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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS,  
AND RESERVATION OF EASEMENTS  
OF  
170 OFF THIRD,  
A CONDOMINIUM COMMUNITY

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS,  
AND RESERVATION OF EASEMENTS  
OF  
170 OFF THIRD,  
A CONDOMINIUM COMMUNITY**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND RESERVATION OF EASEMENTS OF 170 OFF THIRD, A CONDOMINIUM COMMUNITY (this "**Declaration**") is made this 6<sup>th</sup> day of APRIL, 2007, by SP/P 170 King L.L.C., a Delaware limited liability company ("**Declarant**").

**ARTICLE 1.  
INTENTION OF DECLARATION**

**1.1 FACTS**

This Declaration is made with reference to the following facts:

1.1.1 ***Property Owned by Declarant:*** Declarant is the owner of all the real property and Improvements thereon located at 170 King Street, in the City and County of San Francisco, State of California, described in Exhibit A attached hereto (the "**Property**").

1.1.2 ***Nature of Community:*** Declarant intends to develop the Property as a common interest development and hereby declares that the Property described in Exhibit A is a condominium project within the meaning of California Civil Code section 1351(f) and in conformity with the provisions of the California Subdivided Lands Law (California Business & Professions Code, sections 11000, et seq.) and the Davis-Stirling Common Interest Development Act (California Civil Code, sections 1350-1376, inclusive). The project shall be referred to as the Community as defined in Section 2.11 herein.

Declarant has improved or intends to improve the Property by constructing improvements on it containing one hundred ninety-eight (198) residential Units, four (4) commercial Units and other facilities in accordance with plans and specifications on file with the City of San Francisco, County of San Francisco, California. By this Declaration, Declarant intends to establish a plan of condominium ownership. Declarant desires to impose on the Community these mutually beneficial restrictions, easements, assessments and liens under a comprehensive general plan of improvement and development for the benefit of all of the Owners (as defined in Section 2.32 herein) of Condominiums within the Community.

**1.2 APPLICABILITY OF RESTRICTIONS**

Pursuant to California Civil Code section 1353, Declarant hereby declares that the Property is subject to the provisions of this Declaration. The Community shall be held, mortgaged, rented, encumbered, used, sold, conveyed, leased, improved, and occupied subject to the limitations covenants, conditions and restrictions stated in this Declaration. All such

covenants, conditions and restrictions are declared to be in furtherance of the plan for the subdivision, improvement and sale of the Community as a planned development project. Pursuant to California Civil Code section 1353(a), all of the limitations, easements, restrictions, covenants, conditions stated in this Declaration shall be enforceable as equitable servitudes pursuant to a general plan for the development of the Community for the purpose of enhancing and protecting the value and attractiveness of the Community and every part thereof, in accordance with the plan for the improvement of the Community and the division thereof into Condominiums. All of the limitations, covenants, conditions, restrictions and easements shall run with the land and shall be binding on Declarant and its successors and assigns, and on all parties having or acquiring any right, title or interest in or to any part of the described Community, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## **ARTICLE 2.** **DEFINITIONS**

Unless the context clearly indicates a different meaning, the terms used in this Declaration, the Condominium Plan, the Map and any grant deed to a Condominium shall have the meanings specified in this Article.

### **2.1 ADDITIONAL CHARGES**

The term “**Additional Charges**” shall mean costs, fees, charges and expenditures, including, without limitation, attorneys’ fees, late charges, interest and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of assessments, fines and/or penalties.

### **2.2 ARTICLES**

The term “**Articles**” shall mean the Articles of Incorporation of the Association, as amended from time to time, which are or shall be filed in the Office of the Secretary of State of the State of California.

### **2.3 ASSOCIATION**

The term “**Association**” shall mean 170 OFF THIRD OWNERS ASSOCIATION, its successors and assigns, a nonprofit mutual benefit corporation incorporated under the laws of the State of California.

### **2.4 ASSOCIATION DOCUMENTS**

The term “**Association Documents**” shall mean the Articles, Bylaws, this Declaration, the Rules and Regulations, the current budget of the Association, the Condominium Plan and the Map.



**2.5 BOARD**

The term “**Board**” or “**Board of Directors**” shall mean the Board of Directors of the Association, and “**Director**” shall mean a member of the Board.

**2.6 BYLAWS**

The term “**Bylaws**” shall mean the Bylaws of the Association and any amendments thereto.

**2.7 CITY**

The term “**City**” shall mean the City and County of San Francisco, State of California.

**2.8 COMMERCIAL OWNER**

The term “**Commercial Owner**” shall mean the Owner of a Commercial Unit.

**2.9 COMMERCIAL UNIT**

The term “**Commercial Unit**” shall mean a Unit used exclusively for office, retail, or other commercial purposes. Commercial Units are designated on the Condominium Plan as Units 105, 109, 131, and 135.

**2.10 COMMON AREA**

The term “**Common Area**” shall mean all of the Property, Improvements thereon, and airspace which are not part of any Unit, including the earth parcel shown on the Map.

**2.11 COMMUNITY**

The term “**Community**” shall mean the development constructed or to be constructed on the Property.

**2.12 CONDOMINIUM**

The term “**Condominium**” shall mean an estate in real property as defined in California Civil Code sections 783 and 1351(f), consisting of an undivided interest in common in a portion of the Common Area, together with a separate fee interest in a Unit and any other separate interests in the Property as are described in this Declaration, in the Condominium Plan, or in the deed conveying the Condominium.

**2.13 CONDOMINIUM PLAN**

The term “**Condominium Plan**” means the plan attached hereto as Exhibit B, pursuant to California Civil Code section 1351 respecting the Community and any amendments to the Condominium Plan.

#### **2.14 CURRENT OPERATION ACCOUNT**

The term “**Current Operation Account**” shall mean the account where assessments collected for current maintenance and operation shall be deposited.

#### **2.15 DECLARANT**

The term “**Declarant**” shall mean SP/P 170 King L.L.C., a Delaware limited liability company. The term “Declarant” shall also mean successors in interest of Declarant if: (i) such successor(s) in interest acquire(s) all or any portion of Declarant’s interest in the Community for the purpose of development and/or sale, and (ii) a certificate has been recorded in the County in which the successor(s) in interest assume(s) the rights and duties of Declarant to the portion of the Community so acquired. There may be more than one Declarant.

#### **2.16 DECLARATION**

The term “**Declaration**” shall mean this Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements of 170 Off Third, A Condominium Community, and any amendments hereto.

#### **2.17 ELIGIBLE HOLDER**

The term “**Eligible Holder**” shall mean any Institutional Mortgagee who has delivered a written notice to the Association containing its name, address and the number or address of the Condominium encumbered by the Mortgage and requesting that the Association deliver written notice to it of any or all of the events specified in Section 9.5.

#### **2.18 EXCLUSIVE USE COMMON AREA**

The term “**Exclusive Use Common Area**” shall mean the following portions of the Common Area that are reserved for the exclusive use of individual Units: (i) certain of the Parking Spaces described on the Condominium Plan; (ii) the decks described on the Condominium Plan; (iii) the Storage Lockers, if any, described on the Condominium Plan, and (iv) the Wine Storage Lockers, if any, described on the Condominium Plan. Each such Exclusive Use Common Area shall be appurtenant to the applicable Unit and may not be conveyed or transferred apart from the applicable Unit, except for those Parking Spaces, Storage Lockers and Wine Storage Lockers, if any, to which Declarant or the Association may grant rights to a party other than an Owner or to which Declarant or the Association may grant rights to more than one such item to an Owner. The boundaries or location of the Exclusive Use Common Area are described on the Condominium Plan. Except as expressly provided in this Declaration, no other portion of the Community is an Exclusive Use Common Area.

#### **2.19 FIRST MORTGAGE**

The term “**First Mortgage**” shall mean a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a Condominium.

**2.20 FIRST MORTGAGEE**

The term "First Mortgagee" shall mean the Mortgagee of a First Mortgage.

**2.21 IMPROVEMENTS**

The term "Improvements" shall mean everything constructed, installed or planted on the Property subject to this Declaration, including, without limitation, buildings, facilities, the Parking Area, streets, driveways, fences, walls, paving, pipes, wires, and grading, and excluding only those Improvements or portions thereof which are dedicated to the public or a public or quasi-public entity or utility company and accepted for maintenance by the public, such entity or utility company.

**2.22 INSTITUTIONAL MORTGAGEE**

The term "Institutional Mortgagee" shall mean a First Mortgagee which is (i) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under or regulated by any federal and/or state law; (ii) an insurer or governmental guarantor of a First Mortgage, including, without limitation, the Federal Housing Authority and the Veteran's Administration; (iii) the State of California; or (iv) Declarant.

**2.23 INVITEE**

The term "Invitee" shall mean any person whose presence within the Community is approved by or is at the request of a particular Owner, including, but not limited to, lessees, tenants and the family, guests, employees, licensees or invitees of Owners, tenants or lessees.

**2.24 LOT**

The term "Lot" shall mean each individual portion of the Property designated on the Map as "Lot" followed by a number.

**2.25 MANAGER**

The term "Manager" shall mean the person or entity appointed or hired to manage and operate the Community.

**2.26 MAP**

The term "Map" shall mean the "Final Map 3375, 170 King Street, a 202 Unit Mixed Use Condominium Project, being a subdivision of Lot 75, as said Lot is shown in that Certificate of Compliance recorded April 15, 2004, in Reel I617, Image 604, O.R., also being a portion of Assessor's Block No. 3794, also being a portion of 100 Vara Block No. 361, San Francisco, California" recorded in the Official Records of the City on March 29, 2007, as Serial No. 2007-J361544-00 in Book 99 of Condominium Maps at Pages 155-157.

**2.27 MEMBER**

The term “**Member**” shall mean every person or entity holding a membership in the Association. Members shall also be Owners (as defined below).

**2.28 MORTGAGE**

The term “**Mortgage**” shall mean any duly recorded mortgage or deed of trust.

**2.29 MORTGAGEE**

The term “**Mortgagee**” shall mean a mortgagee under a Mortgage as well as beneficiary under a deed of trust.

**2.30 NOTICE AND HEARING**

The term “**Notice and Hearing**” shall mean the procedure which gives an Owner notice of an alleged violation of the Association Documents and the opportunity for a hearing before the Board.

**2.31 OCCUPANT**

The term “**Occupant**” shall mean any occupant or tenant (other than an Owner) occupying a Unit or portion thereof at the time or times in question.

**2.32 OWNER**

The term “**Owner**” shall mean the holder of record fee title to a Condominium in the Community, including Declarant as to each Condominium owned by Declarant. If more than one person owns a single Condominium, the term “Owner” shall mean all owners of that Condominium. The term “Owner” shall exclude any person having an interest in a Condominium merely as security for performance of an obligation. Owners shall also be Members (as defined above).

**2.33 PARKING AREA**

The term “**Parking Area**” shall mean all parking areas which are designated on the Condominium Plan. The Parking Area shall consist of Parking Spaces, driveways and easements benefiting the Parking Spaces.

**2.34 PARKING SPACE**

The term “**Parking Space**” shall mean and refer to each portion of the Parking Area used for parking purposes which is designated on the Condominium Plan as P-XX or HCP-XX, where “XX” represents the number of the individual space. The approximate dimensions of each Parking Space are shown on the Condominium Plan. Each Parking Space includes the airspace encompassed within its boundaries. Many Parking Spaces shall be Exclusive Use Common Areas with exclusive rights granted to a particular Unit. Other Parking Spaces shall remain

Common Area to be controlled, leased and/or assigned by the Association pursuant to Section 4.3.21 below. Pursuant to San Francisco Planning Commission Motion No. 16531, the Association shall make at least three (3) Parking Spaces available for use by an appropriate provider of car sharing services, as initially selected by the Declarant, and as may be subsequently changed by the Board, provided, however, that any Board action in this regard shall comply with all terms and conditions of any contract(s) or other agreement(s) between Declarant and the car share provider with respect to the Community.

**2.35 PERSON**

The term “**Person**” shall mean any natural person, corporation, partnership, trust or other entity, or any combination thereof.

**2.36 PROJECT SITE**

The term “**Project Site**” shall mean all that land designated in the official records of the City and County of San Francisco as Assessor’s Lot No. 75 of Assessor’s Block No. 3794 and any other areas used for construction of the Community.

**2.37 PUBLIC REPORT**

The term “**Public Report**” shall mean a Final Subdivision Public Report issued by the Department of Real Estate of the State of California for the Community.

**2.38 REGULAR ASSESSMENT**

The term “**Regular Assessment**” shall mean any assessment levied against the Owners pursuant to Section 6.2.1.

**2.39 REIMBURSEMENT ASSESSMENT**

The term “**Reimbursement Assessment**” shall mean any assessment levied against an Owner pursuant to Section 6.5.

**2.40 RESERVE ACCOUNT**

The term “**Reserve Account**” shall mean the account where a portion of the assessments collected as reserves for the maintenance, repair or replacement of capital Improvements shall be deposited.

**2.41 RESIDENTIAL OWNER**

The term “**Residential Owner**” shall mean the Owner of a Residential Unit.

**2.42 RESIDENTIAL UNIT**

The term “**Residential Unit**” shall mean any Unit which is restricted by Section 4.3 below to be occupied and used for residential purposes only. Residential Units are designated on the Condominium Plan as Units 201, 205, 207, 209, 211, 235-239, 301, 305, 307, 309, 311, 325,

327, 329, 335-339, 401, 402, 404-407, 409-411, 414, 422, 425-431, 435-439, 501, 502, 504-507, 509-511, 514, 522, 525-531, 535-539, 601, 602, 604-607, 609-611, 614, 616, 618, 620, 622, 625-631, 635-639, 701, 702, 704-707, 709-711, 714, 716, 718, 720, 722, 725-731, 735-739, 801, 802, 804-807, 809-811, 814, 822, 825-831, 835-839, 901, 902, 904-907, 909-912, 924-931, 1001, 1002, 1004-1007, 1009-1012, 1024-1031, 1101, 1102, 1104-1107, 1109-1112, and 1124-1131. Twenty-four (24) of the Residential Units in the Community are required to participate in an affordable housing program managed by the City and County of San Francisco. The participating Residential Units are designated in the records of the City and County of San Francisco and are subject to certain sale, resale and rental restrictions, as more particularly set forth in the Ordinances and Regulations of the City and County of San Francisco and the grant deeds or other documents applicable to those Residential Units.

#### **2.43 RULES AND REGULATIONS**

The term “**Rules and Regulations**” shall mean the rules and regulations adopted by the Association, including architectural guidelines, restrictions and procedures.

#### **2.44 SPECIAL ASSESSMENT**

The term “**Special Assessment**” shall mean any assessment levied against all Condominiums pursuant to Section 6.3.

#### **2.45 STORAGE AREA**

The term “**Storage Area**” shall mean those area(s) of the Common Area which are designated by the Association as such.

#### **2.46 STORAGE LOCKER**

The term “**Storage Locker**” shall mean those areas of Exclusive Use Common Area which are designated on the Condominium Plan as such.

#### **2.47 TENANT**

The term “**Tenant**” shall mean a person who occupies a Unit, but who is not an Owner.

#### **2.48 UNIT**

The term “**Unit**” shall refer to a Separate Interest as defined in California Civil Code section 1351(1)(2). The boundaries of each Unit are described on the Condominium Plan. Each Unit includes the airspace encompassed within its boundaries and all improvements, fixtures and utility equipment located therein, including without limitation hot water heaters, space heaters, lighting fixtures and cabinetry, and any Exclusive Use Common Area granted to Owner together with such Unit. Bearing walls, if any, located within the interior of a Unit are Common Area, not part of the Unit, except for the finished surfaces thereof. The approximate dimensions of each Unit are shown on the Condominium Plan as the boundaries of the Unit; however the existing physical boundaries of a Unit as originally constructed or as reconstructed in accordance

with the original construction design shall be conclusively presumed to be located entirely within its boundaries. The term "Unit" includes both the Commercial Units and Residential Units.

## **2.49 WINE STORAGE LOCKER**

The term "**Wine Storage Locker**" shall mean those areas of Exclusive Use Common Area which are designated on the Condominium Plan as such.

### **ARTICLE 3. OWNERSHIP AND EASEMENTS**

#### **3.1 NON-SEVERABILITY**

3.1.1 **No Separate Conveyance:** The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Condominium owned by the Owner. Each Owner shall have a proportionate undivided interest in the Common Area as shown in Exhibit B attached hereto. No Condominium shall be conveyed by the Owner separately from the interest in the Common Area. Any conveyance of any Condominium shall automatically transfer the right to use the Common Area without the necessity of express reference in the instrument of conveyance.

3.1.2 **Judicial Partition:** There shall be no judicial partition of the Common Area. Each Owner, whether by deed, gift, devise or operation of law, for his or her own benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests and causes of action for judicial partition of any interest in the Common Area and does further agree that no action for judicial partition shall be instituted, prosecuted or reduced to judgment. Notwithstanding any provisions to the contrary contained in this Declaration and in order to provide for a means of terminating the Community if this should become necessary or desirable, on occurrence of any of the conditions allowing an Owner of a Unit to maintain an action for partition (as such conditions are presently set forth in California Civil Code section 1359 or as such conditions in the future may be set forth in any amendment thereto or comparable provisions of law), seventy-five percent (75%) of the Owners of Units shall have the right to petition the Superior Court having jurisdiction to alter or vacate the Map under California Government Code section 66499.21, *et seq.*, or any comparable provisions of law, and to vest title to the property in Owners as tenants in common and order an equitable partition of the property in accordance with the laws of the State of California.

3.1.3 **Power of Attorney:** If there is a judicial partition of the Community pursuant to California Civil Code section 1359 or this Declaration, each Owner, for the Owner and the Owner's successors and assigns, hereby grants to the Association an irrevocable power of attorney to sell the entire Community for the benefit of all of the Owners. The power of sale shall be exercised only after recordation by the Association of a certificate which provides that the Association has the right to exercise the powers provided in this Section and in California Civil Code section 1359.

### 3.2 EASEMENTS

The ownership interests in the Common Area and Units described in this Article are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration, for the Owners of Condominiums in the Community. Said easements shall be deemed to be covenants running with the land for the use and benefit of the Owners and their Condominiums superior to all other encumbrances applied against or in favor of any portion of the Community. Individual grant deeds to Condominiums may, but shall not be required to, set forth the easements specified in this Article.

3.2.1 ***Easements on Map:*** The Common Area, Exclusive Use Common Area, and Units are subject to all easements, dedications and rights of way shown on the Map.

3.2.2 ***Easements for Common Area:*** Every Owner shall have a non-exclusive right and easement for the ingress, egress, use and enjoyment of the Common Area which shall be appurtenant to and shall pass with the title to every Condominium, subject to the following provisions:

(a) The right of the Board, after Notice and Hearing, to suspend an Owner's right to use any recreational facilities.

(b) The right of the Association to dedicate and/or grant easements, leases, licenses and permits over all or any portion of the Common Area including, without limitation, leases for Storage Areas, Storage Lockers and Wine Storage Lockers.

(c) The grant of any easements to certain Owners for Exclusive Use Common Area(s).

3.2.3 ***Easements to Exclusive Use Common Area:*** All easements to Exclusive Use Common Areas are subject to the right of the Association to enter in and upon such Exclusive Use Common Areas as provided by and in accordance with the limitations upon such right as set forth in this Declaration, except that the Association shall have no right to enter in or upon Storage Lockers or Wine Storage Lockers, except in the event of a Storage Locker or Wine Storage Locker, the rights to which are held by an individual or entity who was, but is no longer, an Owner or tenant and has vacated the premises. Each Owner shall have an exclusive right and easement for the use, possession and enjoyment of the Parking Space which is granted to that Owner, including easements for ingress and egress. For those Owners that have been granted an exclusive use easement for a deck (as shown on the Condominium Plan), such Owners shall have an exclusive right and easement for the use, possession and enjoyment of such deck that they have been granted, including easements for ingress and egress, as applicable.

3.2.4 ***Utilities:*** Each Owner shall have a non-exclusive right and easement over, under, across and through the Community, except for portions of the Community on which a structure is situated, for utility lines, pipes, wires and conduits installed by or on behalf of Declarant.



3.2.5 **Encroachment:** If any portion of the Common Area encroaches on any Unit or any part thereof 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 said encroachment, settlement or shifting; provided, however, that no right shall be created in favor of an Owner or Owners if said encroachment occurred due to the intentional conduct of said 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 Units or Common Area shall be permitted and that there shall be appropriate rights for the maintenance of said 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 Unit, or into a required setback area, a correcting modification may be made in the Map. Said modification shall 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 Property) and, in addition, by the city engineer (in the case of a parcel map).

3.2.6 **Support, Maintenance and Repair:** The Association and each Owner shall have a non-exclusive right and easement appurtenant to the Common Area and to all Units through each Unit and the Common Area for the support, maintenance and repair of the Common Area and all Units.

3.2.7 **Easement to Governmental Entities:** All governmental and quasi-governmental entities, agencies, and utilities and their agents shall have a non-exclusive easement over the Common Area and Exclusive Use Common Area for the purposes of performing their duties within the Community.

3.2.8 **Additional Easements:** Notwithstanding anything expressly or impliedly to the contrary, this Declaration shall be subject to all easements granted by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of the Community.

3.2.9 **Association's Easements:** There are hereby reserved to the Association and its duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association set forth in the Association Documents, including the right to enter upon Common Area, Exclusive Use Common Area and Units in the Community, subject to the limitations contained in this Declaration and the Rules and Regulations. Such Association's Easements shall include, but not be limited to, easements in favor of the Association through, upon and across certain Units, including, but not limited to, Units 902, 912, 924 and 931, for the purposes of accessing and maintaining the roof of the Property and for washing the exterior windows of the Property.

3.2.10 **Reservation of Easement Rights:** Notwithstanding any property rights, including easements, granted or reserved herein, Declarant hereby reserves such easements over and across the Community, and each Unit in the Community, as may be reasonably necessary for the exercise of the following rights:

(a) The right of Declarant or its agents to enter on any portion of the Community to construct the Improvements, to develop and improve the real property, and to market and sell Condominiums in the Community, provided that such entry does not unreasonably interfere with the Owners' rights to the use of the Community. This easement right will exist for five years from and after the date of recordation of this Declaration.

(b) The right of Declarant to enter any portion of the Community, including any Unit, to make repairs and to correct any construction problems thereon, provided that such entry does not unreasonably interfere with the use or occupancy of any occupied Unit unless authorized by its Owner, which authorization shall not be unreasonably withheld. In the case of entry into a Unit, the prior consent of the Owner shall be required.

(c) The right of the Association to enter any Unit, for the purpose of inspection. Such an entry upon a Unit shall be made only after three (3) days prior written notice to the Owner of such Unit, and after authorization of a majority of the Board.

(d) The right of the Association's agents to enter any Unit in the Community to cure any violation or breach of this Declaration, the Bylaws, the Rules and Regulations, or any other Association Document, provided that: (i) at least fifteen (15) days' prior written notice of such violation or breach (except in the cases of emergency) has been given to the Owner or Occupant; and (ii) if such violation or breach cannot be cured within such 15-day period, Owner or Occupant has not begun diligently prosecuting such cure during such 15-day period, or has not completed such cure within a reasonable period of time thereafter.

(e) The right of the Association's agents to enter any Unit in the Community to perform its obligations and duties under this Declaration, including the obligations and the duties with respect to maintenance or repair of any Improvements located on the Community, subject to such reasonable rules and regulations as may be promulgated by the Association concerning such entry, including the requirement that Association obtain the Owner's prior consent to entry. In case of emergency the right of entry shall be immediate.

### **3.3 DURATION**

Except for the Easements expressly limited in duration, all Easements shall be deemed to be perpetual, subject only to the amendment or termination of this Declaration.

**ARTICLE 4.**  
**USES AND RESTRICTIONS**

**4.1     ADMINISTRATION**

The Community will be administered in accordance with the provisions of this Declaration and the Bylaws. All Common Area will be subject to the reasonable supervision, operation, management and control of the Association in accordance with this Declaration.

**4.2     COMPLIANCE**

This Declaration and the Bylaws constitute a general scheme to benefit each Owner and may, subject to the provisions of this Declaration, be enforced by Declarant, the Association or any Owner. Each Owner will take and hold right, title and interest in such Owner's Unit or portion thereof subject to all of the covenants and conditions of this Declaration and the Bylaws. Each Owner will comply with all of the applicable provisions of this Declaration, the Bylaws and any rules and regulations promulgated by the Association, as the same may be amended from time to time. Each Owner shall comply with all of the requirements of all governmental authorities, federal, state or local, and all laws, ordinances, rules and regulations applicable to the Owner's use, occupancy, operation, maintenance and repair of the Owner's Unit.

**4.3     RESIDENTIAL USE RESTRICTIONS**

4.3.1     *Residential Unit Use:* The Residential Units may be used solely for residential purposes. No other use shall be allowed except as specifically permitted below:

(a)     A home office may be maintained to conduct a trade or business provided such office complies with the requirements of local laws and regulations governing the maintenance of offices in residential dwelling units, and such home office use shall only be for uses that do not interfere with the quiet enjoyment by other Owners in the Community and does not include visiting clients nor any signage or other displays that are visible from the exterior of the Residential Unit.

(b)     Until all of the Residential Units have been sold, Declarant, and its successors or assigns, may use any Residential Unit or Residential Units in the Community owned by Declarant for a model home site or sites and sales or leasing offices.

(c)     Use and occupancy of Condominiums shall be limited as provided by State and local law.

(d)     No Condominiums shall be owned, leased, occupied or rented pursuant to any time sharing agreement of any kind.

4.3.2     *Rental of Residential Units:* An Owner shall be entitled to rent or lease his or her Residential Unit if:

(a)     There is a written rental or lease agreement specifying that (i) the Tenant shall be subject to all provisions of the Association Documents and (ii) a failure to

comply with any provision of the Association Documents shall constitute a default under the agreement. Owner shall remain liable for any violation or infraction of the Association Documents by the tenant;

(b) The period of the rental or lease is not less than thirty (30) days, and no customary hotel services, such as room service for food and beverage, mail services or the furnishing of laundry and linen for a fee are provided to the Tenant;

(c) Owner gives written notice of the tenancy to the Board and has otherwise complied with the terms of the Association Documents; and

(d) Owner gives each Tenant a true and complete copy of the Association Documents.

(e) Notwithstanding any of the foregoing, no Owner may rent a Unit if doing so would cause more than twenty percent (20%) of the total number of Units in the Community to be rented at that time.

Upon satisfaction of the foregoing conditions, all rights to the use and enjoyment of the Common Area shall be exercised by the tenant rather than by the Owner of the leased or rented Residential Unit for the period of the rental agreement; however, the Owner shall not be relieved of and shall remain responsible for the obligations and duties imposed by this Declaration and any other Association Document. In the event an Owner does lease or rent his or her Residential Unit as herein provided, he or she shall, within seven (7) days of execution of the lease or occupancy agreement, provide the Board or the manager with the landlord/tenant package supplied by the Association.

#### 4.3.3 *Animals:*

(a) No animals, reptiles, rodents, birds, livestock or poultry of any kind shall be raised, bred or kept in any Unit, or any portion of the Property; except that no more than two (2) domestic dogs or two (2) domestic cats, or one (1) domestic dog and one (1) domestic cat, fish (which shall not be counted in determining the number of pets) and no more than two (2) birds (in birdcages) may be kept as domestic pets in any Residential Unit, provided they are not kept, bred or maintained for any commercial purposes, and they are kept under reasonable control that all times. Owners shall inform the Association of the type of breed of pet upon commencement of occupancy and provide the Association with proof of rabies vaccination.

(b) In no event shall any Owner authorize, bring or keep within the Development (i) any pit bull, rottweiler, Doberman pinscher, mastiff, canaria presa, or any other breed known as a "fighting breed" or any dog being a mix thereof; or (ii) any snakes, pigs, large lizards, spiders, rats or vermin. The Board, after notice and a hearing, may require the permanent removal from the Development of any animal that the Board, in its discretion, determines is a nuisance, a danger to the health or safety of any occupant, or otherwise interferes with the quiet use and enjoyment of occupants of any Condominium. The Board may find that an animal is a nuisance if the animal or its Owner continue to violate the Rules regulating pet after receipt of a demand from the Board to comply with the Rules.

(c) In addition to the foregoing, the keeping and control of each type of pet shall be further expressly subject to such controls and prohibitions as may be adopted by the Board and/or as specified in the Rules and Regulations. The Board shall specifically have the right to prohibit the maintenance of any pet which, after Notice and Hearing, is found to be a nuisance to other Owners.

(d) No pet shall be allowed in the Common Areas except as may be permitted by the Rules and Regulations. Owners and Occupants shall prevent their pet from soiling any portion of the Common Areas and shall promptly clean up any waste left by their pet.

(e) Each person bringing or keeping a pet upon the Property shall be liable to the other Owners, their family members, guests, invitees, tenants and their respective family members for any damage to persons or property proximately caused by his/her pet. Notwithstanding anything to the contrary contained herein, each owner of a pet shall comply with the applicable ordinances of the City.

4.3.4 **Insurance risks:** Any use which would constitute an unusual fire hazard or which would result in jeopardizing any insurance maintained on any part of the Improvements or would result in an increase in the premium therefore is prohibited.

4.3.5 **Overloading:** Any use beyond the maximum loads the floor of the Improvements are designed to carry, which maximum loads are set forth in the Maintenance Manual defined in Section 4.6 below, unless adequate additional strengthening is undertaken at the sole expense of the Owner committing such use and otherwise in accordance with this Declaration and any use which would place an extraordinary burden on any Common Areas.

4.3.6 **Signs:** No sign shall be displayed to the public view on any Residential Unit or in the Common Areas except (i) signs as are approved by the Board; (ii) signs maintained by Declarant in connection with its initial and ongoing sales activity; and (iii) signs required by legal proceedings. In accordance with California Civil Code section 712, one (1) "For Sale" or "For Rent" sign for each Residential Unit shall be allowed, provided that such sign is reasonable in size and posted at an appropriate location on the Property as determined by the Board. The Board may adopt rules and regulations concerning the procedure, display, size and location of "For Sale" or "For Rent" signs or notices.

4.3.7 **Garbage and Refuse Disposal:** All rubbish, trash and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall be kept only in sanitary containers. All trash, garbage and other waste must be in sealed bags before placing in trash chutes or sanitary containers. No toxic or hazardous materials shall be disposed of within the Community by dumping in the trash chutes, garbage containers or down the drains or otherwise (other than those required, in limited quantities, for normal household cleaning and landscaping work). In the event trash recycling is made available to the Community, recyclable materials shall be placed in designated recycling containers.

4.3.8 **Radio and Television Antennas:** No Owner shall alter or modify a central radio antenna, television antenna system, cable television system or microwave or

satellite dish, if any, as developed by Declarant and as maintained by the Association, without the express written permission of the Board. No Owner shall construct and/or use and operate his/her own external radio, television antenna or microwave or satellite dish in any portion of the Common Area outside of Owner's Exclusive Use Common Area. No Owner shall construct and/or use and operate his/her own external radio, television antenna or microwave or satellite dish within Owner's Exclusive Use Common Area without the express written approval of the Board. The Board may not prohibit or restrict the construction and/or use of a satellite dish having a diameter or diagonal measurement of 36 inches or less and which is not visible from any street or Common Areas unless it or the Association makes available to Owner the service typically offered through such a dish at a price and under terms generally consistent with those available to an individual user. Notwithstanding the foregoing, the Board may prohibit the installation of any external antenna or other external facility or equipment used for amateur ("Ham") radio, CB radio, FM or AM radio service, satellite radio or used as part of a hub to relay signals among antennas, and the Board may impose reasonable restrictions for the installation and use of a video or television antenna, including a satellite dish, that do not significantly increase the cost of the system or significantly decrease its efficiency or performance, as set forth in Civil Code section 1376. If the Board requires approval for the installation of such radio, television antenna or microwave or satellite dish, the application for approval shall be processed in the same manner as an application for architectural modification and the issuance of the decision on the application shall not be unreasonably delayed.

4.3.9 **Exterior Appearance:** All window coverings, or other materials which are visible from the exterior of the Improvements, shall conform to the reasonable Rules and Regulations so as to preserve the uniformity of appearance of the Improvements from the exterior and from areas subject to common use; provided, however that, window coverings visible from the exterior of the Unit shall be restricted to drapes, curtains, shutters or blinds of the off-white or white color. Nothing shall be done or permitted within any Unit which will interfere with or disrupt the uniformity of the exterior appearance of the Improvements.

4.3.10 **Floor Covering:** Owner shall provide and maintain, at Owner's sole expense, in each room (excluding kitchens and bathrooms) in all Units situated above other Units carpeting or rugs covering at least seventy-five percent (75%) of its square footage, or other measures expressly deemed by the Board to be equivalent, for the purposes of reducing noise and maximizing quiet enjoyment of those Owners whose Units are situated beneath other Units. Owner shall be responsible and fully liable for providing and maintaining all such carpeting or rugs or other Board-approved products. All Owners covenant and agree to take all reasonable precautions to lower noise transference between Units and to abide by any Rules and Regulations regarding floor coverings. Any mitigation of noise transference which is required of an Owner by the Board shall be the sole responsibility of said Owner. Flooring in each Unit originally installed by the Declarant shall not be replaced with flooring that provides less sound protection than that provided by the original flooring. This may require the use of an acoustical underlayment if the installation of hard surface flooring is desired. It is the sole responsibility of each Owner installing flooring to retain the services of an acoustical consultant and/or architect (to be paid for by such Owner) to ensure that the sound absorbing materials and procedures to be utilized by the Owner in the alteration of such flooring material, meet or exceed the sound absorbing criteria of the flooring being replaced. An Owner who fails to comply with the foregoing floor covering restrictions may be forced to remove the non-conforming floor

coverings and replace such floor coverings with other flooring which conforms to the foregoing restrictions at such Owner's sole expense. The Board and the Architectural Committee shall have the authority to require the removal of non-conforming floor coverings, and the Board may include in the Rules and Regulations additional sound attenuation restrictions and guidelines.

4.3.11 ***Clothes Lines:*** No exterior clothes lines shall be erected or maintained and there shall be no outside laundry or drying of clothes. No draping of towels, carpet or laundry over railings shall be allowed.

4.3.12 ***Nuisance:*** No illegal or offensive activity shall be transacted or conducted in any Unit or on any part of the Property, nor shall anything be done thereon which may be a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners of his or her respective Unit (including without limitation, the use of any equipment or machines, which would cause undue noise, vibration, or emission of noxious odors; barking dogs; or the parking of vehicles in areas other than those designated for parking or licensed for exclusive use), or which shall in any way increase the rate of insurance for the Community, or cause any insurance policy to be canceled or to cause a refusal to renew the same, or which will impair the structural integrity of any Improvements. Owners who have installed access alarm systems within their respective Units shall take reasonable care in preventing consistently false alarms of such system causing an annoyance or nuisance or in any way interfering with the quiet enjoyment of neighboring Owners and Occupants of the Community. Barbecue cooking is prohibited on all decks.

4.3.13 ***Decks:*** In addition to the restrictions set forth in Sections 4.3.8, 4.3.11, 4.3.12, 11.14 and elsewhere in this Declaration, no Owner shall (i) store any items on decks including without limitation furniture (excluding furniture designed specifically for outdoor use), bicycles, barbecues and appliances; (ii) install outdoor speakers on decks which would cause noise to interfere with the quiet enjoyment of neighboring Owners or Occupants; (iii) water plants or flowers in such a way to cause water to encroach on below or neighboring decks; (iv) enclose any deck with netting or shades; (v) install carpeting on any deck; or (vi) install additional outdoor lighting. Only furniture listed by the Association on an approved furniture list (or otherwise approved by the Association) may be placed on a deck.

4.3.14 ***Mechanical Equipment:*** Notwithstanding any provisions contained herein regarding the necessity of Board approval contained in Section 4.3.17, any mechanical equipment installed in any Unit or Exclusive Use Common Area including, but not limited to, any HVAC equipment (if any), shall be insulated and installed so as not to interfere with the quiet enjoyment of other Owners or any other Person. The emission of noise over 40 decibels shall be a violation of this requirement.

4.3.15 ***Violation of Law:*** Any use which constitutes the violation of any law, statute, ordinance, rule, regulation or order of any governmental authority having jurisdiction over the Community, including, without limitation, any of the same that regulate or concern hazardous or toxic wastes, substances or materials is prohibited.

4.3.16 **Smoking:** Smoking in any interior Common Area, including any interior Exclusive Use Common Area, is strictly prohibited. The Board may establish rules and regulations regarding smoking in exterior Common Areas.

4.3.17 **Power Equipment and Motor Vehicle Maintenance:** Except in any station specifically provided in the Community by the Declarant or the Association for any or all of these purposes, no power equipment, hobby shops, vehicle, motorcycle or boat washing, or motor vehicle or motorcycle maintenance or repair (other than in the event of an emergency) shall be permitted in the Community, except with prior written approval of the Board. In deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, vibration, dirt or grease, fire hazard, interference with radio or television reception, and similar objections, as well as compliance with hazardous materials regulations. Any such specifically provided station shall be used only by Owners or Tenants, and shall be otherwise used pursuant to rules and regulations adopted and maintained by the Board. Such rules and regulations shall limit, among other things, the hours of operation and use of said station.

4.3.18 **Hazardous Materials:** An Owner shall not use or keep in a Unit or the Common Areas, any kerosene, gasoline or inflammable or combustible fluid or material or other hazardous materials (other than those required, in limited quantities, for normal household cleaning or landscaping work). All hazardous waste shall be disposed of properly by each Owner.

4.3.19 **Liability of Owners for Damage to Common Areas:** The Owner of each Unit shall be liable to the Association for all damage to the Common Areas or the Improvements thereon, caused by such Owner, Owner's Invitees, or Owner's pet. Liability of an Owner shall be established only after Notice and Hearing before the Board.

4.3.20 **Vehicle Restrictions:**

(a) Vehicles shall not be parked anywhere in the Community except in Parking Spaces. As long as applicable ordinances and laws are observed, including the requirements of Section 22658.2 of the California Vehicle Code, any vehicle which is in violation of this Declaration may be removed at its owner's expense if said vehicle is parked, left, maintained or used in any way that violates this Declaration. Parking Spaces shall be used solely for the parking of standard passenger vehicles, including automobiles, motorcycles, passenger vans designed to accommodate ten (10) or fewer people, and pickup trucks having a manufacturer's rating or payload capacity of one (1) ton or less, and shall not be used for storage purposes. No trailer, camper, mobile home, commercial vehicle, truck (other than pickup trucks permitted above), bus or van designed for more than ten (10) passengers, vehicle having more than two (2) axles, boat, inoperable automobile, or similar equipment shall be parked, stored or permitted to remain upon any area of the Property other than on a temporary basis. Commercial vehicles shall not include sedans (or standard vans or pickup trucks) which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive, as determined by the Board. No noisy or smoky vehicles shall be operated upon the Property. No unlicensed motor vehicles shall be operated upon the Property. In the event an alarm system on a vehicle parked in a Parking Space is consistently activated and becomes a nuisance and interferes with the quiet enjoyment of other



Owners and Occupants of the Community, Owner or Occupant of such vehicle shall disconnect, repair or adjust such alarm system, or remove its vehicle from the Community.

(b) The Association may install a sign at each vehicular entrance to the Community, containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Community will be removed at the owners expense. The sign shall contain the telephone number of the local traffic law enforcement agency and shall not be less than seventeen (17) × twenty-two (22) inches in size with lettering not less than one (1) inch in height.

(c) The Association may cause the removal of any vehicle wrongfully parked on the Property, including a vehicle owned by an Owner or Occupant, and the vehicle owner's expense.

(d) 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. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

4.3.21 **Parking:** Parking Spaces designated as RS-XX and all Common Area Parking Spaces which are neither Exclusive Use Common Areas conveyed as easements appurtenant to a Unit, nor assigned or granted by the Declarant, shall remain under the control of the Association. Parking Spaces shall be used for parking of permitted vehicles only and not for the parking or storage of boats, trailers or non-mobile vehicles of any description. Garage space may not be converted into any use that would prevent its use as a parking area for the number of vehicles for which the area was originally intended. The Association shall establish rules and regulations regarding the use of the Parking Spaces designated as RS-XX and the unassigned Parking Spaces in the Common Area. Use by Owners of such unassigned Parking Spaces, if available, shall only be valid if established by the Association and such use must be set forth in writing by the Association.

4.3.22 **Handicap Parking:** The Community contains eight Parking Spaces designated as handicap parking spaces (shown as HCP-XX) (the "Handicap Spaces"). Declarant, and subsequently the Association, may lease, assign or otherwise make these spaces available to handicapped Owners or Occupants. Evidence of handicap status shall be by distinguishing license plate or placard issued by the California Department of Motor Vehicles. If an insufficient number of qualified handicapped Owners or Occupants desires to acquire rights to the Handicap Spaces, Declarant, and subsequently the Association, may lease, assign or otherwise make them available to other Owners or Occupants by the same procedure as it makes any other surplus Parking Space available, provided that Declarant or the Association must reserve the right, in the case that a qualified handicapped Owner or Occupant desires to acquire rights to a Handicap Space that has been conveyed, leased, assigned or made available to an Owner or Occupant who is not himself handicapped, to terminate the rights granted to the non-handicapped Owner or Occupant in favor of the handicapped Owner or Occupant for so long as the handicapped Owner or Occupant both: (a) Owns or Occupies a Unit and (b) remains a qualified handicapped Owner or Occupant, provided further that in that case, the Association shall lease, assign or otherwise make available a replacement Parking Space for the non-handicapped Owner or Occupant if or

when one is or becomes available. In this event, the Association shall use its best efforts to provide a replacement parking space for the non-handicapped Owner or Occupant.

Subsequent to initial assignment by the Declarant, the Association shall have the authority and be responsible for coordinating the leasing or other assignment of parking spaces pursuant to this section, including any necessary exchanges by and between handicapped Owners or Occupants and non-handicapped Owners or Occupants, and shall adopt rules and regulations with respect thereto, including the procedure to be followed should an Owner or Occupant be or become handicapped and wish to lease or otherwise acquire rights to a handicap parking space, notice to be given to the Association and Owner, and review of the required evidence of handicap. The Association shall maintain appropriate records of such transactions, including a copy of the evidence provided.

Subsequent to the initial acquisition of rights to Parking Spaces by Owners, whether handicapped or not, no parking transactions, including exchanges, shall be recognized except those that are done by and through the Association pursuant to its rules, practices and procedures.

The right to use any Parking Space or Handicap Space may not be transferred to any Person other than an Occupant or Owner or for any purpose other than in connection with the occupancy of a Condominium in the Community. Any authorized use transfer shall be a license only and shall not transfer any other interest in the Parking Space or Handicap Space.

#### **4.4 COMMERCIAL USE RESTRICTIONS**

4.4.1 **Commercial Unit Use:** The Commercial Units may be used for any commercial purposes as defined in Section 4.4.2 below.

4.4.2 **Commercial Use:** Any Commercial Unit shall not be occupied and used except for commercial purposes by the Owner or his or her lessee. For purposes of this Section 4.4, "**commercial purposes**" shall include retail sales and businesses, offices, and food preparation, service and/or sales, any or all of which shall comply with and be permitted by applicable federal, state and local laws and regulations.

4.4.3 **Hours of Operation:** The hours of daily operation for the Commercial Units shall be limited to the period beginning at 6:00 a.m. and ending at 11:00 p.m., unless otherwise approved by Association.

4.4.4 **Advertising and Signs:** No Owner, or his or her lessee, shall employ an advertising medium which can be heard or experienced outside of the Commercial Units, including, without limiting the generality of the foregoing, flashing lights, searchlights, loudspeakers, phonographs, radios or television. No Owner, or his or her lessee, shall distribute, or cause to be distributed, any handbill or other advertising device in the Common Area or on the public sidewalks or streets adjacent to the Community. Declarant reserves the right to display signs in connection with its initial and ongoing sales activity as provided in Section 4.3.6 above. All signs displayed for public view on the Commercial Units shall comply with all applicable federal, state and local laws and regulations.

4.4.5 **Leasing of a Commercial Unit:** Except for the restrictions contained in this Section 4.4.5, there shall be no restriction on the right of an Owner to lease his or her Commercial Unit. An Owner may lease his or her Commercial Unit for the uses allowed by Section 4.4.1 and 4.4.2. Any lease shall provide that it is subject, in all respects, to the provisions of this Declaration, the Articles, and the Bylaws.

4.4.6 **Customers, Guests and Lessees; Insurance:** An Owner shall be responsible for compliance by his or her customers, invitees, guests and lessees, and his or her lessees customers, invitees and guests, with the provisions of this Declaration, the Bylaws, and any rules and regulations made by the Board. The Owner of a Commercial Unit or such Owner's lessees shall maintain a policy or policies of public liability insurance in an amount equal to or exceeding \$2,000,000 per occurrence, and shall demonstrate proof of such insurance to the Board upon request. If the Owner of a Commercial Unit's (or such Owner's lessees') conduct or use of the Commercial Unit causes any increase in the premiums of the insurance policies carried by the Association pursuant to Article 8, below, then such Owner shall reimburse the Association for any such increase promptly upon being billed therefore.

4.4.7 **Restrictions on Board:** The Board may not restrict the reasonable use of the Commercial Units as provided for herein.

4.4.8 **Inclusion of Residential Restrictions:** The provisions of Sections 4.3.3-4.3.5, 4.3.7, 4.3.8, 4.3.11; 4.3.12, 4.3.14-4.3.17, 4.3.19-4.3.22 are hereby incorporated into this Section 4.4 and shall be restrictions on the use of the Commercial Units.

4.4.9 **Hazardous Materials:** An Owner shall not use or keep in a Commercial Unit or the Common Area any kerosene, gasoline or inflammable or combustible fluid or material or other hazardous materials, other than those required or necessary to operate the business for which the Commercial Unit is used and for normal cleaning and landscaping work and provided such business complies with all applicable laws and safety requirements.

4.4.10 **Restrictions on Restaurant Use:** The Commercial Units may be used for restaurant purposes subject to the following restrictions:

(a) Noise and/or odors caused from the operation of the restaurant shall be sufficiently controlled such that neither would cause a nuisance to the other Owners or Occupants, or unreasonably disturb any Owner or Occupant's right to the quiet enjoyment of their premises. The restaurant operator shall undertake all reasonable measures necessary to remove any offensive odors generated by the restaurant and/or its garbage.

(b) No wood-burning stove may be used in the Commercial Units.

(c) All utilities serving the restaurant shall be provided independent from the Community utilities, except for the sprinkler system and life-safety systems, provided that the Association may provide utilities at its sole discretion, in which case such utilities shall be separately metered and paid for by the restaurant operator. In the case of separate metering, the Owner of the Commercial Unit shall be jointly and severally liable with the restaurant owner for any amounts due the Association for utilities.

(d) No live entertainment may be conducted in the Commercial Units, unless approved by the Board.

(e) The grease trap must be cleaned out at least every seven (7) days.

(f) The owner of the restaurant must maintain an effective pest inspection and extermination program.

(g) No exterior lights may be kept on between the hours of 11:00 p.m. and 6:00 a.m. daily.

4.4.11 *Use of Common Area Amenities:* No persons associated with the Commercial Units who are not also Owners of Residential Units, including Owners, tenants or guests of said Commercial Units, may use whatever Common Area amenities may be, or may become, a part of the Community, including the fitness center and the community room.

#### 4.5 USE OF COMMON AREA

All use of the Common Area is subject to the Rules and Regulations. Except as otherwise set forth herein, the Common Area is for the sole use, enjoyment and benefit by Owners and their Invitees, and any Persons other than Owners and their Invitees shall be deemed to be trespassers. Subject to the provision of Sections 3.2.3, 3.2.4 and 3.2.6, all Owners and their Invitees may enjoy the use of all facilities in the Common Area so long as they abide by the terms of the Association Documents. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area without the prior approval of the Board, which approval may be withheld in its sole discretion (other than as otherwise set forth herein with respect to the Exclusive Use Common Area). No alterations or additions to Common Area shall be permitted without the prior approval of the Board, which approval may be withheld in its sole discretion. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area without the prior approval of the Board, which approval may be given or withheld in its sole discretion. No Owner shall permit anything to be done or kept in the Common Area which might result in the cancellation of insurance on any part of the Common Area, which would interfere with rights of other Owners, which would be noxious, harmful or unreasonably offensive to other Owners or which would be in violation of any governmental statute, ordinance, rule or regulation. No waste shall be committed in the Common Area. Nothing shall be stored, grown, or displayed in the Common Area that is not approved by the Architectural Control Committee (other than as otherwise set forth herein with respect to the Exclusive Use Common Area).

#### 4.6 MAINTENANCE STANDARD

For the benefit of all Owners and in a manner consistent with the nature of the Community as a first class condominium project, each Owner will use, maintain and operate (or cause to be used, maintained and operated) its respective Unit or portion thereof pursuant to this Declaration and in accordance with the Maintenance Manual Guidelines – Maintenance Recommendations (the “**Maintenance Manual**”) provided by Declarant to each Owner, and the Association will operate and maintain (or cause to be operated and maintained) those portions of the Community required to be operated and maintained by the Association pursuant to this

Declaration and in accordance with the Maintenance Manual provided by Declarant to the Association.

#### **4.7 ALTERATIONS TO UNITS**

Owners may alter or remodel the interiors of their Units, excluding load bearing walls, if the alterations do not impair the structural integrity of the Unit and if the Owner complies with the Rules and Regulations, all laws and ordinances regarding alterations and remodeling, and the provisions contained in Article 11 herein. No alteration of the floor coverings of the Unit which will result in an increase in sound transmission into any other Unit shall be made. In accordance with Section 4.3.10 above, soft floor coverings must cover at least seventy-five percent (75%) of the square footage on floor levels located above any other Unit, and any hard coverings replaced in kitchen, bath or other areas in such Units are allowed only where such hard coverings were originally installed by Declarant.

#### **4.8 INVITEES**

Each Owner shall be responsible for compliance with the provisions of the Association Documents by his or her Invitees. An Owner shall promptly pay any Reimbursement Assessment levied and/or any fine or penalty imposed against such Owner for violations committed by his or her Invitee.

#### **4.9 MACHINERY AND EQUIPMENT**

No machinery or equipment of any kind shall be maintained or operated within any Unit in the Community except as is customary and necessary in connection with approved construction without the approval of the Board.

### **ARTICLE 5.** **IMPROVEMENTS**

#### **5.1 MAINTENANCE OF COMMON AREA**

The Association shall be responsible for maintenance, repair, replacement, painting and upkeep of the Common Area, including perimeter trees and sidewalks in accordance with the Maintenance Manual provided by Declarant to the Association. The Association shall keep the Common Area and Improvements thereon in good condition and repair in accordance with the Maintenance Manual provided by Declarant to the Association, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure that the Common Area shall be in first class condition. Pursuant to the provisions of this Declaration, the cost of maintaining, repairing and replacing the Common Area shall be assessed against and paid for by the Owners of all Condominiums within the Community. Notwithstanding the foregoing, Owners shall be responsible for cleaning and daily upkeep (as well as the cost of the repair of any damage caused by Owner) of Owner's deck as set forth in Section 5.8, below. As part of its obligations under this Section 5.1, the Association annually shall cause a licensed engineer to inspect all building systems within or owned and operated by the Community and to provide a comprehensive report of such inspection to the Board and Declarant.

## **5.2 ALTERATIONS TO COMMON AREA**

5.2.1 **Approval:** Except for actions taken by Declarant pursuant to Section 3.2.10 hereof, only the Board shall construct, reconstruct, refinish or alter any Improvements situated upon the Common Area. Any proposed change in the use of Common Area facilities requires approval of not less than sixty-seven percent (67%) of the Members of the Association.

5.2.2 **Funding:** Expenditures for alterations, maintenance or repairs to an existing capital Improvement for which a reserve has been collected shall be made from the Reserve Account. The Board may levy a Special Assessment to fund any construction, alteration, repair or maintenance of an Improvement for which no reserve has been collected or if the Reserve Account contains insufficient funds to cover the cost of the proposed Improvement.

## **5.3 UTILITIES**

The Association shall maintain all utilities facilities located in the Common Area or to which the Association has been granted an easement, except for those facilities maintained by utility companies, public, private, or municipal. The Association shall pay all charges for utilities supplied to the Community except for those metered or charged separately to the Owners.

## **5.4 LIFE SAFETY/SURVEILLANCE SYSTEMS**

The Association shall maintain and repair the life safety system, including, without limitation, fire sprinklers, backup generator, backup water pressure systems, alarms, and magnetic fire doors. In addition the Association shall install, maintain, and repair surveillance systems, including a key card entry system or other similarly secure entry system. The Declarant, the Association, and the Board shall not be deemed to have made any representation or warranty to Owner, tenant, or Occupant of a Unit or any invitee thereof, or to any other Person using the facilities or Improvements within the Community 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 use, operation or provision of any 24-hour on-site staff service or safety system, or the failure to provide any 24-hour on-site staff service or safety system, within any portion of the Community.

## **5.5 LANDSCAPING**

The Association shall maintain all landscaping in the Common Areas (other than with respect to decks) in a manner consistent with the standards of design and quality originally established by Declarant and in a condition comparable to that of other first class condominium projects in the City. Specific restrictions on landscaping may be established in the Rules and Regulations. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed.

## **5.6 PARKING AREA**

The Association will operate, maintain, repair, replace and restore the Parking Area including the striping, numbering, plumbing and sump pumps located therein. In discharging its obligations under this Section, the Association may from time to time engage a parking operator. By utilization of a card access or similar system, the Parking Area shall be operated in such a manner as to permit the Owner (or other party) to which a Parking Space has been granted to enjoy his or her rights thereto. Notwithstanding the foregoing, the Declarant may grant rights to third party non-Owners to utilize the Parking Area.

## **5.7 STORAGE AREA**

The Association may designate a portion or portions of the Common Area as a Storage Area. The Association will lease, operate, maintain, repair, replace and restore such Storage Area, if any. By utilization of a card access or similar system, a Storage Area shall be operated in such a manner as to permit the Person to which a space in the Storage Area is leased to enjoy his or her rights set forth in such lease. The Association shall have the authority to lease Storage Lockers or Wine Storage Lockers in a Storage Area; however, only Owners and Occupants may be lessees of such spaces.

## **5.8 OWNERS' MAINTENANCE DUTIES**

The Owners will have the following responsibilities with respect to operation, maintenance and repair:

5.8.1 ***In General:*** Subject to the provisions of Articles 4 and 11 and pursuant to the Maintenance Manual, each Owner will: (i) operate and maintain its Unit (and for those Owners that have been granted an exclusive use easement for a deck, as shown on the Condominium Plan, operate such deck) and all Improvements located therein at all times in good and clean condition and will repair, replace or restore, at its expense, all portions of the Improvements within its Unit (and will reimburse the Association for any repair performed by the Association for damage caused by the Owner or Occupant to a deck) requiring repair, replacement or restoration; (ii) perform its responsibilities in such a manner so as not to disturb unreasonably other Owners or their Occupants; (iii) keep any Parking Space to which such Owner has the right of exclusive use clean and free of oil and litter; and (iv) promptly report to the Association any defect or need for repairs for which the Association is responsible. No Owner shall wash clean decks with water (and shall instead sweep or dry mop such space).

5.8.2 ***Electric and Gas Consumption:*** Each Owner shall be responsible for the payment of all utility bills (such as electricity and gas) specific to such Owner's Unit.

5.8.3 ***Responsibility for Damage:*** Subject to Section 5.8, each Owner of a Unit will pay all costs of repair or replacement of any portion of the Community that may become damaged or destroyed by reason of the acts of omissions of such Owner, its Invitees or any of its Occupants. Such payment will be made upon receipt of a demand by the Owner from the Association.

## 5.9 RIGHT OF ENTRY

The Association may elect to maintain, repair, replace or restore any Improvements or portion thereof within any Unit if (i) the Owner of such Unit has failed, for more than 30 days after notice from the Association, to perform its responsibilities under this Declaration with respect to the maintenance, repair, replacement or restoration of its Unit, and (ii) such failure has a material effect on the appearance of such Improvements when viewed from any area outside the same, or impairs the structural integrity or building systems of any portion of the Improvements, or has a material adverse effect on the use of another Unit or Common Area for its permitted and intended use; provided, however, that if such failure is not susceptible of being cured within such 30-day period, the Association will not be entitled to perform any such repairs, maintenance, replacement or restoration if such Owner commences performance of its obligations within such 30-day period and thereafter diligently completes such performance. Such Owner will pay all costs incurred by the Association in accordance with this Section 5.9, upon receipt of a demand from the Association. In order to effectuate this provision, the Board may enter any Unit in the Community whenever entry is necessary in connection with the performance of any maintenance or construction which the Board is authorized to undertake. Entry shall be made with as little inconvenience to an Owner as practicable and only after reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations. The costs and expenses of such entry and maintenance or construction may be reimbursed by a Reimbursement Assessment, as set forth in Section 6.5, below.

## ARTICLE 6. FUNDS AND ASSESSMENTS

### 6.1 COVENANTS TO PAY

Declarant and each Owner covenants and agrees to pay to the Association the assessments and any Additional Charges levied pursuant to this Article 6.

6.1.1 *Liability for Payment.* The obligation to pay assessments shall run with the land so that each successive record Owner of a Condominium shall in turn become liable to pay all such applicable assessments. No Owner may waive or otherwise escape personal liability for assessments or release the Condominium owned by him or her from the liens and charges hereof by non-use of the Common Area, abandonment of the Condominium or any other attempt to renounce rights in the Common Area or the facilities or services within the Community. Each assessment shall constitute a separate assessment and shall also be a separate, distinct and personal obligation of the Owner of the Condominium at the time when the assessment was levied and shall bind his or her heirs, devisees, personal representatives and assigns. Any assessment not paid within fifteen (15) days after it becomes due is delinquent, and subject to the Additional Charges set forth in Section 6.7.5. The personal obligation of an Owner for delinquent assessments shall not pass to a successive Owner unless the personal obligation is expressly assumed by the successive Owner. No such assumption of personal liability by a successor Owner (including a contract purchaser under an installment land contract) shall relieve any previous Owner from personal liability for delinquent assessments. After an Owner transfers fee title of record to his or her Condominium, he or she shall not be liable for any charge



thereafter levied against the Condominium. The successor Owner shall be liable for any assessments that become due after the date of transfer of fee title to the Condominium.

6.1.2 **Funds Held in Trust:** The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Community as provided in this Declaration. Upon the sale or transfer of any Condominium, the applicable Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner.

6.1.3 **Offsets:** No offsets against any assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

## 6.2 REGULAR ASSESSMENTS

6.2.1 **Definitions:** The term "Regular Assessment" shall mean a charge against each Owner and his or her Condominium attributable to such Owner and his or her Condominium for the actual and estimated costs of all things to be done pursuant to the Association Documents by the Association, including, without limitation, the maintenance, repair, operation and restoration of the Common Area.

6.2.2 **Payment of Regular Assessments:** Subject to the limitations set forth in Section 6.4 hereof, Regular Assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year. Regular Assessments shall be levied on a fiscal year basis. Unless otherwise specified by the Board, Regular Assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration. Regular Assessments shall commence for all Units the first day of the month following the first close of escrow conveying a Unit in the Community to an Owner.

6.2.3 **Budgeting:** Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and distribute to each Member a pro forma operating budget in accordance with Section 9.1(a) of the Bylaws.

The total amount of all charges (other than specially allocated items, described below) shall be charged equally against all Condominiums in the Community as Regular Assessments, subject to the limitations set forth in Section 6.4 hereof, and except for that portion of the Assessments specifically 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 Units in the proportion that the square footage of living space for each Unit bears to the square footage of all Units subject to the Declaration as determined by the Condominium Plan and set forth in the budget submitted to the California Department of Real Estate. For the first fiscal year, the budget shall be based upon the budget accepted by the California Department of Real Estate and shall be approved by the Board no later than the date on which Regular Assessments are scheduled to commence. Thereafter, the Board shall annually prepare and approve the budget and distribute a copy thereof to each Member, together with written notice of the amount of the Regular Assessments to be levied against the Owner's

Condominium, not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year.

6.2.4 *Non-Waiver of Assessments*: If before the expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until the Assessments are fixed.

### 6.3 SPECIAL ASSESSMENTS

Subject to the limitations in the Bylaws, Special Assessments may be levied in addition to Regular Assessments for (i) constructing capital improvements; (ii) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of Improvements in the Community or Common Area; or (ii) paying for such other matters as the Board may deem appropriate for the Community. Special Assessments shall be levied in the same manner as Regular Assessments.

### 6.4 LIMITATION ON ASSESSMENTS

6.4.1 *General Limitations*: The Board may not impose an increase in the Regular Assessment for any fiscal year unless the Board has (i) fully complied with all of the provisions of Section 9.1(a) of the Bylaws and Civil Code section 1365(a), as the same may, from time to time, be amended, or (ii) obtained the approval of Members constituting a quorum, casting a majority of the votes at a meeting of Members. For purposes of this Section only, the term "quorum" shall mean more than fifty percent (50%) of the Members of the Association.

6.4.2 *Percentage Limitations*: The Board may not impose, except as provided in this Section 6.4, a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the immediately preceding fiscal year or impose Special Assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of Owners, constituting a quorum, casting a majority of votes at a meeting or election of the Association. For the purpose of this Section, a quorum means more than fifty percent (50%) of the Owners.

The provisions of this Section 6.4.2, above, shall not apply to Regular Assessment increases or Special Assessments for the following purposes:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to repair or maintain the Community or any part of it for which the Association is responsible, where a threat to personal safety in the Community is discovered;
- (c) An extraordinary expense necessary to repair or maintain that portion of the Community 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 required under Section 9.1(a) of the Bylaws; provided, however, that prior to the imposition or collection of an assessment under this subparagraph (c), 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 such resolution shall be distributed to the Members with the notice of Assessment; and

(d) An extraordinary expense in making the first payment of the earthquake insurance surcharge pursuant to Section 5003 of the Insurance Code.

This Section 6.4.2 incorporates the statutory requirements of California Civil Code section 1366. If this section of the California Civil Code is amended in any manner, this Section automatically shall be amended in the same manner without the necessity of amending this Declaration.

6.4.3 *Notice of Increase in Assessments:* The Board shall notify the Owners by first-class mail of any increase in the Regular or Special Assessments of the Association. Such notice shall be provided not less than thirty (30) nor more than sixty (60) days prior to the date on which such increased Regular or Special Assessment is due and payable.

## 6.5 REIMBURSEMENT ASSESSMENTS

The Association shall levy a Reimbursement Assessment against any Owner and his or her Condominium if a failure to comply with the Association Documents has (i) necessitated an expenditure of monies by the Association to bring the Owner or his or her Condominium into compliance or (ii) resulted in the imposition of a fine or penalty. A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association until Notice and Hearing has been given. Reimbursement Assessments are assessments but they may not be characterized nor treated as an assessment which may become a lien against the Owner's Condominium, enforceable by a sale of such interest in accordance with the provisions of Section 2924, 2924(b), and 2924(c) of the Civil Code; provided, however, that this Section does not apply to Additional Charges in connection with delinquent assessments that may be imposed pursuant to Section 6.7.5.

## 6.6 ACCOUNTS

6.6.1 *Types of Accounts:* Assessments collected by the Association shall be deposited into at least two (2) separate accounts with a bank and/or savings and loan association, which accounts shall be clearly designated as (i) the Current Operation Account, and (ii) the Reserve Account. The Board shall deposit those portions of the assessments collected for current maintenance and operation into the Current Operation Account and shall deposit those portions of the Regular Assessments collected as reserves for contingencies and for replacement and deferred maintenance of capital Improvements into the Reserve Account. Funds received by the Association, but not yet expended, from a compensatory damage award or settlement arising from any legal action for construction or design defects shall also be deposited into the Reserve Account, but shall be separately itemized from assessments collected for replacement and deferred maintenance of capital Improvements.

6.6.2 **Current Operation Account:** All of the following may be paid from the Current Operation Account:

- (a) All costs of enforcing the provisions of the Association Documents;
- (b) Taxes and assessments, if any, levied or assessed separately against the Common Area;
- (c) Sums necessary to discharge any lien or encumbrance, including taxes, levied against any Condominium which constitutes a lien against any portion of the Common Area;
- (d) Insurance premiums and costs for policies purchased for the benefit of the Association;
- (e) Water, sewer, garbage, electrical, gas, telephone, common area cable television, common area wireless internet or network service, Community serving satellite television infrastructure and service, window washing, and other necessary utility services for the Common Area, and the Units, to the extent such services are not separately metered or individually charged;
- (f) Costs of routine maintenance, repair and upkeep of Improvements in the Common Area and building mechanical systems;
- (g) Maintenance and compliance with any agreement(s) or obligation(s) with or to the car share service required to serve the Community; and
- (h) All other goods, materials, supplies, furniture, labor, services, maintenance, repairs or alterations which the Association is authorized to secure and pay for pursuant to the terms of this Declaration or by law, other than those to be expended from either of the Reserve Accounts.

6.6.3 **Reserve Account:** The Association shall pay out of the Reserve Account only those costs that are attributable to the maintenance, repair or replacement of capital Improvements for which reserves have been collected and held, including costs of repairing any construction or design defects for which the Association has received a damage award or settlement. However, the Board may authorize the temporary transfer of money from the Reserve Account to the Current Operation Account to meet short-term cash flow requirements or other expenses. The transferred funds shall be restored to the Reserve Account within one year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a delay would be in the best interests of the Association, delay such restoration until the time which the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the Reserve Account, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits set forth herein. Such a Special Assessment shall be subject to the restrictions set forth in Sections 6.4.2–6.4.3 of this

Declaration, but shall not be subject to the limitations set forth in Section 6.4.1 of this Declaration.

The signatures of at least two Directors shall be required for the withdrawal of money from the Reserve Account.

## 6.7 ENFORCEMENT OF ASSESSMENTS

In accordance with California Civil Code section 1367.1(d), and in addition to all other remedies provided by law, the Association, or its authorized representative, may enforce the obligations of the Owners to pay each assessment provided for in this Declaration in any manner provided by law or by either or both of the following procedures:

6.7.1 **By Suit:** The Association may commence and maintain a suit at law against any Owner personally obligated to pay a delinquent assessment. The suit shall be maintained in the name of the Association. Any judgment rendered in any action shall include the amount of the delinquency, Additional Charges and any other amounts as the court may award. A proceeding to recover a judgment for unpaid assessments may be maintained without the necessity of foreclosing or waiving the lien established herein.

6.7.2 **By Lien:** The Association may impose a lien against an Owner's Condominium for the amount of any delinquent assessment(s), plus all Additional Charges (detailed in Subsection 6.7.5 below) by taking the following steps:

(a) **Notice to Owner.** The Association shall notify the Owner in writing by certified mail of the fee and penalty procedures of the Association, and shall provide an itemized statement of the charges owed by the Owner, including items on the statement that indicate the principal owed, any late charges and the method of calculation, any attorney fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection.

(b) **Creation of Lien.** After compliance with the notice requirements of subparagraph (a), the Association may impose a lien against the Owner's condominium, for the amount of any delinquent assessment(s) plus all Additional Charges, by recording a notice of assessment ("**Recorded Notice**"), in the Official Records of the City. Each Owner, including Declarant, hereby authorizes the Association to appoint and designate in the Recorded Notice a person or entity to act as "Trustee," with power of sale, for and on behalf of such Owner, pursuant to California Civil Code section 1367.1(d), and to appoint, at the Association's discretion, a substitute trustee pursuant to California Civil Code section 2934(a). The designation of a substitute trustee may be effected by any authorized officer of the Association. Each Owner empowers such Trustee to enforce the lien and to foreclose the lien by the private power of sale provided in Section 1367.1(d) of the California Civil Code as it may be revised, amended or altered from time to time, or by judicial foreclosure. Each Owner further grants to the Association, as trustee, the power and authority to sell the Condominium of any defaulting Owner to the highest bidder to satisfy such lien. Each Owner hereby waives the benefit of any homestead or exemption laws of this State of California now or then in effect regarding any lien created pursuant to this Declaration. Any lien recorded shall be in favor of the Association.

(c) **Notice of Assessment.** The Notice shall state the amount of the delinquent assessment(s), the Additional Charges incurred to date, a description of the Owner's interest in the Condominium against which the assessment and other sums are levied and the name(s) of the record Owner(s) thereof, and if the lien is to be enforced by non-judicial foreclosure, the name and address of the Trustee authorized by the Association to enforce the lien. The Notice shall be signed by any officer of the Association or an agent of the Association authorized to do so by the Board and a copy mailed in the manner required by Civil Code section 2924(b) to all record owners of the Owner's interest in the Condominium no later than ten days after recordation.

(d) **Priority.** When a Notice has been recorded, such assessment shall constitute a lien on the respective Condominium prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any First Mortgage. Except for the transfer of a Condominium pursuant to a foreclosure proceeding, the sale or transfer of a Condominium shall not affect such a lien.

6.7.3 ***Foreclosure Under Assessment Lien:*** Once (i) thirty (30) days has elapsed since the recordation of the Notice and (ii) ten (10) days has elapsed since the mailing or delivery of a copy of the recorded Notice to the Owner, an action in the name of the Association may then be commenced to foreclose the assessment lien in any manner permitted by law, including filing an action for judicial foreclosure, or by recording a notice of default in the form described in Civil Code section 2924(c)(b)(1) to commence a non-judicial foreclosure. Any non-judicial foreclosure shall be conducted in accordance with the requirements of Civil Code sections 2924, 2924(b), 2924(c), 2924(f), 2924(g), 2924(h), and 2924(j), including any successor statutes thereto, that apply to non-judicial foreclosures of mortgages or deeds of trust. The sale shall be conducted by the Trustee in accordance with Civil Code section 2934(a).

6.7.4 ***Certificate of Satisfaction of Lien:*** Upon payment of a delinquent assessment or other satisfaction thereof, the Association shall record a certificate stating the satisfaction and release of the assessment lien required by law.

6.7.5 ***Additional Charges:*** In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay such Additional Charges as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent. All Additional Charges shall be included in any judgment in any suit or action brought to enforce collection of delinquent assessments or may be levied against a Condominium as a Reimbursement Assessment. Additional Charges shall include, but not be limited to, the following:

(a) **Attorneys' Fees:** Reasonable attorneys' fees and costs incurred in the event an attorney(s) is employed to collect any assessment or sum due, whether by suit or otherwise;

(b) **Late Charges:** A late charge in an amount to be fixed by the Board in accordance with Civil Code section 1366(e)(2) to compensate the Association for additional collection costs incurred in the event any assessment or other sum is delinquent; provided, however, that such late charge shall not exceed ten percent (10%) of the delinquent assessment

or ten dollars (\$10.00), whichever is greater, or such greater amount as may, from time to time, be allowed by law;

(c) Costs of Suit: Costs of suit and court costs incurred as are allowed by the court;

(d) Interest: Interest on all sums imposed in accordance with this Article 6, including the delinquent assessment, reasonable costs of collection, reasonable attorneys' fees, and late charges, at an annual percentage rate to be established by the Board, but in no event to exceed twelve percent (12%) interest, or such greater amount as may, from time to time, be allowed by law, commencing thirty (30) days after the assessment becomes due; and

(e) Other: Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

#### **6.8 STATEMENT OF ASSESSMENT LIEN**

Within ten (10) days of a request from an Owner liable for assessments, the Association shall furnish to that Owner a written certificate signed by an officer or authorized agent of the Association stating the amount of any assessment and any Additional Charges secured by the lien upon his or her Condominium. A charge, not to exceed the reasonable costs of preparation and reproduction of the certificate, may be levied by the Board for the issuance of such certificate.

#### **6.9 SUBORDINATION OF LIEN**

Notwithstanding any provision to the contrary, the liens for assessments created by this Declaration shall be subject and subordinate to and shall not affect the rights of the holder of a First Mortgage made in good faith and for value. Upon the foreclosure of any First Mortgage on a Condominium, any lien for assessments which became due prior to such foreclosure shall be extinguished; provided, however, that after such foreclosure there shall be a lien on the interest of the purchaser at the foreclosure sale to secure all assessments, whether Regular or Special, charged to such Condominium after the date of such foreclosure sale, which lien shall have the same effect and shall be enforced in the same manner as provided herein. For purposes of this Section, a Mortgage may be given in good faith or for value even though the Mortgagee has constructive or actual knowledge of the assessment lien provisions of this Declaration.

#### **6.10 CAPITALIZATION OF ASSOCIATION**

Upon acquisition of record title to a Unit from Declarant, Each Owner shall contribute to the capital of the Association an amount equal to Two Hundred Fifty Dollars (\$250.00). This amount shall be deposited by the buyer into the purchase and sale escrow and distributed therefrom to the Association or to Declarant if Declarant has previously advanced such funds to the Association. Such capital contributions shall be deposited into the Association's working capital account and Declarant shall be prohibited from using any of such capital contributions to defray any of its expenses, reserve contributions, or construction costs, or to make up any budget deficits while it is in control of the Association.

## 6.11 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 Regular Assessments made under the provisions of Section 6.2 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.

## ARTICLE 7.

### MEMBERSHIP IN THE ASSOCIATION

#### 7.1 THE ORGANIZATION

The Association is a nonprofit mutual benefit corporation. Its affairs shall be governed by and it shall have such powers as are set forth in the Association Documents.

#### 7.2 MEMBERSHIP

Each Owner (including Declarant for so long as Declarant is an Owner), by virtue of being an Owner, shall be a Member of the Association. No other person shall be accepted as a Member. Association membership is appurtenant to and may not be separated from the ownership of a Condominium in the Community. Membership shall terminate upon termination of Condominium ownership. Ownership of a Condominium in the Community shall be the sole qualification for Association membership. Membership shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner's Condominium (and then only to the transferee of title to such Condominium). A mortgagee does not have membership rights unless and until it obtains title to a Condominium by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. The rights, duties, privileges and obligations of all Members shall be provided in the Association Documents.

#### 7.3 CLASSES OF MEMBERSHIP

The Association shall initially have two (2) classes of Members.

7.3.1 **Class "A" Members:** Each Owner, except Declarant, shall be a Class A Member. The voting rights of Class A Members shall be as set forth in Section 3.8(a) of the Bylaws.

7.3.2 **Class "B" Member:** Declarant shall be the sole Class B Member. The voting rights of the Class B Member shall be as set forth in Section 3.8(b) of the Bylaws. Class B membership shall expire and shall be converted to Class A membership on the first to occur of the following events:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) On the date which is the fourth anniversary of the first conveyance of a Condominium in the Community.



#### 7.4 POWERS, DUTIES AND AUTHORITY OF THE ASSOCIATION

The Association shall have the powers set forth in the Articles, Bylaws and this Declaration. In addition to the duties and powers enumerated in the Articles and Bylaws or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the following duties and obligations:

7.4.1 **Common Area Maintenance:** The Association shall replace, maintain and repair the Common Area, including the Improvements, utilities and facilities located thereon.

7.4.2 **Easements, Permits and Licenses:** The Association shall have the power to grant easements, permits and licenses where necessary for utilities over the Common Area to serve the Common Area and the Units.

7.4.3 **Discharge of Liens:** The Association shall discharge by payment, if necessary, any lien against the Common Area, and charge the cost thereof to the Owner or Owners responsible for the existence of said lien. Prior to any Board decision to discharge a lien, the responsible Owner shall be given written notice and an opportunity for Notice and Hearing.

7.4.4 **Assessments:** The Association shall fix, levy, collect and enforce assessments as set forth in Article 6 hereof.

7.4.5 **Payment of Expenses:** 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.

7.4.6 **Management:** The Association may hire and discharge, and delegate its authority and powers to, managing agents to the extent deemed advisable by the Board, as well as hire and discharge, or permit such managing agent to hire and discharge, such other employees, agents and independent contractors as may be necessary or proper for the performance of the Association's responsibilities.

7.4.7 **Litigation:** Institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings in its own name in matters pertaining to the enforcement of this Declaration, the Bylaws or any rules or regulations promulgated by the Association or any other matter affecting any portion of the Improvements with respect to which the Association is responsible for operation, repair, maintenance, restoration or replacement. Notwithstanding any other provision of this Declaration or any other document governing the Association, Board or Community, the Association may only institute or intervene in litigation that includes any claim for defects in the design or construction of any Unit, Common Area, or any improvements thereon, or provide the notice described in Section 12.3 hereof, upon the affirmative vote of not less than two-thirds of the Class A Members of the Association supporting the proposed litigation action.

7.4.8 **Contracts:** The Association shall contract for goods and/or services as may be necessary to perform its duties, including contracts with Declarant, subject to limitations set forth in Section 7.3(a) of the Bylaws, or elsewhere in the Association Documents.

7.4.9 **Improvements:** Cause additional Improvements to be made to the Common Areas.

7.4.10 **Acquisition of Property:** The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build up, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association. However, except with the vote or written assent of a majority of the voting power residing in members other than Declarant, the Board is prohibited from incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. Any sale of property or improvements owned, directly or indirectly, by the Association for the benefit of Condominiums and Owners shall be subject to the requirements of Article 9.

7.4.11 **Limitation of Liability:** The purpose of the Association is for the management and maintenance of the Community, and the Association shall not be responsible for the safety of Owners within the Community, except in the event of active gross negligence or willful misconduct of its Directors or officers. No Director, officer, employee, or other agent of the Association, including Declarant or any agent of Declarant when acting in such capacity, shall be liable to any Owner or any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person if such person has acted in good faith and in a manner such person reasonably believed to be in the best interests of the Association. The Association shall indemnify its Directors and officers as provided in the Bylaws.

## **7.5 ENFORCEMENT**

7.5.1 **Rights to Enforce:** The Association and/or any Owner shall have the power to enforce the provisions of the Association Documents in any manner provided by law or in equity and in any manner provided in this Declaration. The Association may institute appropriate legal action, suspend an Owner's use of the Common Area (other than ingress and egress to Owner's Unit) or his or her voting rights for a period not to exceed thirty (30) days and/or levy a fine against an Owner in an amount not to exceed such standard maximum amount as may be approved by fifty-one percent (51%) of each class of Members; provided, however, that Reimbursement Assessments are not enforceable by any lien provisions of this Declaration. No determination of whether a violation has occurred shall be made until Notice and Hearing has been provided to the Owner. In the event legal action is instituted by the Association, any judgment rendered shall include all appropriate Additional Charges. 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 right to the full use and enjoyment of his or her individually owned Unit, including access thereto over and across the Common Area, due to the Owner's failure to comply with the provisions of the Association Documents, unless the loss or forfeiture is the result of the judgment of a court, an arbitration decision or a foreclosure

proceeding or a sale conducted pursuant to this Declaration. The provisions of this Declaration shall be equitable servitudes, enforceable by any Owner and/or the Association against the Association and/or any other Owner, tenant or Occupant of the Community. Except as otherwise provided, Declarant, the Association or any Owner(s) shall have the right to enforce, in any manner permitted by law or in equity, any and all of the provisions of the Association Documents, including any decision made by the Association, upon the Owners, the Association or upon any property in the Community.

7.5.2 **Violation of Law:** The Association may treat any Owner's violation of any state, municipal or local law, ordinance or regulation, which violation creates a nuisance to the other Owners in the Community or to the Association, in the same manner as a violation by an Owner of the Association Documents by making such violation subject to any or all of the enforcement procedures set forth in this Declaration, provided that the Association complies with the Notice and Hearing requirements herein.

7.5.3 **Remedies Cumulative:** Each remedy provided by this Declaration is cumulative and not exclusive.

7.5.4 **Nonwaiver:** The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of this Declaration.

## 7.6 NOTICE AND HEARING

7.6.1 **Procedure:** If a Member appears to be in violation of any provision of the Association Documents and the provisions of any of the Association Documents require that Notice and Hearing be provided, the Board shall give written notice to the Member specifying the nature of the violation (along with any other appropriate information) and stating the time, date and place that the Member will have an opportunity to be heard by the Board. If the Member's failure to correct a violation results in the expenditure of funds by the Association to correct the violation, the notice shall also state that the Board may vote to levy a Reimbursement Assessment if the Board finds that a violation has occurred. Written notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class postage prepaid, addressed to the Member at the address given by the Member to the Board for the purpose of service of notice or to the address of the Member's Unit if no other address has been provided. Any address may be changed from time to time by giving written notice to the Board.

7.6.2 **Determination:** After the hearing has taken place, the Board shall (i) determine whether a violation has occurred and, if so, may impose a Reimbursement Assessment against such Owner which shall become effective not less than five (5) days after the date of the hearing; or (ii) take such other action as may be appropriate. The determination of the Board shall be final. However, nothing herein shall be construed to prevent the Board from making any emergency repairs or taking any other emergency action it deems necessary and providing Notice and Hearing subsequent to such emergency repair or other actions taken by the Board.

## 7.7 ENFORCEMENT OF BONDED OBLIGATIONS

If Common Area Improvements have not been completed prior to the issuance of the original Public Report to which the Common Area is subject and the Association is the obligee under a bond or other arrangement ("**Bond**") to secure performance of the commitment of Declarant to complete such Common Area Improvements, the following provisions shall apply to initiating action to enforce the obligations of Declarant and the surety under the Bond:

7.7.1 *Exemption from Assessments for Common Areas:* Notwithstanding any other provisions of this Declaration, Declarant or any other Owner shall not be obligated to pay any portion of assessments which are for the purpose of defraying expenses and establishing reserves directly attributable to the existence and use of Common Area Improvements that are not complete at the time assessments commence. Any such exemption from the payment of assessments shall be in effect only until a Notice of Completion of such Common Area Improvements has been recorded or the Common Area Improvements have been placed into use, whichever shall first occur.

7.7.2 *Action by Board:* 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 that Improvement in the planned construction statement appended to the Bond. If the Association has given a written extension for the completion of any Common Area Improvements, the Board shall consider and vote whether to take action if a notice of completion has not been filed within thirty (30) days after the expiration of the most recent extension.

7.7.3 *Action by Members:* If the Board decides not to act or fails to initiate action to enforce bonded obligations, then upon receipt by the Board of a petition for a special meeting signed by Members representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of the Members. The meeting shall be held neither less than thirty-five (35) nor more than forty-five (45) days after receipt of the petition by the Board. At the meeting, the vote of more than fifty percent (50%) of the total voting power of the Association residing in Members, other than Declarant, to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association. The Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association. The only Members entitled to a vote at such meeting of Members shall be the Owners other than Declarant. A vote at such meeting of a majority of the voting power of such Members other than Declarant to take action to enforce the obligations under the Bond 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. The Association shall act in a reasonably prompt manner to exonerate Declarant and its surety under any Bond in favor of the Association upon completion of the Common Area Improvements.

## 7.8 DECLARANT'S RIGHTS

For a period of ten (10) years after the close of escrow for the sale of the last Unit in the Community, in addition to Declarant's rights as an Owner and a Member, Declarant shall have the following rights: (a) to access the Association's books and financial records; (b) to inspect the Association's maintenance records; (c) to inspect the Common Areas; (d) to receive notice of all meetings of the Board; (e) to receive notice of, attend and speak at all regular and special meetings of the Board and meetings of the Members; and (f) to receive copies of the minutes of the meetings of the Board and meetings of the Members, upon request and payment of the actual costs to copy and distribute such records.

For a period extending from the date of this Declaration until one (1) year after a final certificate of occupancy has been issued for all of the Units, in addition to Declarant's rights as an Owner and a Member, Declarant shall have the right to: (a) maintain construction equipment, personnel and materials on the Project Site; (b) use such portions of the Project Site as may be necessary or advisable to complete the construction or sales of the Community; (c) maintain construction and/or sales offices on the Project Site and appropriate parking to accommodate said offices or functions; (d) maintain sale signs or other appropriate advertisements on the Project Site; (e) maintain model homes for viewing by prospective purchasers; and (f) allow prospective purchasers access to the Property to inspect any Common Area, model homes or unoccupied Residential Units.

## 7.9 TAX-EXEMPT STATUS

The Board shall cause any annual election for tax-exempt status required under federal or state law to be filed timely and shall cause the Association to comply with the statutes, rules and regulations adopted by federal and state agencies pertaining to such exemptions.

## ARTICLE 8.

### INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION

#### 8.1 INSURANCE

The Board shall obtain and maintain insurance as provided in this Section.

8.1.1 *General Provisions and Limitations:* All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

(a) Underwriter: All policies shall be written with a company legally qualified to do business in the State of California and holding a rating of A-XII or better in the financial category as established by Best's Insurance Reports, if such a company is available, or, if not available, the best rating possible or its equivalent.

(b) Named Insured: Unless otherwise provided in this Section, the named insured shall be the Association or its authorized representative, as a trustee for the Members. However, all policies shall be for the benefit of Owners and their Mortgagees, as their interests may appear.

(c) Certificate of Insurance: If reasonably available, provision shall be made for the issuance of a certificate of insurance to each Owner and his or her Mortgagee which shall specify the amount of such insurance attributable to the particular Owner's Unit.

(d) Authority to Negotiate: Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations related thereto.

(e) Contribution: In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by Owners or their Mortgagees.

(f) General Provisions: To the extent possible, the Board shall make every reasonable effort to secure insurance policies providing for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Board, the Manager, the Owners and their respective servants, agents and guests;

(ii) A waiver by the insurer of its right to repair and reconstruct instead of paying cash;

(iii) That no policy may be canceled, invalidated or suspended on account of the acts of any one or more individual Owners;

(iv) That no policy may be canceled, invalidated or suspended on account of the conduct of any Manager, Director, officer or employee of the Association without prior demand in writing delivered to the Association requiring remedying of the defect and allowing a reasonable time within which the defect may be cured by the Association, its Manager, any Owner or Mortgagees;

(v) That any "other insurance" clause in any policy excludes individual Owners' policies from consideration;

(vi) That no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each First Mortgagee listed as a scheduled holder;

(vii) An agreed amount endorsement;

(viii) A contingent liability from operation of building codes endorsement; and

(ix) An inflation guard endorsement.

(g) Term: The period of each policy shall not exceed three (3) years, provided that the policy permits short rate cancellation by the insureds.

(h) Deductible: The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance equals replacement cost.

(i) Additional Insurance by Member: No Owner shall separately insure his or her Unit 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 Units and does not cover personal liability for damages or injuries occurring in the Units. Any Owner can insure his or her personal property against loss and obtain any personal liability insurance that he or she desires. In addition, any improvements made by an Owner within his or her 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 8.1.2(a) will provide coverage for such improvements. 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. 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 8.1.2(a).

8.1.2 *Types of Coverage*: At least the following kinds and amounts of insurance shall be obtained by the Association:

(a) Property Insurance: A policy or policies of all risk property insurance for all insurable Common Area Improvements, including buildings and any additions or extensions thereto, all fixtures, machinery, and building service equipment, fences, monuments, lighting fixtures, exterior signs, and personal property owned or maintained by the Association, and including all Units as originally constructed. The policy(s) shall be primary and noncontributing with any other insurance policy covering the same loss. Such policy(s) shall provide coverage against losses caused by fire and all other hazards normally covered under the Special Building Form as published by the Insurance Services Office or equivalent form issued by a specific insurance carrier, with coverage in an amount of not less than one hundred percent (100%) of the full replacement cost of the insurable Common Area Improvements (excluding land, foundations or excavations).

(b) Endorsements: The property insurance policy(s) shall contain the following endorsements or their equivalents: an "Inflation Guard Endorsement," a "Contingent Liability Operation of Building Codes Endorsement," an "Agreed Amount Endorsement," a "Demolition Endorsement," glass coverage and any other reasonable endorsements deemed desirable by the Association.

(c) Liability Insurance: A combined single limit policy of public liability insurance covering the Common Area and all damage or injury caused by the negligence of the Association, the Board or any of its agents or the Members against any liability to the public or to any Member incident to the use of or resulting from any accident or intentional or unintentional act occurring in or about the Common Area or any other Association owned or maintained real or personal property. The amount of liability insurance shall not be less than the minimum amounts required by California Civil Code sections 1365.7 and 1365.9, but in no event shall be less than \$2,000,000.00 per occurrence. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured. The Association shall also carry an umbrella policy with a limit of not less than \$5,000,000.

(d) Worker's Compensation: Worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Community covering all employees used or hired by the Association in connection with the maintenance and operation of the Community.

(e) Earthquake Insurance: The Association shall carry earthquake insurance to the extent required by law; if not required by law, the Association shall not carry earthquake insurance without the approval of a majority of the total voting power of the Members. If the Members elect to require the Association to obtain earthquake insurance, such coverage may be subsequently cancelled on vote of a majority of the total voting power of the Members. If cancelled, the Association shall make reasonable efforts to notify the Members of the cancellation at least 30 days before the effective date of the cancellation.

(f) Fidelity Bond: A fidelity bond naming the Board, the Members, the Association and such other persons as a majority of the Members may designate as obligees, in an amount equal to at least one-fourth (1/4) of the total sum budgeted for the Current Operation Account and Reserve Account for the current fiscal year. The fidelity bond shall contain a waiver of any defense based upon the exclusion of persons serving without compensation.

(g) Directors and Officers: Errors and omissions (liability) insurance covering Directors and officers in the minimum amount of Two Million Dollars (\$2,000,000.00).

(h) Other Insurance: Other types of insurance, including coverage for water damage, liability for non-owned and hired automobiles, which the Board in its discretion determines to be necessary to fully protect the interests of the Members.

8.1.3 Association's Discretion: The Association, and its officers and Board, 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.



8.1.4 **Periodic Insurance Review:** The Board periodically (and not less than once every three (3) years shall review the Association's insurance policies and make such adjustments to the policies' terms and conditions as the Board considers to be in the best interests of the Association. The review shall include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Association's policy unless the Board is satisfied that the current dollar amount of the property policy, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs.

## 8.2 DAMAGE AND DESTRUCTION

If Community 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) (a) the cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all Community Improvements, (b) available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and (c) three-fourths (3/4) of the total voting power of the Association residing in Members and their respective First Mortgagees vote against such repair or reconstruction; or (2) (a) available insurance proceeds are not sufficient to substantially repair or reconstruct the Improvements within a reasonable time as determined by the Board, (b) a Special Assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in Section 6.4, and (c) 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.

8.2.1 **Process for Substantial 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 Community 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, provided that, at a minimum, the construction consultant, general contractor and architect shall certify within ten (10) days prior to any disbursement substantially the following:

(a) 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;

(b) The 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 (which shall include a brief description of such services or materials), and the principal subdivisions or categories such services or materials fall under, and the respective amounts paid or due to each of said persons in respect thereof and a brief description of the progress of the work up to the date of said certificate;

(c) 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;

(d) No part of the cost of the services and materials described in the foregoing subparagraph (b) has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

(e) 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.

8.2.2 **Process for Limited Repair or Reconstruction:** If the cost of repair or reconstruction is less than twenty-five (25%) of the current replacement cost of all the Community 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 shall immediately 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.

8.2.3 **Authority to Effect Changes:** If any Improvement is damaged or destroyed or in need of renovation or rehabilitation, such Improvement may be repaired or reconstructed in a manner that alters the boundaries (the "**Boundary Alteration**") of the Units or Common Area, provided that the following conditions are satisfied:

(a) the Boundary Alteration has been approved by the Board, by fifty-one percent (51%) of each class of Members and by the Eligible Holders to the extent required in this Declaration;

(b) the Board has determined that the Boundary Alteration is necessary in order to comply with current building code requirements or construction standards, or to improve the quality of the building;

(c) the Boundary Alteration does not materially change the location of any Unit or increase or decrease the interior floor space of any Unit by more than five percent (5%) without the consent of the Unit Owner and the holders of any First Mortgage on that Unit;

(d) the Board has determined that any Boundary Alteration that will relocate or reduce the Common Area will not unreasonably interfere with the rights of the Owners to use and enjoy the Common Area;

(e) the Condominium Plan is amended to reflect the Boundary Alteration to the Units or Common Area; and

(f) such amended Condominium Plan referred to in subparagraph (e) above is duly processed through the City of San Francisco's Department of Public Works and filed for record in the Official Records of the City.

Each Owner irrevocably appoints the Association as that Owner's attorney-in-fact and irrevocably grants to the Association the full power in the name of the Owner to take any actions necessary or appropriate to effect any Boundary Alteration to any Unit or Common Area as authorized above.

**8.2.4 *Process if Repair or Reconstruction Not Undertaken:***

(a) If the Improvements are not repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among all Owners 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 Community, making provision for the continuance of public liability insurance to protect the interests of the Owners until the Community can be sold, and complying with all other applicable requirements of governmental agencies.

(b) If the failure to repair or reconstruct results in a material alteration of the use of the Community 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 Community improvements), the Community shall be sold in its entirety under such terms and conditions as the Board deems appropriate. If any Owner or First Mortgagee 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.

**8.2.5 *Sale of Community:*** If the Community 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. The sale must be completed through a judicial partition action pursuant to California Civil Code section 1359.

(a) For the purpose of effecting a sale under this Section 8.2.5, each Owner grants to the Association an irrevocable power of attorney, as provided in Section 3.1.3 of

this Declaration, to sell the entire Community for the benefit of the Owners, to terminate the Declaration and to dissolve the Association.

(b) In the event the Association fails to take the necessary steps to sell the entire Community as required hereunder 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 a material alteration, the entire Community under California Civil Code section 1359, or any successor statute, and the court shall order partition by sale of the entire Community and distribution of the sale proceeds as provided herein.

(c) Notwithstanding anything herein 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 Community under this Section 8.2.5, provided that 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 thereof. 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 interest may appear. In the event of an award for the taking of any Condominium in the Community by eminent domain, the Owner of such Condominium shall be entitled to receive the award for such taking, and after acceptance thereof the Owner and such Owner's mortgagee shall be divested of all interest in the Community 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 Community, or take other action. The remaining portion of the Community 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 Community. 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 8.2.4.

8.3.1 **Substantial Taking:** If there is a substantial taking of the Community (more than fifty percent (50%)), the Owners may terminate the legal status of the Community

and, if necessary, bring a partition action under California Civil Code section 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 Holders holding mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Holder 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 8.2.4.

## **ARTICLE 9.** **RIGHTS OF MORTGAGEES**

### **9.1 CONFLICT**

Notwithstanding any contrary provision contained elsewhere in the Association Documents, the provisions of this Article shall control with respect to the rights and obligations of Institutional Mortgagees specified herein.

### **9.2 LIABILITY FOR UNPAID ASSESSMENTS**

Any Institutional Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the First Mortgage shall take the property free of any claims for unpaid assessments or charges against the Unit which accrue prior to the acquisition of title to the Condominium by the Institutional Mortgagee.

### **9.3 PAYMENT OF TAXES AND INSURANCE**

Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area or Improvements thereon and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Area. Institutional Mortgagees making such payments shall be owed immediate reimbursement for such expenditures from the Association and, on demand, the Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

### **9.4 TERMINATION OF CONTRACT AND AGREEMENTS**

9.4.1 Any contract or lease, including any contract providing for the services of Declarant, entered into by the Association while Declarant controls the Association shall provide that the Association has the right to terminate such contract or lease without cause and without penalty or the payment of a termination fee at any time after the transfer of control of the Association from Declarant upon not more than ninety (90) days' notice to the other party. For purposes of this Subsection, the term "**control**" shall mean the right of Declarant to exercise unilateral control over the Association, the Board, the Community or the Owners in any manner other than by Declarant's exercise of votes allocated to Declarant on the same basis as votes are allocated to other Owners.

9.4.2 Any agreement for professional management of the Community or any agreement providing for services of Declarant shall be for a term not to exceed one (1) year without the consent of fifty-one percent (51%) of each class of Members; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days' written notice.

#### **9.5 NOTICE TO ELIGIBLE HOLDERS**

An Eligible Holder is entitled to timely written notice of:

9.5.1 Any condemnation loss or casualty loss which affects either a material portion of the Community or the Unit on which the Eligible Holder holds a First Mortgage;

9.5.2 Any delinquency in the payment of assessments or charges owed by the Owner of a Condominium which is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after its due date;

9.5.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

9.5.4 Any proposal to take any action specified in this Article or in Section 10.2.2 below;

9.5.5 Any default by an Owner-mortgagor of a Condominium in the performance of his or her obligations under this Declaration or the Bylaws which is not cured within sixty (60) days.

#### **9.6 RESERVE FUND**

The Association shall maintain as a reserve fund the Reserve Account which shall be sufficient to pay for maintenance, repair and periodic replacement of Common Area Improvements which the Association is obligated to maintain. This reserve fund shall be funded by Regular Assessments of Owners which are payable in installments rather than by Special Assessment; provided, however, that this provision shall not be deemed to limit the power of the Association to levy any other type of assessment or charge authorized by this Declaration.

#### **9.7 INSPECTION OF BOOKS AND RECORDS**

Upon request, any Owner or Institutional Mortgagee shall be entitled to inspect the books, records and financial statements of the Association, the Association Documents and any amendments thereto during normal business hours or under other reasonable circumstances.

#### **9.8 FINANCIAL STATEMENTS**

The Association, at its expense, shall prepare an audited financial statement for the immediately preceding fiscal year and furnish the same within one hundred twenty (120) days after written request from any Institutional Mortgagee.

## 9.9 VOTING RIGHTS OF MORTGAGEES

For purposes of this Section a Mortgagee shall be entitled to one (1) vote for each First Mortgage owned.

9.9.1 Unless at least sixty-seven percent (67%) of the Institutional Mortgagees and sixty-seven percent (67%) of the Owners other than Declarant have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission abandon, partition, subdivide, encumber, sell or transfer any property or improvements owned, directly or indirectly, by the Association for the benefit of the Units and the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Community by the Association and Owners shall not be deemed a transfer within the meaning of this Subsection);

(b) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Units.

(c) Fail to maintain fire and extended coverage insurance on insurable portions of the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost;

(d) Use hazard insurance proceeds for losses to any property or Improvements owned by the Association other than for the repair, replacement or reconstruction of the property and Improvements.

9.9.2 Any election to terminate the legal status of the Community as a condominium project shall require:

(a) The approval of at least sixty-seven percent (67%) of the Eligible Holders if the election to terminate the legal status is for a reason other than the substantial destruction or a substantial taking in condemnation of the property within the Community; or

(b) The approval of sixty-seven percent (67%) of the total voting power of the Association and fifty-one percent (51%) of the Eligible Holders if the election to terminate the legal status is due to substantial destruction or a substantial taking in condemnation of the property within the Community.

(c) For purposes of this Section, the Board may imply the approval of an Eligible Mortgagee under the circumstances set forth in the last paragraph of Subsection 10.2.2 hereof.

9.9.3 The vote or written consent of sixty-seven percent (67%) of the total voting power of the Association and fifty-one percent (51%) of the Eligible Holders shall be required to assume self-management of the Community if professional management of the Community has been required by an Eligible Holder at any time.

## **9.10 MORTGAGE PROTECTION**

A breach of any of the conditions contained in this Declaration shall not defeat nor render invalid the lien of any First Mortgage made in good faith and for value as to any Condominium in the Community; provided, however, that the conditions contained in this Declaration shall be binding upon and effective against any Owner of a Condominium if the Condominium is acquired by foreclosure, trustee's sale or otherwise.

## **ARTICLE 10. AMENDMENT**

### **10.1 AMENDMENTS**

Prior to the conveyance of the first Condominium, the Bylaws and this Declaration may be amended by Declarant alone. After the conveyance 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 sixty-seven percent (67%) of the total voting power of the Association and a majority of the affirmative votes or written consent of Members other than Declarant, or, where the two class voting structure is still in effect, a majority of the voting power of each class of membership. Notwithstanding the foregoing, if any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Owners in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Owners shall be required to amend or revoke such provision.

### **10.2 MORTGAGEE PROTECTION PROVISIONS**

10.2.1 With respect to any action to be taken under this Section which is also governed by provisions of Article 9 that require a specified vote of Owners and/or Mortgagees, the requirements of Article 9 must be satisfied before action may be taken under this Section. After the requirements of Article 9 have been satisfied, a vote to amend this Declaration in compliance with this Section may then be taken.

10.2.2 The vote or written consent of sixty-seven percent (67%) of each class of Members and fifty-one percent (51%) of the Eligible Holders, based on one (1) vote for each First Mortgage owned, shall be required to add to, amend or modify, whether by formal amendment or otherwise, any material provision of this Declaration or the Bylaws which establishes, provides for, governs or regulates any of the following subjects:

- (a) Voting rights;
- (b) Assessments, assessment liens or the priority of assessment liens;
- (c) Reserves for maintenance, repair and replacement of Common Area;
- (d) Insurance policies or fidelity bonds;
- (e) Reallocation of interests in or rights to use the Common Area;



(f) Responsibilities for maintenance and repair of any portion of the Community;

(g) The interest of an Owner in the Common Area or any easements by which the Owner or his or her Unit is benefited;

(h) Change in the permitted use of any Owner's Unit without, in each instance, the affirmative vote or written consent of such Owner;

(i) Expansion or contraction of the Community, or the addition, annexation or withdrawal of property to or from the Community; or

(j) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her Condominium; or

(k) Restoration or repair of the Community (after a hazard damage or partial condemnation) in a manner other than specified in the Association Documents or the original plans and specifications for the Community; or

(l) Any action to terminate the legal status of the Community after substantial destruction or condemnation occurs in a manner other than specified in the Association Documents; or

(m) The provisions of Article 9 and this Section 10.2.2.

Any amendment or addition to the Declaration or Bylaws regarding any of the foregoing subjects shall not be considered material and need not be approved by Eligible Holders if the amendment or addition is solely for the purposes of correcting technical errors or for clarification. Any Eligible Holder who receives a written request to approve an addition or amendment and who does not deliver or have its response post-marked within thirty (30) days of the date contained within the written request shall be deemed to approve the addition or amendment. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when (i) personally delivered against receipted copy; or (ii) mailed by certified or registered mail, postage prepaid, in either case (i) or (ii) to the parties at their last known address.

### 10.3 AMENDING DOCUMENTS

An amendment to this Declaration shall be effective only upon the occurrence of all of the following events:

10.3.1 **Approved Writing:** The amendment shall have been reduced to a writing which writing shall have been approved (by affirmative vote or written consent) by the applicable required percentage of Owners.

10.3.2 **Owners' Execution:** The written amendment shall be executed and acknowledged by each of the Owners approving the same. For purposes hereof, the President or any Vice President of the Association shall have the authority to execute and acknowledge an

amendment to this Declaration on behalf of all of the Members of the Association (it being expressly intended hereby that no amendment to this Declaration shall require execution by any individual Unit Owner).

10.3.3 *Certificate by Association.* A written certificate, executed and acknowledged by the President or any Vice President and the Secretary of the Association, shall be attached to the written amendment which shall state that such amendment was approved by the applicable required percentage of Owners and by all First Mortgagees, if any, who are required to approve such amendment pursuant to Section 10.2.2.

10.3.4 *Recordation of Amendment:* The amendment shall be effective upon the recordation in the Official Records of the City of an instrument setting forth the terms of the amendment, duly certified and executed by the officers specified in Section 10.3.2 above.

#### 10.4 PRESUMPTION OF VALIDITY

There will be a presumption subsequent to the recording of an amendment to this Declaration pursuant to Section 10.3.4 that all votes and consents required to pass the same pursuant to this Declaration were duly obtained (at a duly-called meeting of the Association, in the case of votes). Such presumption may be rebutted by an action commenced within one year from the date the amendment is recorded; in the absence of any such action, such presumption shall thereafter become conclusive.

### ARTICLE 11. ARCHITECTURAL REVIEW

#### 11.1 GOVERNMENTAL APPROVAL

Nothing contained in this Article shall be deemed to relieve any Owner from obtaining all consents and permits and from otherwise complying with all applicable governmental laws and regulations. Approval by the Association does not satisfy the appropriate approvals that may be required by any governmental agency with appropriate jurisdiction. Any major improvements or construction on or to the exterior of the Community must be approved in writing by the Agency.

#### 11.2 APPLICABILITY

No structure or improvement of any kind shall be commenced, installed, erected, painted, or maintained upon the Community, nor shall any alteration or improvement of any kind be made thereto, or to the exterior of any Unit, nor shall any alterations or improvements be made to the interior of any Unit that would involve or impact any structural components or any of the operating facilities in the Community, including but not limited to the HVAC system, until the same has been approved in writing by the Board, or by an Architectural Control Committee appointed by the Board as provided herein. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., 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 taking into account the impact, if any, on the structural components and/or operating facilities. No

permission or approval shall be required to repaint in accordance with Declarant's original color scheme, or to rebuild in accordance with Declarant's original plans and specifications. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Architectural Control Committee or the Board, or to rebuild in accordance with plans and specifications previously approved by the Architectural Control Committee or by the Board. Nothing contained herein shall be construed to limit the right of an Owner to paint the interior of his Unit any color desired.

### **11.3 ARCHITECTURAL CONTROL COMMITTEE**

The Architectural Control Committee shall consist of a minimum 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 Public Report for the Community. Declarant reserves to itself the power to appoint a majority of the members of the Committee until ninety percent (90%) of all the Condominiums in the Community have been sold, or until the fifth (5th) anniversary of the issuance of the Public Report for the Community, whichever first occurs. After one (1) year from the date of the issuance of the Public Report, the Board shall have the power to appoint one (1) member to the Architectural Control Committee until ninety (90%) of all of the Condominiums in the Community have been sold, or until the fifth (5th) anniversary date of the issuance of the Public Report, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Control Committee, who shall be from the membership of the Association.

Members appointed to the Architectural Control Committee by Declarant 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 members to the successor. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant hereto.

### **11.4 BASIS FOR APPROVAL OF IMPROVEMENTS**

The Board or the Architectural Control Committee may approve an Owner's proposal for improvements only if it finds that (i) the plans and specifications conform to this Declaration and to any architectural standards which have been adopted by the Board in accordance with the Bylaws at the time the proposal was submitted and (ii) the proposed alteration or addition will be consistent with the subjective standards of the Community and the provisions of this Declaration as to quality of workmanship and materials, harmony of exterior design and visibility with respect to existing structures; and any major exterior improvements have been approved by the Agency.

### **11.5 FORM OF APPROVALS AND DENIALS**

All approvals and denials shall be in writing. Any denial of a proposal must state the reasons for the decision to be valid. Any proposal (with all underlying documents attached)

which has not been rejected in writing within forty-five (45) days from the date of submission shall be deemed unapproved.

#### **11.6 PROCEEDING WITH WORK**

Upon approval of the Board the Owner shall diligently proceed with the commencement and completion of all work so approved. Work must be commenced within three (3) months from the date of the approval. If the Owner fails to comply with the provisions of this Section, the approval given shall be deemed revoked unless the Board extends the time for commencement. Any request for an extension shall be in writing. No extension shall be granted unless the Board finds that there has been no change in the circumstances under which the original approval was granted.

#### **11.7 FAILURE TO COMPLETE WORK**

Completion of the work approved must occur in the six (6) month period following the approval of the work unless the Board determines that completion is impossible or would result in great hardship to the Owner due to strike, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his or her agents. If Owner fails to complete the work within the six (6) month period, the Board shall proceed in accordance with the provisions of Sections 11.8.2 and 11.9 below.

#### **11.8 DETERMINATION OF COMPLIANCE**

Any work performed, whether or not the Owner obtained proper approvals, shall be inspected and a determination of compliance shall be made as follows:

11.8.1 Upon the completion of any work performed by an Owner for which approval was required, the Owner shall give written notice of completion to the Board. If the Owner fails to give the notice of completion of work performed for which approval was required, the Board may proceed upon its own motion.

11.8.2 Within sixty (60) days the Board shall inspect the work performed and determine whether it was performed in substantial compliance with the approval granted. If the Board finds that the work was not performed in substantial compliance with the approval granted or if the Board finds that the approval required was not obtained, the Board shall notify the Owner in writing of the non-compliance. The notice shall specify the particulars of non-compliance and shall require the Owner to remedy the non-compliance.

#### **11.9 FAILURE TO REMEDY THE NON-COMPLIANCE**

If the Board has determined that an Owner has not constructed an Improvement consistent with the specifications of the approval granted and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then after the expiration of thirty (30) days from the date of such notification, the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. At the hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall determine the estimated cost of correcting it. The Board shall then require the Owner to remedy or remove

the same within a period of not more than forty-five (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 either remove the non-complying Improvement or remedy the non-compliance. The costs of such action shall be assessed against the Owner as a Reimbursement Assessment.

#### **11.10 WAIVER**

Approval of any plans, drawings or specifications for any work proposed, or for any other matter requiring approval, shall not be deemed to constitute a waiver of any right to deny approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

#### **11.11 ESTOPPEL CERTIFICATE**

Upon completion of the improvements by any Owner, within thirty (30) days after written demand is delivered to the Board by such Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall provide an estoppel certificate, executed by any two (2) Directors, certifying that as of the date thereof, either: (a) the work completed complies with this Declaration or (b) the work completed does not comply. In the latter situation, the certificate shall also identify the particulars of the non-compliance. Any successor in interest of the Owner shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall be conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through any of them.

#### **11.12 LIABILITY**

If Directors have acted in good faith on the basis of such information possessed by them, neither the Board nor any Director shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the Community; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct.

#### **11.13 NON-APPLICABILITY TO DECLARANT**

The provisions of this Article shall not apply to any Unit owned by Declarant or prior to its first conveyance of a Condominium to an Owner.

#### **11.14 LANDSCAPING**

No landscaping or other physical improvements or additions shall be made to any decks, or any other Condominium Common Areas or portions of Units which are visible from the street or from any Condominium 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 Architectural Control Committee, or the Board.

### **11.15 COMBINING UNITS.**

Subject to prior written approval of the Board, which approval shall not unreasonably be withheld, the Owner of two or more adjacent Units may combine the Units by creating internal access from one Unit to another through the walls or other portions of the Common Area which separate and divide the individual Units, or separate and divide two or more Units previously joined hereunder, so long as any such work does not impair the structural integrity of the building. All of such work shall be done at the expense of the Owner and shall be performed in accordance with any permits which may be required. All plans must be approved by the Board prior to commencement of work, or by the Architectural Control Committee, in accordance with the terms of this Article 11.

Any Owner combining Units, as provided in this Section, shall indemnify all other Owners and the Association against and hold them harmless from any cost, loss, liability, damage or injury to property or persons arising from or caused by, such work. As a condition to granting its approval, the Board (or any committee appointed by the Board) may impose reasonable terms and conditions, including, without limitation, a requirement that Owner obtain lien and completion bonds to assure lien-free completion of the work. Assessments by the Association shall continue to be made to each Unit and each Unit shall have one (1) vote, whether or not combined (such that an Owner who combines two (2) Units shall have two (2) votes and two (2) separate assessments).

### **11.16 STRUCTURAL INTEGRITY**

Nothing shall be done in or on any Unit or Exclusive Use Common Area which will impair the structural integrity of any Unit or any building on the Community.

## **ARTICLE 12. DISPUTE RESOLUTION**

### **12.1 REQUIREMENT OF THE BOARD OF DIRECTORS TO PROVIDE NOTICE TO MEMBERS PRIOR TO FILING A CIVIL ACTION**

In accordance with California Civil Code section 1368.4, as hereafter amended, not later than thirty (30) days prior to the filing of any civil action by the Association against the Declarant or other developer of the Community for alleged damage to the Common Area, alleged damage to a Unit that the Association is obligated to maintain or repair, or alleged damage to a Unit that arises out of, or is integrally related, to damage to the Common Area or a Unit that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member who appears on the records of the Association at the time notice is given, specifying (a) that a meeting of Members will be held to discuss problems that may lead to the filing of a civil action, (b) the options, including civil actions, that are available to address the problems, and (c) 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 files the civil action, the Association may give the foregoing notice not later than thirty (30) days after the filing of the action.

## 12.2 DISPUTE RESOLUTION

Any disputes between the Association, all or any of the Owner(s), the Declarant, or any director, officer, partner, employer, contractor, design professional, consultant, subcontractor or agent of the Declarant (collectively "Declarant Parties"), arising under this Declaration or relating to the Community, shall be subject to the following provisions of this Section 12.2 and the following Sections 12.3, 12.4 and 12.5.

## 12.3 CONSTRUCTION DEFECT DISPUTES

12.3.1 *Notice of Construction Claims Statute.* California Civil Code sections 895, *et seq.*, as hereafter amended ("Construction Claims Statute"), delineates standards for how various components of residential dwelling units should be constructed and function, limits the time frames for bringing various claims against the builder to anywhere from one year to ten years (as listed in the Construction Claims Statute) from the close of escrow for the residential dwelling unit, imposes an obligation on all Owner's to follow Declarant's maintenance recommendations and schedules, or other applicable maintenance guidelines, and establishes a non-adversarial claims resolution procedure that must be followed by an Owner or the Association before such Owner or the Association can initiate an adversarial claim and proceed to judicial reference or binding arbitration, as described in Section 12.5 below. THE CONSTRUCTION CLAIMS STATUTE AFFECTS EACH OWNER'S AND THE ASSOCIATION'S LEGAL RIGHTS. OWNERS, ON BEHALF OF THEMSELVES AND AS MEMBERS OF THE ASSOCIATION, ARE ADVISED TO READ THE STATUTE CAREFULLY AND SEEK LEGAL ADVICE IF OWNER HAS ANY QUESTIONS REGARDING ITS AFFECT ON OWNER'S LEGAL RIGHTS. PURSUANT TO CALIFORNIA CIVIL CODE SECTION 914, DECLARANT IS PERMITTED TO ELECT TO USE ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES INSTEAD OF USING THE STATUTORY PRE-LITIGATION PROCEDURES PROVIDED IN THE CONSTRUCTION CLAIMS STATUTE, AND DECLARANT HAS ELECTED TO USE ITS OWN ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES AS PROVIDED BELOW.

### 12.3.1.1 Obligation to Follow Maintenance

Recommendations and Schedules. All Owners and the Association are obligated by Section 907 of the Construction Claims Statute to follow Declarant's maintenance recommendations and schedules, including the maintenance recommendations and schedules for manufactured products and appliances provided with such Owner's Unit or the Common Area, or any improvements thereon, as well as all commonly accepted maintenance practices (collectively, "**Maintenance Recommendations**"). Per Section 945.5 of the Construction Claims Statute, failure to follow the Maintenance Recommendations may reduce or preclude Owner's and the Association's right to recover damages relating to such Unit or Common Area, which could have been prevented or mitigated had the Maintenance Recommendations been followed.

### 12.3.1.2 Obligation to Retain Documents and Provide

Copies to Successors. All Owners, who originally purchased a Unit from Declarant were provided copies of certain documents in conjunction with the purchase of their Unit, including copies of this Declaration, maintenance recommendations from Declarant, maintenance

recommendations for manufactured products or appliances included with the Unit, a limited warranty, claim forms, and other documentation relating to the Construction Claims Statute. All Owners are required by the Construction Claims Statute to retain these documents and provide copies of such documents to their successors in interest upon the sale or transfer of such Owner's Unit.

12.3.2 ***Owners' Construction Defect Claims.*** Prior to the commencement of any legal proceeding by any Owner against Declarant or any Declarant Party based upon a claim for defects in the design or construction of any Unit, Common Area, or any improvements thereon, the Owner must first comply with the provisions of this paragraph. If at any time during the ten (10) year period following the close of escrow for the original Owner's purchase of such Owner's Unit from Declarant, as such period may be extended by any applicable tolling statute or provision, or any shorter period as provided by applicable law, such Owner believes Declarant has violated any of the standards set forth in the Construction Claims Statute ("**Claimed Defect**"), which such Owner feels may be the responsibility of Declarant, such Owner shall promptly notify Declarant's agent for notice of construction defect claims on file with the Secretary of State, which is SP/P 170 King L.L.C., attention John M. Marasco in writing, with a copy thereof to Declarant at 1201 Third Avenue, Suite 5400, Seattle, Washington 98101. Such notice shall be deemed a notice of intention to commence a legal proceeding and shall include: (a) a detailed description of the Claimed Defect, (b) the date upon which the Claimed Defect was first discovered, and (c) dates and times when Owner or Owner's agent will be available during ordinary business hours, so that service calls or inspections by Declarant can be scheduled. Declarant shall, in its sole discretion, be entitled to inspect the applicable property regarding the reported Claimed Defect and, within its sole discretion, shall be entitled to cure such Claimed Defect. Nothing contained in this Article shall obligate Declarant to perform any such inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner. Owner's written notice delivered to Declarant shall be a condition precedent to Owner's right to institute any legal proceeding and to proceed to judicial reference or binding arbitration as set forth in Section 12.5 below, and Owner shall not pursue any other remedies available to it, at law or otherwise, including without limitation the filing of any legal proceeding or action, until Declarant has had the reasonable opportunity to inspect and cure the Claimed Defect. As one option for curing the Claimed Defect, Declarant may, but is in no way required to, offer to purchase the Unit from Owner. Such an offer shall not be considered an admission of liability of any kind for any purpose. During the term of any written limited warranty provided to the original Owner of the Unit by Declarant, any conflict between the provisions of this Section and such limited warranty shall be resolved in favor of the limited warranty. Declarant shall not be liable for any general, special or consequential damage, cost, diminution in value or other loss which Owner may suffer as a result of any Claimed Defect in the Unit, which reasonably might have been avoided had Owner given Declarant the notice and opportunity to cure as described above within a reasonable time of discovering the Claimed Defect. Except as otherwise provided in any written limited warranty, if any, provided to Owner, nothing contained herein shall establish any contractual duty or obligation on the part of Declarant to repair, replace or cure any Claimed Defect. If an Owner sells or otherwise transfers ownership of such Owner's Unit to any other person during such ten (10) year period, as such period may be extended by any applicable tolling statute or provision, Owner covenants and agrees to give such other person written notice of these procedures by personal delivery. Owner's continuing obligation under this covenant shall be binding upon Owner and Owner's successors and assigns.



12.3.3 *Association's Construction Defect Claims.* DECLARANT ELECTS TO USE THE ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES CONTAINED IN CIVIL CODE SECTION 1375, EXCEPT AS OTHERWISE PROVIDED HEREIN, RATHER THAN THE STATUTORY PRE-LITIGATION PROCEDURES OF THE CONSTRUCTION CLAIMS STATUTE, WITH RESPECT TO CLAIMS BY THE ASSOCIATION. Prior to the commencement of any legal proceeding by the Association against Declarant or any Declarant Party based upon a claim for defects in the design or construction of the Common Area, or any improvements thereon, or any other area within the Community which the Association has standing to make a claim for defects in the design or construction thereof, the Association must first comply with all of the applicable requirements of Civil Code section 1375, as the same may be amended from time to time, or any successor statute thereto. In addition to the requirements of said Section 1375, Declarant shall have an absolute right, but not an obligation, to repair any alleged defect or condition claimed by the Association to be in violation of the standards set forth in the Construction Claims Statute, within a reasonable period of time after completion of the inspection and testing provided for in such Section and prior to submission of builder's settlement offer under such Section. If the parties to such dispute are unable to resolve their dispute in accordance with the procedures established under Civil Code section 1375, as the same may be amended from time to time, or any successor statute, the dispute shall be resolved in accordance with the judicial reference or binding arbitration provisions below and the parties to the dispute shall each be responsible for their own attorneys' fees. The Association shall have the power to initiate claims against a Declarant Party for violations of Construction Claims Statute, as soon as the Association has one (1) Class A Member other than Declarant and upon the satisfaction of the requirements of Section 7.4.7 hereof. Upon the written request of any Class A Member to the Board of Directors, the Board shall establish a committee consisting exclusively of Class A Member(s) other than Declarant to investigate claimed violations of the standards of the Construction Claims Statute. Upon the committee's determination that cause exists to initiate a claim, the decision of whether to initiate a claim shall be made by a vote of not less than two-thirds of the Class A Members other than Declarant. Votes cast in the affirmative to support the proposed litigation action by not less than two-thirds of the Class A Members shall be deemed to be the decision of the Association, which the Board shall carry out by submitting the necessary claim to Declarant or the appropriate Declarant Party; provided, however, that the vote is either conducted at a properly convened meeting with the requisite quorum in accordance with the provisions of the Bylaws relating to meetings and voting, or the vote was conducted without a meeting in accordance with California Corporations Code section 7513, as authorized by the Bylaws.

#### **12.4 OTHER DISPUTES INVOLVING DECLARANT**

Any other disputes arising under this Declaration, or otherwise, between the Association or any Owner and Declarant or any Declarant Party (except for any action taken by the Association against Declarant for delinquent assessments and any action involving enforcement of any completion bonds) shall be resolved in accordance with the alternate dispute resolution provisions of Section 12.5 below.

## 12.5 ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

The foregoing procedures provide for resolution of disputes through general judicial reference or, in the alternative, binding arbitration. In either event, Declarant, the Association and each Owner of a Unit within the Community, expressly acknowledge and accept that they are waiving their respective rights to a jury trial.

12.5.1 *Judicial Reference.* Subject to compliance with the provisions of Sections 12.2 through 12.4, to the extent applicable, it is the intention of Declarant that, except as otherwise expressly provided herein, any and all disputes, based upon which litigation is filed, shall be resolved by judicial reference under California law. Accordingly, except as otherwise expressly provided in this Declaration (such as the collection of delinquent assessments), any dispute, between the Association or any Owner(s) and the Declarant, or other developer of the Community, or between the Association and any Owner with respect to the interpretation of any of the provisions of this Declaration, or with respect to any alleged breach hereof, or with respect to any other claim related to a Unit or the Common Area, including, without limitation, any alleged latent or patent construction or design defect in the Community, any Unit or any part thereof, any alleged violation of the standards set forth in the Construction Claims Statute, any judicial determination to be made under California Civil Code section 1375(h), or for alleged damage to the Common Area, or alleged damage to Units that arises out of, or is integrally related to the Common Area or Units that the Association is obligated to maintain or repair, shall be heard by a referee pursuant to the provisions of California Code of Civil Procedure Sections 638 through 645.1. Notwithstanding any other provision of this Declaration, this Article shall not be amended without the written consent of Declarant. In the event litigation is filed based, upon any such dispute, the following shall apply:

(a) The proceeding shall be brought and held in the City, unless the parties agree to an alternative venue.

(b) The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services, Inc. ("JAMS") for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties).

(c) The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters.

(d) The parties to the litigation shall agree upon a single referee who shall have the power to try any and all of the issues raised, whether of fact or of law, which may be pertinent to the matters in dispute, and to issue a statement of decision thereon to the court. 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 in accordance with California Code of Civil Procedure Sections 638 and 640.

(e) The referee shall be authorized to provide all remedies available in law or equity appropriate under the circumstances of the controversy.

(f) The referee may require one or more pre-hearing conferences.

(g) 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.

(h) A stenographic record of the trial shall be made.

(i) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable.

(j) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

(k) The parties shall promptly and diligently cooperate with each other and the referee and perform such acts, as may be necessary for an expeditious resolution of the dispute.

(l) Except as otherwise agreed by the parties or as required by applicable law, neither the Association nor any Owner shall be required to pay any fee of the judicial reference proceeding except to the extent of the cost that would be imposed upon the Association or Owner if the dispute had been resolved as a dispute in court. The referee may not award against the Association or any Owner any expenses in excess of those that would be recoverable as costs if the dispute had been litigated to final judgment in court. Each party to the judicial reference proceeding shall bear its own attorney fees and costs in connection with such proceeding.

(m) 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. This provision shall in no way be construed to limit any valid cause of action that may be brought by any of the parties.

12.5.2 ***Binding Arbitration of Disputes.*** If for any reason the judicial reference procedures in Section 12.5.1 are legally unavailable or unenforceable at the time a dispute would otherwise be referred to judicial reference, then such dispute shall be submitted to binding arbitration under the rules and procedures in this Section 12.5.2. Any dispute submitted to binding arbitration shall be administered by the American Arbitration Association ("AAA") in accordance with the AAA's Construction Industry Arbitration Rules in effect on the date of the submission. If such entity is not then in existence, then the dispute shall be submitted to JAMS, and administered in accordance with either the Streamlined Arbitration Rules and Procedures, or (if applicable) the Comprehensive Arbitration Rules of JAMS. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such dispute. If the claimed amount exceeds \$250,000.00 or includes a demand for punitive damages, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved. All decisions concerning the arbitrability of any dispute shall be decided by the arbitrator(s). At the

request of any party, the award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither party nor the arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

12.5.3 *Applicability of Federal Arbitration Act.* The binding arbitration procedures contained in Sections 12.5.2 are implemented for the Community in accordance with the philosophy and intent of the Federal Arbitration Act (9 U.S.C. Section 1 et seq.) ("FAA"), which is designed to encourage the use of alternative methods of dispute resolution and avoid costly and potentially lengthy traditional court proceedings. The binding arbitration procedures in said Section are to be interpreted and enforced as authorized by the FAA. Parties interpreting this Section shall follow the federal court rulings, which provide among other things that: (1) the FAA is a congressional declaration of liberal federal policy favoring alternate dispute resolution notwithstanding substantive or procedural state policies or laws to the contrary, (2) alternate dispute resolution agreements are to be rigorously enforced by state courts; and (3) the scope of issues subject to alternate dispute resolution are to be interpreted in favor of alternate dispute resolution.

## **12.6 DISPUTES RELATING TO ENFORCEMENT OF GOVERNING DOCUMENTS**

In the event of a dispute between the Association and an Owner, or between an Owner and another Owner, relating to the enforcement of the governing documents of the Association, the parties shall comply with the provisions of California Civil Code section 1354(b) through (j), prior to filing of any civil action.

## **12.7 CIVIL CODE SECTIONS 1368.4, 1375, 1375.05 AND 1375.1**

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.

## **12.8 USE OF DAMAGE AWARD AMOUNTS**

Any and all amounts awarded to a claimant on account of a claimed construction or design defect in the Community, or damage suffered as a result thereof, shall be expended by such claimant for the attorney fees and costs of the proceeding and the repair, rehabilitation, or remediation of the claimed defect or damage.

## **12.9 MISCELLANEOUS**

Nothing in this Article shall constitute a waiver of any of the benefits of statute of limitations or equitable defense of any party. Furthermore, notwithstanding any other provision of this Declaration, this Article may not be amended without the prior written consent of the Declarant.

**ARTICLE 13.**  
**MISCELLANEOUS PROVISIONS**

**13.1 TERM OF DECLARATION**

This Declaration shall continue for a term of fifty (50) years from its date of recordation. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years until a vote of greater than fifty percent (50%) of the Owners determines that this Declaration shall terminate.

**13.2 ASSIGNABILITY**

Declarant shall have the right to assign its rights and obligations set forth in this Declaration upon the execution and recordation of an assignment and assumption agreement by Declarant and the assignee whereby the assignee expressly agrees to assume all of the rights and obligations of Declarant set forth in this Declaration.

**13.3 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 planned development project.

**13.4 DECLARATION IS BINDING**

This Declaration shall be for the benefit of and be binding upon all Owners, their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, purchasers, tenants, encumbrances, donees, grantees, mortgagees, lienors and assigns.

**13.5 SEVERABILITY OF PROVISIONS**

The provisions hereof shall be deemed independent and severable, and the invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

**13.6 GENDER, NUMBER AND CAPTIONS**

As used herein, the singular shall include the plural and masculine pronouns shall include feminine pronouns, where appropriate. The title and captions of each paragraph hereof are not a part thereof and shall not affect the construction or interpretation of any part hereof.

**13.7 PROVISION OF ASSOCIATION DOCUMENTS UPON RESALE**

Upon the resale of any Condominium by any Owner, the Owner shall supply to the buyer of the Condominium each of the following items: (i) a copy of each of the Association Documents and a copy of the Maintenance Manual; (ii) a copy of the most recent financial statement of the Association; (iii) the statement of assessment lien referred to in Section 6.8 of this Declaration; (iv) a copy of the most recent documents distributed to Members pursuant to

Article 9 of the Bylaws; (v) a copy of the preliminary list of defects provided to each Member pursuant to California Civil Code section 1375; and (vi) a true written statement from an authorized representative of the Association as to the amount of the Association's current Regular and Special Assessments or fees, including a description of any change in such Assessments or fees which have been approved by the Board but have not become due and payable as of the date of such written statement, the amount of any assessments levied against the Owner's Condominium that are delinquent, and information on Additional Charges that may be included in an action to enforce delinquent assessments.

Within ten (10) days after the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a copy of the requested items listed in (i) through (vi) above. The requesting Owner will pay the Association its reasonable fee for the preparation of this information in an amount determined by the Board from time to time.

### **13.8 EXHIBITS**

All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.

**13.9 CONFLICT**

In the event of a conflict, the provisions of this Declaration shall prevail over the Bylaws and the Rules and Regulations.

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the date first above written.

*DECLARANT:* SP/P 170 King L.L.C.,  
a Delaware limited liability company

By: SP Multi-Family L.L.C.,  
a Washington limited liability company  
Its: Managing Member

By: SP Real Estate L.L.C.,  
a Washington limited liability  
company  
Its: Managing Member

By: SP Investments II L.L.C.,  
a Washington limited liability  
company  
Its: Manager

By: John M Orehek  
Name: John M. Orehek  
Title: Manager

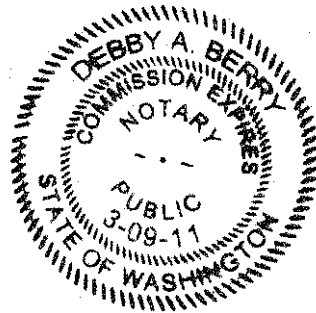
STATE OF Washington )  
 ) ss.  
COUNTY OF King )

On April 6, 2007, before me, the undersigned notary public in and for said County and State, personally appeared John M. Dehek

personally known to me [or]  
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity(ies) and that, by his signature(s) on the instrument, the person(s) or the entity(ies) upon behalf of which the person(s) acted executed the instrument.  
WITNESS my hand and official seal.

Debby A. Berry  
My commission expires on  
3-9-11





**EXHIBIT "A"**

All that certain real property in the City and County of San Francisco, State of California as shown on the map entitled "Final Map 3375, 170 King Street" recorded on March 29, 2007 in Book 99 of Condominium Maps at Pages 155 through 157, inclusive, Official Records of the County of San Francisco, State of California.

EXHIBIT B  
CONDOMINIUM PLAN

**EXHIBIT "B"**  
**MIXED USE CONDOMINIUM PLAN FOR**  
**170 KING STREET**  
**SAN FRANCISCO, CALIFORNIA**

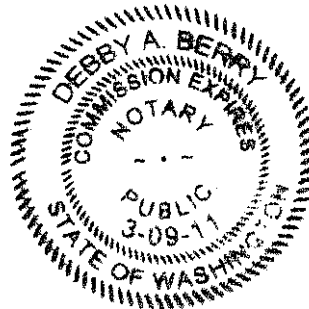
BEING ALL THAT CERTAIN REAL PROPERTY ("PROPERTY") IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, SHOWN ON "FINAL MAP 3375, 170 KING STREET, A 202 UNIT MIXED USE CONDOMINIUM PROJECT, BEING A SUBDIVISION OF LOT 75, AS SAID LOT IS SHOWN IN THAT CERTIFICATE OF COMPLIANCE RECORDED APRIL 15, 2004, IN REEL I617, IMAGE 604, O.R., ALSO BEING A PORTION OF ASSESSOR'S BLOCK NO. 3794, ALSO BEING A PORTION OF 100 VARA BLOCK NO. 361, SAN FRANCISCO, CALIFORNIA" FILED MARCH 29, 2007 IN BOOK 99 OF CONDOMINIUM MAPS, PAGES 155 THROUGH 157, INCLUSIVE, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

WE CERTIFY THAT WE ARE THE OWNERS OF, OR HAVE SOME RIGHT, TITLE IN AND TO THE REAL PROPERTY INCLUDED IN THE ATTACHED DESCRIPTION OF THE CONDOMINIUM PLAN HEREIN; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS CLEAR TITLE TO SAID PROPERTY AND WE CONSENT TO THE MAKING AND RECORDING OF SAID PLAN AND DESCRIPTION AS SHOWN.

**OWNER:** SP/P 170 KING, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY  
**BY:** SP MULTI-FAMILY L.L.C., A WASHINGTON LIMITED LIABILITY COMPANY,  
**ITS:** MANAGING MEMBER

**BY:** SP REAL ESTATE L.L.C., A WASHINGTON LIMITED LIABILITY COMPANY,  
**ITS:** MANAGING MEMBER

**BY:** John M. Orehek  
JOHN M. OREHEK  
ITS: MANAGER



**OWNER'S ACKNOWLEDGEMENT:**

STATE OF Washington

COUNTY OF King

ON April 23, 2007 BEFORE ME, Debby A. Berry A NOTARY  
PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED

John M. Orehek  
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 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: Debby A. Berry

NAME: Debby A. Berry

COMM. #: 90740 - Expires 3/9/2011

NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE.

**SURVEYOR'S STATEMENT**

I, THE UNDERSIGNED, HEREBY STATE THAT I AM A LICENSED LAND SURVEYOR IN THE STATE OF CALIFORNIA, AND THIS CONDOMINIUM PLAN CONSISTING OF 33 SHEETS WAS PREPARED UNDER MY SUPERVISION AND THAT THIS PLAN TRULY REPRESENTS THE BOUNDARIES AND ELEVATIONS OF THE PARCELS AND COMMON AREA. I ALSO STATE THE SURVEY MADE UNDER MY DIRECTION DURING THE MONTH OF APRIL, 2007, IS TRUE AND COMPLETE AS SHOWN.

DATED 4-19-07

BY: B. B. R.  
BENJAMIN B. RON  
LICENSED LAND SURVEYOR NO. 5015  
EXPIRATION DATE: 12-31-2007



**EXHIBIT "B"**  
**MIXED USE CONDOMINIUM PLAN FOR**  
**170 KING STREET**  
**SAN FRANCISCO, CALIFORNIA**

**GENERAL NOTES**

THIS IS A PLAN OF A "CONDOMINIUM PROJECT" AS THAT TERM IS DEFINED IN SECTION 1351 (f) OF THE CIVIL CODE OF THE STATE OF CALIFORNIA, AND THE SUBDIVISION DEPICTED HEREON IS SUBJECT TO THE PROVISIONS OF THE DAVIS-STIRLING COMMON INTEREST DEVELOPMENT ACT, TITLE 6, PART 4, DIVISION 2 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA. SHEET 5 HEREOF IS A PORTION OF THE SURVEY MAP OF THE SURFACE OF THE LAND INCLUDED WITHIN THE PROJECT AND SHEETS 6 THROUGH 29 SHOW THE DIAGRAMMATIC FLOOR PLANS OF THE BUILDING AS PROVIDED IN SECTION 1351 (e) OF THE CIVIL CODE.

1. "UNIT" SHALL MEAN THE ELEMENTS OF A CONDOMINIUM WHICH ARE NOT OWNED IN COMMON WITH THE OWNERS OF OTHER CONDOMINIUMS IN THE PROJECT. EACH UNIT IS SHOWN, NUMBERED AND DELINEATED ON THE PLAN. THE BOUNDARIES AND DIMENSIONS OF EACH UNIT SHALL BE ESTABLISHED AS FOLLOWS AND GRAPHICALLY DEPICTED HEREON:
  - A. THE UPPER BOUNDARY SHALL BE THE UNFINISHED SURFACE OF THE BOTTOM OF THE CEILING SLAB AND THE LOWER BOUNDARY SHALL BE THE UNFINISHED SURFACE OF THE TOP OF THE FLOOR SLAB.
  - B. THE SIDE BOUNDARIES SHALL BE THE UNFINISHED INTERIOR SURFACES OF THE PERIMETER WALLS OF THE UNITS.
2. "COMMON AREA" WITHIN THE SUBDIVISION SHALL MEAN AND REFER TO THOSE PORTIONS OF THE PROPERTY TO WHICH TITLE IS HELD BY ALL THE OWNERS IN COMMON, EXCEPTING THE INDIVIDUAL UNITS. THE COMMON AREA INCLUDES, BEARING WALLS, STAIRWAYS (EXCEPT STAIRWAYS WITHIN A UNIT), ELEVATORS, COLUMNS, GIRDERS, SUBFLOORS, UNFINISHED FLOORS, ROOFS, FOUNDATIONS, CENTRAL HEATING, CENTRAL AIR CONDITIONING EQUIPMENT, RESERVOIRS, TANKS, PUMPS, MOTORS, DUCTS, FLUES AND CHUTES, CONDUITS, PIPES, PLUMBING, WIRES, AND OTHER UTILITY INSTALLATIONS (EXCEPT THE OUTLETS THEREOF LOCATED WITHIN A UNIT), REQUIRED TO PROVIDE POWER, LIGHT, TELEPHONE, GAS, WATER, SEWERAGE, DRAINAGE, AIR-CONDITIONING, SPRINKLERS, SPRINKLER PIPES AND SPRINKLER HEADS WHICH PROTRUDE INTO THE AIRSPACE OF THE CONDOMINIUM UNIT, AND CENTRAL TELEVISION ANTENNA, IF ANY.
3. ALL DIMENSIONS SHOWN AND ELEVATIONS NOTED ON SHEETS 6 THROUGH 29 ARE INTENDED TO BE THE UNFINISHED INTERIOR SURFACES OF THE WALLS, FLOORS AND CEILINGS.
4. ALL BUILDING WALLS OF UNITS ARE AT FORTY-FIVE OR NINETY DEGREES AND WALLS WIDTHS ARE 0.67', EXCEPT AS SHOWN. DISTANCES ARE SHOWN IN FEET AND DECIMALS OF A FOOT.
5. BASIS OF SURVEY IS MONUMENT MAP 319 ON FILE IN THE OFFICE OF THE CITY ENGINEER.
6. ELEVATIONS SHOWN HEREON ARE BASED ON CITY OF SAN FRANCISCO DATUM.
7. THE AREAS ENTITLED "P-3", "P-4", "P-5", ETC., ARE PARKING AREAS. AN EASEMENT FOR THE EXCLUSIVE USE OF EACH PARKING AREA MAY BE GRANTED AS AN APPURTENANCE TO A UNIT.
8. THE AREAS ENTITLED "HCP-1", "HCP-7", "HCP-9", ETC., ARE HANDICAP PARKING AREAS. "HCP-2" IS A VAN ACCESSIBLE HANDICAP PARKING AREA. AN EASEMENT FOR THE EXCLUSIVE USE OF EACH HANDICAP PARKING AREA MAY BE GRANTED AS AN APPURTENANCE TO A UNIT.

## GENERAL NOTES

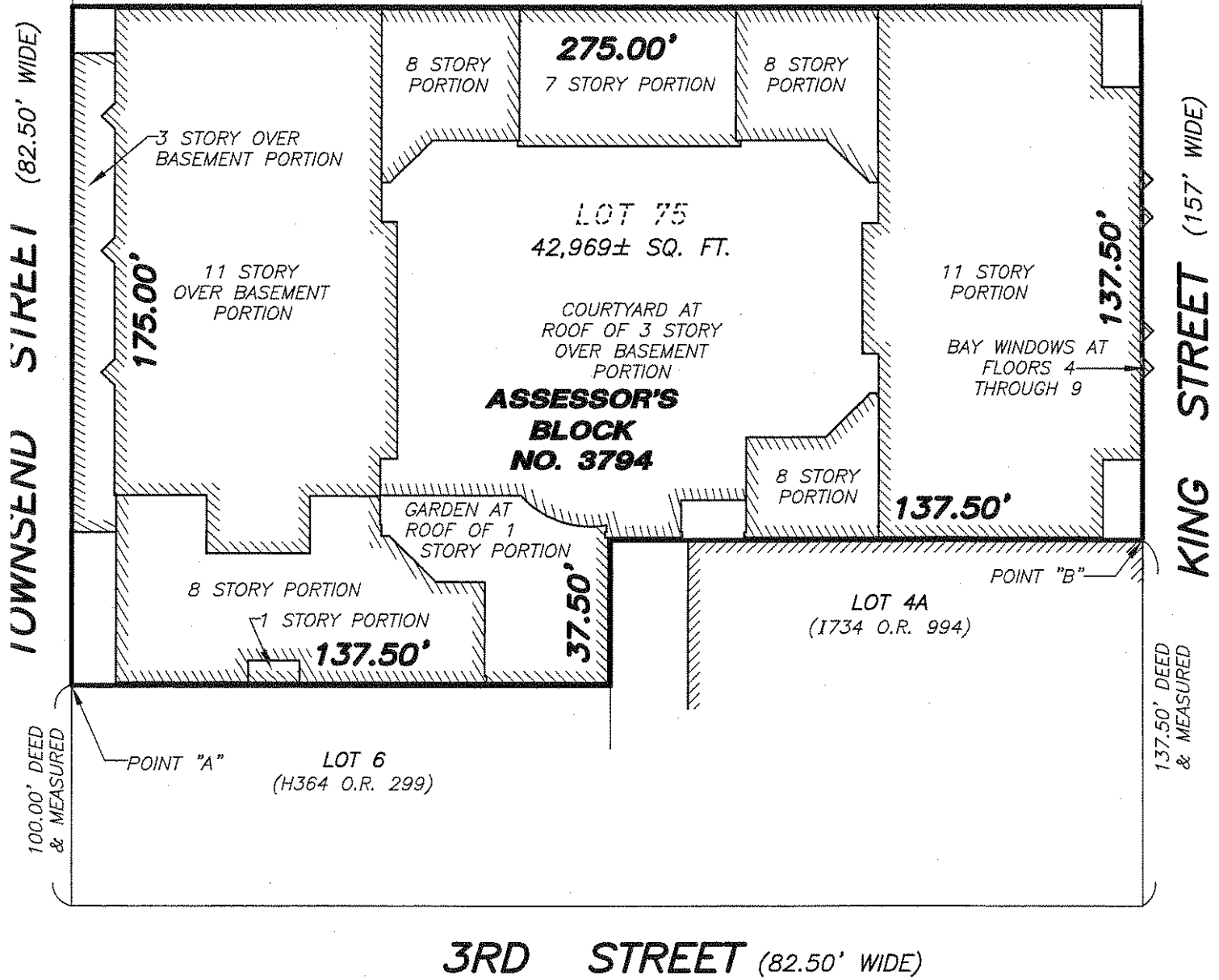
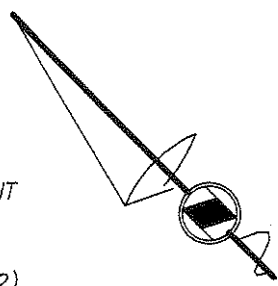
CONTINUED FROM PREVIOUS SHEET

9. THE AREAS ENTITLED "D-402", "D-404", "D-406", ETC., ARE DECK AREAS. AN EASEMENT FOR THE EXCLUSIVE USE OF EACH DECK AREA SHALL BE GRANTED AS AN APPURTENANCE TO THE CORRESPONDINGLY NUMBERED UNIT.
10. THE AREAS ENTITLED "S-1", "S-2", "S-3", ETC., ARE STORAGE AREAS. AN EASEMENT FOR THE EXCLUSIVE USE OF EACH STORAGE AREA MAY BE GRANTED AS AN APPURTENANCE TO A UNIT.
11. THE AREAS ENTITLED "W-1", "W-2", "W-3", ETC., ARE WINE STORAGE AREAS. AN EASEMENT FOR THE EXCLUSIVE USE OF EACH WINE STORAGE AREA MAY BE GRANTED AS AN APPURTENANCE TO A UNIT.
12. FOR THE PERCENTAGE OF UNDIVIDED INTEREST IN THE OWNERSHIP OF THE COMMON AREA FOR THE UNITS, SEE TABLE ON SHEETS 30 THROUGH 33.
13. BAY WINDOWS AND OTHER ENCROACHMENTS ON KING AND TOWNSEND STREETS ARE ALLOWED BY BUILDING PERMITS AND ARE SUBJECT TO THE RESTRICTIONS SET FORTH IN THE BUILDING CODE OF THE CITY OF SAN FRANCISCO. THIS DOES NOT CONVEY ANY OWNERSHIP INTEREST IN SUCH ENCROACHMENT AREAS TO THE PROPERTY / CONDOMINIUM UNIT OWNER.
14. NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE RECORDED APRIL 15, 2003 IN BOOK 1366, PAGE 1100, OFFICIAL RECORDS.

### LEGEND:

BMR	BELOW MARKET RATE UNIT
CLR.	CLEAR OF PROPERTY LINE
L.E.	LOWER ELEVATION
O.R.	OFFICIAL RECORDS
OV.	OVER PROPERTY LINE
U.E.	UPPER ELEVATION

9 STORY  
OVER BASEMENT  
BUILDING  
LOT 25  
(H584 O.R. 492)



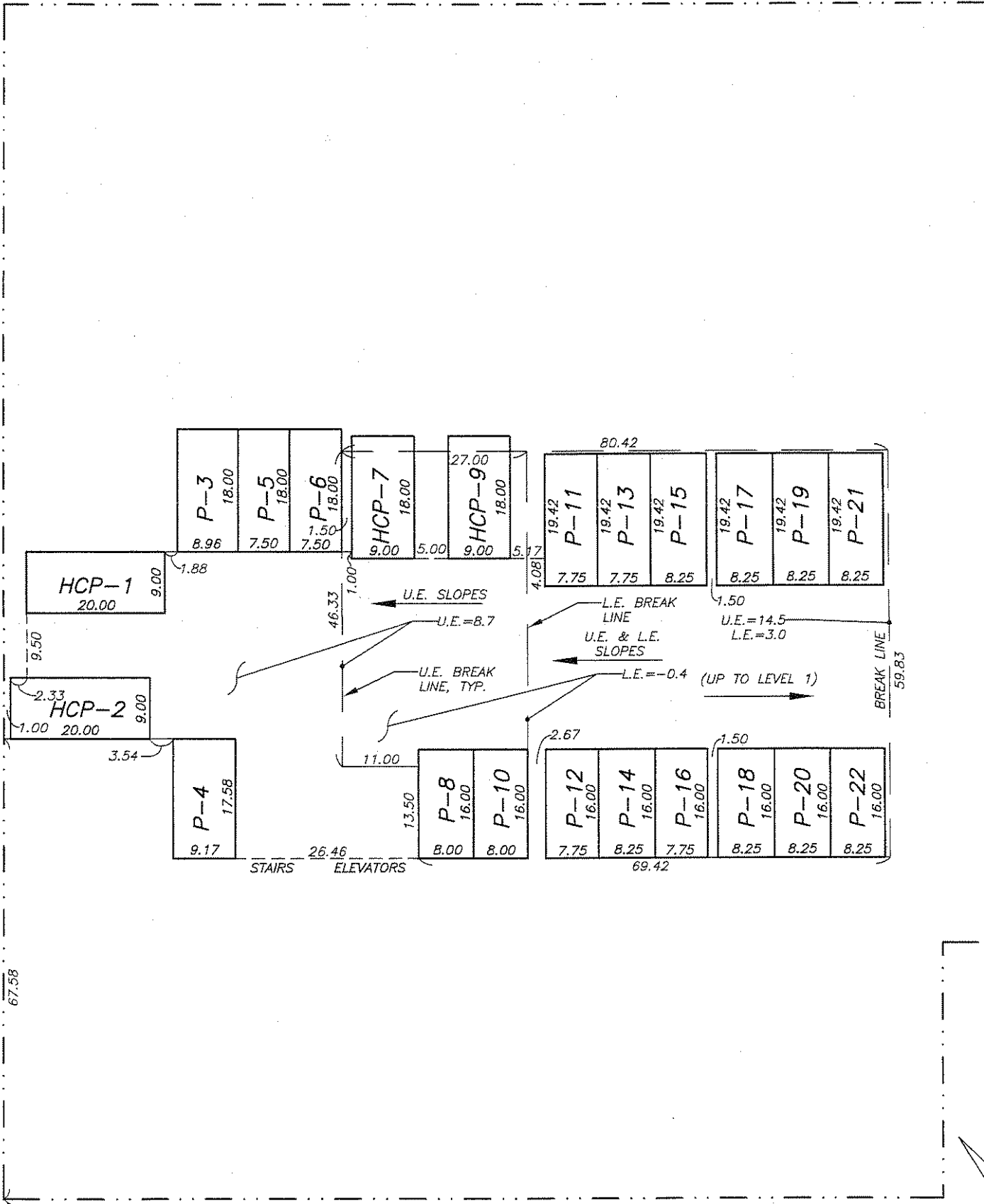
**3RD STREET** (82.50' WIDE)

**BOUNDARY**

BY RW CHKD. DATE APRIL 2007 SCALE 1"=40' SHEET 5 OF 33 JOB NO. S-5680

**MARTIN M. RON ASSOCIATES, INC.**  
LAND SURVEYORS

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



POINT "A"

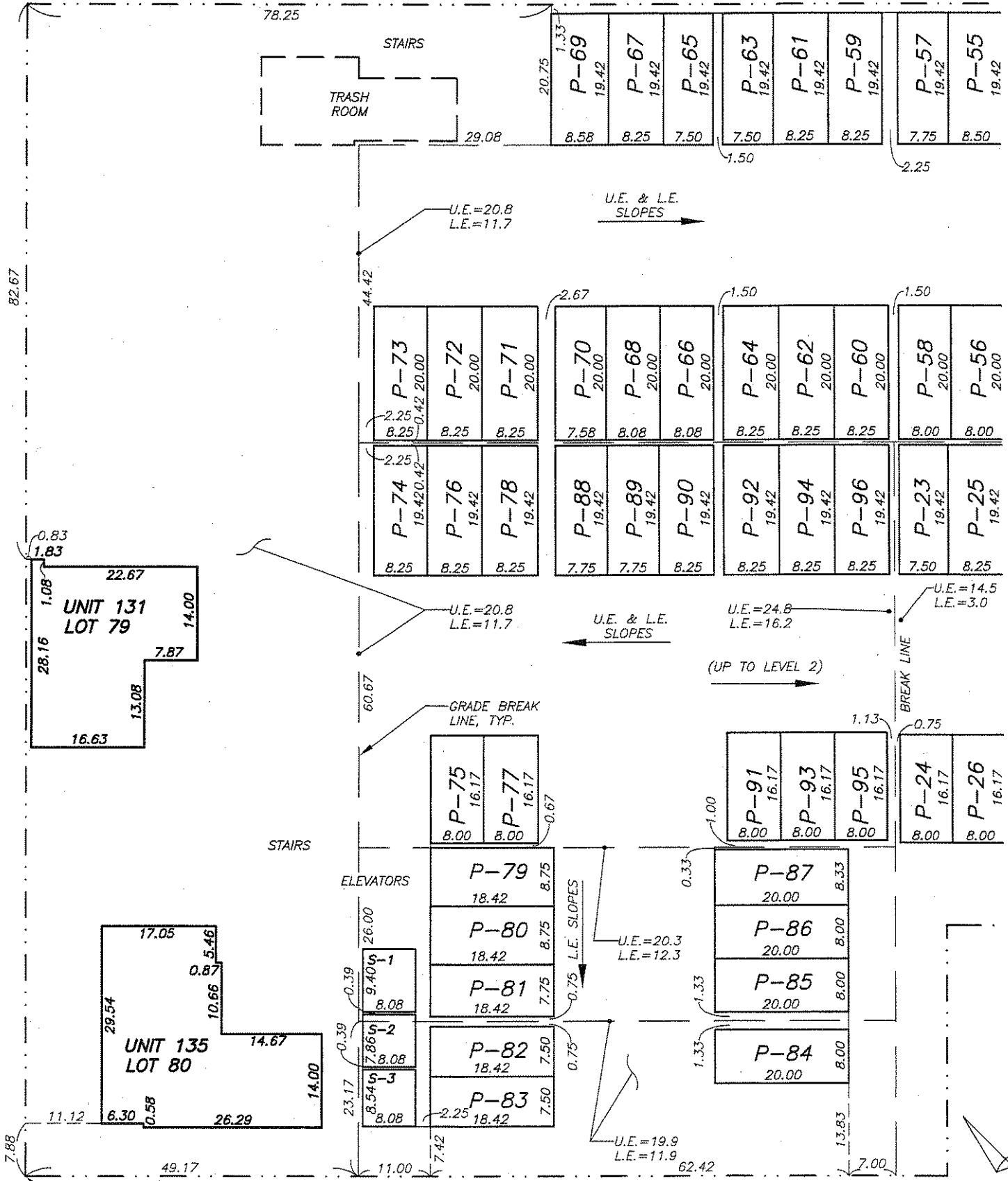
LEVEL P1 UPPER ELEVATION = -0.4 (EXCEPT AS SHOWN)  
 LOWER ELEVATION = 8.7 (EXCEPT AS SHOWN)

BY RW CHKD. DATE APRIL 2007 SCALE 1"=20' SHEET 6 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
 LAND SURVEYORS

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





DIRECTLY ABOVE POINT "A"

LEVEL 1

UPPER ELEVATION = 20.8 (EXCEPT AS SHOWN)  
LOWER ELEVATION = 11.7 (EXCEPT AS SHOWN)

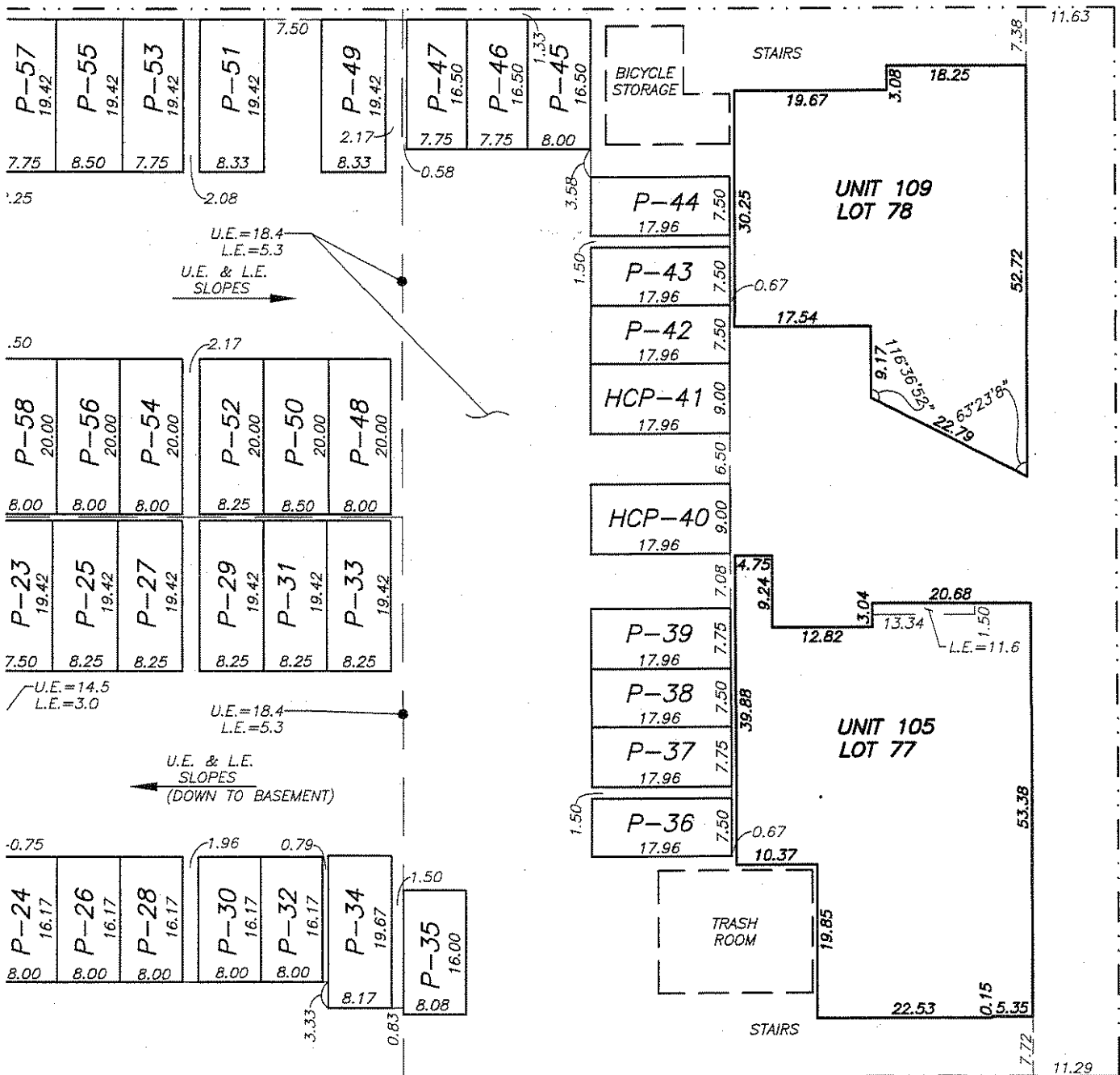
SEE SHEET 8

BY RW CHKD. DATE APRIL 2007 SCALE 1"=20' SHEET 7 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

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

SEE SHEET 7

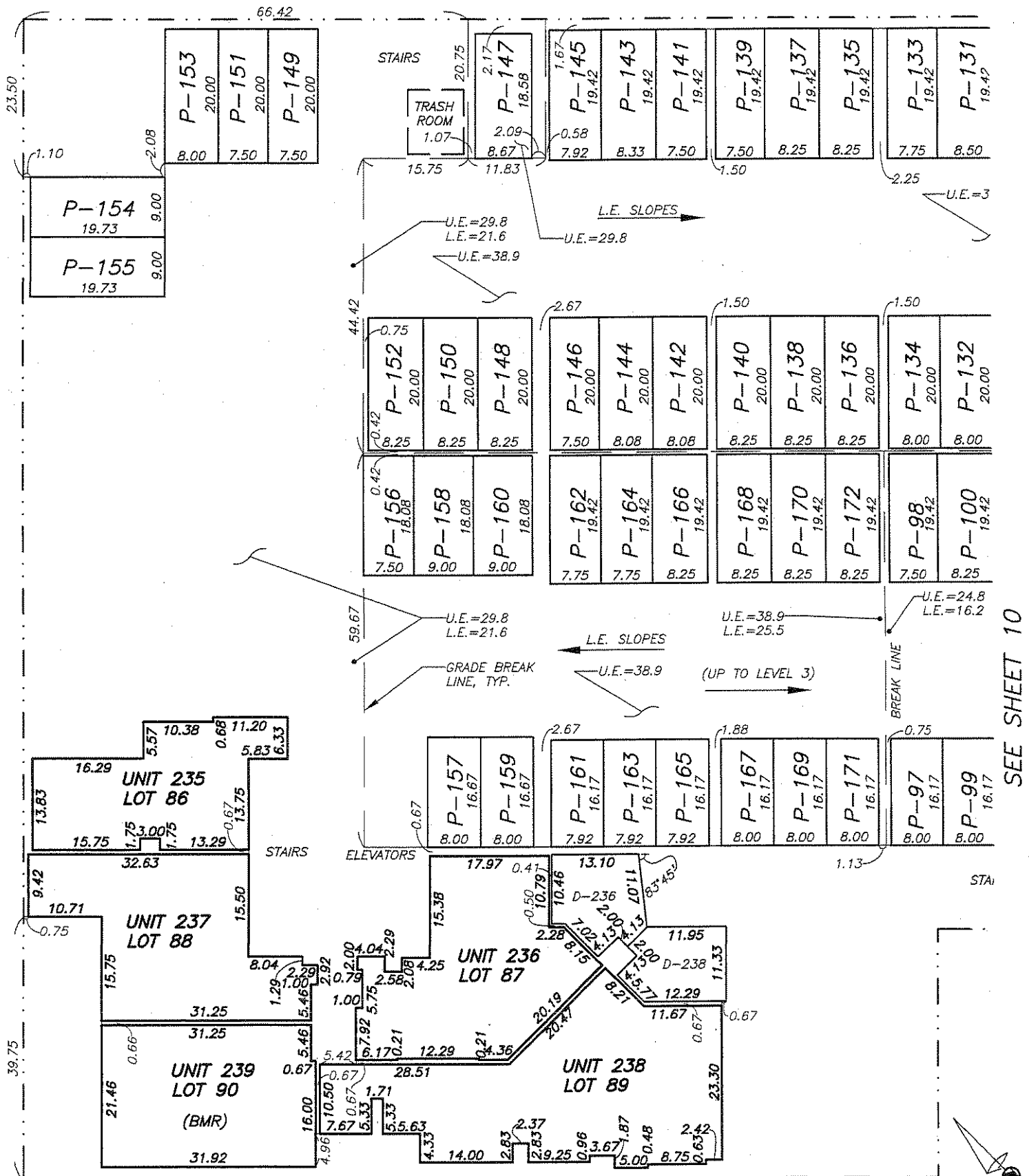


LEVEL 1 UPPER ELEVATION = 18.4 (EXCEPT AS SHOWN)  
 LOWER ELEVATION = 5.3 (EXCEPT AS SHOWN)

BY RW CHKD.        DATE APRIL 2007 SCALE 1"=20' SHEET 8 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
 LAND SURVEYORS

859 HARRISON STREET  
 SAN FRANCISCO, CA. 94107  
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SEE SHEET 10

DIRECTLY ABOVE  
POINT "A"

LEVEL 2

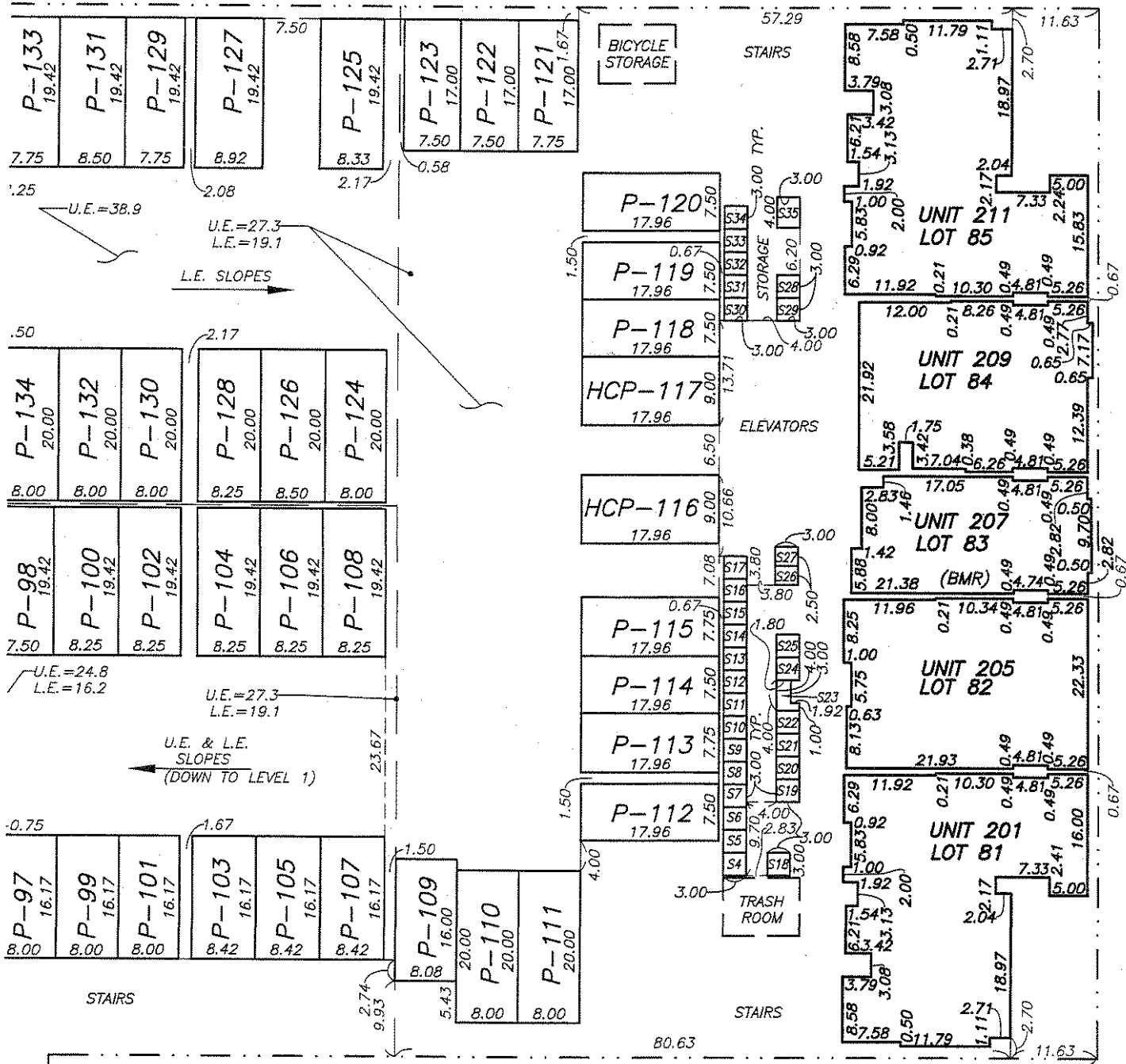
UPPER ELEVATION = 29.9 (EXCEPT AS SHOWN)  
LOWER ELEVATION = 21.6 (EXCEPT AS SHOWN)

BY RW CHKD. DATE APRIL 2007 SCALE 1"=20' SHEET 9 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

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SEE SHEET 9

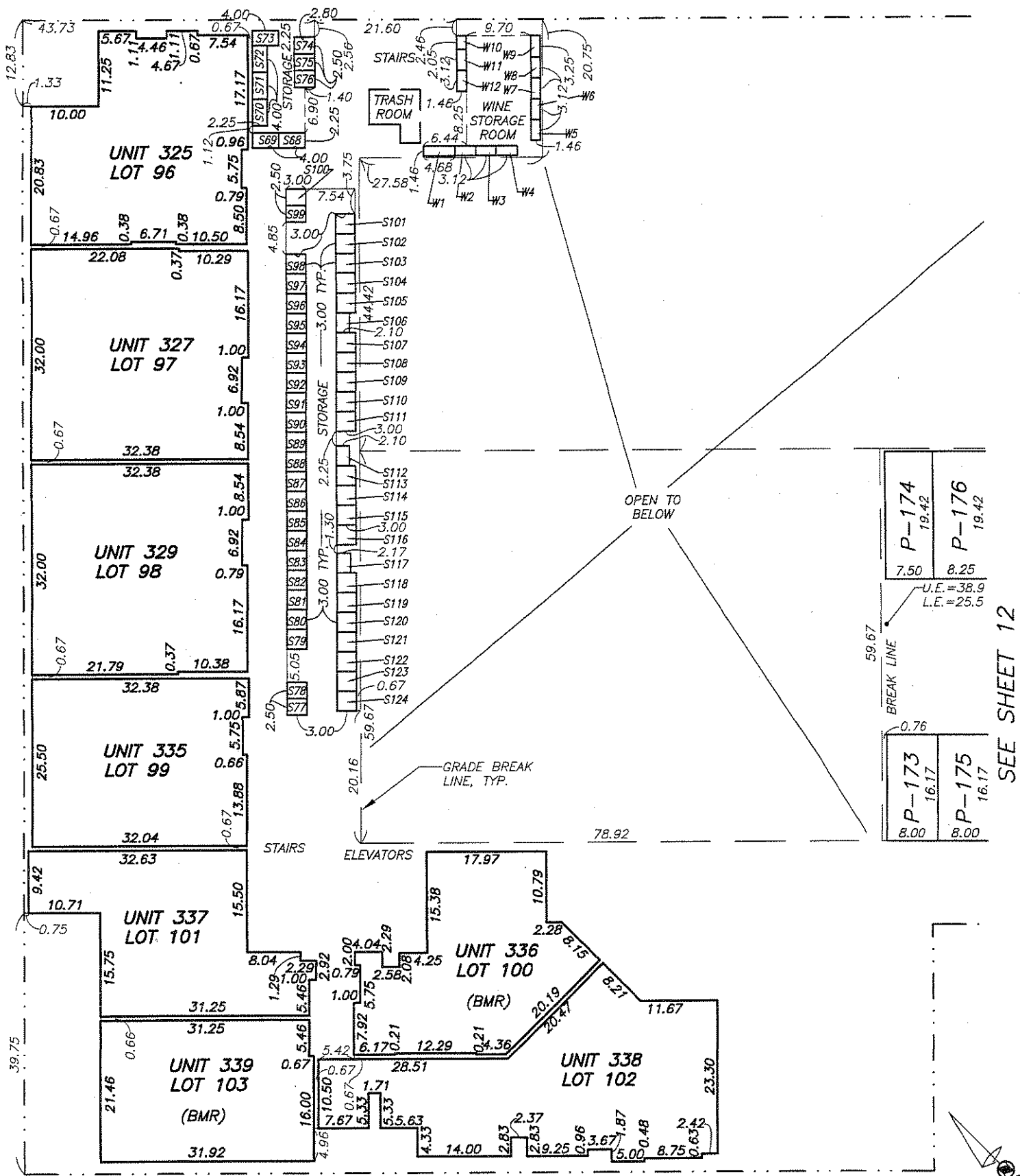


**LEVEL 2** UPPER ELEVATION = 27.3 (EXCEPT AS SHOWN)  
 LOWER ELEVATION = 19.1 (EXCEPT AS SHOWN)

BY RW CHKD.            DATE APRIL 2007 SCALE 1"=20' SHEET 10 OF 33 JOB NO. S-5680

**MARTIN M. RON ASSOCIATES, INC.**  
 LAND SURVEYORS

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



DIRECTLY ABOVE  
POINT "A"

LEVEL 3

UPPER ELEVATION = 38.9 (EXCEPT AS SHOWN)  
LOWER ELEVATION = 30.6 (EXCEPT AS SHOWN)

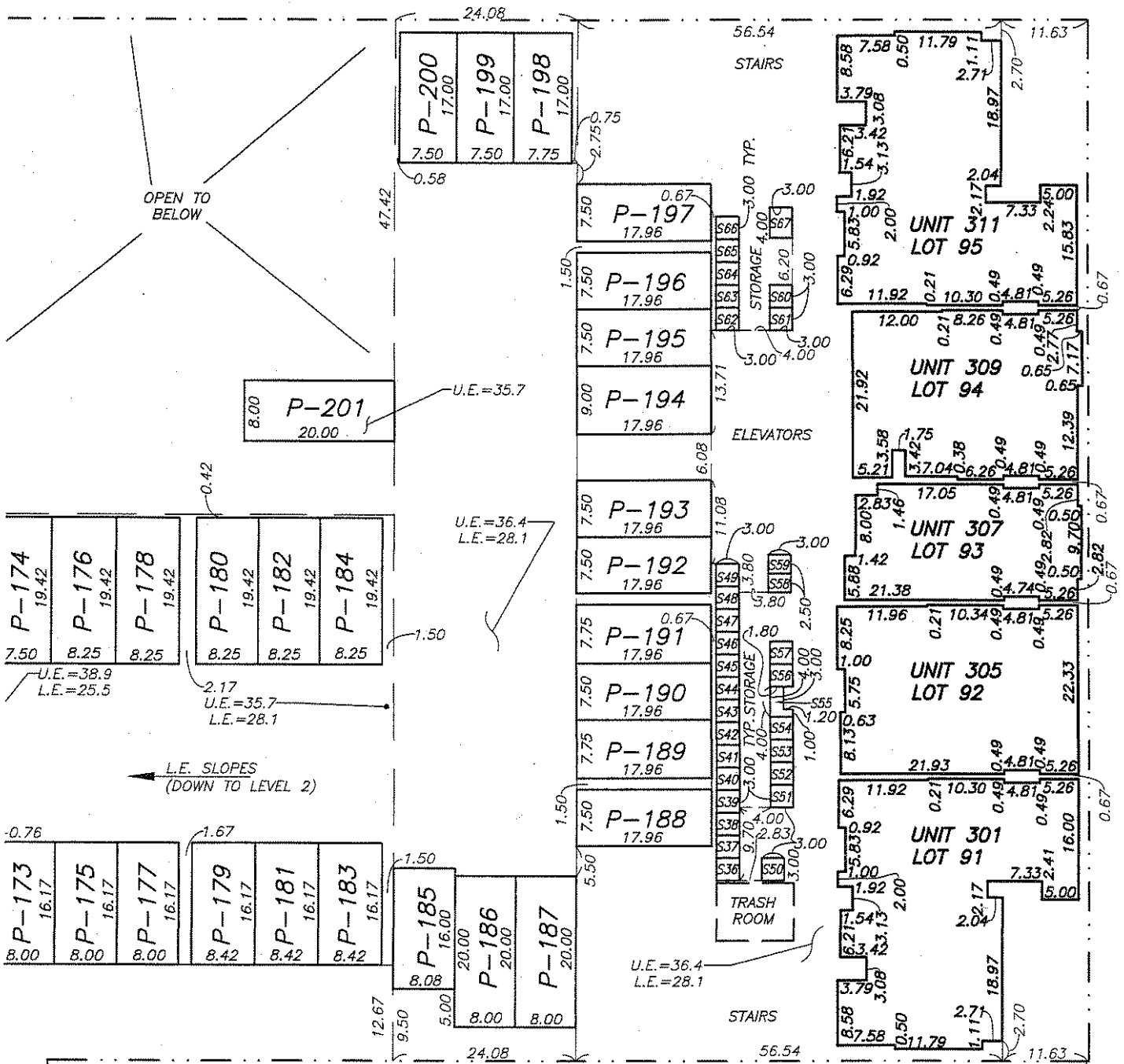
SEE SHEET 12

BY RW CHKD. DATE APRIL 2007 SCALE 1"=20' SHEET 11 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

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SEE SHEET 11



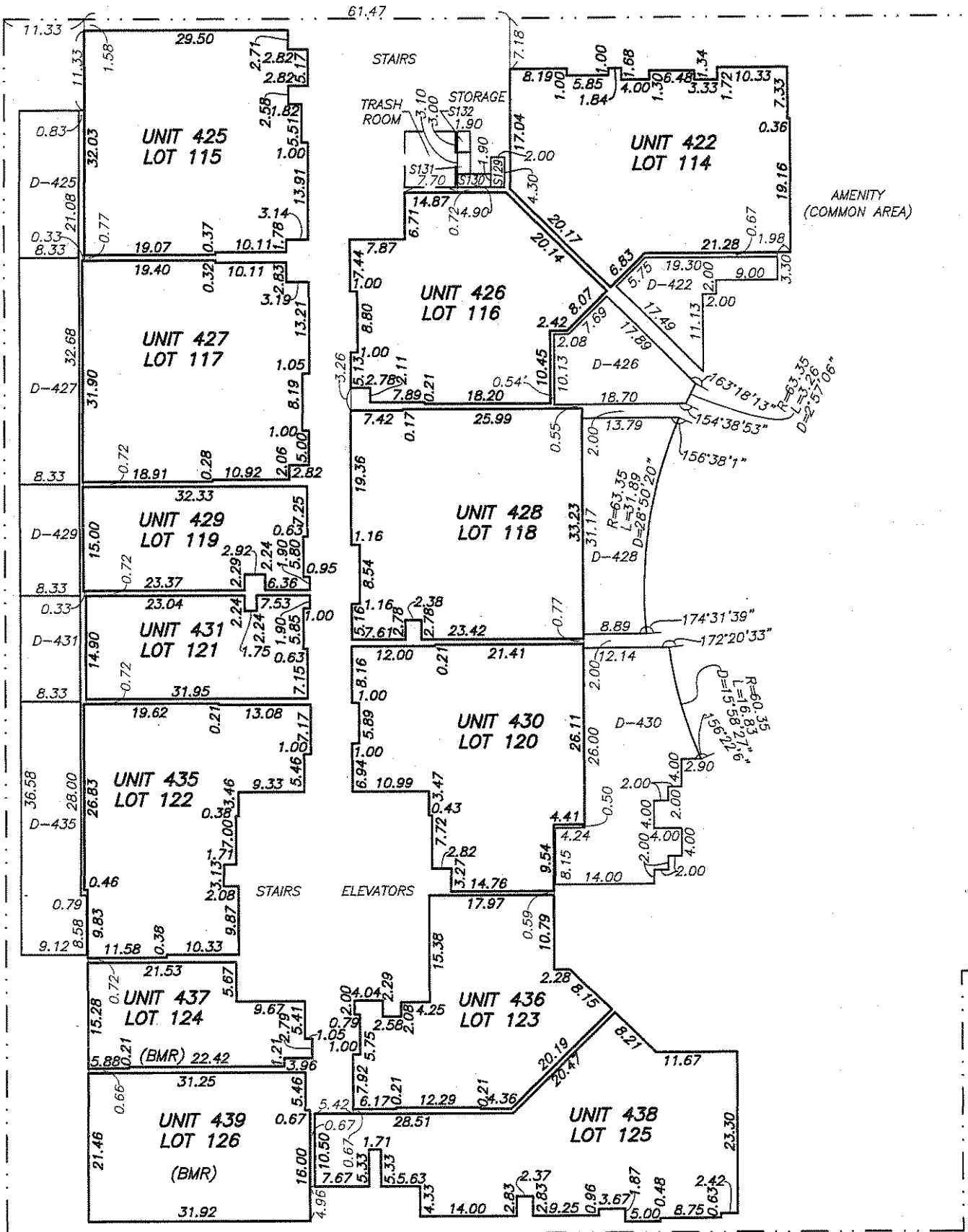
DIRECTLY ABOVE POINT "B"

**LEVEL 3** UPPER ELEVATION = 36.4 (EXCEPT AS SHOWN)  
 LOWER ELEVATION = 28.1 (EXCEPT AS SHOWN)

BY RW CHKD.      DATE APRIL 2007 SCALE 1"=20' SHEET 12 OF 33 JOB NO. S-5680

**MARTIN M. RON ASSOCIATES, INC.**  
 LAND SURVEYORS

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SEE SHEET 14

DIRECTLY ABOVE  
POINT "A"

LEVEL 4

UPPER ELEVATION = 47.8  
LOWER ELEVATION = 39.5

BY RW CHKD.          DATE APRIL 2007 SCALE 1"=20' SHEET 13 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

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

SEE SHEET 13

AMENITY  
(COMMON AREA)

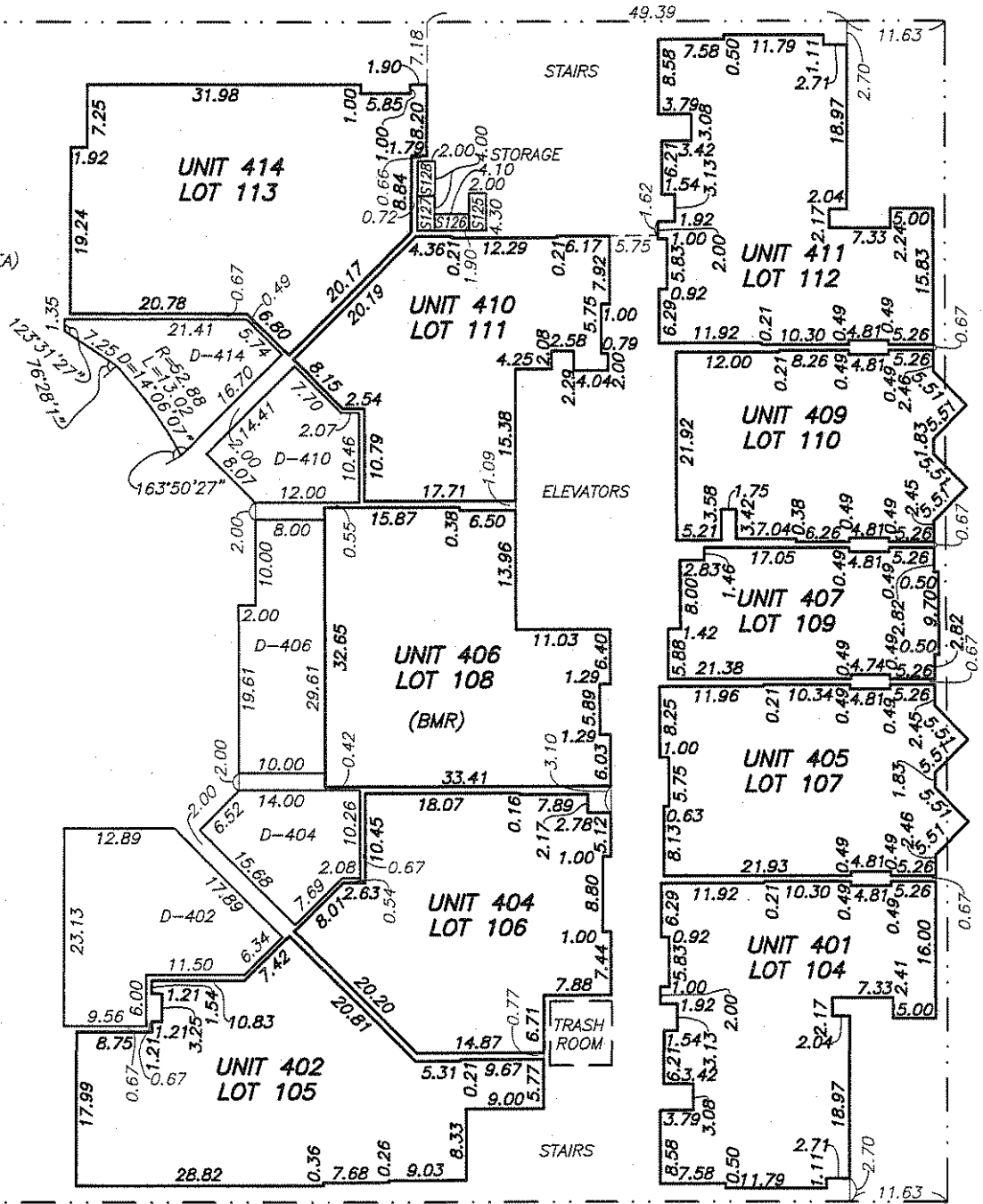
STAIRS

STAIRS

ELEVATORS

STAIRS

DIRECTLY ABOVE  
POINT "B"



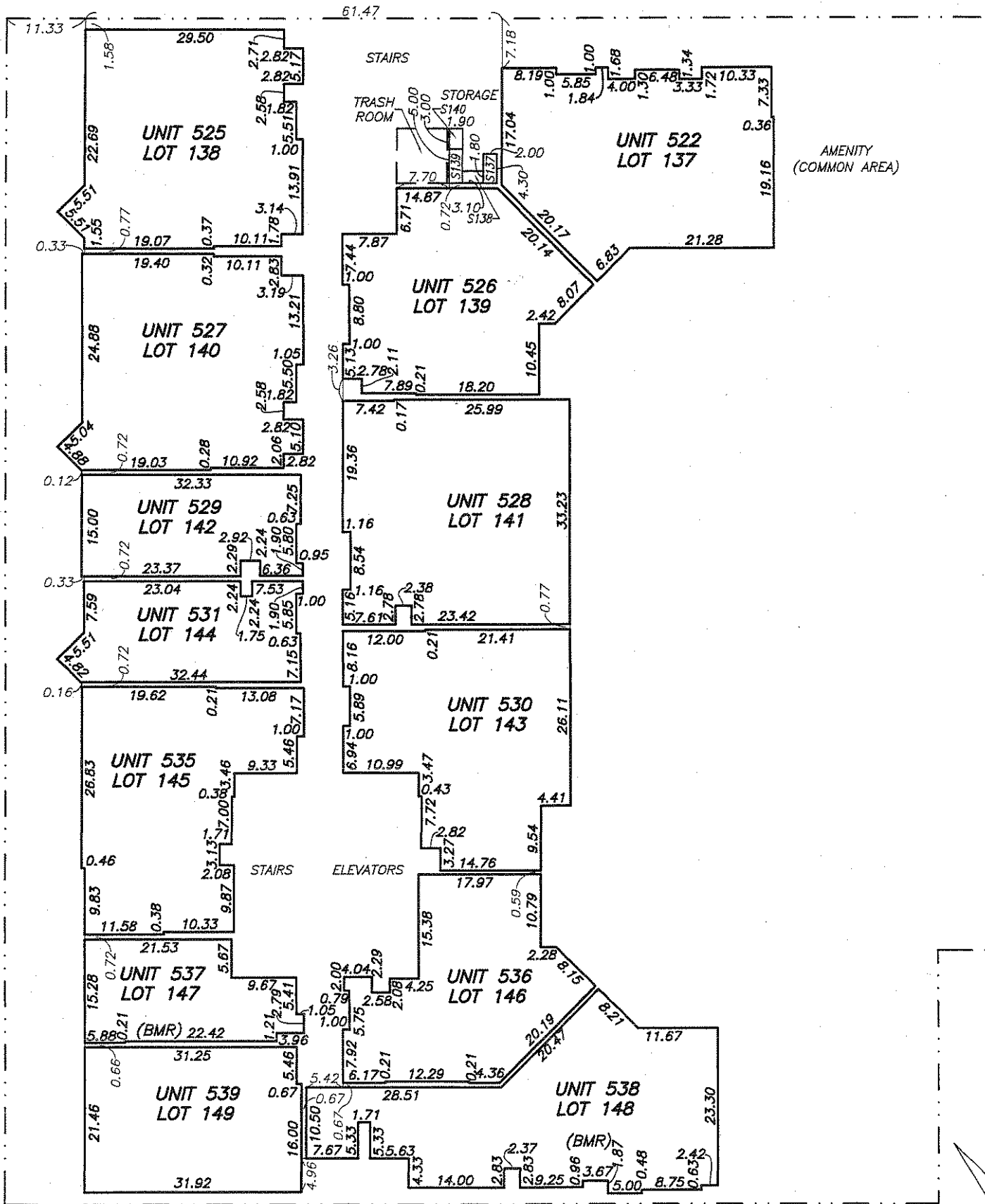
LEVEL 4 UPPER ELEVATION = 45.3  
LOWER ELEVATION = 37.0

BY RW CHKD.        DATE APRIL 2007 SCALE 1"=20' SHEET 14 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

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





SEE SHEET 16

DIRECTLY ABOVE  
POINT "A"

LEVEL 5 UPPER ELEVATION = 56.8  
LOWER ELEVATION = 48.5

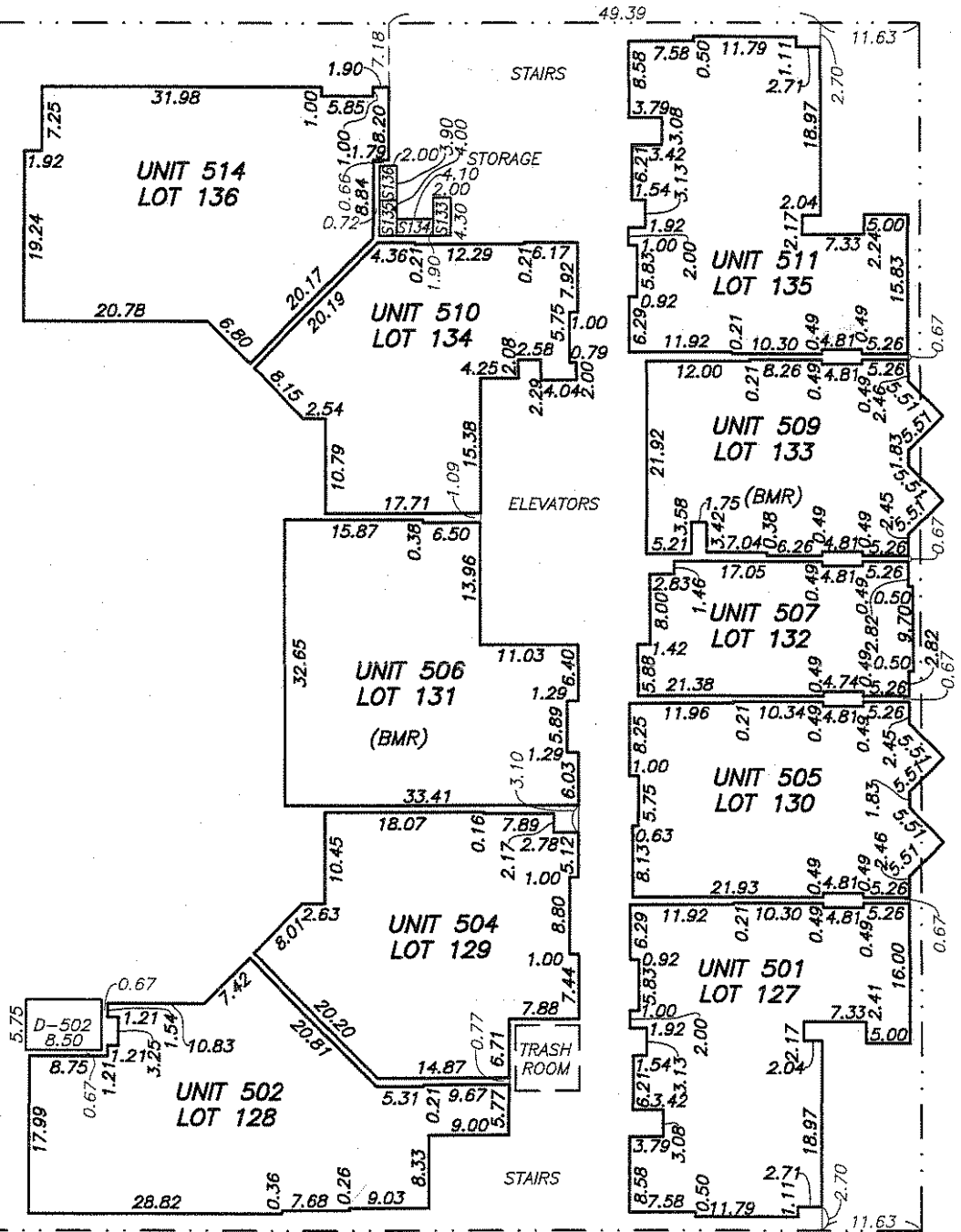
BY RW CHKD. DATE APRIL 2007 SCALE 1"=20' SHEET 15 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

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

SEE SHEET 10

AMENITY  
(COMMON AREA)



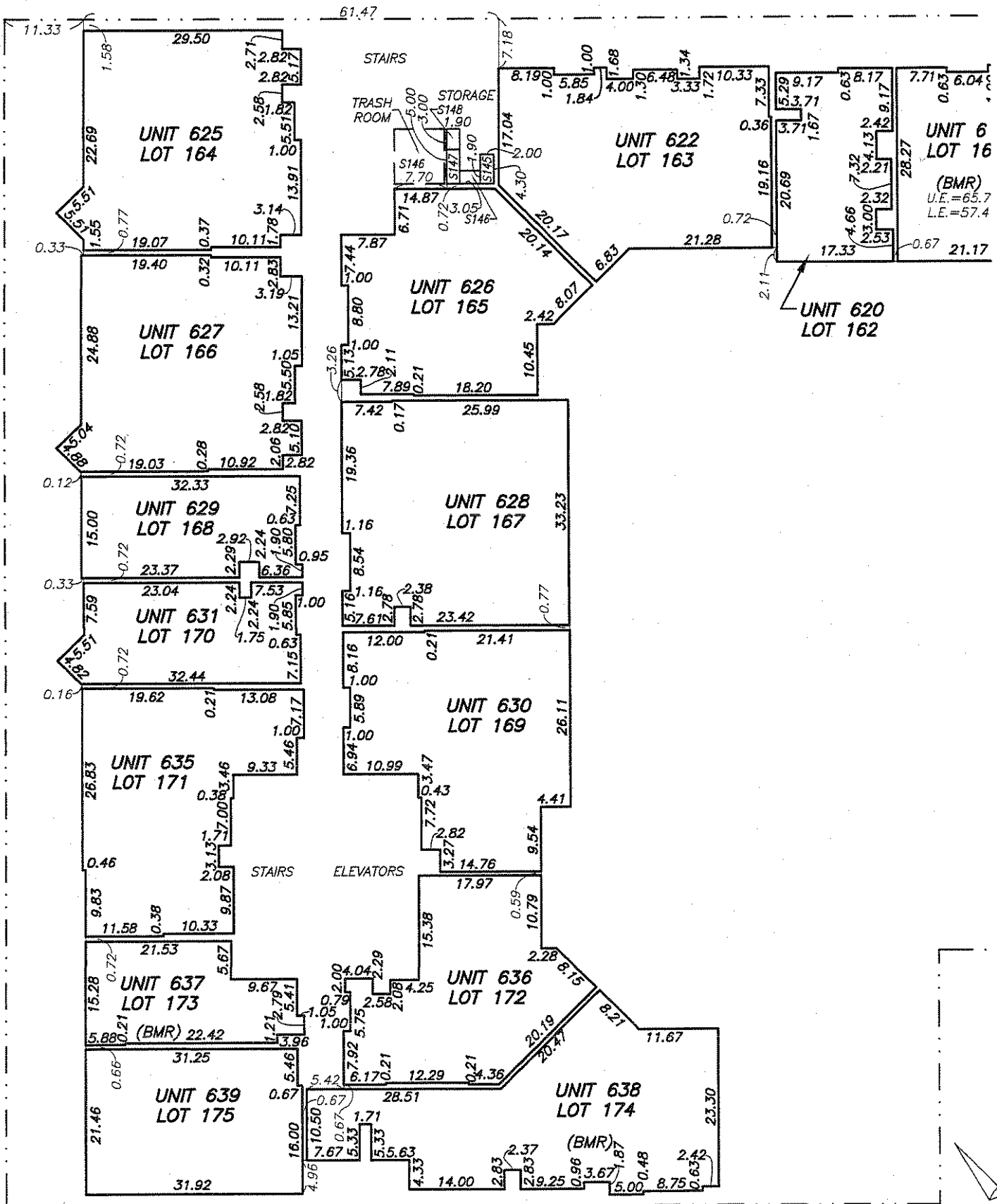
DIRECTLY ABOVE  
POINT "B"

LEVEL 5 UPPER ELEVATION = 54.3  
LOWER ELEVATION = 46.0

BY RW CHKD. DATE APRIL 2007 SCALE 1"=20' SHEET 16 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

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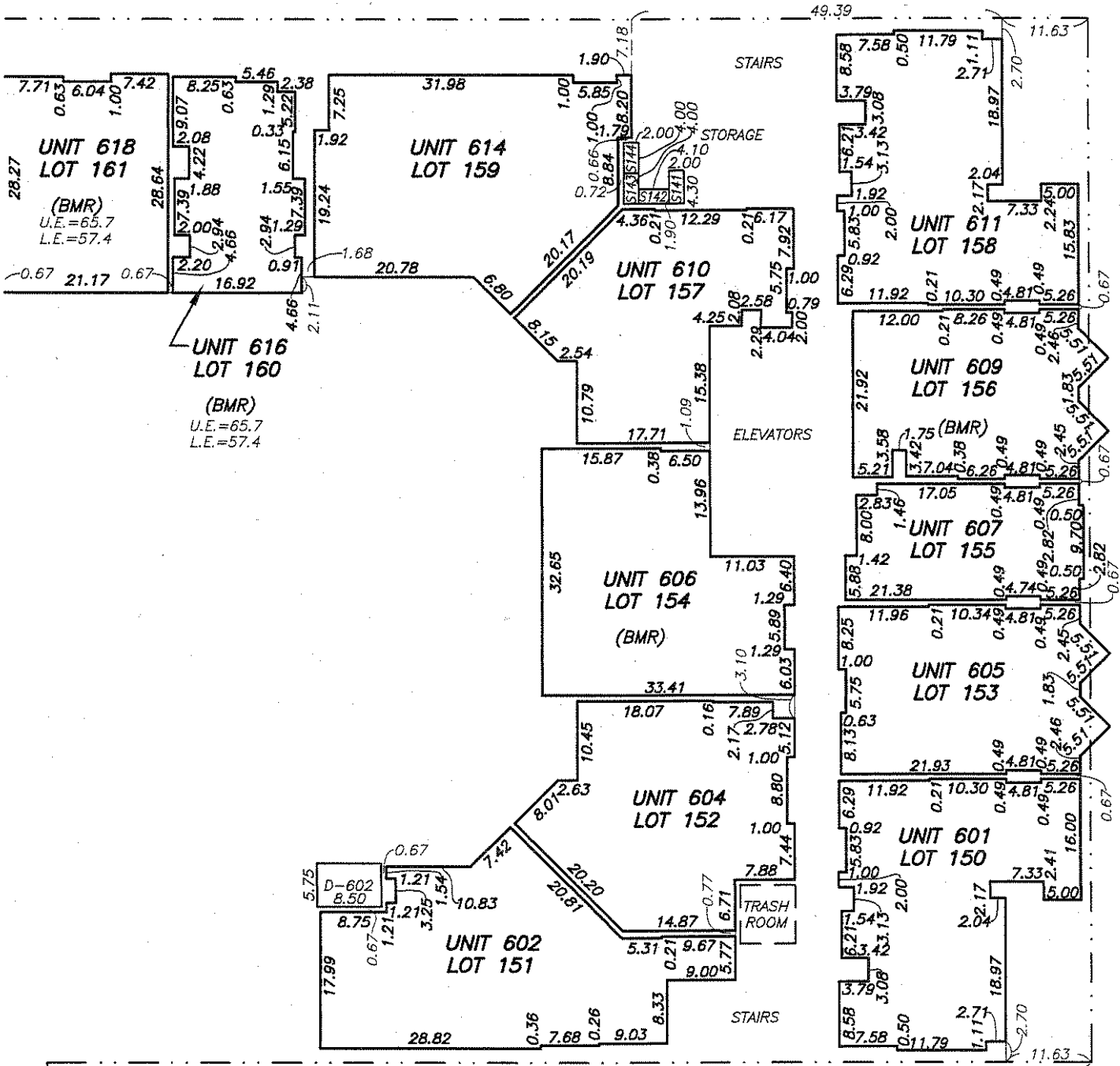
SEE SHEET 18

DIRECTLY ABOVE POINT "A" LEVEL 6 UPPER ELEVATION = 65.7 LOWER ELEVATION = 57.4

BY RW CHKD. DATE APRIL 2007 SCALE 1"=20' SHEET 17 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC. LAND SURVEYORS

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SEE SHEET 17

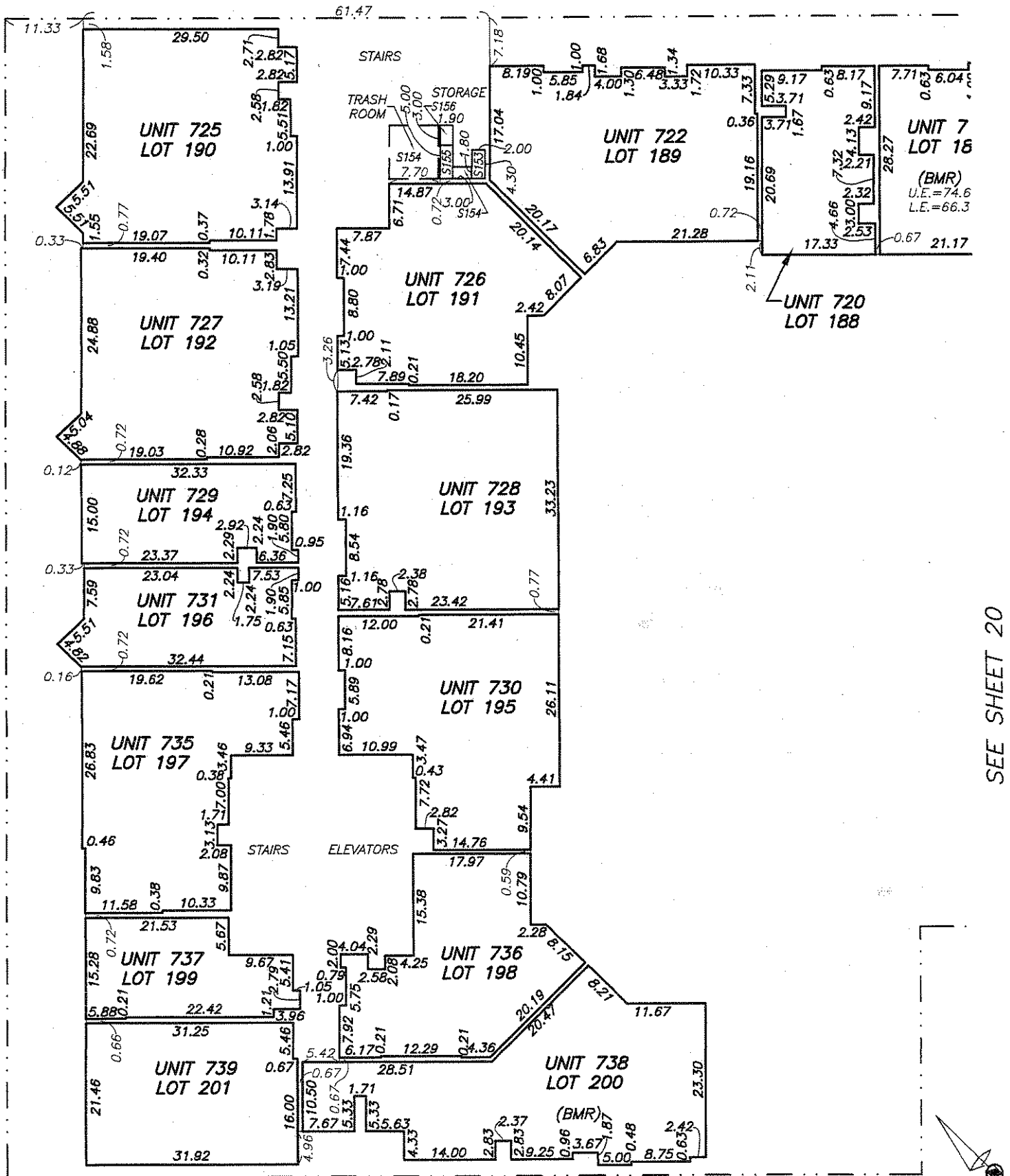
DIRECTLY ABOVE  
POINT "B"

LEVEL 6 UPPER ELEVATION = 63.3  
 LOWER ELEVATION = 55.0

BY RW CHKD. DATE APRIL 2007 SCALE 1"=20' SHEET 18 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
 LAND SURVEYORS

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SEE SHEET 20

DIRECTLY ABOVE  
POINT "A"

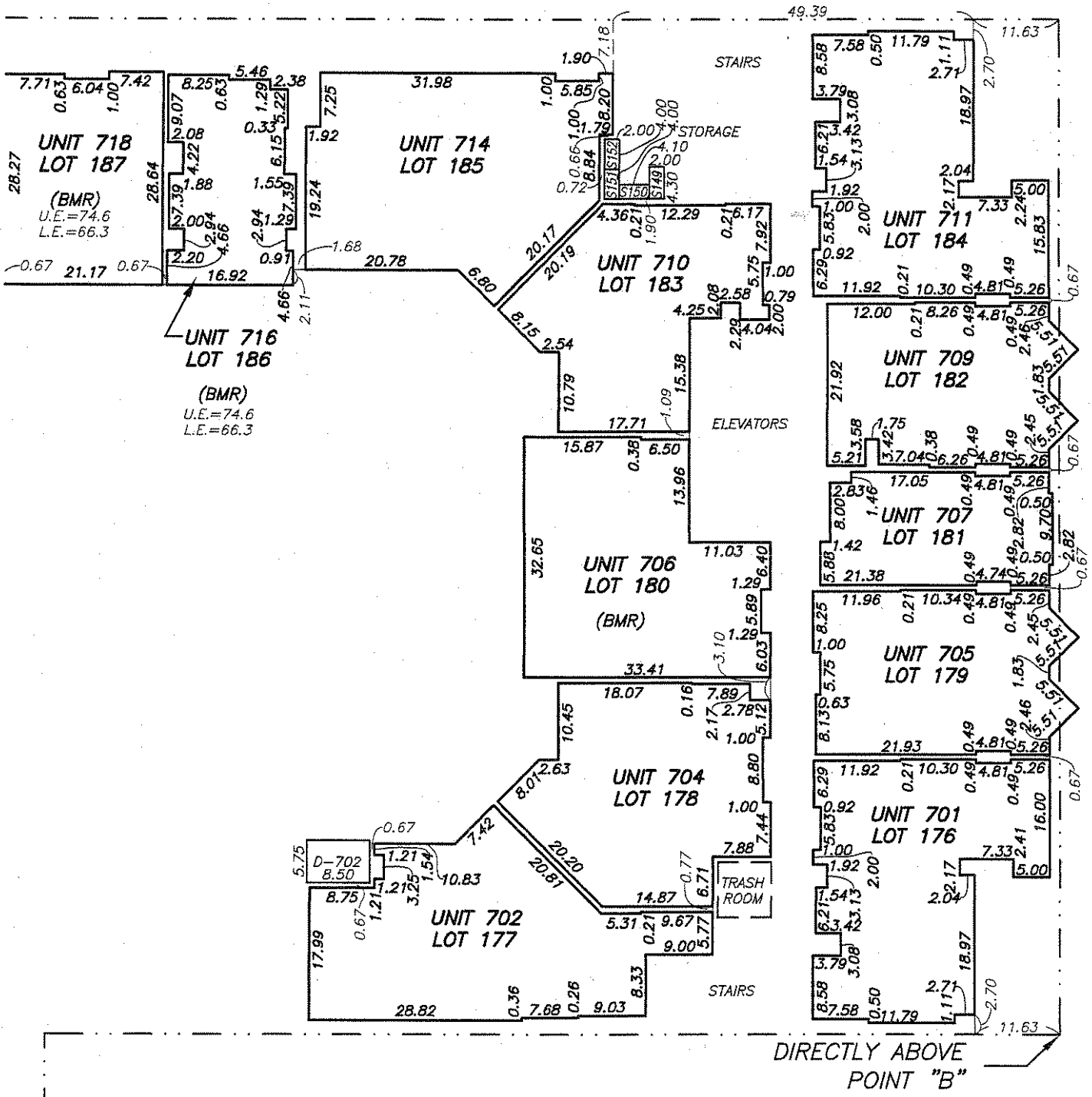
LEVEL 7 UPPER ELEVATION = 74.6  
LOWER ELEVATION = 66.3

BY RW CHKD.        DATE APRIL 2007 SCALE 1"=20' SHEET 19 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

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SEE SHEET 19

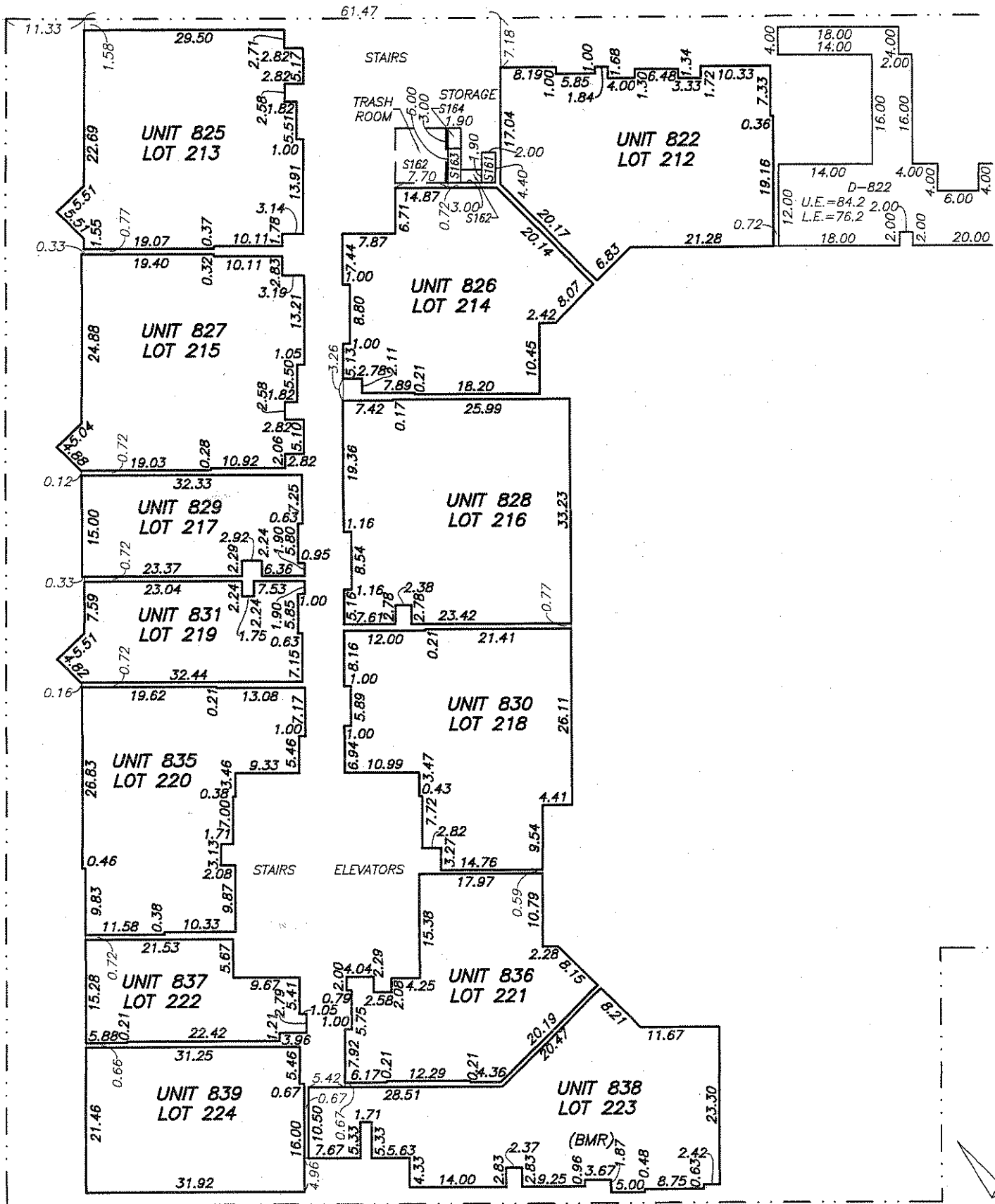


LEVEL 7 UPPER ELEVATION = 72.2  
 LOWER ELEVATION = 63.9

BY RW CHKD.        DATE APRIL 2007 SCALE 1"=20' SHEET 20 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
 LAND SURVEYORS

859 HARRISON STREET  
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SEE SHEET 22

DIRECTLY ABOVE  
POINT "A"

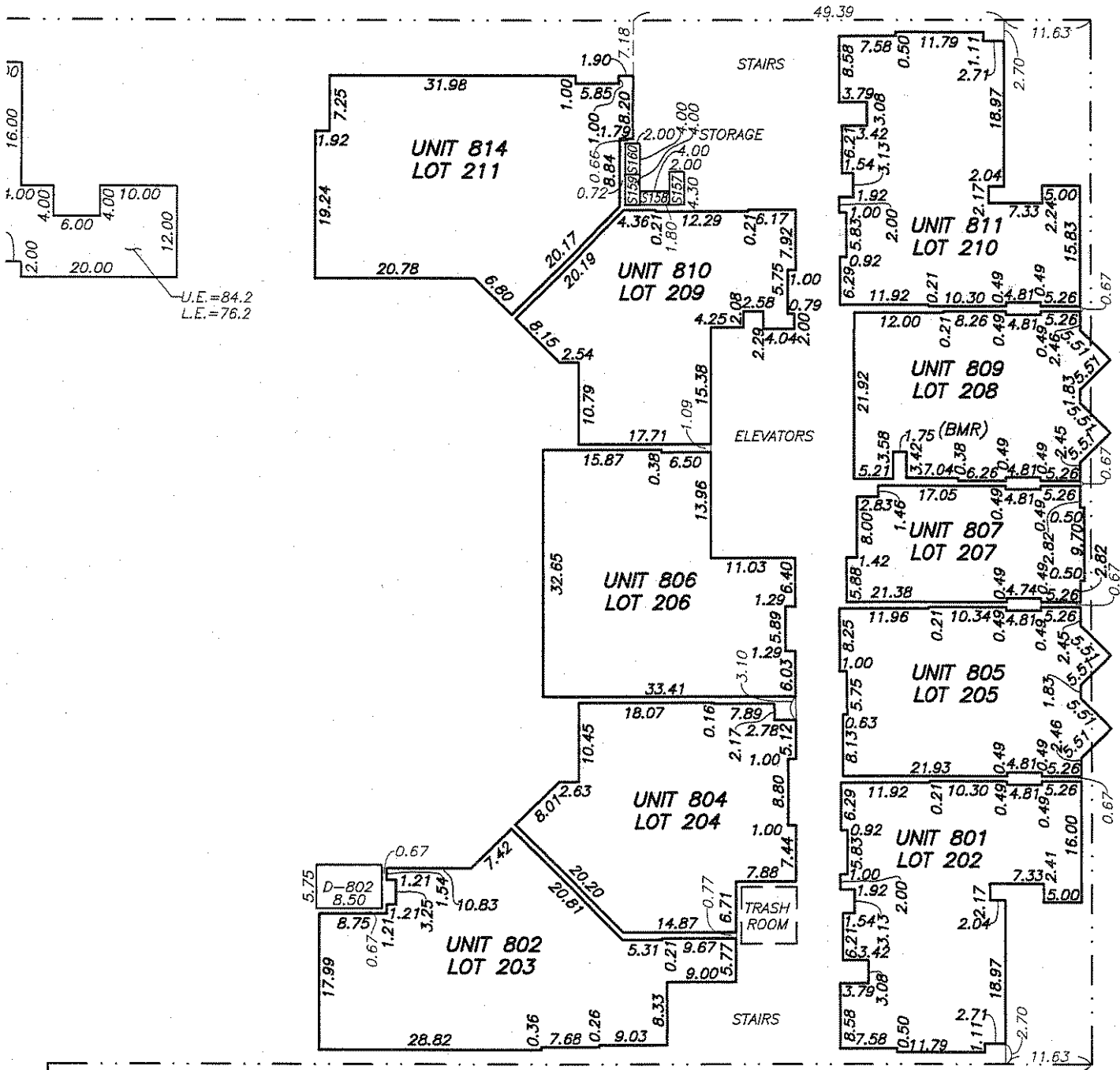
LEVEL 8

UPPER ELEVATION = 84.2 (EXCEPT AS SHOWN)  
LOWER ELEVATION = 75.3 (EXCEPT AS SHOWN)

BY RW CHKD. \_\_\_\_\_ DATE APRIL 2007 SCALE 1"=20' SHEET 21 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

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DIRECTLY ABOVE POINT "B"

**LEVEL 8** UPPER ELEVATION = 81.1 (EXCEPT AS SHOWN)  
 LOWER ELEVATION = 72.8 (EXCEPT AS SHOWN)

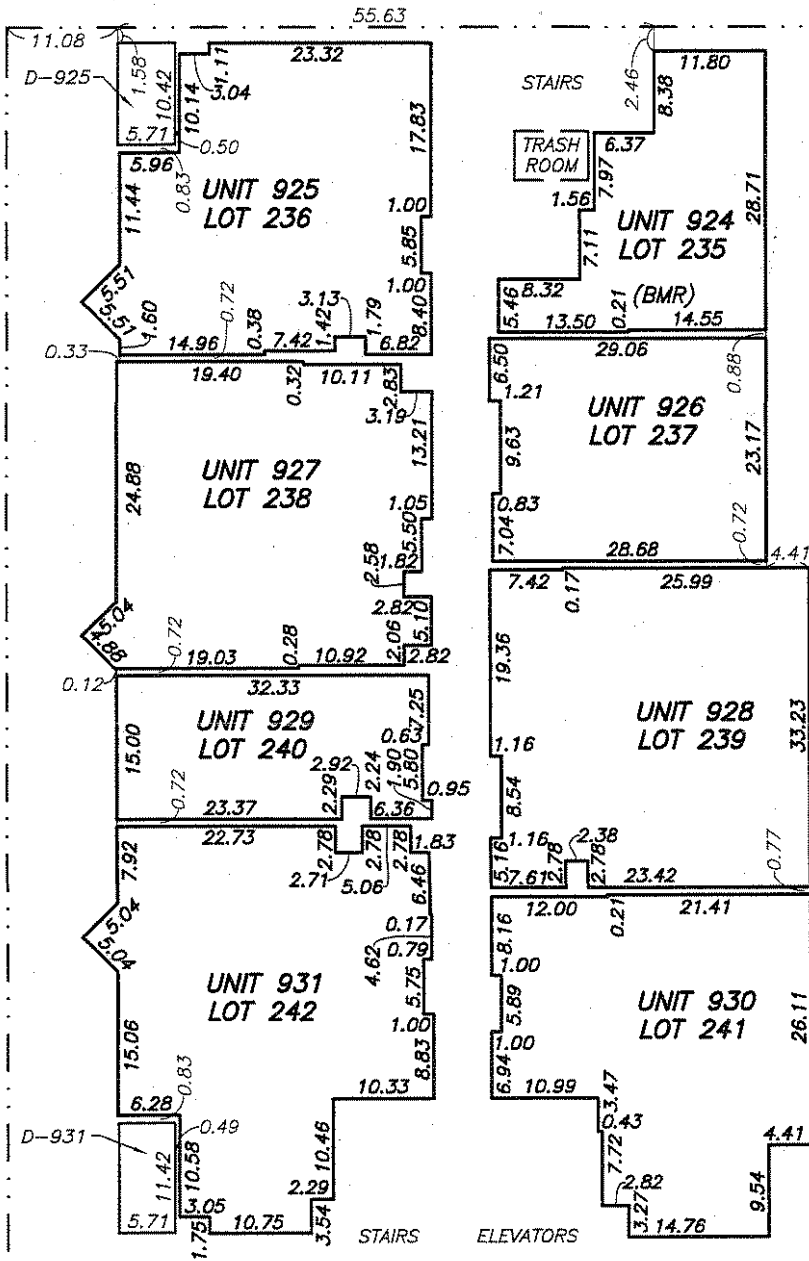
BY RW CHKD.        DATE APRIL 2007 SCALE 1"=20' SHEET 22 OF 33 JOB NO. S-5680

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SEE SHEET 21





SEE SHEET 24

DIRECTLY ABOVE  
POINT "A"

LEVEL 9

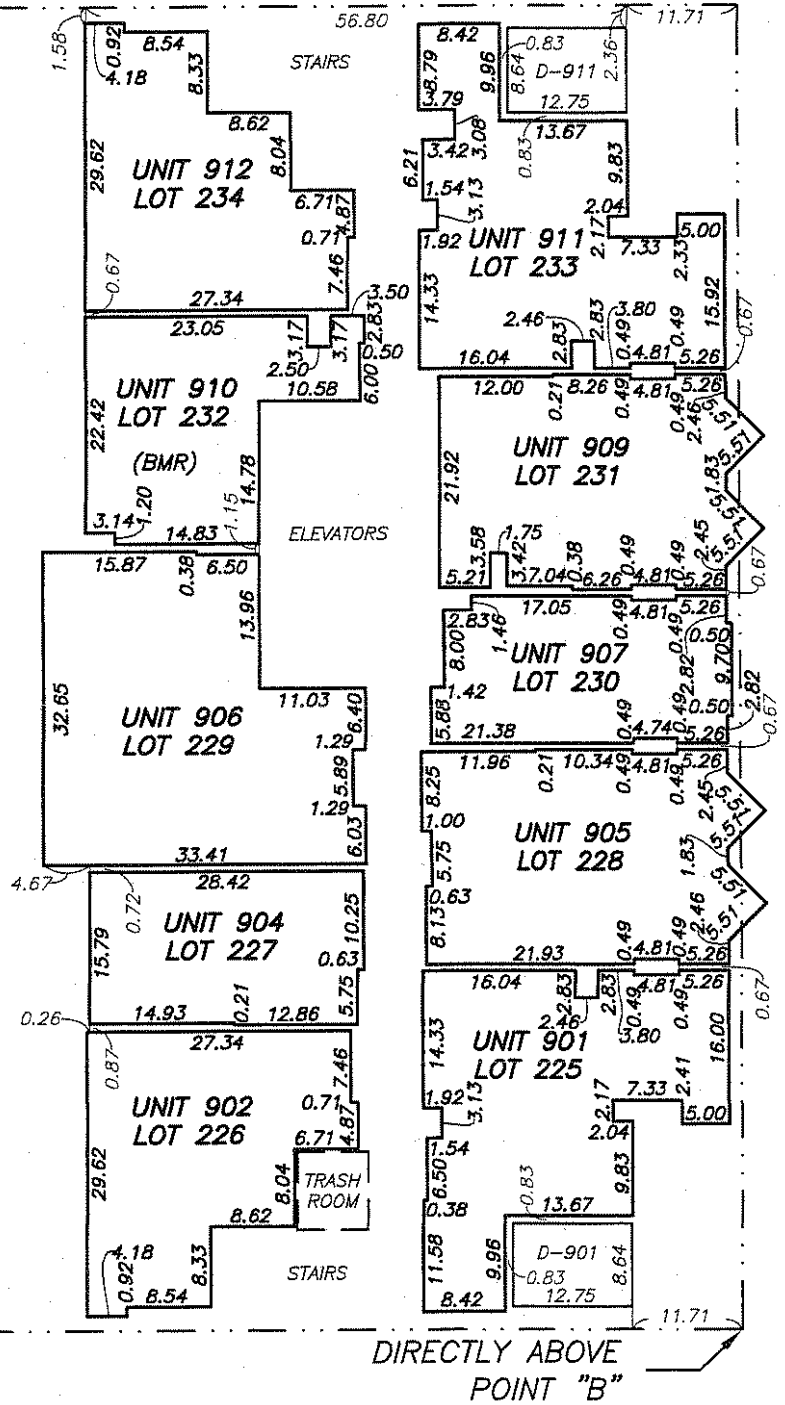
UPPER ELEVATION = 93.8  
LOWER ELEVATION = 84.9

BY RW CHKD. \_\_\_\_\_ DATE APRIL 2007 SCALE 1"=20' SHEET 23 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
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SEE SHEET 23

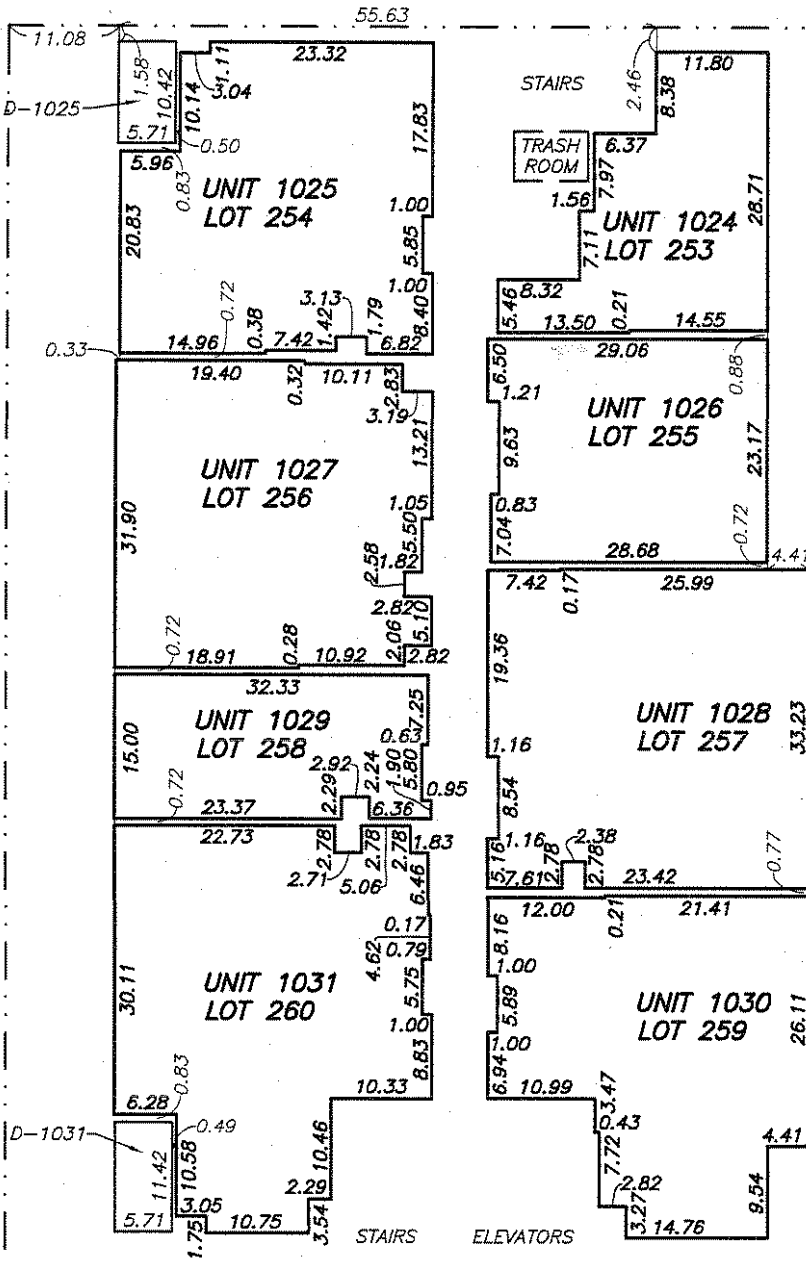


LEVEL 9 UPPER ELEVATION = 90.1  
 LOWER ELEVATION = 81.8

BY RW CHKD. \_\_\_\_\_ DATE APRIL 2007 SCALE 1"=20' SHEET 24 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
 LAND SURVEYORS

859 HARRISON STREET  
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SEE SHEET 26

DIRECTLY ABOVE  
POINT "A"

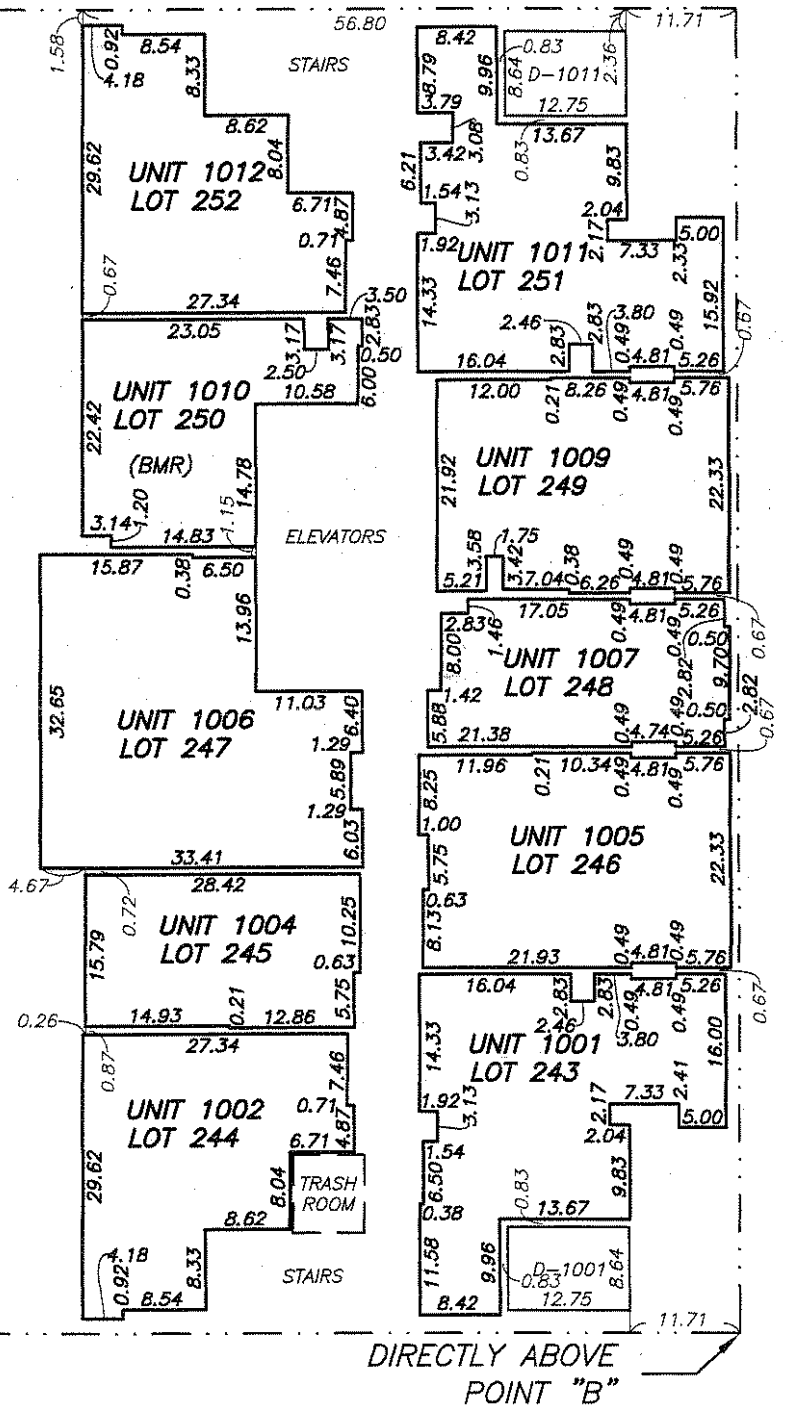
LEVEL 10 UPPER ELEVATION = 103.4  
LOWER ELEVATION = 94.5

BY RW CHKD.            DATE APRIL 2007 SCALE 1"=20' SHEET 25 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

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SEE SHEET 20

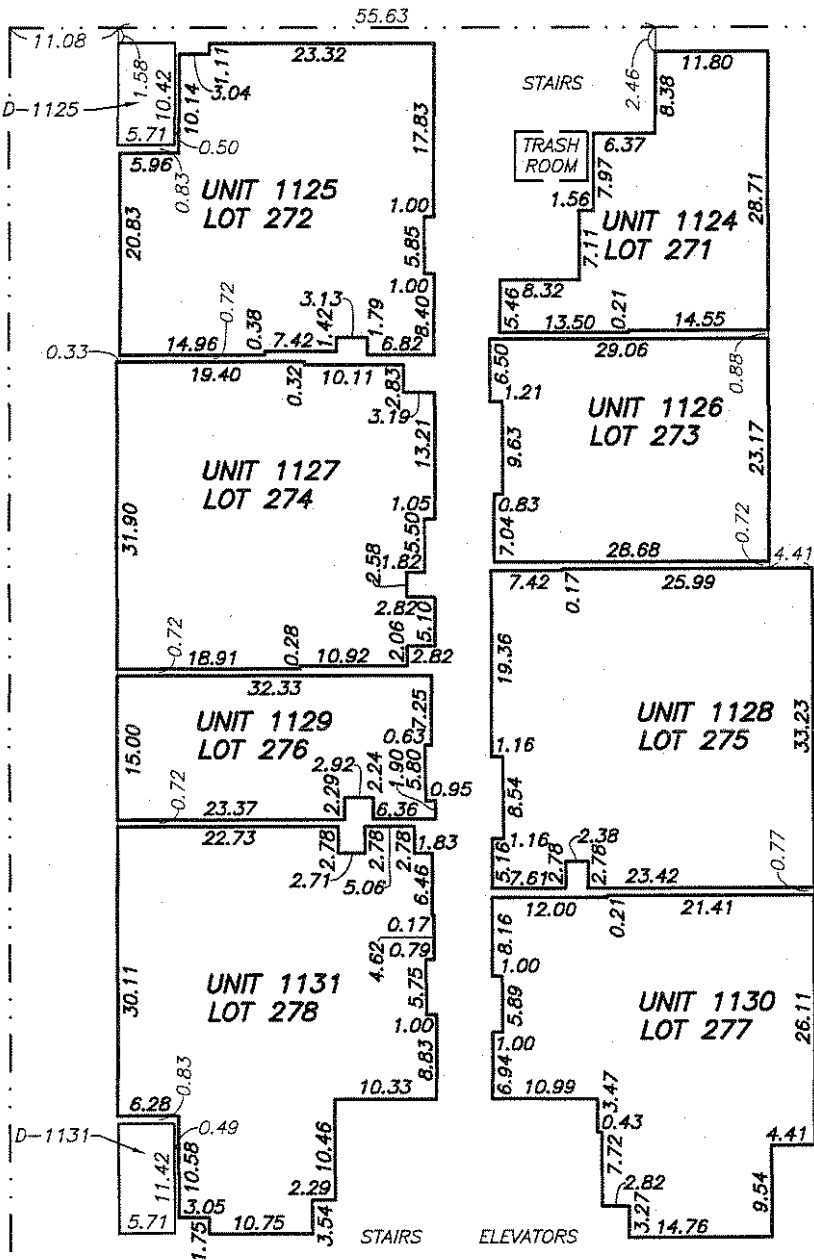


LEVEL 10 UPPER ELEVATION = 99.4  
 LOWER ELEVATION = 90.7

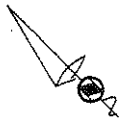
BY RW CHKD.      DATE APRIL 2007 SCALE 1"=20' SHEET 26 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
 LAND SURVEYORS

859 HARRISON STREET  
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 (415) 543-4500



SEE SHEET 28



DIRECTLY ABOVE  
POINT "A"

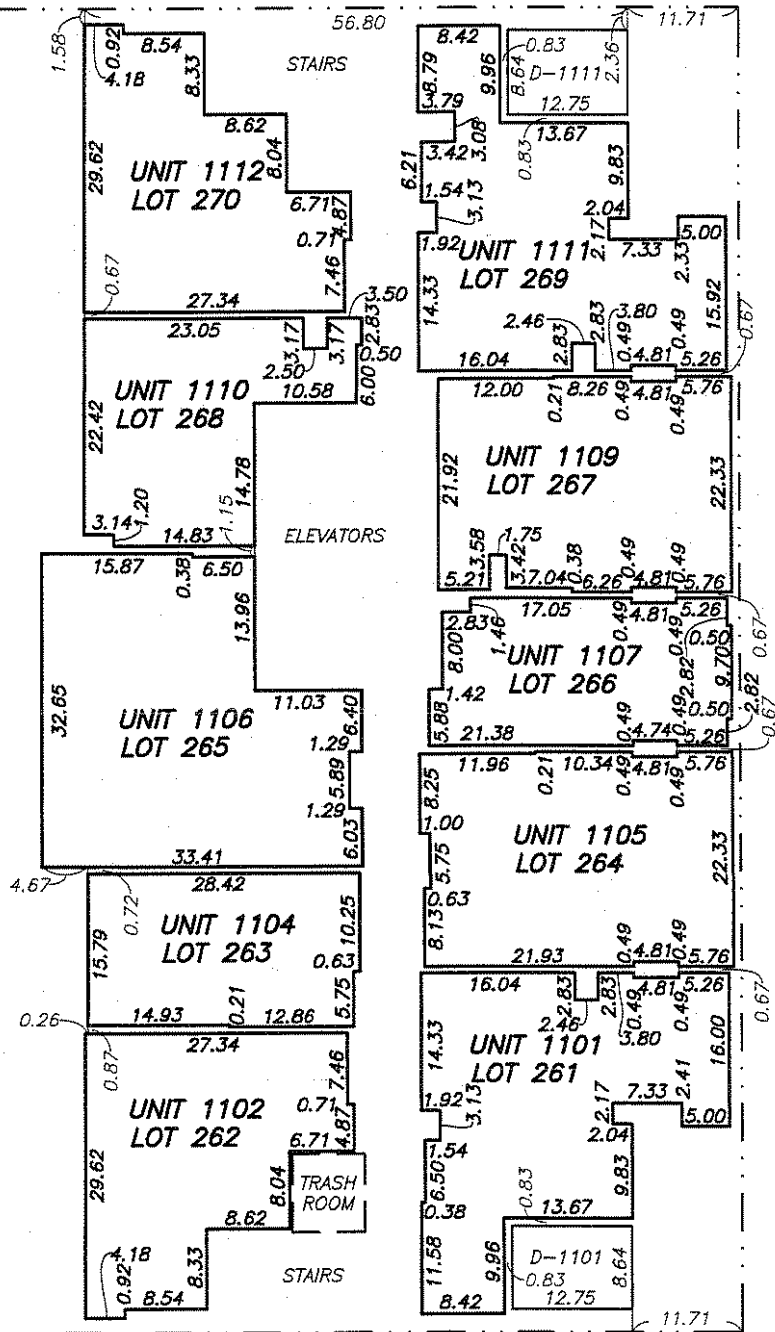
LEVEL 11 UPPER ELEVATION = 112.9  
LOWER ELEVATION = 104.0

BY RW CHKD. \_\_\_\_\_ DATE APRIL 2007 SCALE 1"=20' SHEET 27 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

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SEE SHEET 27



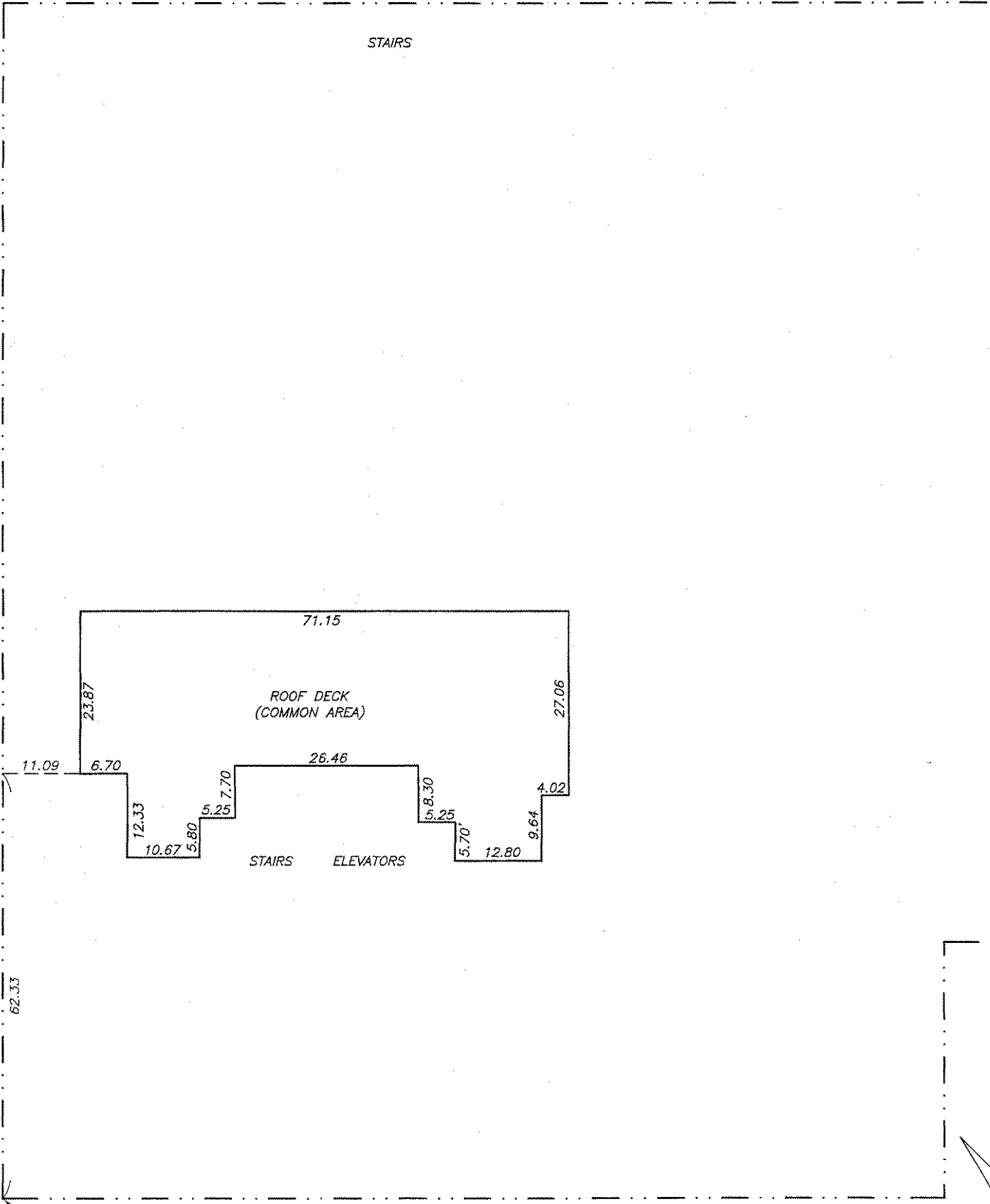
DIRECTLY ABOVE  
POINT "B"

LEVEL 11 UPPER ELEVATION = 108.7  
LOWER ELEVATION = 100.1

BY RW CHKD.      DATE APRIL 2007 SCALE 1"=20' SHEET 28 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

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DIRECTLY ABOVE  
POINT "A"

LEVEL 12 UPPER ELEVATION = 122.3  
LOWER ELEVATION = 114.3

BY RW CHKD.      DATE APRIL 2007 SCALE 1"=20' SHEET 29 OF 33 JOB NO. S-5680

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

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

## 170 King Street

#	UNIT NO.	LOT NO.	%
1	105	77	1.136%
2	109	78	0.927%
3	131	79	0.349%
4	135	80	0.457%
5	201	81	0.559%
6	205	82	0.439%
7	207	83	0.288%
8	209	84	0.412%
9	211	85	0.559%
10	235	86	0.351%
11	236	87	0.469%
12	237	88	0.462%
13	238	89	0.679%
14	239	90	0.423%
15	301	91	0.559%
16	305	92	0.439%
17	307	93	0.288%
18	309	94	0.412%
19	311	95	0.559%
20	325	96	0.562%
21	327	97	0.636%
22	329	98	0.634%
23	335	99	0.506%
24	336	100	0.469%
25	337	101	0.462%
26	338	102	0.679%
27	339	103	0.423%

#	UNIT NO.	LOT NO.	%
28	401	104	0.559%
29	402	105	0.624%
30	404	106	0.529%
31	405	107	0.457%
32	406	108	0.572%
33	407	109	0.288%
34	409	110	0.428%
35	410	111	0.467%
36	411	112	0.559%
37	414	113	0.639%
38	422	114	0.636%
39	425	115	0.623%
40	426	116	0.529%
41	427	117	0.627%
42	428	118	0.678%
43	429	119	0.295%
44	430	120	0.601%
45	431	121	0.291%
46	435	122	0.575%
47	436	123	0.469%
48	437	124	0.258%
49	438	125	0.679%
50	439	126	0.423%

% REPRESENTS THE PERCENTAGE OF UNDIVIDED  
INTEREST IN THE OWNERSHIP OF THE COMMON AREA.



## 170 King Street

#	UNIT NO.	LOT NO.	%
51	501	127	0.559%
52	502	128	0.624%
53	504	129	0.529%
54	505	130	0.457%
55	506	131	0.572%
56	507	132	0.288%
57	509	133	0.428%
58	510	134	0.467%
59	511	135	0.559%
60	514	136	0.639%
61	522	137	0.636%
62	525	138	0.633%
63	526	139	0.529%
64	527	140	0.632%
65	528	141	0.678%
66	529	142	0.295%
67	530	143	0.601%
68	531	144	0.300%
69	535	145	0.575%
70	536	146	0.469%
71	537	147	0.258%
72	538	148	0.679%
73	539	149	0.423%

#	UNIT NO.	LOT NO.	%
74	601	150	0.559%
75	602	151	0.624%
76	604	152	0.529%
77	605	153	0.457%
78	606	154	0.572%
79	607	155	0.288%
80	609	156	0.428%
81	610	157	0.467%
82	611	158	0.559%
83	614	159	0.639%
84	616	160	0.274%
85	618	161	0.371%
86	620	162	0.285%
87	622	163	0.636%
88	625	164	0.633%
89	626	165	0.529%
90	627	166	0.632%
91	628	167	0.678%
92	629	168	0.295%
93	630	169	0.601%
94	631	170	0.300%
95	635	171	0.575%
96	636	172	0.469%
97	637	173	0.258%
98	638	174	0.679%
99	639	175	0.423%

% REPRESENTS THE PERCENTAGE OF UNDIVIDED  
INTEREST IN THE OWNERSHIP OF THE COMMON AREA.

Martin M. Ron Assoc., Inc.  
859 Harrison Street, Ste. 200  
San Francisco, CA 94107  
415-543-4500

## 170 King Street

#	UNIT NO.	LOT NO.	%
100	701	176	0.559%
101	702	177	0.624%
102	704	178	0.529%
103	705	179	0.457%
104	706	180	0.572%
105	707	181	0.288%
106	709	182	0.428%
107	710	183	0.467%
108	711	184	0.559%
109	714	185	0.639%
110	716	186	0.274%
111	718	187	0.371%
112	720	188	0.285%
113	722	189	0.636%
114	725	190	0.633%
115	726	191	0.529%
116	727	192	0.632%
117	728	193	0.678%
118	729	194	0.295%
119	730	195	0.601%
120	731	196	0.300%
121	735	197	0.575%
122	736	198	0.469%
123	737	199	0.258%
124	738	200	0.679%
125	739	201	0.423%

#	UNIT NO.	LOT NO.	%
126	801	202	0.559%
127	802	203	0.624%
128	804	204	0.529%
129	805	205	0.457%
130	806	206	0.572%
131	807	207	0.288%
132	809	208	0.428%
133	810	209	0.467%
134	811	210	0.559%
135	814	211	0.639%
136	822	212	0.636%
137	825	213	0.633%
138	826	214	0.529%
139	827	215	0.632%
140	828	216	0.678%
141	829	217	0.295%
142	830	218	0.601%
143	831	219	0.300%
144	835	220	0.575%
145	836	221	0.469%
146	837	222	0.258%
147	838	223	0.679%
148	839	224	0.423%

% REPRESENTS THE PERCENTAGE OF UNDIVIDED  
INTEREST IN THE OWNERSHIP OF THE COMMON AREA.

Martin M. Ron Assoc., Inc.  
859 Harrison Street, Ste. 200  
San Francisco, CA 94107  
415-543-4500

## 170 King Street

#	UNIT NO.	LOT NO.	%
149	901	225	0.483%
150	902	226	0.386%
151	904	227	0.278%
152	905	228	0.457%
153	906	229	0.572%
154	907	230	0.288%
155	909	231	0.428%
156	910	232	0.315%
157	911	233	0.475%
158	912	234	0.386%
159	924	235	0.331%
160	925	236	0.601%
161	926	237	0.409%
162	927	238	0.632%
163	928	239	0.678%
164	929	240	0.295%
165	930	241	0.601%
166	931	242	0.709%
167	1001	243	0.483%
168	1002	244	0.386%
169	1004	245	0.278%
170	1005	246	0.446%
171	1006	247	0.572%
172	1007	248	0.288%
173	1009	249	0.416%
174	1010	250	0.315%
175	1011	251	0.475%
176	1012	252	0.386%
177	1024	253	0.331%
178	1025	254	0.591%
179	1026	255	0.409%
180	1027	256	0.625%
181	1028	257	0.678%
182	1029	258	0.295%
183	1030	259	0.601%
184	1031	260	0.701%

#	UNIT NO.	LOT NO.	%
185	1101	261	0.483%
186	1102	262	0.386%
187	1104	263	0.278%
188	1105	264	0.446%
189	1106	265	0.572%
190	1107	266	0.288%
191	1109	267	0.416%
192	1110	268	0.315%
193	1111	269	0.475%
194	1112	270	0.386%
195	1124	271	0.331%
196	1125	272	0.591%
197	1126	273	0.409%
198	1127	274	0.625%
199	1128	275	0.678%
200	1129	276	0.295%
201	1130	277	0.601%
202	1131	278	0.701%
<b>SUM:</b>			<b>100.000%</b>

% REPRESENTS THE PERCENTAGE OF UNDIVIDED  
INTEREST IN THE OWNERSHIP OF THE COMMON AREA.