Mortgage, accept a deed (or assignment) in lieu of foreclosure in the event of a default by the Mortgagor, or sell or lease a Condominium acquired by the first Mortgagee.

**8.5 PRIORITY AS TO PROCEEDS AND AWARDS.** No Owner and no other party shall have priority over any rights of a Mortgagee pursuant to its Mortgage in the case of a distribution to

Owners of insurance proceeds or condemnation awards for losses to or taking of Units and/or the Common Area.

**B.6 CONSENT BY MORTGAGEES TO AMENDMENTS.** Without the vote or prior written consent of sixty-seven percent (67%) of the total voting power for the Association (based on one vote for each Condominium encumbered, unless a higher percentage of voting power is specifically required elsewhere in this Declaration), and the approval of fifty-one percent (51%) of eligible mortgage holders, the Association shall not amend any material provisions of the Governing Documents which establish, provide for, govern or regulate any of the following:

- A. Voting rights;
- B. Increases in assessments that increase the previously assessed amount more than twenty-five percent (25%), assessment liens or priority of such liens;
- C. Reductions in reserves for maintenance, repairs and replacement of the Common Area;
- D. Hazard or fidelity insurance requirements;
- E. Reallocation of interests in or rights to use the Common Area or Exclusive Use Common Area;
- F. Responsibility for maintenance and repair of the Project;
- G. Expansion or contraction of the Project or the additions, annexation or withdrawal of property to or from the Project;
- H. Redefinition of boundaries of any Unit;
- I. Convertibility of Units into Common Area or of Common Area into Units;
- J. Imposition of any restrictions on the leasing of Units;
- K. Imposition of any right of first refusal or any other restriction on the right of an Owner to sell, transfer, or otherwise convey his Condominium;
- L. Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;
- M. Any provisions which are for the express benefit of mortgage holders, insurers or guarantors.

**8.7 CHANGES REQUIRING ADDITIONAL FIRST MORTGAGEE APPROVAL.** Except as provided by statute in case of condemnation or substantial loss to the Units and/or Common Area, unless at least sixty-seven percent (67%) of all Owners or first Mortgagees (based on one vote for each Condominium encumbered) have given their prior written approval, neither the Association nor the Owners shall:

- A. By act or omission, seek to abandon or terminate the Project;
- B. Change the pro rata interest or obligations of any Condominium for purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of ownership of each Condominium in the Common Area;
- 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 said areas by the Association or the Owners shall not be deemed a transfer within the meaning of this clause); or
- E. Use hazard insurance proceeds for losses to the Property (whether to Units or Common Area) for other than the repair, replacement or reconstruction of the Property except as provided by statute in case of substantial loss of the Units or Common Area.

**8.8 CONSENT TO TERMINATE LEGAL STATUS OF PROJECT.** Any action to terminate the legal status of the project after substantial destruction or condemnation occurs shall require the vote or prior written consent of sixty-seven percent (67%) of the total voting power of the Association (unless a higher percentage of voting power is specifically required elsewhere in this Declaration) and the approval of fifty-one percent (51%) of eligible mortgage holders (based upon one vote for each Condominium encumbered). Any action to terminate the legal status of the project for reasons other than substantial destruction or condemnation shall require the vote or prior written consent of sixty-seven percent (67%) of the total voting power of the Association (unless a higher percentage of voting power is specifically required elsewhere in this Declaration) and the approval of sixty-seven percent (67%) of eligible mortgage holders (based upon one vote for each Condominium encumbered).

**8.9 SUBORDINATION; FORECLOSURE OF ASSESSMENT LIENS.** Any lien created or claimed under the provisions of this Declaration is subject and subordinate to the rights of any first Mortgagee with a first Mortgage that encumbers a Condominium. No such lien shall in any way defeat, invalidate or impair the obligation or priority of a first Mortgage unless the Mortgagee expressly subordinates its interest to such lien in writing. Each holder of a first Mortgage who obtains title to a Condominium pursuant to a foreclosure proceeding shall not be liable for unpaid

Assessments and charges against the Condominium which accrued prior to the acquisition of it by the first Mortgagee. However, such first Mortgagee shall be liable for any Assessments becoming due after the date of the transfer. Subsequently levied Assessments may include previously unpaid Assessments provided all Owners are required to pay their proportionate share of the previously unpaid Assessments.

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

**8.11 RIGHTS TO INSPECT, RECEIVE STATEMENTS, ATTEND MEETINGS.**

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

B. An eligible mortgage holder shall be entitled to have an audited financial statement for the immediately preceding fiscal year of the Association prepared at its expense if one is not otherwise available, and the Association shall make its records available for such purpose in accordance with Section 8.11A. If such a financial statement had already been prepared for the Association, it shall be furnished to the eligible mortgage holder without charge within 120 days of the Association's fiscal year end.

C. Any first Mortgagee shall, upon written request to the Association, be entitled to receive written notice of all annual and special meetings of the Association, and first Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Association; provided, however, nothing contained in this Section shall give a first Mortgagee the right to call a meeting of the Association or of the Members for any purpose or to vote at any such meeting.

**8.12 DEEMED APPROVAL.** For purposes of this Article 8, any Mortgagee who receives a written request to approve additions or amendments to the Governing Documents and who does not deliver or post with the Association a negative response within thirty (30) days, shall be deemed to have approved such request, provided the request was delivered by certified or registered mail, "return receipt" requested.



**ARTICLE 9**  
**Insurance, Destruction of Project, Condemnation**

**9.1 INSURANCE COVERAGE.**

A. The Association shall acquire and maintain the following insurance coverage:

i. **Fire and Casualty.** A master policy of fire and casualty insurance covering the Project and the Property, providing multi-peril coverage endorsement, and coverage for such other risks as are commonly covered with respect to projects similar to the Project in construction, location and use, or such other fire and casualty insurance as the Association determines gives substantially equal or greater protection. Coverage shall be in an amount equal to the full replacement value of the Project and shall include an agreed amount or equivalent endorsement. The policy shall be in a form and from an insurance carrier satisfactory to the Association and to any first Mortgagee who inquires of the Association as to the acceptability of any policy;

ii. **Comprehensive Public Liability.** Comprehensive Public Liability coverage insuring against such risks as are customarily covered with respect to projects similar to the Project in construction, location and use, insuring Declarant, the Owners, the Association and the Association's employees against liability to the public, or to any Owner, his tenants and invitees, incident to the ownership and use of the Project. Coverage under the policy shall not be less than two million dollars (\$2,000,000.00) per occurrence. The policy shall be issued on a comprehensive liability basis and provide cross-liability endorsements so the rights of any named insured under the policy shall not be prejudiced in an action against another named insured;

iii. **Worker's Compensation Insurance.** Worker's compensation insurance to the extent necessary to comply with any applicable law; and

iv. **Fidelity Bond.** If required by any institutional lender, a fidelity bond or policy of insurance against dishonest acts on the part of any person entrusted with or permitted to handle funds belonging to or administered by the Association, including a professional manager and his employees, naming the Association as the insured. The bond or insurance shall be in an amount not less than one and one-half times the estimated annual operating expenses plus accumulated reserves of the Association.

v. **Director and Officer Liability Insurance.** The Association shall purchase and maintain insurance in the amount of five hundred thousand dollars (\$500,000.00) on behalf of any officer or member of a committee of the

Association against any liability asserted against or incurred by any of these persons in their capacity or arising out of their status as agents of the Association, regardless of whether the Association has the power to indemnify these persons against liability under applicable law or the bylaws.

vi. **Insurance Required by Certain Leaders.** Notwithstanding the foregoing or any other provision of this Declaration, in the event the casualty, boiler or machinery, liability insurance and fidelity bond requirements established for condominium projects by the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC") are greater than those insurance and fidelity bond requirements specified in this Declaration, the FNMA or FHLMC requirements, whichever are greater, shall be maintained by the Association. This requirement as to FNMA or FHLMC shall remain so long as FNMA or FHLMC is a Mortgagee, Insurer or Guarantor of a Mortgage, or an Owner of a Condominium within the Development; provided however, to the extent such coverage is not available or has been modified or waived in writing by FNMA or FHLMC, it need not be obtained.

B. **Insurance Premiums.** Insurance premiums shall be a Common Expense to be included in the Regular Annual Assessment levied by the Association. The portion of the Assessment attributable to insurance premiums shall be held in a separate account of the Association and used only for the payment of insurance premiums as they become due.

C. **Review of Policies.** All policies of insurance shall be reviewed at least annually and adjusted, if necessary, to provide such coverage and protection as the Association may deem prudent or as reasonably required by any first Mortgagee.

D. **Owner's Insurance.** Each Owner shall insure his personal property and the improvements and betterments added to his Unit. Each Owner shall obtain liability insurance for the interior of his Unit.

E. **General Policy Provisions.** Each insurance policy obtained by the Association shall name as insureds the Association, as trustee for the Owners, and the Owners and shall provide that coverage may not be canceled or substantially changed without at least thirty days' prior written notice to the Association, each Owner, and his first Mortgagee. Each policy shall contain a waiver of subrogation by the insurer as to all claims against the Association, the Owners and their agents, employees and tenants. Each policy shall also contain a waiver of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

F. **Additional Insurance.** Nothing in this Section restricts or prohibits the Association from maintaining additional policies of insurance as it, in its discretion, deems necessary or reasonable, or as reasonably required by any first Mortgagee.



**9.2 DAMAGE OR DESTRUCTION OF PROJECT.**

A. **Damage to a Single Unit.** If a single Unit within the Project is damaged by a casualty which is covered by insurance, the insurance proceeds shall be paid to the Owner of the Unit and his Mortgagee according to their respective interests in the Condominium. The insurance proceeds shall be used to rebuild and repair the Unit. If the proceeds are insufficient to complete the work, the Owner shall pay whatever additional sums may be necessary to complete the rebuilding and repair. If a single Unit within the Project is damaged by a casualty which is not covered by insurance, the entire cost of repairing and rebuilding the Unit shall be paid by the Owner.

B. **Damage to Two Units or Common Area.** If the damage extends to two Units or any part of the Common Area, the following procedures shall be employed for disposition of insurance proceeds and guidance in reconstruction.

i. **Minor Casualty.** If the available insurance proceeds initially offered or paid by the insurer exceed ninety percent (90%) of the cost of repairing or rebuilding, the insurance proceeds shall be paid to a bank, savings and loan association, or another trustee designated by the Association ("insurance trustee"). The Association, on behalf of the Owners, shall enter into an insurance trust agreement, consistent with this Declaration, with the insurance trustee, relating to its powers, duties and compensation. The Association shall promptly contract to repair and rebuild the damaged portions of the Units and the Common Area. If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Association shall levy a Special Assessment on all Owners, subject to the provisions of this Declaration governing Special Assessments.

ii. **Major Casualty.** If subparagraph 9.2B.i. is inapplicable, (including inapplicability due to the fact that the damage is uninsured) then the following shall apply:

a. All insurance proceeds shall be paid to the insurance trustee and held for the benefit of the Owners and their Mortgagees, according to their respective interests in the Condominiums.

b. The Association shall obtain firm bids, including the obligation to obtain a performance bond, from two or more responsible contractors to rebuild the Project. The Association may also obtain an estimate from the insurance carrier of the work it will perform for the amount of the insurance coverage. The Owners shall promptly meet at a special meeting to consider the bids. Failure by the Owners to call a meeting or to repair the casualty damage within twelve months from the date the damage occurred shall be deemed a decision not to rebuild the damaged or

destroyed improvements. At the meeting, the Owners may accept the bid they consider most favorable or may vote to reject all bids and not rebuild the Project.

c. If a bid or estimate is accepted, the Association shall levy a Special Assessment on both Owners to make up any deficiency between the total insurance proceeds and the cost of the repairs or rebuilding. The Assessment and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the insurance trustee to be used for the rebuilding.

d. Upon an election not to rebuild, the Association, as agent, shall promptly sell the entire Project, in its then condition, on terms satisfactory to the Association. For the purposes of effecting a sale under this Section, each Owner grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of the Owners, to terminate the Declaration and to dissolve the Association. This Declaration shall then terminate. The net proceeds and all funds held by the insurance trustee shall be distributed to the Owners and their respective Mortgagees proportionately, according to the respective fair market values of the Units at the time of the destruction as determined by a qualified independent appraiser with an M.A.I. certificate or the equivalent. The appraiser shall be selected by the Association. The Association shall pay the cost of the appraisal. If the Association fails promptly to sell the Project, any Owner may bring an action for judicial partition of the tenancy in common ownership of the Project.

**C. Standards for Rebuilding and Repair.** All reconstruction of the Project shall be made in accordance with the conditions existing immediately prior to the damage, modified to comply with building codes and construction standards in effect at the time of the rebuilding.

**D. Full Insurance Settlement.** Notwithstanding any provision to the contrary, if the insurance carrier offers the full amount required to repair and restore all of the damage, then the Association must contract to repair and rebuild the damaged portions of all Units and the Common Area in the manner provided in Section 9.2B.i for a minor casualty.

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

**F. Notice of Damage or Destruction.** Within sixty days after damage or destruction occurs, the Association or, if it does not, any Owner, Mortgagee, the insurer or the insurance trustee, shall record in the Recorder's Office of the County of San Francisco,

California, a sworn declaration setting forth a description of the damage or destruction, the name of the insurer against whom the claim is made, the name of the insurance trustee and that the sworn declaration is recorded pursuant to this Section of the Declaration.

**9.3 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, or part thereof. In the event of a taking or acquisition of part or all of the Common Area by a condemning authority, the award or proceeds of settlement shall be payable to the Association, 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 a taking of any Condominium in the Project by eminent domain, the Owner shall be entitled to receive the award. An award for a taking which extends to two Condominiums or the Common Area shall be apportioned among the Owners according to a court judgment or agreement between the condemning authority and each of the Owners. In the absence of such an apportionment, the award shall be distributed among the Owners and their respective Mortgagees according to the relative values of the Condominiums affected as determined by independent appraisal in accordance with the procedure set forth in Section 9.2B.ii.d.

#### ARTICLE 10 General Provisions

**10.1 MEDIATION; ARBITRATION OF DISPUTES; ENFORCEMENT.** Any controversy arising from this Declaration or its breach, or any dispute between Owners or between an Owner and the Association, shall first be submitted to mediation. Mediation fees shall be divided equally among the parties to the mediation. In the event the matter cannot be resolved by mediation, then the matter shall be determined by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association (AAA) or the rules of Judicial Arbitration and Mediation Services, Inc./Endispute (JAMS). The selection between AAA and JAMS rules shall be made by the claimant first filing for mediation or arbitration. The parties to the mediation or arbitration may agree in writing to use different rules, different mediators or arbitrators, or both. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. The cost of the arbitration shall be paid as determined by the arbitrator. The following matters are excluded from the requirement for mediation and arbitration: (a) foreclosure of a delinquent assessment lien [where the delinquent Owner has not sought alternative dispute resolution in accordance with Section 4.11(c)], and (b) any claim solely for monetary relief which is within the jurisdiction of a probate or small claims court.

Subject to the foregoing requirement for arbitration, the Association or any Owner has the right to enforce the provisions of the Governing Documents by any civil action, and shall be entitled to recover reasonable attorneys' fees and costs as are ordered by the Court. Failure of the Association or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so in the future.

**10.2 TERM.** This Declaration shall continue for a term of fifty years from the date it is recorded, except as provided in Sections 9.2 and 9.3. After that fifty year period, this Declaration shall be extended automatically for successive periods of ten years, unless the Owners vote to change the Declaration or to terminate it, and an instrument in writing to that effect is recorded within the year preceding the beginning of the next period of ten years.

**10.3 AMENDMENTS.** This Declaration may be amended by an unanimous vote of the Association. Any amendment shall be signed by at least one Owner of each Unit and shall become effective only upon being recorded in the Recorder's Office of the County of San Francisco. No amendment shall adversely affect the rights of the holder of any Mortgage recorded prior to the amendment.

**10.4 OWNER'S RIGHT AND OBLIGATION TO MAINTAIN AND REPAIR.** Each Owner shall maintain his Unit in good condition and repair at his own expense. Each Owner shall keep the Exclusive Use Common Areas appurtenant to his Unit clean and neat. Each Owner has the exclusive right to paint, plaster, panel, tile, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his Unit. Each Owner shall be responsible for cleaning of the windows and glass of his Unit, both exterior and interior. If an Owner fails to maintain the interior of his Unit or the Exclusive Use Common Areas appurtenant to his Unit in a manner necessary to preserve the appearance, value and sanitation of the Property, the Association may notify the Owner of the work required and request it be done within sixty days from the date of the notice. If the Owner fails to comply with the notice, the Association shall enter the Unit pursuant to Section 5.10, cause the work to be done, and levy an Expenditure against the Owner for the cost of the work.

**10.5 OWNER'S COMPLIANCE.** Each Owner shall comply with the provisions of this Declaration, the Bylaws, the rules and regulations and the decisions and resolutions of the Association.

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

**10.6 NOTICES.** Any notice permitted or required by the Governing Documents may be delivered either personally or by first-class or registered mail. If delivery is by mail, the notice shall be deemed delivered seventy-two hours after a copy of it has been deposited in the United States mail, postage prepaid, addressed to each Owner at the current address given by him to the Secretary of the Association or addressed to the Unit of the person if no address has been given to the Secretary.

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

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

**10.9 STATUTORY REFERENCES.** References to particular statutes of the State of California shall include any amendment of the statute. If a particular statute is repealed, reference to the statute shall include another statute which thereafter governs the same subject.

**10.10 SEVERABILITY OF PROVISIONS.** The provisions of this Declaration shall be independent and severable, and the invalidity or unenforceability of one shall not affect the validity or enforceability of the others.

**10.11 CONSTRUCTION OF PROVISIONS.** The provisions of this Declaration shall be liberally construed to effect its purpose of creating a uniform plan for the development and operation of a condominium project pursuant to the provisions of Section 1350 et seq. of the California Civil Code.

Declarant has executed this Declaration on 5-30, 2000

Clipper Street Associates LLC,  
a limited liability company

by: William Lynch managing member  
William Lynch, managing member

by: William McInerney managing member  
William McInerney, managing member

STATE OF CALIFORNIA }  
COUNTY OF SAN FRANCISCO } SS.

On 5-30-00, before me, Mike Costello, personally  
appeared WILLIAM LYNCH and WILLIAM Mc INERNEY  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)  
whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)  
on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed  
the instrument.

WITNESS my hand and official seal.

Signature Mike Costello

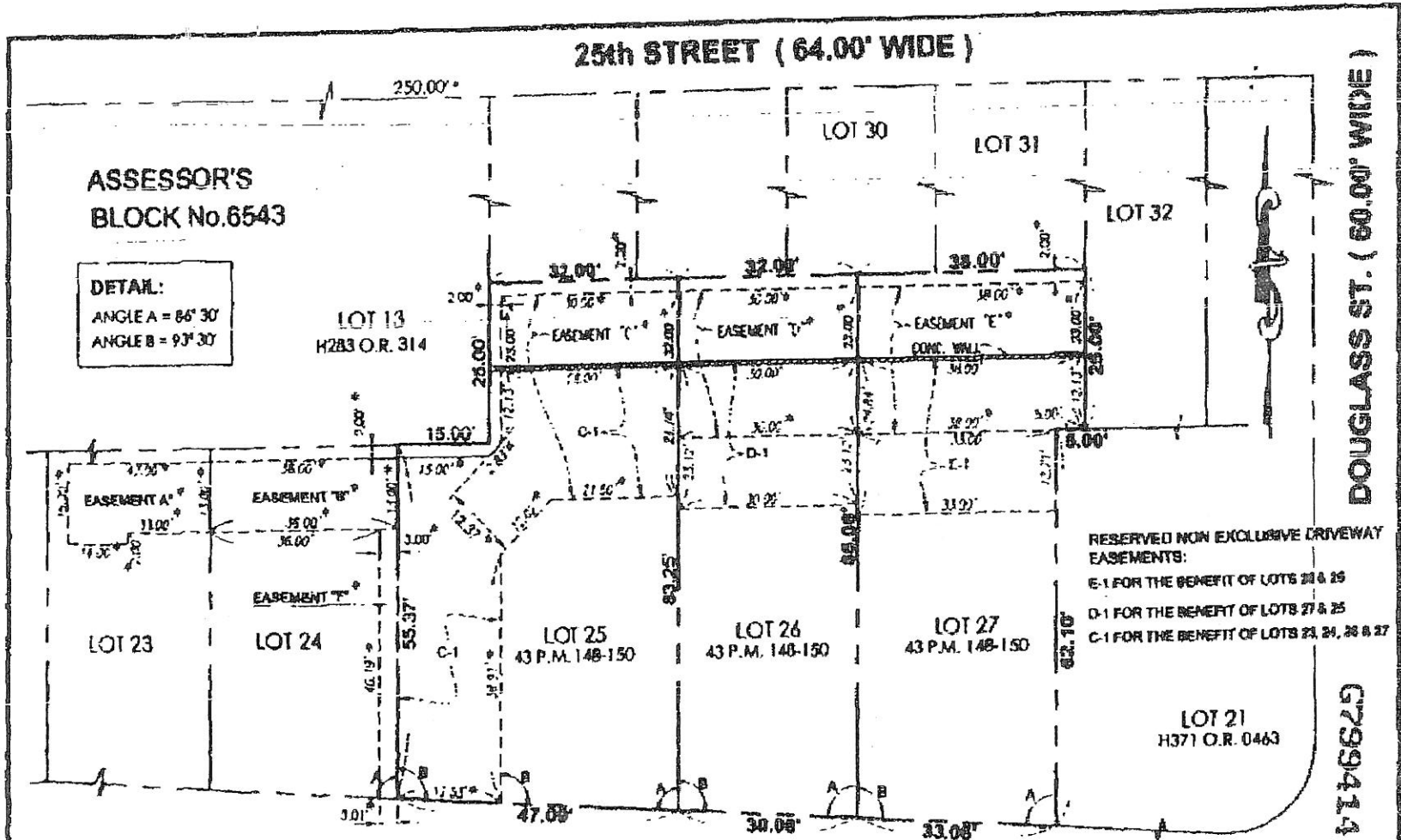


0815442

DECLARATION OF 672 CLIPPER STREET  
A CONDOMINIUM PROJECT  
EXHIBIT "A"

ALL that certain real property, as shown on that certain map entitled "Parcel Map of 672 Clipper Street, a Residential Condominium Project, being a Subdivision of Lot 27, Assessor's Block No. 6543, San Francisco, California," which map was filed for record in the Office of the Recorder of the County of San Francisco, State of California, on August 17, 2000, in Book \* \_\_\_\_\_ of Condominium Maps at pages \_\_\_\_\_ through \_\_\_\_\_, inclusive.

\*Document No. 2000-G814609-00



ASSESSOR'S  
BLOCK No.6543

DETAIL:  
ANGLE A = 86° 30'  
ANGLE B = 93° 30'

RESERVED NON EXCLUSIVE DRIVEWAY  
EASEMENTS:  
E-1 FOR THE BENEFIT OF LOTS 28 & 29  
D-1 FOR THE BENEFIT OF LOTS 27 & 28  
C-1 FOR THE BENEFIT OF LOTS 23, 24, 26 & 27

NOTES:

1. CONC. WALL AS SHOWN IS A PART OF DRIVEWAY EASEMENT C-1, D-1, & E-1.
2. ALL DEFLECTION ANGLES ARE IN DEGREES UNLESS EXPRESSLY OTHERWISE INDICATED AS A & B ANGLES.

LEGEND:

\* DENOTES PER 43 P.M. 148-150

6/20/00  
APPROVED: *[Signature]*  
L.S. 3076  
STATE OF CALIFORNIA  
CITY OF SAN FRANCISCO

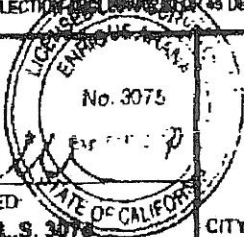


EXHIBIT "A"  
FOR DRIVEWAY EASEMENTS  
FOR LOTS 23, 24, 25, 26, & 27  
ASSESSOR'S BLOCK No.6543

DRAWN BY:	JUN
CHECKED BY:	H.A.
SCALE:	1" = 20'
Job No.	48105

CALIFORNIA