

3811-2068445 (DL)



San Francisco Assessor-Recorder

Phil Ting, Assessor-Recorder

DOC- 2007-1496629-00

Acct 3-FIRST AMERICAN Title Company

Monday, DEC 03, 2007 08:00:00

Ttl Pd \$323.00 Rcpt # 0003358089

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Formerly a portion of Lot 9

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP  
OF  
THE HAYES  
AND  
CONDOMINIUM PLAN  
FOR  
THE HAYES  
SAN FRANCISCO, CALIFORNIA**

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

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

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AND  
CONDOMINIUM PLAN  
FOR  
THE HAYES**

This Declaration of Covenants, Conditions and Restrictions Establishing a Plan for Condominium Ownership of The Hayes and Condominium Plan for The Hayes, San Francisco, California (the "Declaration") is made on the date hereinafter set forth by the undersigned (the "Declarant") and is made with specific reference to the following facts:

A. Reference is made to that real property located in the City and County of San Francisco, State of California, commonly known as 55 Page Street (the "Property"), and which is more particularly described as Parcel 1 on that certain subdivision map entitled Final Map No. 3805, a 128 Residential Unit and 4 Commercial Unit Mixed-Use Condominium Project (the "Map") which was recorded on November 14, 2007, in Condominium Map Book 103, at Pages 41 through 44, inclusive, in the Official Records of the City and County of San Francisco, State of California (the "Official Records").

B. Declarant is the owner of that certain residential airspace parcel designated as Parcel 1 on the Map which shall be hereinafter referred to as the "Residential Parcel." The Residential Parcel shall be further subdivided as shown on that certain condominium plan entitled "Residential Condominium Plan for 55 Page Street" (the "Plan") which is attached to this Declaration as Exhibit B.

C. This Declaration is subject to that certain Declaration of Reciprocal Easements, Covenants and Restrictions of 55 Page Street, recorded in the Official Records of the City and County of San Francisco, State of California on (concurrently herewith), 2007, as Instrument No. (concurrently herewith) (the "Reciprocal Easement Agreement"). The Association shall serve as the representative of the Residential Parcel in accordance with the Reciprocal Easement Agreement. References in this Declaration to a particular subject or subjects in the Reciprocal Easement Agreement shall not be interpreted to mean that all provisions or a particular provision in the Reciprocal Easement Agreement must be referred to in this Declaration in order to be effective, as this Declaration is subject to the Reciprocal Easement Agreement.

D. There is located upon the real property shown on the Plan, one multi-story building, together with certain appurtenances. Declarant intends to establish within the Residential Parcel, as described in the Map, and within building(s) and appurtenances located on the Residential Parcel, condominiums under the provisions of the Davis-Stirling Common Interest Development Act, which provides that a condominium shall consist of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit.

**NOW, THEREFORE,** Declarant hereby declares that the hereinabove described Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, sold and improved subject to the following declarations, limitations, covenants, conditions, restrictions, easements, servitudes and liens all of which are declared and agreed to be in furtherance of a plan for condominium ownership as

described in the Davis-Stirling Common Interest Development Act (Civil Code Section 1350 et seq.) (the "Davis-Stirling Act") for the subdivision, improvement, protection, maintenance and sale of condominiums within or upon the Development and all of which are declared and agreed to be for the purpose of enhancing and protecting the value and attractiveness of the Development and every part thereof. All of such limitations, covenants, conditions, restrictions, easements, servitudes and liens shall run with the land and shall be binding upon and inure to the benefit of Declarant, its successors and assigns and all parties having or acquiring any right, title or interest in or to any part of the Property or the Development. Declarant further declares that it is the Declarant's express intent that this Declaration satisfy the requirements of the Davis-Stirling Common Interest Development Act.

## **ARTICLE 1**

### **DEFINITIONS**

#### **Section 1.1 Definitions.**

"Annual Assessment" shall mean and refer to an Assessment against all Condominiums in the Development which is levied pursuant to Section 4.3.

"Architectural Control Committee" shall mean and refer to the committee by that name established pursuant to this Declaration and Article XI of the Bylaws, as further described in Section 7.26 of this Declaration.

"Articles" shall mean and refer to the Articles of Incorporation of The Hayes Residential Owners Association, as amended from time to time.

"Assessment" shall mean and refer to that portion of the cost of maintaining, improving, repairing, operating and managing the Development which is to be paid by each Owner as determined by the Association in accordance with this Declaration.

"Association" shall mean and refer to The Hayes Residential Owners Association, a California nonprofit mutual benefit corporation, and its successors and assigns.

"Association Rules" or "Rules" shall mean and refer to the rules and regulations governing the use and enjoyment of the Common Area which shall be adopted by the Board from time to time.

"Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

"Bylaws" shall mean and refer to the Bylaws of The Hayes Residential Owners Association, as amended from time to time.

"Commercial Parcel" or "Commercial Parcels" shall mean the Commercial Parcel(s) as shown on the Map. The Commercial Parcels are Parcel 2 and Parcel 3 on the Map.

"Common Area" shall mean and refer to Parcel 1, except the Units, and all improvements located thereon excepting therefrom the Units as shown on the Condominium Plan, as further described in Section 2.2(b) of this Declaration.

"Common Expenses" shall mean and refer to the actual and estimated expenses of operating the Development and any reserve for such purposes as found and determined by the Board to be reasonable

together with all other sums designated common expenses by or pursuant to the Condominium Documents. Reference is made to Article 4 of this Declaration for further details.

“Common Interest” shall mean and refer to the proportionate undivided interest in the Common Area which is appurtenant to each Unit as set forth in this Declaration.

“Condominium” shall mean and refer to an estate in real property as defined in California Civil Code Sections 783 and 1351(f), consisting of an undivided interest as tenant in common in all or any portion of the Common Area together with a separate fee interest in a Unit and any other separate interests in the Development as may be described in this Declaration, in the Condominium Plan or in the deed conveying the Condominium.

“Condominium Building” shall mean and refer to a structure containing Units. There is one (1) Condominium Building within the Development.

“Condominium Documents” shall mean and refer to this Declaration, including the exhibits attached hereto, the Articles, the Bylaws, the Title 7 Master Declaration, the Condominium Plan and any Association Rules as may be established, as any of the foregoing may be amended from time to time.

“Condominium Plan” or “Plan” shall mean and refer to the diagrammatic floor plan depicting all Units located on the Property, which identifies each Unit and establishes its dimensions pursuant to Civil Code Section 1351(e), as further described and shown on Exhibit B of this Declaration. The Condominium Plan is attached to this Declaration as Exhibit B, which is incorporated herein by this reference.

“CPI” shall mean and refer to the Consumer Price Index (1982/84=100) for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco/Oakland area, or any successor entity thereto.

“Davis-Stirling Act” shall mean and refer to the Davis-Stirling Common Interest Development Act, codified in California Civil Code Section 1350 et seq.

“Declarant” shall mean and refer to the undersigned and such successors and assigns as the undersigned may designate pursuant to the procedure set forth in Section 11.5.

“Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions Establishing a Plan for Condominium Ownership of The Hayes and Condominium Plan for The Hayes, and any amendments, modifications or supplements hereto.

“Development” shall mean and refer to the Property together with all structures and improvements now or hereafter existing or erected thereon and all property, real or personal, intended for or used in connection therewith.

“DRE” means the California Department of Real Estate.

“Eligible Insurer or Guarantor” shall mean and refer to an insurer or governmental guarantor of a First Mortgage who requests notice of certain matters from the Association in accordance with Section 8.2.

“Eligible Mortgagee” shall mean and refer to a Mortgagee of a First Mortgage who requests notice of certain matters from the Association in accordance with Section 8.2.



**“Exclusive Use Common Area” shall mean and refer to those portions of the Common Area set aside for exclusive use of an Owner or Owners as set forth in Section 2.2(c) of this Declaration, and shall constitute “exclusive use common area” as defined in California Civil Code Section 1351(i). In addition to those portions of the Common Area set aside as Exclusive Use Common Area pursuant to Section 2.2(c) of this Declaration, the following portions of Common Area designated to serve such Owner’s Unit exclusively shall be Exclusive Use Common Area: screens, windows, window boxes, gates, exterior stairs leading exclusively to a Unit, exterior doors, door frames and hardware incident thereto, any exterior treatment installed by an Owner pursuant to Association approval, and internal and external telephone wiring designed to serve a single Unit but located outside the boundaries of the Unit. The Association, acting on behalf of all Owners, may reserve to an Owner(s), in the name of all Owners as their attorney-in-fact (or in the name of the Association for any property to which the Association holds title), Exclusive Use Common Area for any purpose not inconsistent with the rights of other Owners under this Declaration.**

**“FHLMC” shall mean and refer to the Federal Home Loan Mortgage Corporation, or any successor entity thereto.**

**“First Mortgage” shall mean and refer to any mortgage or deed of trust which has first priority over all other mortgages or deeds of trust, if any, which encumber, in whole or in part, the same Condominium. For purposes of this definition, the fact that the lien of a First Mortgage is inferior to mechanics liens, tax liens, easements and similar limited interests held by government entities, public utilities and the like does not deprive such lien of “first priority” as such term is used herein.**

**“FNMA” shall mean and refer to the Federal National Mortgage Association, or any successor entity thereto.**

**“Individual Special Assessment” shall mean and refer to a charge against a particular Condominium made for the purpose of obtaining reimbursement of certain expenditures of the Association pursuant to Section 4.6.**

**“Line” or “Lines”, when used in a context pertaining to a utility service or function, shall mean and refer to wires, cables, pipes, conduits and ducts.**

**“Maintain” or “Maintenance” whether capitalized or not, shall mean and refer to “maintain, repair and replace” and maintenance, repair and replacement,” respectively; provided however, that maintain or maintenance shall not include repair and replace(ment) where the context or specific language of this Declaration provides another meaning.**

**“Map” shall mean and refer to the recorded final subdivision map for the Property as described in Recital A of this Declaration.**

**“Materially Damaged” shall mean and refer to any damage for which the cost of repair or reconstruction, as determined by bids solicited and obtained from at least two (2) licensed contractors selected by the Board, is equal to or greater than One Million Dollars (\$1,000,000.00) as adjusted by a fraction whose numerator is the CPI last published as of the date of such damage or destruction and whose denominator is the CPI last published as of the date of recordation of this Declaration.**

**“Member” shall mean and refer to each Owner holding a membership in the Association as herein provided.**

**"Mortgage"** shall mean and refer to a mortgage or a deed of trust encumbering a Condominium.

**"Mortgagee"** shall mean and refer to a beneficiary of, or the holder of, a beneficial interest in a deed of trust as well as a mortgagor.

**"Mortgagor"** shall mean and refer to the trustor of a deed of trust, as well as a mortgagor.

**"Owner"** or **"Owners"** shall mean and refer to the record holder or, if more than one, holders of title of a Condominium in the Development. This shall include any Person holding a fee simple title to any Condominium, including Declarant, but shall exclude certain contract sellers and Persons having any interest merely as security for the performance of an obligation. If a Condominium is sold in a recorded "real property sales contract", as defined in Section 2985 of the California Civil Code, to a purchaser who resides in the Unit, the resident purchaser (rather than the contract seller who is the fee owner) shall be considered the Owner so long as he resides in the Unit as a contract purchaser.

**"Percentage Share"** shall mean and refer to the percentage interest in and to the Common Area attributed to and appurtenant to each Unit, which is based upon the ratio of the square footage of the floor area of a Unit to the total square footage of the floor area of all Units, as such percentage is shown on the Condominium Plan.

**"Person"** shall mean and refer to a natural person, a corporation, a partnership, a trustee or other legal entity.

**"Project"** shall mean all of the real property and improvements described in the Map.

**"Property"** shall have the meaning ascribed thereto in Recital A of this Declaration.

**"Reciprocal Easement Agreement"** means that certain Declaration of Reciprocal Easements, Covenants and Restrictions for 55 Page Street, recorded in the Official Records on (concurrently herewith), 200], as Instrument No. (concurrently herewith), against both the Residential Parcel and the Commercial Parcels.

**"Residential Parcel"** shall mean the Residential Parcel as shown on the Map. The Residential Parcel is Parcel 1 on the Map.

**"Special Assessment"** shall mean and refer to an Assessment against all Condominiums in the Development which is levied pursuant to Section 4.4.

**"Title 7 Master Declaration"** shall mean and refer to that certain Master Declaration for Title 7 Issues and Dispute Resolution for The Hayes, to be recorded against the Property in the Official Records of the City and County of San Francisco, State of California. Reference is made to said Title 7 Master Declaration for further details concerning its terms and conditions.

**"Unit"** shall mean and refer to the elements of a Condominium which are not owned in common with all Owners or by the Association, the boundaries of which are shown and more particularly described in the Condominium Plan, in deeds conveying Condominiums and in this Declaration, as further described in Section 2.2(a) of this Declaration.

**"Unit Designation"** shall mean and refer to the number, letter or combination thereof or other official designation of each of the Units as shown on the Condominium Plan.

## ARTICLE 2

### **DESCRIPTION OF DEVELOPMENT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS**

**Section 2.1 Description of Development.** The Development consists of the Residential Parcel and all improvements located thereon. As of the date of this Declaration, the Development contains one hundred twenty-eight (128) Units. Reference is hereby made to the Condominium Plan for further details. The Development is subject to the Reciprocal Easement Agreement, which governs the rights and obligations of the Residential Parcel and the Commercial Parcels with respect to the Project.

**Section 2.2 Division of the Development Areas.** The Development is hereby divided into the following separate freehold estates:

(a) **Units.** Each of the Units, as separately shown, numbered and designated on the Condominium Plan, consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, fire boxes, windows, window frames, doors and door frames of each Unit. Paint, paper, paneling outlets, stain, tile, carpet and other finishes are considered part of the Unit. The vertical boundaries of any two-story Unit shall be the unfinished surface of the floor of the lower level to the unfinished ceiling of the lower level, the unfinished surface of the upper level floor to the unfinished surface of the ceiling of the upper level, and any opening (e.g. stairway) which connects the two levels. The area between the unfinished surface of the ceiling of the lower level and the unfinished surface of the floor of the upper level (other than that area which is part of the stairway) shall be Common Area. Each Unit includes the portions of the building so described as well as the airspace so encompassed. In addition, each Unit includes any air heating, air conditioning and water heating equipment, lighting fixtures, and outlets thereof wherever located, which are part of a discrete and complete system intended to serve only such Unit. A Unit does not include, however, any bearing wall or other structural member necessary to the support or adequate rigidity of any portion of the Common Area or any other Unit, except that any finished surface of such bearing wall or structural member which faces a Unit shall be a part of such Unit. Each Unit is subject to such encroachments as are contained in the building whether the same now exists or may be later caused or created in any manner referred to in Section 6.5. In interpreting deeds and plans, the then existing physical boundaries of a Unit, whether in its original state or as reconstructed in substantial accordance with the original plans and specifications therefor, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in such deed or plan, regardless of settlement or lateral movement of the Condominium Building and regardless of minor variance between the boundaries shown on the plan or deed and those of the building. An Owner of adjacent Units shall have an easement to connect such adjacent Units, subject however to the terms and conditions of Section 7.14 of this Declaration.

(b) **Common Area.** The Common Area shall consist of the entire Development excluding the Units, and may include, without limitation: land; landscaping (including any garden areas); parking areas; elevators; lobby; laundry rooms; trash rooms; bearing walls; terraces; decks; yards; exterior walls; columns; beams; sub-floors; unfinished floors; roofs; foundations; stairways not located within a Unit; hallways which provide access to Units and other Common Areas; life safety equipment (not located within a Unit); those portions of reservoirs, tanks, pumps, motors, ducts, flues, chutes, conduits, pipes, plumbing, wires and other utility installations lying within the Development or contained within and immediately surrounded by that portion of any structure or space which is defined herein as a part of the Common Area (as required to provide power, light, telephone, cable television, gas, water, sewage, drainage, heat and air conditioning service) except that any air heating, air conditioning and water heating equipment and outlets thereof, which are a part of a discrete and complete system serving only one Unit

shall be a part of such Unit; sprinklers, sprinkler pipes, and sprinkler heads which protrude into the airspace of a Unit; and any central television antenna.

The Residential Parcel shares certain structural components and utility systems with the commercial portions of the Development, as may be indicated on the Map and/or Condominium Plan. Reference is made to the Map, Condominium Plan and/or the Reciprocal Easement Agreement for further details.

Each Owner shall have, as appurtenant to his Unit, a membership in the Association and an undivided interest in the Common Area equivalent to that shown in the Condominium Plan. The ownership of each Condominium shall include both a Unit and an undivided interest in the Common Area as described in this Declaration. The Common Interest appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all of the Owners affected and of all of the Mortgagees of First Mortgages covering the Condominiums affected as expressed in an amended Declaration. Such Common Interest cannot be separated from the Unit to which it is appurtenant. Each Owner may use all Common Area (other than Exclusive Use Common Area which use is governed by Section 2.2(c)) in accordance with the purposes for which such Common Area is intended and in accordance with all Association Rules, so long as such use does not hinder the exercise of or encroach upon the rights of any other Owners, including another Owner's rights to Exclusive Use Common Area as hereinafter described.

(c) **Exclusive Use Common Area.** Portions of the Common Area referred to as "Exclusive Use Common Area" as shown on the Condominium Plan, are hereby set aside and allocated for the exclusive use of one or more, but fewer than all, Owners. Said Exclusive Use Common Area shall consist of an assignment, lease or easement for exclusive use of parking areas (P-1, P-2, P-3, etc.), handicap parking areas (HCP-74, HCP-107 and HCP-108), balconies (B-411, B-412, B-419, etc.), and terraces (T-221, T-222, T-310, etc.), as may be specifically designated on the Condominium Plan, the deed conveying the Condominium, this Declaration, or a grant, lease or assignment by Declarant or the Association as an appurtenance to any particular Unit. Such Exclusive Use Common Areas shall be appurtenant to applicable Unit(s) as set forth above. Except as provided in Section 3.7(a), the repair and maintenance of the Exclusive Use Common Areas shall be the responsibility of the Owner of the Unit to which such Exclusive Use Common Area(s) are appurtenant

(1) **Leased Parking.** The right to lease a parking space in the Development shall be assigned to certain residential Unit Owners as part of their purchase of a Unit; provided, however, that the Development contains fewer residential parking spaces than residential Condominium Units, and not all residential Unit Owners will have the right to lease a parking space within the Development. Therefore, subject to the availability of parking spaces in the Development, each Unit Owner that wishes to obtain the right to park a qualified vehicle in the parking garage of the Development shall enter into a lease with the Association for the purposes of leasing an exclusive use parking space. Subject to the specific terms of any such lease, each parking space lease shall be for a period of one (1) year, and shall automatically renew for successive one (1) year periods; provided, however, that upon sale or transfer of a Unit, said leased parking space shall automatically be transferred to the new Unit Owner; provided, however, that in the event that a new Unit Owner does not agree to lease a parking space, then the Board may lease the space to another Unit Owner within the Development at a cost that is no greater than that paid by other Unit Owners. If an existing Unit Owner wants to discontinue the use of a parking space, that Owner shall notify the Association, and the Association shall be responsible for leasing that Owner's parking space to another Unit Owner. Assignment or sublease by a Unit Owner of a leased parking space separate from the Unit to which that parking space has been assigned shall not be permitted.

In the event that there remain any unleased parking spaces after all Unit Owners have had the opportunity to lease a space as described herein this Section 2.2, the Association shall have the right to lease such extra space(s) to the general public at market rates; provided, however, that any such lease of a parking space to the general public shall be restricted as follows: (i) such lease shall be on no longer than a month-to-month basis, (ii) such lease shall be terminable upon receipt by the Association of written notice from a Unit Owner that such Owner desires to lease a parking space for that Owner's Unit, (iii) upon receipt of such written notice, the lease to the member of the general public shall be terminated so that the Unit Owner may lease that parking space. Only the Association shall be permitted to lease any parking spaces in the Development to the general public. In no event shall any Unit Owner or member of the general public that has leased a parking space be permitted to sublease, assign or transfer any parking space to another Unit Owner, resident or other member of the general public.

The use of all parking spaces shall be subject to the terms Section 7.3 of this Declaration. As further described in Section 7.3 below, the Board shall have the right and power to reallocate and reassign parking spaces in a reasonable manner as the Board determines necessary and appropriate to provide any Unit Owner or other occupant of a Unit with a designated handicap parking space, if such Owner or Occupant is legally entitled to the use of a handicap parking space.

**(d) No Separate Conveyance of Undivided Interests.** The foregoing undivided interests are hereby established and are to be conveyed with the respective Units as indicated above and cannot be changed except as set forth herein. Declarant, its successors, assigns and grantees covenant and agree that the undivided interest in the Common Area and the fee title to the respective Unit conveyed therewith shall not be separated or separately conveyed. Each such undivided interest shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Condominium or to the fee title to the Unit.

**Section 2.3 Rights of Entry and Use.** The Units and the Common Area (including the Exclusive Use Common Area) shall be subject to the following rights of entry and use:

**(a)** The nonexclusive rights of each Owner for ingress, egress and support in, to and throughout the Common Area, subject to the rights of other Owners in the Common Area and Exclusive Use Common Areas.

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

**(c)** The access rights of the Association to enter into or upon any Unit or the Common Area to maintain, repair or replace improvements or property located in the Common Area.

**(d)** The rights of the Owners, the Association, and the Declarant to install, maintain, repair or replace utilities as described in Article 6 of this Declaration.

**(e)** The encroachment rights described in Section 6.5 of this Declaration.

**(f)** The rights of the Declarant during the construction period as described in Section 11.4 of this Declaration.

(g) The rights of Owners to make improvements or alterations authorized by Civil Code Section 1360(a)(2), subject to Sections 7.9 and 7.26 of this Declaration and other applicable provisions of this Declaration, the Bylaws, and the Reciprocal Easement Agreement.

**Section 2.4 Partition Prohibited.** The Common Area shall remain undivided as set forth above. Except as otherwise provided in Civil Code Section 1359, no Owner shall bring any action for partition of a Unit or of the Common Area, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Development and each Owner, by acceptance of a deed to his Condominium, shall be deemed to have waived and abandoned, for himself, his successors and assigns (whether by deed, gift, devise, foreclosure or operation of law), the right to bring or maintain any such action for partition. Judicial partition by sale of a single Condominium owned by two or more Persons and division of the sale proceeds is not prohibited hereby but partition of title to a single Condominium is prohibited.

**Section 2.5 Subdivision Prohibited.** Neither the Association nor any Owner shall subdivide or apply to any appropriate jurisdiction to subdivide the Common Area without the express written consent of all of the Owners and of all the Mortgagees of First Mortgages encumbering any Condominium within the Development and no Owner shall cause or permit the further subdivision of the airspace within his Unit.

**Section 2.6 Basement Storage; Moisture; Water Intrusion.** Due to the water table in the ground beneath the Property, Declarant has taken precautions to prevent water intrusion into the basement of the Condominium Building. However, water may be trapped in the soil beneath the Property and Condominium Building, and underground water levels in the water table beneath the Condominium Building could be elevated during periods of heavy rainfall. To prevent and/or mitigate potential moisture, dampness or water intrusion into the basement of the Condominium Building, Declarant has added a dewatering system, subdrain system and sump pumps with back up power supply. However, the basement of the Condominium Building may not be one-hundred percent (100%) waterproof. Water vapor may pass through the basement floors and/or walls, causing dampness in the basement areas, and causing mineral deposits on the basement floors and/or walls. For these reasons, and to prevent damage to the property of any Owners or the Association caused by dampness, moisture or water intrusion, there shall be no storage of any items on the floor or against the walls in basement level B-2; and, there shall be no storage of any items against the walls in basement level B-1.

### ARTICLE 3

#### THE ASSOCIATION

**Section 3.1 Incorporation.** The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. At the recording of the first sale of a Condominium, the Association shall be charged with the duties and invested with the powers set forth in the Condominium Documents.

**Section 3.2 Action Through Designated Officers.** Except as to matters requiring the approval of Owners as set forth in the Condominium Documents, the affairs of the Association, including the exercise of its powers and duties, and representation of the Residential Parcel pursuant to the Reciprocal Easement Agreement, shall be conducted by the Board, such officers as the Board may elect or appoint or such Persons with delegated authority as set forth in the Condominium Documents.

**Section 3.3 Association to Manage the Common Area.** The management of the Common Area shall be vested in the Association in accordance with the Condominium Documents. The Owners of all of the Condominiums hereby covenant and agree that the administration of the Development shall be in accordance with the provisions of the Condominium Documents.

**Section 3.4 Membership.** The Owner of a Condominium shall automatically, upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as his ownership ceases for reasons set forth herein, at which time his membership in the Association shall automatically terminate. Each Owner shall have the rights, duties and obligations of membership as set forth in the Condominium Documents. Any party that holds an interest in a Condominium merely as security for performance of an obligation shall not be a Member of the Association.

**Section 3.5 Transferred Membership.** Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale, conveyance, judicial sale or other voluntary or involuntary transfer of the Condominium to which it is appurtenant and then only to the purchaser in the case of a sale or to the transferee in the case of a transfer. Any attempt to make a prohibited transfer is void.

**Section 3.6 Membership Classes and Voting Rights.** The Association shall initially have two classes of voting Members as follows:

(a) **Class A:** Class A voting Members shall consist of all Owners with the exception of the Declarant and shall be entitled to one vote or right of consent for each Condominium owned. When more than one Person holds an interest in any Condominium, all such Persons shall be Members; provided, however, the vote or right of consent for any such Condominium shall be exercised in accordance with the Bylaws and as such multiple Owners may among themselves determine, but in no event shall more than one vote be cast or right of consent be exercised with respect to any Condominium.

(b) **Class B:** Class B voting Members shall consist of the Declarant who shall be entitled to three (3) votes or rights of consent for each Condominium owned. Declarant may designate an individual(s) to exercise Declarant's rights as a member of the Association. The Class B voting membership shall cease and be converted to Class A voting membership on the happening of whichever of the following events first occurs: (i) when the total votes outstanding in Class A voting membership equal the total votes outstanding in Class B voting membership; or (ii) a prescribed date which is not later than the second anniversary of the first conveyance of a subdivision interest in original issuance of the subdivision public report for the Development.

Other than the provisions contained in Section 11.7, no provision of the Condominium Documents which requires the approval of a prescribed majority of Members of the Association other than Declarant for action to be taken by the Association is intended to preclude the Declarant from casting votes attributable to Condominiums which it owns. Notwithstanding anything to the contrary herein, any action for which the Condominium Documents require the approval of a majority of Members of the Association other than Declarant shall require the vote or written assent of a majority of the Class B voting power as well as the vote or written assent of a majority of the Class A voting power, or, upon the conversion of Class B to Class A shares, the vote or written assent of a majority of the total voting power of the Association as well as the vote or written assent of a majority of the total voting power of Members other than Declarant.

Voting rights of a Member shall vest at the time Assessments are levied against such Owner's Condominium or as provided in a subsidization plan which may be approved by the DRE, whichever occurs first.

**Section 3.7 General Duties and Powers.** In addition to the duties, powers and limitations enumerated in the Articles and Bylaws of the Association or elsewhere provided for at law or herein, and those enumerated in Section 7140 of the Corporations Code, and without limiting the generality thereof, the Association shall:

(a) Subject to the provisions of Section 5.1 of this Declaration, manage, control, operate, repair, replace, restore, and maintain in good condition and appearance, all of the Common Area and all facilities, improvements, furnishings, equipment and landscaping thereon (other than that placed by an Owner or tenant upon any Exclusive Use Common Area). The Association shall maintain and repair any portions of the Common Area damaged by the presence of wood destroying pests or organisms, and all property that may be acquired by the Association, as more fully provided in Section 5.5. As further described in Section 5.2, each Owner shall maintain repair, replace, restore any Exclusive Use Common Area appurtenant to his or her Unit. In furtherance of its responsibilities under this Section 3.7, and as further described in Sections 5.1 and 5.2 below, the Association may cause any maintenance, repair or replacement of any portion of the Common Area. Relocation of Owners or tenants required in order to repair any areas within the responsibility of the Association shall be subject to the provisions of Civil Code Section 1364(c) et seq.

(b) Acquire, provide and pay for water, sewer, garbage disposal, electrical, gas and other necessary utility services for the Common Area and for the Units that are not separately provided to the Units; provided, however, the Association shall have no liability to any Owner arising out of the temporary or permanent failure of any utility, governmental entity or quasi-utility to deliver such services after the Association has contracted for such services.

(c) Grant easements over, under and through the Common Area and/or any of the Units that are reasonably necessary for the efficient operation of the Development.

(d) Maintain such policy or policies of insurance as are required by this Declaration or as the Board deems necessary or desirable in protecting the interests of the Association and its Members, as further provided in Article 9 of this Declaration.

(e) Have the authority to employ a manager or other Persons and to contract with independent contractors or managing agents to perform all or any part of the duties or responsibilities of the Association except the initiation and execution of disciplinary proceedings against Members in accordance with the procedure set forth in the Bylaws; provided, however, that any contract with a firm or Person appointed as a manager or managing agent shall not exceed a one (1) year term and shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association after either the execution and delivery of the contract or the commencement of the term of the contract, and to terminate the same at any time upon thirty (30) days written notice with cause and upon sixty (60) days written notice without cause, in either case without payment of a termination fee. The Association shall at all times employ a professional manager or managing agent although the contract with any such manager or managing agent shall be of limited duration as set forth above.

(f) Discharge by payment, if necessary, any obligation which, in the opinion of the Board, may become a lien against the Common Area, or any portion thereof, and assess the costs thereof as a monetary penalty against any Owner responsible for the existence of said lien as determined by the Board after notice and a hearing in accordance with the Bylaws.



**(g)** Enforce this Declaration and adopt reasonable Association Rules not inconsistent with this Declaration for the use of the Common Area and all improvements and facilities now or hereafter located thereon and the conduct of Owners and their tenants and guests with respect to the Development and other Owners.

**(h)** Defend, prosecute and settle, as deemed necessary, all lawsuits and arbitrations involving the Association in the Association's own name as the real party in interest and without joining with it the individual Owners in the manner described in Code of Civil Procedure, Section 374.

**(i)** Assume obligations, enter into contracts, including contracts of guarantee or suretyship, incur liabilities, borrow, lend money or otherwise use its credit and secure any of its obligations, contracts or liabilities by mortgage, pledge or other encumbrance of all or any part of its property or income.

**(j)** Participate with others in any partnership, joint venture or other association, transaction or arrangement of any kind whether or not such participation involves sharing or delegation of control with or to others.

**(k)** Fill a vacancy on the Board except for a vacancy created by the removal of a Board member, which shall be filled as provided in the Bylaws. Any election of a Board member shall comply with applicable procedures provided in Civil Code Section 1363.03.

**(l)** Establish and maintain separate, restrictive accounts into which only Annual Assessments and Special Assessments for reserves shall be deposited. Approval of the Board shall be obtained prior to the expenditure of such reserves; and the Association may:

**(m)** Subject to Sections 10.2 and 10.3 of this Declaration, and subject to the provisions of the Title 7 Master Declaration, institute, defend, settle, or intervene on behalf of the Association, subject to compliance with Civil Code Sections 1363.810-1363.850 and 1369.510-1369.590 and the provisions of this Declaration, in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to:

**(1)** enforcement of this Declaration, the Davis-Stirling Act or the Nonprofit Mutual Benefit Corporation Law;

**(2)** damage to the Common Area;

**(3)** damage to Unit(s) which the Association is obligated to maintain or repair, or

**(4)** damage to Unit(s) which arises out of, or is integrally related to, damage to the Common Area or Units which the Association is obligated to maintain or repair.

**(n)** As provided in Civil Code Section 1363.07, and notwithstanding anything to the contrary in this Declaration or the Bylaws, the affirmative vote of at least sixty-seven percent (67%) of the Owners shall be required in order for the Board to grant the exclusive use of any portion of the Common Area to any individual Owner. Notwithstanding anything to the contrary in this Declaration or the Bylaws, any such voting of the Owners shall be by secret ballot and shall comply with the applicable procedures in Civil Code Section 1363.03.

(o) As further described in the Bylaws, the Association shall adopt rules as required by Civil Code Section 1363.03 pertaining to elections, campaigns, voting, proxies and other matters contained therein Civil Code Section 1363.03.

(p) Provide the Owners with all notices required by this Declaration and as required by the Davis-Stirling Act, including, without limitation, the following notices:

(1) Annual notices of the Association's operating budget, Assessment and Reserve Funding Disclosure Form, and the Association's foreclosure rights (See Section 4.10);

(2) Annual notices concerning insurance policies maintained by the Association (See Section 9.9(d));

(3) Notices concerning alternative dispute resolution (See Sections 10.1 and 10.2);

(4) Schedule of fines adopted by the Association (Civil Code Section 1363(g));

(5) Balance sheet and related information as set forth in Section 9.08(d)(2) of the Bylaws;

(6) Statement of any transaction or indemnification described in California Corporations Code Section 8322(d) and (e), and a statement notifying members of their right to have copies of minutes of meetings of the governing body, as set forth in Section 9.08(d)(4) of the Bylaws; and

(7) Other notices and disclosures required by Civil Code Section 1365, 1365.1, 1365.2.5, 1365.3 and 1365.5.

(q) In the event that a public nuisance exists or is conducted on any portion of the Common Area, the Association shall take reasonable measures to abate such nuisance.

(r) Represent the Residential Parcel with respect to the Reciprocal Easement Agreement and cooperate in the maintenance, repair and replacement of any common building elements and common systems as described in the Reciprocal Easement Agreement. Such representation shall include without limitation serving on the Joint Maintenance Committee described in the Reciprocal Easement Agreement.

(s) Telecommunications Contract. Notwithstanding anything stated in the Condominium Documents to the contrary, the Board shall have the power and authority to enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of an exclusive telecommunications services contract ("Telecommunications Contract") with a telecommunications service provider ("Service Provider") pursuant to which the Service Provider shall serve as the exclusive provider of telecommunications services to each Unit in the Project. The Board shall only enter into, accept an assignment of, or otherwise cause the Association to comply with the terms of a Telecommunications Contract if the Board determines that such action is in the best interests of the Association. Among other factors the Board deems appropriate, the Board shall consider the following factors in making such a determination:

(1) The initial term of the Telecommunications Contract should not exceed five (5) years, and if the Telecommunications Contract provides for automatic extensions, the length of such extension should not exceed five (5) years.

(2) The Telecommunications Contract should provide that (a) at least six (6) months prior to the expiration of either the initial term or any extended term of the Telecommunications Contract, the entire membership of the Association may, without cause by a sixty percent (60%) vote, prevent any automatic extension that the Telecommunications Contract may provide and thereby allow the Telecommunications Contract to expire and (b) at any time the Board may terminate the Telecommunications Contract if, in the sole discretion of the Board, the Service Provider fails to provide quality, state of the art telecommunications services.

(3) Whether the monthly or other fees charged to the Association by the Service Provider for the provision of the telecommunications services to all of the Units represents a discount from comparable retail fees charged by the Service Provider in the general geographic area in which the Project is located, and if so, the amount of such discount.

(4) Whether the Service Provider is solely responsible for the installation, and the costs thereof, of the telecommunications equipment and facilities necessary to provide the telecommunications services to each Unit.

(5) Whether the Service Provider has the right to remove the telecommunications equipment and/or facilities provided and/or installed by the Service Provider upon expiration or termination of the Telecommunications Contract.

**Section 3.8 Association Rules.** As further described in Section 3.7(g) above, the Association shall have the power to adopt, amend, and repeal the Association Rules as it considers reasonable and appropriate, subject to the Owners' right to receive prior notice of, and to challenge, the adoption, amendment, or repeal of certain categories of Association Rules as provided in California Civil Code §§1357.100 - 1357.150. The Association Rules shall govern, without limitation, signs, parking restrictions, minimum standards of property maintenance, and the use and enjoyment of the Common Area, including without limitation any common roof deck and private exclusive use terraces and decks appurtenant to Owners' Units, by all Owners and tenants, and their respective family members, guests, and invitees; however, the Association Rules shall not be inconsistent with nor materially alter any provisions of this Declaration, the Articles, or the Bylaws. In a conflict between a provision of the Association Rules and the provisions of this Declaration, the Articles, or Bylaws, the conflicting provision of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles, or the Bylaws to the extent of such inconsistency. A copy of the Association Rules as adopted, amended, or repealed shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within the Development.

The Rules of the Association must apply uniformly to all Owners. The rights of Owners to display typical and unobtrusive religious, holiday and political signs, symbols and decorations inside their Units of the kinds normally displayed in single family residential neighborhoods shall not be abridged, except the Association may adopt time, place and manner restrictions for such displays if they are visible outside of the Unit. No modification to the Rules of the Association may require an Owner to dispose of personal property that was present in a Unit prior to the adoption of such modification if such personal property was in compliance with all rules previously in force; however, this exemption shall apply only during the period of such Owner's ownership of the Unit. The exemption shall not apply to (i) subsequent Owners who take title to the Unit after the modification is adopted, or (ii) clarifications to the

Association Rules.

**Section 3.9 Penalties; Fines; Disciplinary Action.** The Board shall have the power to impose fines, penalties or take disciplinary action against any Owner for failure to pay Assessments (as further described in Article 4 below) or for violation of any provision of the Condominium Documents and the Association Rules. Penalties may include but are not limited to fines, suspension of all voting rights and other privileges of Association membership, or other appropriate discipline, provided that the Member is given notice and a hearing as provided in the Bylaws before the imposition of any fine, penalty or disciplinary action. The Association shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration and the Association Rules as further described in the Bylaws. All fines, penalties, or disciplinary actions against Owners shall comply with the notice and procedural requirements of this Declaration and the California Civil Code.

**ARTICLE 4**

**ASSESSMENTS**

**Section 4.1 Creation of the Lien and Personal Obligation for Assessments.** Declarant, for each Condominium owned within the Development hereby covenants, and each Owner by acceptance of a deed for each Condominium, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (1) Annual Assessments and (2) Special Assessments, such Assessments to be established and collected as hereinafter provided. The Annual Assessments and Special Assessments, together with interest, costs and reasonable attorney's fees, shall be charged to a Condominium and shall be a continuing lien upon such Condominium, the lien to become effective upon the recordation of a Notice of Assessment. Each such Assessment, together with interest, costs and a reasonable attorney's fee, shall also be the personal obligation of the Owner of such Condominium at the time such Assessment becomes due. Before the Association may place a lien upon a Condominium pursuant to this section, to collect an obligation which is past due, the Association shall notify the Owner in writing by certified mail of the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including items on the statement which indicate the Assessments owed, any late charges and the method of calculation, any attorneys' fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. Any payments owed toward such a debt shall first be applied to the principal owed, and only after the principal owed is paid in full shall such payments be applied to interest or collection payments. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed in writing by them. No Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use of enjoyment of the Common Area or by the abandonment of his Unit.

**Section 4.2 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of all of the residents in the entire Development, for the improvement and maintenance of the Common Area and for the common good of the Development. Use of Association funds for election or campaign purposes shall be limited as provided in Civil Code Section 1363.04.

**Section 4.3 Annual Assessments.** Each Owner shall pay Assessments based upon the initial operating expense budget submitted by Declarant and approved by the DRE. Said budget shall be based on the estimated operating expenses to be paid during the initial year by the Association in the performance of its duties (plus a reasonable provision for replacement reserves, including a reserve for life safety systems not entirely within a Unit) and shall be assessed against each Condominium in the Development as provided in Section 4.7 of this Declaration.

During each succeeding fiscal year of the Association, the Board may not impose an Annual Assessment that is more than twenty percent (20%) (or any other maximum percentage permitted by law) greater than the Annual Assessment for the Association's preceding fiscal year without the approval of Owners casting a majority of votes at a meeting or election of the Association at which a quorum was present in accordance with Section 4.5 and conducted in accordance with Corporations Code Sections 7510 et seq. and 7613. Any such voting of the Owners regarding assessments shall be by secret ballot and shall comply with the applicable procedures in Civil Code Section 1363.03. This Section shall not limit Assessment increases necessary for the following emergency situations: (1) an extraordinary expense required by an order of a court; (2) an extraordinary expense necessary to repair or maintain the Development or any part of it for which the Association is responsible where a threat to personal safety in the Development is discovered; (3) an extraordinary expense necessary to repair or maintain the Development or any part thereof for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the budget (prior to the imposition or collection of an Assessment under this subsection (3), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and a determination as to 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 (4) an extraordinary expense in making the first payment on any earthquake insurance surcharge that the Board elects to purchase.

Unless the Association is exempt from Federal and State of California income taxes, all reserves shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in such other manner authorized by law or regulation of the Internal Revenue Service and the California Franchise Tax Board as will prevent such funds from being taxed as income to the Association.

**Section 4.4 Special Assessments.** In addition to the Annual Assessment authorized above, the Association may levy, in any fiscal year, a Special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the Common Expenses of the Association for such fiscal year (including, but not limited to, unanticipated delinquencies, costs of construction and unexpected repairs, replacement or reconstruction of capital improvements in or on the Common Area including fixtures and personal property related thereto). The aggregate of Special Assessments during any fiscal year shall not exceed five percent (5%) of the budgeted gross expenditures of the Association for that fiscal year without an approval of Owners casting a majority of the votes at a meeting or election of the Association at which a quorum was present and in accordance with Section 4.5 conducted in accordance with Corporations Code Sections 7510 et seq. and 7613. Any such voting of the Owners regarding assessments shall be by secret ballot and shall comply with the applicable procedures in Civil Code Section 1363.03. This Section shall not limit Assessment increases necessary for the following emergency situations: (1) an extraordinary expense required by an order of a court; (2) an extraordinary expense necessary to repair or maintain the Development or any part of it for which the Association is responsible where a threat to personal safety in the Development is discovered; (3) an extraordinary expense necessary to repair or maintain the Development or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the budget (prior to the imposition or collection of an Assessment pursuant to this subsection (3), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and a determination as to 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 (4) an extraordinary expense in making the first payment on any earthquake insurance surcharge that the Board elects to purchase.

Unless exempt from Federal and State of California income taxes, all proceeds from any Special Assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied, or otherwise shall be handled and used in a manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board in order to avoid, to the extent possible, its taxation as income to the Association.

**Section 4.5 Notice and Quorum for Adoption of Annual or Special Assessment.** Any action authorized to be taken by the Members under Sections 4.3 and 4.4, shall be taken at a meeting called for that purpose, written notice of which shall be mailed by first class mail, postage prepaid to each Member at the address of each Unit owned by such Member within the Development not less than ten (10) days nor more than ninety (90) days prior to the meeting. For purposes of Sections 4.3 and 4.4 only, quorum means more than fifty percent (50%) of the Owners of the Association. The proposed action may also be taken without a meeting pursuant to the provisions of Corporations Code Section 7513. Any voting of the Owners regarding assessments shall be by secret ballot and shall comply with the applicable procedures in Civil Code Section 1363.03.

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

**Section 4.6 Individual Special Assessment.** The Association may levy an Individual Special Assessment, pursuant to the procedures contained in the Bylaws, against any Condominium or any Owner in order to obtain reimbursement of certain funds expended by the Association, provided that such an Individual Special Assessment may only be levied to reimburse the Association for costs incurred in bringing the Owner and his Condominium into compliance with provisions of the Condominium Documents. When levied pursuant to the procedures contained in the Bylaws, such an Individual Special Assessment shall be immediately due and payable. Such Individual Special Assessment shall not be subject to the enforcement and lien procedures contained in Sections 4.14 and 4.15 of this Declaration.

**Section 4.7 Division of Assessments.** All Annual and Special Assessments shall be charged to and divided among the Unit Owners as follows:

(a) Annual and Special Assessments for Residential Common Expenses and General Common Expenses, as such terms are defined in this Section 4.7 and itemized in the Operating Budget for The Hayes Residential Owners Association (the "Association Budget"), shall be assessed to each Unit Owner as set forth below and as more specifically itemized in the Association Budget.

(b) "Residential Common Expenses" are those expenses relating only to the Residential Units and Common Area used by the Residential Unit Owners. Residential Common Expenses shall be allocated and assessed to each Residential Unit Owner as set forth below and as more specifically itemized in the Association Budget. All Residential Common Expenses shall be divided equally among the Residential Unit Owners, except for those Residential Common Expenses that will be prorated as described below. Those Residential Common Expenses for items that are reasonably expected to provide certain Residential Unit Owners with benefits at least ten percent (10%) greater than other Residential Unit Owners with different sizes of Units shall be prorated according to the percentage for each Residential Unit set forth in the Association Budget, which percentage is based on the ratio of the square footage of the floor area of each Residential Unit to the total square footage of the floor area of all Residential Units. All Residential Common Expenses not prorated as described above shall be assessed to each Residential Unit Owner equally, notwithstanding a Residential Unit's respective square footage. Reference is made to the Association budget for further detail regarding the prorated Residential Common Expenses. No Residential Common Expenses shall be assessed to the Commercial Unit Owner.

(c) "General Common Expenses" are those expenses relating to both the Residential Units and Commercial Unit and Common Area used by both the Residential Unit Owners and the Commercial Unit Owner. General Common Expenses shall be allocated and assessed to each Unit Owner as set forth below and as more specifically itemized in the Association Budget. All General Common Expenses shall be divided equally among all of the Unit Owners, except for those General Common Expenses that will be prorated as described below. Those General Common Expenses for items that are reasonably expected to provide certain Unit Owners with benefits at least ten percent (10%) greater than other Unit Owners with different sizes of Units shall be prorated according to each Unit's Percentage Share. All General Common Expenses not prorated as described above shall be assessed to each Unit Owner equally, notwithstanding a Unit's Percentage Share. Reference is made to the Association budget for further detail regarding the prorated General Common Expenses.

(d) Annual Assessments shall be charged to and collected from each Owner on a monthly basis at the rate of one-twelfth (1/12) of the Annual Assessment charged with respect to each Condominium Unit.

(e) Special Assessments, other than an Individual Special Assessments, shall be levied against each of the Owners in the same proportion as Annual Assessments and may be enforced in the same manner as an Annual Assessment; provided however, that any Special Assessment for the rebuilding or major repair of the Common Area shall be assessed according to each Owner's Percentage Share. Special Assessments shall be charged to and collected from the Owners in either one (1) single payment, or in monthly payments, as determined by the Board.

**Section 4.8 Date of Commencement of Annual Assessment.** The Annual Assessment provided for herein shall commence as to all Condominiums covered by this Declaration on the first day of the month following the conveyance of the first Condominium from Declarant to an Owner; provided, however, in the event the first Annual Assessment commences on a date other than the beginning of a fiscal year of the Association, only such portion of the first Annual Assessment as would ordinarily be collected at the monthly rate during the remaining months of such partial fiscal year shall be due and collectible from the Owners.

**Section 4.9 Failure to Establish Annual Assessment.** Subject to the provisions of Section 4.3 hereof, the Board shall determine and fix the amount of the Annual Assessment charged against each Condominium at least forty-five (45) days in advance of each fiscal year of the Association. In the event that the Board fails or refuses to establish an Annual Assessment as required by this Section, the Annual Assessment for the immediately preceding fiscal year shall be the Annual Assessment for the fiscal year as to which no Annual Assessment has been established unless an increase or decrease therein is approved by a majority of each class of Members or, in the event Class B shares have been converted to Class A shares, the vote or written assent of a majority of the total voting power of the Association as well as the vote or written assent of a majority of the total voting power of Members other than Declarant.

**Section 4.10 Annual Notice of Assessments and Foreclosure Rights.** The Association shall distribute a copy of the pro forma operating budget (or a summary, as provided for in Civil Code Section 1365) at least thirty (30) days, but not more than ninety (90) days, prior to the beginning of the Association's fiscal year, as required by Civil Code Section 1365, and as further set forth in the Bylaws. The pro forma operating budget (or summary thereof) shall at a minimum include: (i) all of the information and statements required by Civil Code Section 1365 (including, without limitation, all of the information concerning the Association's reserves), and (ii) the disclosures required by Civil Code Section 1365.2.5 (Assessment and Reserve Funding Disclosure Summary Form). In addition, the written notice described in Section 1365.1 of the Civil Code (notice regarding foreclosure rights of the Association) shall be provided to each member of the Association during the 60-day period immediately

preceding the beginning of the Association's fiscal year. This notice shall be printed in at least 12-point type.

**Section 4.11 Certificate as to Payment.** The Association shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Condominium have been paid. Such certificate shall be deemed to be conclusive evidence of the payment of such Assessments to the extent stated therein to have been previously paid.

**Section 4.12 Delinquency of Assessment; Right to Lien.** All Annual and Special Assessments, or monthly installments thereof, levied pursuant to this Declaration are delinquent fifteen (15) days after they become due. For each delinquent Assessment, or monthly installment thereof, the Association may recover: (i) reasonable costs incurred in collecting the delinquent Assessment, or part thereof, including reasonable attorney's fees, (ii) a late charge not to exceed ten percent (10%) of the delinquent Assessment or ten dollars (\$10.00), whichever is greater, and (iii) interest on all sums imposed herein, including the delinquent Assessment, reasonable costs of collection and late charges at ten percent (10%) per annum commencing thirty (30) days after the Assessment becomes due. The Association shall have the right to record a lien against the delinquent Owner and enforce such lien and foreclose upon Owner's interest in the Unit in accordance with the procedures described in Civil Code Section 1367.1, as further described in Sections 4.14 and 4.15 of this Declaration. The Association's right shall be subject to the limitations imposed by Civil Code Section 1367.4 with respect to delinquent assessments that are less than One Thousand Eight Hundred Dollars (\$1,800).

**Section 4.13 Transfer of Condominium by Sale or Foreclosure.** Sale or transfer of any Condominium shall not affect the Assessment lien imposed by a Notice of Delinquent Assessment (defined below) and shall not relieve such Condominium from liability for any Assessments thereafter becoming due or from the lien thereof. The transfer of the Condominium as a result of a foreclosure or purchase at a foreclosure sale shall relieve the Mortgagee of a First Mortgage or a purchaser of a condominium at a foreclosure of a First Mortgage from liability for any past due Assessments, except to the extent of a recorded Notice of Delinquent Assessment. Such transfer or foreclosure sale shall not relieve the prior Owner of any personal liability for past due Assessments.

**Section 4.14 Procedure for Perfection of Lien of Assessment.** In the event any Assessment or monthly installment of an Annual Assessment is not paid within fifteen (15) days after the day upon which it becomes due, the Board may deliver a "Notice of Delinquent Assessment" to the Owner of the Condominium assessed and may cause a copy of said Notice to be recorded in the Official Records of the City and County of San Francisco. Prior to recording the Notice of Delinquent Assessment, the Association shall provide the Owner with thirty (30) days prior written notice in accordance with the provisions of Civil Code Section 1367.1, and shall offer the Owner and, if so requested by the Owner, shall participate in dispute resolution pursuant to Civil Code Sections 1363.810-1363.840 and any applicable successor statutes. Said Notice of Delinquent Assessment shall state the amount of the Assessment then due and unpaid which shall include interest, costs and reasonable attorneys fees, a legal description of the Condominium against which such Assessment has been levied, the name of the record Owner of such Condominium and the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure (if the Association so elects). Such Notice of Delinquent Assessment shall be signed by a representative designated by the Board, and mailed in the manner set forth in Section 2924(b) of the Civil Code, to all record Owners of the Condominium assessed, no later than ten (10) calendar days after recordation. When such a Notice of Delinquent Assessment has been recorded, the Assessment described therein shall constitute a lien upon the Condominium identified therein which lien shall be prior in right to all other liens thereafter arising except for all taxes, assessments or other levies which by law would be prior thereto and except for the lien of any Mortgage



recorded prior to the date any such Assessment became due. Such Assessment lien shall be in favor of the Association and shall be for the benefit of all Owners. If the delinquent Assessment or installment and related charges are paid or otherwise satisfied, the Association shall send to the Owner a "Notice of Satisfaction and Release of Lien" and shall record same in the Official Records of the City and County of San Francisco.

**Section 4.15 Enforcement of Lien of Assessment.** After the expiration of thirty (30) days following the recording of the lien of any Assessment established pursuant to Section 4.14, and subject to the meet and confer and other procedural requirements in Civil Code Sections 1367.1(c) and 1367.4(c), as applicable, the Board may enforce the lien by filing an action for judicial foreclosure or, if the Notice of Delinquent Assessment contains the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure, by recording a "Notice of Default" in the form described in Civil Code Section 2924c(b)(1) to commence nonjudicial foreclosure. Such nonjudicial foreclosure is to be conducted in accordance with the requirements of Sections 2924-2924h of the California Civil Code applicable to the exercise of nonjudicial foreclosures of mortgages or deeds of trust. The sale shall be conducted by the trustee named in the Notice of Delinquent Assessment or by a trustee substituted in accordance with the provisions of California Civil Code Section 2934a. The Association, acting on behalf of the Owners, shall have the power to bid for the Condominium at a foreclosure or trustee's sale and to acquire, hold, mortgage and convey the same. If the default is cured before the sale, or before completing a judicial foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a Notice of Satisfaction and Release of Lien and, upon receipt of a written request by the Owner, a "Notice of Rescission of the Declaration of Default and Demand for Sale."

**Section 4.16 Enforcement of Assessment by Suit.** The Association may, in its own name, commence and maintain a suit at law against any Owner or Owners personally obligated to pay Assessments for such delinquent Assessments as to which they are personally obligated. Any judgment rendered in any such action shall include the amount of the delinquent Assessments, together with processing fees, interest thereon, costs of collection, court costs and reasonable attorney's fees in such amount as the court may determine with respect to such delinquent Owner. Suit to recover judgment for unpaid Assessments shall be maintained without foreclosing or waiving any lien for such Assessments created pursuant to this Declaration. In any action instituted by the Association to collect delinquent Assessments, accompanying late charges and/or interest, the prevailing party shall be entitled to recover costs and reasonable attorney's fees.

**Section 4.17 Suspension for Non-Payment of Assessment.** The Board may suspend the voting rights and right to use the Common Area of a Member who is in default in the payment of any Assessment after notice to such Member and an opportunity for a hearing before the Board which satisfies the minimum requirements of Section 7341 of the Corporations Code and as provided in the Bylaws.

**Section 4.18 Unallocated Taxes.** In the event that any taxes are assessed against the Common Area, or any portion thereof, the personal property of the Association or the Development as a whole, rather than against the Condominiums, said taxes shall be included in the Assessments made under the provisions of Section 4.1, and, if necessary, a Special Assessment may be levied against the Condominiums in an amount equal to said taxes to be paid in two installments, each thirty (30) days prior to the due date of the respective tax installment.

**Section 4.19 Review of Accounts, Revenues and Expenses.** As provided in Civil Code Section 1365.5, the Board shall, on at least a quarterly basis:

- (a) Review a current reconciliation of the Association's operating accounts.

- (b) Review a current reconciliation of the Association's reserve accounts.
- (c) Review the current year's actual reserve revenues and expenses compared to the current year's budget.
- (d) Review the latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts.
- (e) Review an income and expense statement for the Association's operating and reserve accounts.

For purposes of this Section 4.19, "review" shall include preparing reasonable documentation of such review.

**Section 4.20 Expenditure of Reserve Funds.** In accordance with Section 1365.5 of the Civil Code, the Board shall not expend funds designated as reserve funds for any purpose other than: (i) the repair, restoration, replacement or maintenance of major components for which the Association is obligated and for which the reserve fund was established, or (ii) litigation involving the purposes set forth in (i) above. Notwithstanding the provisions of (i) and (ii) above, the Board:

(a) May authorize the temporary transfer of money from the reserve account to the Association's operating account to meet short term cash flow requirements or other expenses, if the Board has provided notice of the intent to consider the transfer in a notice of meeting, which shall be provided as specified in Civil Code Section 1363.5. The notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a special assessment may be considered. If the Board authorizes the transfer, the Board shall issue a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund.

(b) Shall cause the transferred funds to be restored to the reserve account within one year of the date of the initial transfer; except that the Board may, after giving the same notice required for considering a transfer, and upon, making a documented finding that a delay of restoration of the funds to the reserve account would be in the best interests of the Development, temporarily delay the restoration.

(c) Shall exercise prudent fiscal management in maintaining the integrity of the reserve account and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits specified in (2) above. The Board may, at its discretion, extend the date the payment on the Special Assessment is due; however, any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment. Any such Special Assessments shall be subject to the limitations specified in Section 4.4.

(d) Subject to the provisions of Article 10 below, when the decision is made to use reserve funds or to temporarily transfer funds from the reserve account to pay for litigation, the Association shall notify the Members of that decision in the next available mailing to all Members pursuant to Section 5016 of the California Corporations Code, and of the availability of an accounting of those expenses. The Association shall make an accounting of such expenses on at least a quarterly basis, and such accounting shall be made available for inspection by Members at the Association's office.

(e) The signatures of at least two (2) persons, who shall be members of the Board, or one officer who is not a member of the Board and one member of the Board, shall be required for the withdrawal of moneys from the reserve account.

**Section 4.21 Reserve Studies.** At least once every three years, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obliged to repair, replace, restore or maintain, as part of a study of the reserve account requirements, if the current replacement value of the major components which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half of the gross budget of the Association for any fiscal year, which excludes the Association's reserve account for that period. In addition, the Board shall annually review, or cause to be reviewed, the reserve account study and shall consider and implement necessary adjustments to its analysis of the reserve account requirements as a result of that review. The reserve account study shall at a minimum include the items and components set forth in Civil Code Sections 1365.5(c) and 1365.2.5.

## ARTICLE 5

### MAINTENANCE, REPAIR AND IMPROVEMENT

**Section 5.1 Association's Rights and Obligations to Inspect, Maintain and Repair the Development.** Coincident with the first conveyance of a Condominium by Declarant, the Association shall repair, restore, replace and maintain in good condition and appearance all of the Common Area and all facilities, improvements, furnishings, equipment and landscaping thereon, including, without limitation, any responsibilities under the Reciprocal Easement Agreement; provided however, that the Association shall not be responsible for the routine maintenance and cleaning of any Exclusive Use Common Area appurtenant to an Owner's Unit; which routine maintenance and cleaning shall be performed by the owner of the Unit to which said Exclusive Use Common Area is appurtenant, as further described in Section 5.2 below. Without limitation of the foregoing, reference is made to Exhibit A hereto for specific Association maintenance and repair obligations. Subject to the provisions of Sections 5.1 and 5.2, the Association shall maintain, repair, replace and restore the structural components of the Condominium Building associated with the Exclusive Use Common Areas (excepting an Owner's or tenant's personal improvements to said Exclusive Use Common Areas which shall be the responsibility of such Owner or tenant). The replacement of any of the Common Area shall be of equal or greater grade or quality than the original installation. All maintenance and repair of the Condominium Building and any portion of the Common Area shall be performed by only licensed professionals.

The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an Owner or his or her guests, tenants or invitees, or the pets of an Owner or his guests, tenants or invitees, except that if a repair or replacement is covered by the insurance carried by the Association, the Association shall be responsible for making the repairs or replacements, and the responsible Owner shall pay any deductible pursuant to the insurance policy. If the responsible Owner fails to pay such deductible, the Association may make such payment and shall charge the responsible Owner which charge shall bear interest at the rate of ten percent (10%) per annum (but no greater than the maximum rate permitted by law) until paid in full. Any repairs or replacements arising out of or caused by the willful or negligent act or neglect of an Owner or his guests, tenants or invitees, or the pets of an Owner or his guests, tenants or invitees the cost of which is not covered by insurance carried by the Association shall be made by the responsible Owner; provided that the Association approves the person actually making the repairs, which person shall be a licensed professional, and the method of repair and any such repair shall comply with the rules and regulations of the Architectural Control Committee as approved by the Board, and shall comply with the Reciprocal Easement Agreement.

If an Owner fails to make any repairs or replacements for which that Owner is responsible as provided herein this Article 5, then, upon a vote of a majority of the Board and after notice to the Owner and an opportunity for a hearing before the Board, the Association shall have the right, but not the obligation, to perform such maintenance, repairs or replacements and, if necessary in connection therewith, to enter that Owner's Unit, as further described in Section 5.2 below. The cost of such repairs or replacements shall be paid to the Association by said responsible Unit Owner, as further described in Section 5.2 below.

In furtherance of the Association's obligations described in this Section 5.1, the Board shall have the obligation to regularly and actively inspect, or cause to be inspected by a qualified professional, the Common Area and all facilities, improvements, furnishings, equipment and landscaping thereon (other than Exclusive Use Common Areas appurtenant to Owners' Units, as described in Section 5.2 below), to determine the need for repairs, replacements, restorations and maintenance in order to keep the Common Area and all facilities, improvements, furnishings, equipment, landscaping in good repair, working order, condition and appearance. The Board shall keep a written record and documentation of the results of such inspections. The Board shall promptly and without delay cause any necessary maintenance, repair, replacements or restorations to be performed by a qualified licensed professional in a timely manner.

**Section 5.2 Owner's Right and Obligation to Inspect, Maintain and Repair.** Except for those portions of the Development which the Association is required to maintain and repair, each Owner shall, at his or her sole cost and expense, maintain and repair his or her Unit, keeping the same in good condition and repair. Each Owner's responsibility for maintenance and repair shall include, without limitation, performance of any inspection, maintenance and repair described in any homeowners manual, maintenance manual or manufacturers manual provided to such Owner or the Association by Declarant, and each Owner shall perform, without limitation, any cleaning, maintenance and repair described on Exhibit A attached hereto, and by this reference made a part hereof. Each Owner shall keep any Exclusive Use Common Area to which he has an easement or assignment clean and neat and shall maintain, repair and otherwise care for any personal property, landscaping, irrigation system, or improvements located within or upon any such Exclusive Use Common Area. All maintenance and repair shall be in accordance with the Association Rules and shall be performed only by licensed professionals.

Subject to the Association Rules, each Owner shall have the exclusive right to paint, plaster, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his Unit in a manner which does not intrude on or into the Common Area, which does not transmit unreasonable noise through the Common Area as reasonably determined by the Board and which is not visually offensive to persons of ordinary sensibilities viewing from the Common Area or public areas as reasonably determined by the Board. In the event an Owner fails to maintain the interior of his Unit or fails to perform routine cleaning and maintenance of any Exclusive Use Common Area to which he has an easement or assignment in a manner which the Board deems necessary or appropriate to preserve the appearance and value of the Development, the Board may notify the Owner of the work required and request that the Owner complete such work within sixty (60) days from the date such notice was given to the Owner. In the event said Owner fails to complete such work within said period, the Board may, after written notice to the Owner and an opportunity for a hearing before the Board, cause such work to be done and the cost of such work shall be a monetary penalty enforceable according to the provisions of the Bylaws and this Declaration and shall be payable to the Association by such Owner.

In furtherance of each Owner's obligations described in this Section 5.2, each Owner shall regularly and actively inspect, or cause to be inspected by a qualified professional, his or her Unit, in order to maintain his or Unit in good repair, condition and appearance. Each Owner shall promptly and

without delay cause any necessary maintenance, repair, replacements or restorations to his or her Unit to be performed by a qualified licensed professional in a timely manner.

**Section 5.3 Maintenance of Landscaping.** The Association shall maintain all of the landscaping within the Development (other than that placed on Exclusive Use Common Area by an Owner or tenant), if any, in general accordance with the landscaping plans as originally installed unless climatic conditions make such maintenance impracticable or unless the Board consents to a change in the plan for the landscaping.

**Section 5.4 Access at Reasonable Hours.** For the purpose of performing the maintenance and/or repairs authorized by this Article 5, the Association's agent or employee shall have the right, after reasonable written notice to the Owner (received by Owner pursuant to Section 11.12 not less than twenty-four (24) hours prior to entry, unless an emergency exists, in which case no written notice need be given), to enter any Unit during reasonable hours with as little inconvenience to the Owner as is practicable.

**Section 5.5 Capital Improvements by Association.** The Association may purchase furniture or fixtures or may construct or cause to be constructed capital improvements upon the Common Area; provided, however, that the Association shall not incur in any fiscal year aggregate expenses for such purchases and construction which exceed five percent (5%) of the budgeted gross expenses of the Association for such fiscal year without the vote or written assent of a majority of each class of Members or, in the event Class B shares have been converted to Class A shares, the vote or written assent of a majority of the total voting power of the Association as well as the vote or written assent of a majority of the total voting power of Members other than Declarant.

## ARTICLE 6

### UTILITIES AND EASEMENTS

**Section 6.1 Owners' Rights and Duties.** The rights and duties of the Owners with respect to sanitary sewer, water, cable television, electricity, gas and telephone Lines and facilities and heating and air-conditioning facilities shall be as follows:

(a) Whenever sanitary sewer, water, cable television, telephone, electricity, gas, heating or air-conditioning conduits, ducts or flues are installed within the Development, which connections, or any portion thereof, lie in or about Units owned by a Person other than the Owner of a Unit served by said connections, the Association shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon the Units or to have the appropriate utility companies enter the Units after reasonable notice and during reasonable hours (except, in the event of an emergency in which case entry may occur at anytime without notice), in or about which said connections, or any portion thereof, lie to repair, replace and generally maintain said connections as and when necessary.

(b) Whenever sanitary sewer, water, cable television, telephone, electricity, gas, heating or air-conditioning conduits, ducts or flues are installed within the Development which connections serve more than one Unit, the Owner of each Unit served by said connection shall be entitled to full use and enjoyment of such portions of said connections as service his Unit.

(c) Whenever internal and external telephone wiring for a Unit, or any portion thereof, lies in or about the Development, the Owner of the Unit served by such wiring shall be entitled to reasonable access to the Development for the purpose of maintaining such wiring. Said access shall be

subject to the consent of the Board whose consent shall not be unreasonably withheld and which may include the Association's approval of telephone wiring upon the exterior of the Common Area and other conditions as the Board determines reasonable.

(d) In the event of a dispute between Owners with respect to the repair or rebuilding of the above-described connections, or with respect to the sharing of the cost thereof, then, upon request of one of such Owners addressed to the Association, the matter shall be submitted to the Board who shall hold a hearing and decide the dispute and the decision of the Board shall be final and conclusive upon the parties.

(e) Any air heating, air conditioning, water heating equipment, lighting fixtures and outlets thereof, which are a part of a discrete and complete system serving only one Unit shall be maintained by the Owner of the Unit served by said equipment.

**Section 6.2 Association's Duties.** The Association shall maintain all utility connections, sanitary sewers and storm drainage facilities located in the Common Area, except for those installations maintained by utility companies whether public, private or municipal. All storm drainage facilities shall be regularly inspected and, if necessary, cleaned or otherwise maintained. The Association shall pay all charges for utilities supplied to the Development except those metered or charged separately to the Condominiums.

**Section 6.3 Easements for Utilities and Maintenance.** Easements over and under the Development for (a) the installation, operation, repair and maintenance of electric, telephone, water, gas and sanitary sewer Lines and facilities, (b) heating and air-conditioning Lines and facilities, (c) cable or master television antenna Lines and facilities, (d) drainage Lines and facilities, and (e) walkways and landscaping, as such easements are recorded or are needed to service the Development or any portion thereof, are hereby reserved by Declarant and Declarant's successors and assigns together with the right to grant and transfer the same.

**Section 6.4 Easements for Ingress, Egress and Support.** Unless designated Exclusive Use Common Area, which use is restricted as described on the Condominium Plan or this Declaration for the benefit of less than all Units, there is appurtenant to each Condominium nonexclusive rights of ingress, egress and support, if necessary, through, on, upon or over the Common Area.

**Section 6.5 Encroachment Easements.** In interpreting deeds and the Condominium Plan, the existing physical boundaries of a Unit shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the deed or Condominium Plan. As such, each Unit within the Development is hereby declared to have an easement over all adjoining Units and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, reconstruction, repair, movement, settlement or shifting of any building or any similar cause. In addition, each Unit is subject to such encroachments by the Common Area as may now exist or may hereafter be created by any of the causes referred to in this Section. There shall be valid easements for the maintenance of said encroachments as long as they shall exist and the rights and obligations of the Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of such Owner or Owners. In the event a structure is partially or totally destroyed and is then repaired or rebuilt in substantially the same manner as originally constructed, the Owners of each Condominium agree that minor encroachments over adjoining Units or the Common Area shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. In Units where air conditioning equipment or water/utility shut-off valves are installed, an easement over the Common Area into which the air

conditioning equipment encroachments shall exist for the purpose of maintenance, replacement and repair of said equipment.

**Section 6.6 Right to Grant Easements.** In addition to the Exclusive Use Common Areas designated on the Condominium Plan, Declarant reserves the right to grant easements over the Common Area for the exclusive use by an Owner or Owners of contiguous property. Any such easement may be conveyed by the Declarant before the last close of escrow for sale of a Condominium in the Development. Such conveyance must be approved by the Board, which approval must not be unreasonably withheld. The purpose of the easement, the portion of the Common Area affected, the Condominium to which the easement is appurtenant, and any restrictions on use of the easement area shall be identified in a recorded grant of easement.

**Section 6.7 Right of Entry.**

(a) **Association.** The Association has the right to enter each Condominium to inspect the Development, and may take whatever corrective action it determines to be necessary or proper. Entry onto any Condominium Unit under this subsection may be made after at least three (3) days advance written notice to the Owner of the Unit except for emergency situations, which shall not require notice. Any damage to the Condominium caused by entry under this subsection shall be repaired by the Association.

(b) **Declarant.** Declarant has the right to enter any Condominium Unit and the Common Area (i) to inspect the Development, (ii) to complete and/or repair any improvements within the Development it determines necessary or proper, in its sole discretion, (iii) perform any warranty work it determines necessary or proper, (iv) to comply with requirements for the recordation of the Map or Condominium Plan or the grading or construction of the Development, and (v) to comply with requirements of applicable governmental agencies. Declarant shall provide reasonable notice to an Owner prior to entry into the Owner's Unit under this subsection except for emergency situations, which shall not require prior notice, but shall require notice to the Owner within seven (7) days after such entry was made. Any damage caused by entry under this subsection shall be repaired by the Declarant. Unless otherwise specified in the initial grant deed of the Condominium Unit from Declarant, this right of entry shall automatically expire eleven (11) years from the last close of escrow for the sale of a Condominium in the Development.

**ARTICLE 7**

**USE RESTRICTIONS**

In addition to all of the conditions and covenants contained herein, the use of the Development and each Unit therein is subject to the following restrictions:

**Section 7.1 Residential Use.** No Condominium shall be occupied and used except for residential purposes by the Owners, their tenants, and guests, and no trade or business shall be conducted in any Condominium, except that Declarant, its successors or assigns, may use any Condominium or Condominiums in the Development owned by Declarant for a model home site and display and sales/construction/customer service office during construction and until the last Condominium is sold by Declarant. A Condominium may be used as a combined residence and executive or professional office by the Owner or other occupant of the Unit, thereof, provided that (i) such use does not interfere with the quiet enjoyment by other Condominium Owners of their Condominiums, (ii) there is no signage visible from the exterior of the Unit, and (iii) such use does not include visiting clients or employees.

(a) Residents shall be limited as follows: With the exception of infants and children, no more than two (2) persons per bedroom in any Condominium shall be permitted as permanent residents. A "permanent resident" means any person residing in a Condominium more than sixty (60) days out of any twelve (12) consecutive month period. One (1) person shall be allowed in addition to the maximum number of permanent residents otherwise permitted in each Condominium.

(b) No health care facilities operating as a business or charity shall be permitted in the Development.

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

**Section 7.2 Nuisance.** No nuisance, use or practice is permitted which is detrimental to the health, safety and welfare of the residents or interferes with their peaceful possession or proper use of their Units. No use is allowed which creates conditions that are hazardous, noxious or offensive through the emission of odor, fumes, smoke, cinders, dust, gas, vibration, glare, refuse, water-carried waste or excessive noise or which, in any manner, increases the rates of insurance for the Development, causes an insurance policy to be canceled, causes a refusal to renew an insurance policy or impairs the structural integrity of any building. To the extent storage of materials is permitted pursuant to the Condominium Documents, such storage must be in accordance with building, fire, health and safety requirements as set forth by governmental authorities and insurance carriers.

### **Section 7.3 Vehicle Parking and Operation Restrictions.**

(a) No vehicle shall be parked, stored or operated within the Development, except as permitted by this Section 7.3. An Owner or authorized occupant of a Unit which has been assigned a designated Exclusive Use Common Area parking area pursuant to Section 2.2(c) this Declaration shall be permitted to park one (1) licensed passenger automobile, sports utility vehicle, motorcycle, truck with carrying capacity of ½ ton or less, or van with seating capacity on of eight (8) persons or less within said parking space. No commercial vehicle, trailer, camper, mobile home, recreational vehicle, truck with carrying capacity of greater than ½ ton, van with seating capacity in excess of eight (8) persons, boats, inoperable vehicles or any vehicle too large to fit within a single parking space shall be parked or kept within the Development.

(b) Owners shall use their Exclusive Use Common Area parking space(s) for no other purpose except parking of vehicles as permitted under this Section 7.3. Parking spaces shall not be used for storage of any items. No vehicle shall be operated upon the Development which emits extraordinary and offensive levels of exhaust pollution or noise, as such levels may be determined by the Board. No Owner shall allow oil, grease, antifreeze or any other fluid to leak from and remain in any portion of the garage or parking areas. Any Owner who allows such fluid to remain in any such areas shall be responsible for any expense incurred by the Association to remove such fluid and clean such area.



The Association may establish Association Rules for the parking of vehicles within the Development. All guest parking areas shall be used in accordance with this Section 7.3 and the Association Rules.

(c) The Association may cause the removal of any vehicle wrongfully parked within the Development or operating in violation of this Section 7.3, including a vehicle owned by an Owner or occupant, to be towed and stored at the vehicle owner's expense and the Owner or occupant responsible for the presence of such vehicle shall indemnify, defend and hold the Association, its Board Members, officers, managers and employees harmless for any damage to Persons or property which may result. Before removing any vehicle as provided herein, the Association shall comply with the requirements of Vehicle Code § 22658.2 in effect on the date of this Declaration or as amended. If said Vehicle Code section is amended, this provision automatically shall be amended in the same manner. The Association may install a sign at each vehicular entrance to the Development containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Development will be removed at the owner's expense. Such sign shall comply with the provisions of Vehicle Code § 22658.2.

(d) Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated for disabled persons without proper authority, or in a manner which interferes with any entrance to, or exit from, the Development or any parking space or Condominium located thereon.

(e) The Association shall have the right to temporarily relocate any Owner's parking space(s) during cleaning, painting, construction activities, or other maintenance or repair work within the garage area.

(f) In the event that an Owner that is not handicapped (as defined by applicable laws) is assigned or granted the use of a designated handicap parking space, the Board may reassign the handicap parking space to another Owner who becomes handicapped for an extended period of time, or to a new Owner or occupant of a Unit who is handicapped. The Board shall have the authority to reassign and cause the transfer of parking spaces in a reasonable manner as the Board deems necessary to provide any Owner or occupant of a Unit with a designated handicap parking space, if said Owner or occupant is legally entitled to the use of a designated handicap parking space. In the event that the Board determines to transfer a parking space as provided in this subsection, the Board shall have the authority to execute and record any documents necessary to facilitate and memorialize such a reassignment and transfer. Both the transferor Owner(s) and transferee Owner(s) of the parking space(s) shall execute and record any easement, deed or other document required, as determined by the Board, to facilitate and finalize such a reassignment and transfer. All costs for such a transfer shall be borne by the transferee Owner receiving such a handicap parking space.

(g) Reference is made to Section 2.2(c)(1) of this Declaration for further restrictions concerning the parking in the Development.

#### **Section 7.4 Animals.**

(a) No animals, reptiles, rodents, birds, fish, livestock or poultry shall be kept in any Unit or elsewhere within the Development, except that domesticated dogs, domesticated cats, birds kept in bird cages, fish kept within an aquarium, or other animals as described in the Association Rules, may be kept as household pets within any Unit if such animal(s) are not kept, bred or raised for commercial purposes. With the exception of fish, there shall be no more than a total of two (2) pets kept in any Unit. In no event shall any dog weighing greater than eighty pounds (80lbs.) be kept in any Unit or elsewhere in the Development. In no event shall any Pit Bull Terrier, Rottweiler, Presa Canario or other fighting breed type of dog(s) be kept in any Unit or elsewhere in the Development. There shall be no limitation on

“disability assistance” dogs as certified by the applicable government authority for assistance of visually impaired persons. The keeping and control of each type of pet shall be expressly subject to such controls or prohibitions as may be reasonably adopted by the Board from time to time. No pet may be kept on the Development if the Board, after a hearing, determines, in its sole good faith judgment, that it would result, would continue to result or has resulted in substantial noise or other annoyance or that it would be, would continue to be or has been obnoxious, menacing or threatening to a person of ordinary sensibilities living within a Unit in the Development. Any decision regarding the conduct of a pet shall be made only after notice to the Owner and the opportunity to be heard before the Board.

(b) No pets shall be allowed in the Common Area except as may be permitted by the rules of the Association. No dog whose barking unreasonably disturbs other Owners shall be permitted to remain on the Development. Owners shall prevent their pet from soiling any portion of the Common Area and shall promptly clean up any fouling by their pet. Declarant or any Owner may cause any unauthorized pet found in the Common Area to be removed to a pound or animal shelter under the jurisdiction of the City and County of San Francisco, by calling the appropriate authorities, whereupon the Owner (upon payment of all expenses connected therewith) may repossess the pet. Each person bringing or keeping a pet upon the Development shall be liable to the other Owners, their family members, guests, invitees, tenants and contract purchasers and their respective family members, for any damage to Persons or property proximately caused by any pet brought upon or kept upon the Development by such person bringing or keeping a pet upon the Development. Notwithstanding anything contained herein, each owner of a pet shall comply with each applicable ordinance of the City and County of San Francisco.

**Section 7.5 Garbage and Refuse Disposal.** All rubbish, trash and garbage shall be regularly removed from the Development and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall, at all times, be kept in designated sanitary containers. All equipment for the storage or disposal of such waste material shall be kept in a clean, orderly and sanitary condition. To the extent reasonable, all equipment, garbage and trash containers, woodpiles or storage piles shall be kept in enclosed areas.

**Section 7.6 Right to Lease.** With the exception of a Mortgagee in possession of a Unit following a default in a First Mortgage, a foreclosure proceeding or any other deed or other arrangement in lieu of foreclosure, no Owner shall be permitted to lease his Condominium for transient or hotel purposes which shall be defined as (i) rental for any period less than six (6) months, or (ii) any rental if the occupants of the Unit are provided customary hotel services such as room service for food and beverage, maid services or the furnishing of laundry and linen subject to a fee. Subject to the foregoing restriction, the Owner of the Condominium shall have the right to lease his Condominium provided that the lease is for the entire Condominium (the taking in of a roommate by an Owner shall not be a violation of this clause), is in writing and is expressly made subject to the Condominium Documents and further provided that the breach by the tenant of such covenants, conditions, restrictions, limitations, uses or rules shall also be a breach of the lease.

In the event an Owner does lease his Condominium as herein provided, he shall, within three (3) days of execution of the lease, provide the Board or the manager with the following:

- (a) Name of each permitted occupant;
- (b) Current address and telephone of the Owner;
- (c) A statement by the Owner that the tenant has received a copy of the Declaration and any amendment thereto, the Articles, the Bylaws, the Association Rules, if any, and any rules and

regulations of the Architectural Control Committee and that such tenant has been advised of any obligation he may have thereunder;

(d) A statement by the Owner that the lease does not relieve the Owner of his obligation to pay each and every Annual Assessment and Special Assessment to the Association; and

(e) The duration of the lease.

**Section 7.7 Radio and Television Antennas; External Lines, Wiring or Equipment.** No television or radio poles, antennae, flag poles, clothes lines or other external fixtures other than those originally installed by Declarant or approved by the Association, and any replacements thereof, shall be constructed, erected or maintained on or within the Development. No wiring, insulation, air-conditioning or other machinery or equipment other than that originally installed by Declarant or approved by the Association, and any replacements thereof, shall be constructed, erected or maintained on or within the Common Area. No alteration to or modification of a central radio and/or television antenna system, cable television system, or other central television reception system, whichever is applicable, whether developed by Declarant, cable television franchisee, or other such service provider engaged by Declarant or the Association, shall be permitted. Each Owner shall have the right to maintain video or television antennae within completely enclosed portions of his Unit subject to the following requirements:

(a) The location of common antennae or connection facilities for radio, video or any cable television serving one or more Units shall be as designated by the Board, and each Condominium and its Owner shall be subject to the right of other Owners or the Association to install, use and maintain such common antennae and facilities.

(b) Each Owner shall have the right to install or use a video or television antenna (including a satellite dish) with a diameter or diagonal measurement of thirty-six (36) inches or less so long as said antenna or satellite dish is not visible from the street or the Common Area, subject to the following restrictions:

(1) Prior to installation of the antenna, the Owner must give notice and make application for the approval of the Association.

(2) The Owner requesting approval shall demonstrate reasonable provision for the maintenance, repair or replacement of roofs or other building components.

(3) Installers of a video or television antenna shall be required to indemnify or reimburse the Association and its Members for loss or damage caused by the installation, maintenance or use of a video or television antenna. Any contractors employed to install such antennae or related equipment shall be licensed and insured in accordance with applicable governmental regulations.

(4) Applications for the approval of the installation and use of a video or television antenna under this Section shall be processed in the same manner as an application for construction or alteration, and the issuance of a decision on an application shall not be willfully or unreasonably delayed.

(5) The Board shall, in acting upon requests for approval of a satellite dish or other signal reception or transmission devices, comply with Civil Code Section 1376 and Federal Communications Commission regulations. In any action to enforce compliance under this Section 7.8(b), the prevailing party shall be entitled to reasonable attorneys fees, pursuant to Civil Code Section 1376(d).

(c) Notwithstanding any other provision in this Section 7.8, no antennae, satellite dish or other external wiring or equipment shall be permitted to be affixed or attached in any way to any exterior façade or other exterior portions of the building without the express prior written consent of the Board. No antennae, satellite dish or other external wiring or equipment shall be installed in any portion of the Development without first obtaining all required permits and approvals from the San Francisco Planning Department, Department of Building Inspection and all other applicable agencies.

**Section 7.8 Power Equipment; Car Maintenance; Hazardous Materials.** No power equipment, hobby shops or car maintenance, other than emergency work, shall be permitted in the Development. Owners shall not use or keep on the Development any gas, solvent, kerosene or other combustible substance, or other hazardous material. No tank for the storage of gas, liquid, explosive or any flammable substance shall be stored on or in the Development unless such installation is done by Declarant. Parking area(s) shall not be used for vehicle maintenance or repair.

**Section 7.9 Liability of Owners for Damage.** The Owner of each Condominium shall be liable to the Association for all damages to the Common Area caused by such Owner or any tenant, guest or occupant of such Owner's Unit.

**Section 7.10 Storage.** Nothing shall be stored in the Common Area and/or any Exclusive Use Common Area (except for storage areas designated for storage purposes, if any) without the prior written consent of the Board. Terraces, balconies, decks and patios shall not be used for storage of bicycles or any other items. No perishable items, combustible substance or other hazardous material whatsoever shall be stored in any Exclusive Use Common Area storage area. Reference is made to Section 7.28 below for further restrictions on storage of items in the basement of the Condominium Building.

**Section 7.11 Declarant's Sales Activities.** Declarant and Declarant's successors and assigns may use the Common Area and/or one (1) or more of the various Units owned by Declarant from time to time as a sales model, design center or display and sales office, and may maintain reasonable displays and conduct reasonable activities related to sales and customer service therein, until such time as the last Unit is sold.

**Section 7.12 Signs.** No commercial sign of any kind shall be displayed to the public view on or from any Unit or the Common Area without the prior written consent of the Board subject to the following exceptions:

- (a) Development identification signs;
- (b) Signs advertising any Condominium for sale or exchange of a reasonable design and size and in a reasonable location as previously approved in writing by the Board; and
- (c) Signs maintained by Declarant in connection with its sales activities. Notwithstanding anything contained herein, any sign which is displayed shall conform to each applicable ordinance of the City and County of San Francisco regarding signs.
- (d) Noncommercial signs may be restricted by the Board as provided in Civil Code Section 1353.6.

Subject to the provisions of Section 11.4 of this Declaration, no sign of any type or purpose with dimensions greater than twelve inches (12") in height by twenty-four inches (24") in width shall be displayed on or from any Condominium Unit or the Common Area. Subject to the provisions of Section

11.4 of this Declaration, no more than one (1) permitted sign shall be displayed from any Unit at any given time.

**Section 7.13 Spas; Whirlpool Baths; Hot Tubs.** In no event shall any spa, hot tub or whirlpool bath be permitted in any Unit.

**Section 7.14 Combination of Units.** Contiguous Units may be combined for use as a single residence with the Board's approval or Declarant's approval, prior to election of the Board. Before the Board shall consent to any such combination (except for combinations accomplished by Declarant prior to the conveyance of all Condominiums which shall not require Board approval), it shall first receive and give its approval of:

- (a) Architectural plans;
- (b) A certificate of a structural engineer licensed in the State of California and approved by the Board stating that those portions of the Common Area affected by the proposed combination are not required for structural support;
- (c) A bid by a contractor licensed in the State of California and approved by the Board setting forth the cost to make the proposed combination and the time within which the combination could be completed;
- (d) A bond naming the Board as an obligee (or other security approved by the Board) to assure the prompt completion of the combination in a workmanlike manner free of mechanics liens;
- (e) All building and other governmental permits required for the construction; and
- (f) A certificate of an electrician and/or plumber, as applicable, licensed in the State of California setting forth in detail the effect the proposed combination would have on any plumbing and wiring within the Common Area to be affected by the proposed combination.

The Owner of such combined Units shall be entitled to the votes and shall be obligated to pay the Assessments on each of the owned Units in the same manner as if they had not been combined.

The Board shall permit reconstruction of such Units as independent Units in conformance with the Condominium Plan upon the Board's receipt and approval of items (a) through (f) above relating to such reconstruction. No Unit shall be independently conveyed, leased or transferred as an independent Unit unless and until such reconstruction has been accomplished.

**Section 7.15 Water Beds.** No water beds shall be used or installed in any Unit located above any other Unit without the prior written approval of the Board. If the Board approves the use or installation of a water bed, the Board shall establish Association Rules applicable to Units located above other Units regarding quality of materials and method of installation with respect to water beds.

**Section 7.16 Floor Coverings.** No change in the type of floor covering materials as were originally installed in the Units shall be permitted except with the consent of the Architectural Control Committee. To reduce sound transmission, all Units above other Units shall have sixty-five percent (65%) of all floor areas except kitchens and bathrooms covered with carpet, rugs or other material approved by the Architectural Control Committee that provides equivalent insulation against sound transmission to the Unit below. Each installation of carpeting shall include carpet padding or carpet cushion which meets or exceeds the specifications for Class I padding (Heavy Traffic, Residential or

Commercial). All rugs shall be of sufficient thickness and/or shall include padding to provide adequate insulation against sound transmission to the Unit below. The installation of any type of hard surface flooring in a Unit shall include sound dampening and/or insulating materials in order to reduce sound transmission, as approved by the Architectural Control Committee. If any change is proposed to any floor covering in a Unit, the Architectural Control Committee shall require that the replacement covering provide the same or better acoustical characteristics as the floor covering that is being replaced.

**Section 7.17 Conduct Affecting Insurance.** Nothing shall be done or kept in any Unit or in the Common Area which will increase the rate of insurance on the Common Area without the prior written consent of one-hundred percent (100%) of the Owners. No Owner shall permit anything to be done or kept in his Unit or in the Common Area which will result in the cancellation of insurance on any Unit or on any part of the Common Area or which would be in violation of any law. No waste shall be permitted in the Common Area. No gasoline, kerosene, cleaning solvents, flammable liquids, or other hazardous materials shall be stored in the Common Area, Storage Areas or Parking Areas.

**Section 7.18 Common Utilities.** No change in the utility requirements of a Unit may be accomplished by an Owner without the prior approval of the Board if such utility is metered on a meter shared by other Units or the Common Area. No major power tools or other power-consuming devices shall be operated in the garage, parking areas or other portions of the Common Area without prior approval of the Board.

**Section 7.19 Roof.** No person except maintenance personnel authorized by the Board shall walk on any roof area without the prior consent of the Board except for areas constructed for such use, if any.

**Section 7.20 Guests and Lessees.** Each Owner shall be responsible for compliance with the provisions of this Declaration and the Bylaws and any Association Rules by his guests and lessees (including without limitation employees, customers and invitees of a lessee).

**Section 7.21 Compliance with Laws.** No Owner shall permit anything to be done or kept in his Unit which is in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.

**Section 7.22 Damage to Common Area and Personal Injuries.** Each Owner shall be liable to the remaining Owners for any damage to the Common Area that may be sustained by reason of the negligence of that Owner, members of his family, his contract purchasers, tenants, guests or invitees to the extent that any such damage is not covered by insurance. Each Owner, by acceptance of his deed, agrees for himself and for the members of his family, his contract purchasers, tenants, guests or invitees to indemnify each and every other Owner and to hold such Owner harmless from, and to defend such Owner against, any claim by any Person for personal injury or property damage occurring (a) within the Unit of that particular Owner or (b) within any exclusive easements over the Common Area appurtenant to his Unit, unless the injury or damage occurred by reason of the negligence of another Owner temporarily visiting in said Condominium or portion of the Common Area subject to an exclusive easement appurtenant to the Unit or is fully covered by insurance.

**Section 7.23 Noise Abatement.** All stereos, televisions, radios, tape recorders, computers, vacuum cleaners, hair dryers, exhaust fans, tools, exercise equipment or similar noise producing products located in an Owner's Unit shall be operated in such a manner that they cannot be heard in any bedroom of any other Unit in the Development during the hours of 10 p.m. to 8 a.m. Each Owner and occupant of a Unit shall comply with any Rules of the Association with respect to noise and shall cause no noise which unreasonably disrupts another Owner or occupant's quiet enjoyment of their Unit.

**Section 7.24 Use of Terraces, Balconies, Patio Areas, Yards.** No activities shall occur on any terrace, balcony, patio area or yard, including any common terrace, deck or other such area shared by all Owners, that will cause a disturbance to Owners or occupants of other Units. There shall be no use of barbecues or other outdoor cooking on any private terraces, balconies, patio areas, or any common decks or other such areas shared by all Owners. Each Owner shall, at all times, keep his or her terrace, balcony, patio area or yard free and clear from debris and maintain it in a neat, clean, attractive, safe and first-class manner. No owner shall leave any personal items on any common roof deck or other such area shared by all Owners when that Owner is not present. In recognition that terraces, balconies or patio areas, as applicable, may have open decking to allow for proper drainage, or may be situated such that runoff from said area may drain onto the Common Area, an Owner shall not be responsible to any other Owner or the Association for the unintentional spillage of water or other inoffensive or non-harmful material from his or her terrace, balcony or patio area through such open decking or drainage; provided, however, that an Owner shall not allow excessive amounts of water to pool or collect upon, spill or drain from that Owner's terrace, balcony or patio area. Owner's shall keep water collection basins underneath all plants located in terraces, balconies and patio areas in order to prevent water from leaking from such plants onto or from the surface of the terrace, balcony or patio area. Use of any common roof deck by the Owners or their tenants and guests shall be subject to and in strict accordance with the Association Rules. Terraces, balconies, decks and patios shall not be used for storage of bicycles or any other items.

**Section 7.25 Window Coverings.** Curtains, drapes, blinds, shutters or other window coverings visible from the street or Common Area shall be restricted to a neutral, white or off-white color, unless expressly approved by the Board or the Architectural Control Committee. Windows shall not be covered with newspaper, aluminum foil, bed sheets or other materials not designed for covering windows.

**Section 7.26 Architectural Control.** In order to promote a harmonious and cohesive physical environment within the Development, and to prevent additions, alterations, or replacements which are reasonably likely to adversely affect property values throughout the Development, the Board is empowered to promulgate and enforce architectural controls and restrictions as described herein this Section. The ultimate responsibility shall remain with the Board, but the Board may delegate its authority to an Architectural Control Committee as provided herein and in the Bylaws. The Board or the Architectural Control Committee shall establish reasonable, objective standards clearly ascertainable to the Owners, and shall not act arbitrarily or capriciously in the process of reviewing plans. Such standards may include construction rules, including, without limitation, permitted hours of construction, procedures for access to the Condominium Building, noise controls, and other typical construction guidelines. The emphasis shall be upon uniformity of appearance, and consistency in carrying out Declarant's original design and architectural scheme for the Development. The Board and the Architectural Control Committee shall base their decisions on what is in the best interests of the Development as a whole, and not upon what will appease a particular Member or group of Members. Both the Board and the Architectural Control Committee shall operate pursuant to the following guidelines:

(a) The provisions of this Section 7.26, and the actions of any Owner, the Board and the Architectural Committee hereunder shall be subject to and shall conform to the applicable requirements of the Reciprocal Easement Agreement.

(b) No improvement, alteration or structure of any kind shall be commenced, installed, erected, painted, repainted or maintained upon the Development, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the Board or by the Architectural Control Committee appointed by the Board. Notwithstanding the foregoing, Owners may improve or alter any improvements within the interior boundaries of the Owner's Unit, provided such improvement or alteration documents not impair the structural or acoustical integrity of any

Common Area, the utilities or other systems servicing the Common Area or other Condominiums, and does not involve altering any Common Area (including roofs or bearing walls).

(c) Plans and specifications showing nature, kind, shape, color, size, materials and location of any proposed improvements or alterations, shall be submitted to the Board or Architectural Control Committee for approval as to quality of workmanship and design and harmony with existing improvements, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with Declarant's original color scheme or in accordance with a color scheme previously approved by the Board or the Architectural Control Committee. No permission or approval shall be required to rebuild in accordance with Declarant's original plans and specifications or plans and specifications previously approved by the Board or by the Architectural Control Committee. Nothing contained in this Section shall be construed to limit the right of an Owner to paint or remodel the interior of his or her Unit.

(d) No landscaping or other physical improvements or additions shall be made to any balconies, terraces or patio areas that are visible from the street or Common Area by any Owner until plans and specifications showing the nature, kind, shape and location of the materials shall have been submitted to and approved in writing by the Board or the Architectural Control Committee.

(e) In the event the Board or the Architectural Control Committee fails to approve or disapprove plans and specifications in writing within thirty (30) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with.

(f) Approval of plans or specifications by the Board or the Architectural Control Committee shall in no way make the Architectural Control Committee or its members or the Board or its members responsible for or liable for the improvements built after approval of the plans, and the Owner whose plans are approved shall defend, indemnify and hold the Architectural Control Committee, the Board, the Association, and its members, harmless from any and all liability arising out of such approval.

(g) Before commencement of any alteration or improvements to a Unit or Exclusive Use Common Area, whether or not approval is required by the Architectural Control Committee, the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Architectural Control Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

(h) All work approved by the Board or the Architectural Control Committee shall be completed in compliance with the approvals granted, and shall be commenced within six months from the date of approval unless the Architectural Control Committee or Board permits the work to be commenced at a later time. If the work is not commenced within six months after the approval date, or such later time as the Architectural Control Committee or Board has granted, then the approval shall be deemed cancelled, and the Owner must reapply to the Architectural Control Committee or Board before undertaking any such work.

(i) The Board or the Architectural Control Committee shall inspect work within sixty (60) days after a notice of completion has been delivered to the Board or the Architectural Control Committee by the Owner. If the Board or Architectural Control Committee determines an Owner has not constructed an improvement in compliance of the approval granted in all material respects, and if the Owner fails to remedy such non-compliance in accordance with provisions of the notice of non-compliance, then after expiration of 30 days from the date of such notification, if the Architectural Control Committee has undertaken the architectural review functions under this Section 7.26, the



Architectural Control Committee shall notify the Board, and the Board shall provide notice and a hearing to consider the Owner's continuing non-compliance. If the Board has undertaken the architectural review functions under this Article, the Board shall act after expiration of thirty (30) days from the date of such notification. At the hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall then require the Owner to remedy the non-compliance as necessary and appropriate in the determination of the Board as to result in the improvement being rendered as reasonably in compliance as is appropriate for the overall good and benefit of the Development, or to remove the same within a period of not more than 45 days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion may grant, the Board may (i) remove the non-complying improvement, (ii) remedy the non-compliance, or (iii) institute legal proceedings to enforce compliance or completion.

(j) The Architectural Control Committee or the Board may condition its approval upon the Owner recording a "Notice of Non-Responsibility" or similar document protecting the Association or other Owners from any mechanics lien that may be recorded because of such alteration or improvement.

(k) Nothing contained in this Section shall be construed as requiring Declarant to obtain approval for the renovation or completion of the Development.

(l) Notwithstanding any provision herein to the contrary, in no event shall any Owner or occupant puncture or cause any holes or opening in any terrace, deck or balcony surface or wall area.

**Section 7.27 Concrete Slabs.** Concrete slabs for the Development may be reinforced with a grid of steel cable installed in the concrete slab and then tightened to extremely high tension ("Post Tension Slab"). Cutting into any Post Tension Slab in any building within the Development for any reason may be very hazardous and may result in serious damage to the Units or building and may cause personal injury. No Owner shall cut into or otherwise tamper with any Post Tension Slab or permit or allow any other Person to cut into or otherwise tamper with any Post Tension Slab. Each Owner shall disclose to any Person who rents, leases or purchases the Unit from the Owner the existence of the Post Tension Slab and these limitations on cutting into or otherwise tampering with the Post Tension Slab. The Owner shall indemnify and hold harmless Declarant, the Association and their officers, employees, contractors and agents from and against any and all claims, damages, losses or other liability (including attorneys' fees and costs of court) arising from any breach of this covenant by such Owner or the tenants or renters of, or purchasers from such Owner.

**Section 7.28 Storage in Basement; Moisture; Water Intrusion.** Due to the water table in the ground beneath the Property, Declarant has taken precautions to prevent water intrusion into the basement of the Condominium Building. However, water may be trapped in the soil beneath the Property and Condominium Building, and underground water levels in the water table beneath the Condominium Building could be elevated during periods of heavy rainfall. To prevent and/or mitigate potential moisture, dampness or water intrusion into the basement of the Condominium Building, Declarant has added a dewatering system, subdrain system and sump pumps with back up power supply. However, the basement of the Condominium Building may not be one-hundred percent (100%) waterproof. Water vapor may pass through the basement floors and/or walls, causing dampness in the basement areas, and causing mineral deposits on the basement floors and/or walls. For these reasons, and to prevent damage to the property of any Owners or the Association caused by dampness, moisture or water intrusion, there shall be no storage of any items on the floor or against the walls in basement level B-2; and, there shall be no storage of any items against the walls in basement level B-1.

**Section 7.29 Legal Action.** The failure of any Owner to comply with any provision of this Declaration, the Bylaws or the Association Rules, if any, shall give rise to a cause of action in the Association and/or any aggrieved Owner for the recovery of damages or for injunctive relief, or both, including reasonable attorneys fees, costs and expenses as may be determined by the court.

## **ARTICLE 8**

### **MORTGAGE PROTECTION**

**Section 8.1 Validity of Mortgage Lien.** No breach of any of the covenants, conditions and restrictions contained herein, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any First Mortgage on any Condominium made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale or otherwise.

**Section 8.2 Notice to Eligible Mortgagees and Eligible Insurers and Guarantors.** Upon written request to the Association identifying the name and address of the Eligible Mortgagee or Eligible Insurer or Guarantor and the applicable Unit address, such Eligible Mortgagee or Eligible Insurer or Guarantor shall be entitled to timely notice of:

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

(b) Any delinquency in the payment of Assessments owed by an Owner of a Condominium subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee or Eligible Insurer or Guarantor which remains unpaid for a period of sixty (60) days;

(c) Any default in the performance of an obligation under the Condominium Documents by an Owner of a Condominium subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee or Eligible Insurer or Guarantor which remains unperformed for a period of sixty (60) days;

(d) Any lapse, cancellation or material modification of an insurance policy or fidelity bond maintained by the Association; or

(e) Any proposed action which would require the consent of Mortgagees of First Mortgages as specified in Section 8.6.

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

**Section 8.3 Notice of Condemnation or Destruction.** In the event of the total or substantial destruction of, or the commencement of eminent domain proceedings or other acquisition procedures by a condemning authority against the Development or any portion thereof, Mortgagees of First Mortgages shall be given timely written notice of such destruction or proceedings.

**Section 8.4 Limitation on Right of First Refusal.** The right of an Owner to sell, transfer or otherwise convey his Condominium shall not be subject to any right of first refusal or any similar

restriction in favor of the Association. In the event there is permitted a right of first refusal in favor of any other Person, it shall not be based upon the race, color, religion, sex, sexual preference, marital status, national origin or ancestry of the vendee and it shall not impair the rights of a holder of a First Mortgage:

- (a) foreclose or take title to a Condominium pursuant to the remedies provided in the Mortgage;
- (b) to accept a deed (or assignment) in lieu of foreclosure in the event of a default by the Mortgagor; or
- (c) to sell or lease a Condominium acquired by the Mortgagee.

**Section 8.5 Priority as to Proceeds and Awards.** Any language contained in this Declaration to the contrary notwithstanding, no Owner and no other party shall have priority over any rights of Mortgagees pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Units and/or the Common Area.

**Section 8.6 Consent by Mortgagees to Amendments.** Without the vote or prior written consent of sixty-seven percent (67%) of the total voting power of the Association and the approval of a majority of the Mortgagees of First Mortgages (unless a higher percentage of voting power of Mortgagees of First Mortgages is specifically required elsewhere in this Declaration), the Association shall not materially and adversely, with respect to such mortgages, amend or cause to be amended any material provisions of the Condominium Documents which establish, provide for, govern or regulate any of the following:

- (a) Voting rights;
- (b) Assessments, Assessment liens or priority of such liens;
- (c) Reserves for maintenance, repair and replacement of the Common Area;
- (d) Insurance or fidelity bonds;
- (e) Rights to use the general or Exclusive Use Common Area;
- (f) Responsibility for maintenance and repair of the Development;
- (g) Expansion or contraction of the Development or the addition, annexation or withdrawal of property to or from the Development;
- (h) Boundaries of any Unit;
- (i) Reallocation of interests in the Common Area or Exclusive Use Common Area;
- (j) Convertibility of Units into Common Area or of Common Area into Units;
- (k) Leasing of Units;
- (l) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Condominium;

(m) A decision by the Association to establish self management when professional management has been required previously by a Mortgagee of a First Mortgage;

(n) Restoration or repair of the Development (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;

(o) Any action to terminate the legal status of the Development after substantial destruction or condemnation occurs; or

(p) Any provisions which are for the express benefit of Mortgagees, Insurers or Guarantors of First Mortgages on Condominiums.

For purposes of this Section 8.6, any Mortgagee who receives a written request to approve additions or amendments to the Condominium Documents which are not considered a material change (such as the correction of a technical error or the clarification of a statement), and who does not deliver or post with the Association a negative response within thirty (30) days, shall be deemed to have approved such request.

**Section 8.7 Restrictions on Certain Changes.** Except as provided by statute, in case of condemnation or substantial loss to the Units and/or Common Area by fire or other casualty, unless two-thirds (2/3) of all Mortgagees of First Mortgages (based on one vote for each Condominium encumbered) have given their prior written approval, neither the Association nor the Owners shall be entitled:

(a) By act or omission, to seek to abandon or terminate the Development;

(b) To change the Percentage Share(s) or obligations of any Condominium for purposes of levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of ownership of each Condominium in the Common Area;

(c) To partition or subdivide any Condominium;

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

(e) To use hazard insurance proceeds related to losses of Development property (whether related to Units or Common Area) for other than the repair, replacement or reconstruction of such Development property except as provided by statute in case of substantial loss of the Units or Common Area.

**Section 8.8 Consent to Terminate Legal Status of Development.** Except as provided by statute or any other provision of the Condominium Documents, in case of substantial destruction or condemnation of the Development, the consent of Owners of Condominiums holding at least seventy-five percent (75%) of the voting power of the Association and the approval of sixty-seven percent (67%) of Mortgagees of First Mortgages shall be required to terminate the legal status of the Development as a condominium project.

## ARTICLE 9

### **INSURANCE, DAMAGE OR CONDEMNATION**

**Section 9.1 Fire and Casualty.** The Association shall obtain a blanket policy or policies of insurance covering all of the Development including improvements now or hereafter erected on the Development and all equipment and fixtures located thereon or used in connection therewith, insuring the Owners, including the Association, against loss or damage by the perils insured under the Standard Special Extended Coverage form (including, but not limited to, loss or damage by fire, vandalism, malicious mischief, sprinkler leakage, lightning, windstorm, water and other special extended coverage risks and the costs of demolition and debris removal) which may also be extended to include flood and earthquake insurance. Coverage shall be in an amount or amounts equal to full replacement value (i.e., one hundred percent (100%) of replacement cost exclusive of land, foundation, excavation and other items normally excluded from coverage and without any deduction for depreciation) with an "agreed amount" endorsement or its equivalent, if available, or an "inflation guard" endorsement payable to the Association. Each such policy required to be maintained hereunder may be subject to a "deductible" or self-insurance amount as the Board deems prudent under the then existing circumstances. Each such policy shall provide for full waiver of subrogation by the insurer as to any and all claims against the Association, the Owners and their respective officers, directors, partners, agents, employees and tenants, if any, and as to all defenses based upon acts of the insureds or the existence of co-insurance. The insurance required by this Section 9.1 may be acquired jointly with the Commercial Parcel(s) in accordance with the Reciprocal Easement Agreement.

**Section 9.2 Boiler and Machinery Insurance.** The Association shall obtain a policy of Boiler and Machinery Insurance, if applicable, insuring the Owners, including the Association, against loss or damage to or because of boilers and other machinery, including but not limited to, all machinery and equipment for heating, ventilating, air conditioning, power generation and similar purposes (including, but not limited to, loss or damage by fire, vandalism, malicious mischief, sprinkler leakage, lightning, windstorm, water and other special extended coverage risks and the costs of demolition and debris removal) equal to full replacement value without deduction for depreciation with an "agreed amount" endorsement or its equivalent, if available, or an "inflation guard" endorsement payable to the Association.

**Section 9.3 Liability Insurance.** The Association shall obtain and maintain a policy or policies of Comprehensive General Public Liability Insurance with combined single limit of Bodily Injury and Property Damage Liability limits not less than Two Million Dollars (\$2,000,000) subject to the Board's good faith determination of availability and cost-effectiveness in relation to the risk and premium to be charged for such coverage; provided, however, under no circumstances may the minimum amounts of coverage be less than that specified in Civil Code, Section 1365.7(a)(4). Such policies shall include all of the following extensions of coverage: Products/Completed Operations, Independent Contractors, Blanket Contractual Liability, Broad Form Property Damage, Host Liquor Liability, Non-Owned and Hired Automobile Liability, Employees as Additional Insureds and Personal Injury Liability (Libel, Slander, False Arrest and Wrongful Eviction) with the "Employee Exclusion" deleted. Such policies shall name as insured and shall separately protect the Owners, the Association and the Board including their respective officers, directors, partners, agents, members, employees (including any manager appointed hereunder) and their successors and assigns (both individually and as a class) against any liability to the public including any Owner and his successors, assigns, tenants or lessees.

Any tort cause of action against any Owner arising solely by reason of an ownership interest as a tenant in common of the Common Area shall be brought only against the Association, pursuant to Section 1365.9 of the Civil Code, and not against any such Owner, if:

(a) The Association maintained and has in effect for the tort cause of action, one or more policies of insurance including coverage for general liability of the Association; and

(b) The coverage described in (a) above is in the following minimum amounts:

(1) At least Two Million Dollars (\$2,000,000) if the Development consists of one hundred (100) or fewer units; or

(2) At least Three Million Dollars (\$3,000,000) if the Development consists of more than one hundred (100) units.

Reference is made to Civil Code Sections 1365.7 and 1365.9 for further detail regarding statutory minimum requirements for liability insurance.

**Section 9.4 Board Members and Officers Liability.** The Association shall maintain a policy or policies insuring the Owners, individually and collectively, against claims arising out of or based upon negligent acts, errors, omissions or alleged breaches of duty of any director or any officer while acting in their capacity as such in the amount of Five Hundred Thousand Dollars (\$500,000) for each occurrence if the Development consists of 100 or fewer separate interests or at least One Million Dollars (\$1,000,000) for each occurrence if the Development consists of more than one hundred (100) separate interests, subject to the Board's good faith determination of availability and cost-effectiveness in relation to the risk and premium to be charged for such coverage; provided, however, under no circumstances may the minimum amounts of coverage be less than that specified in Civil Code, Section 1365.7(a)(4). Such limits are to be reviewed by the Board not less frequently than annually. Said policy or policies shall provide for a full waiver or subrogation against the insureds, a full waiver of all defenses based upon acts of insureds and shall further provide that said policy or policies cannot be canceled or modified without at least sixty (60) days' prior written notice to the Association.

**Section 9.5 Fidelity Bond or Insurance.** The Association shall maintain, or be covered by, a fidelity bond or policy of insurance against dishonest acts on the part of any Persons entrusted with or permitted to handle funds belonging to or administered by the Association including the professional manager and his employees. Such fidelity bond or policy of insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection which is not less than the sum of three (3) months' Assessments on all Condominiums in the Development plus the Association's reserves. An appropriate endorsement shall be added to such policy or bond, if necessary, to cover any Persons who serve without compensation, including directors, if such policy or bond would not otherwise cover the acts of volunteers.

**Section 9.6 Workers' Compensation Insurance.** The Association shall obtain Workers' Compensation Insurance to the extent required to comply with any applicable law.

**Section 9.7 Earthquake Insurance.** The Association shall obtain earthquake insurance only if a majority of the Owners vote to purchase such insurance. If the Board elects to purchase such earthquake insurance, the insurance may be subsequently cancelled on a vote of the majority of the Owners. If cancelled, the Association shall make reasonable efforts to notify the Owners of the cancellation.

**Section 9.8 Insurance Required by Certain Lenders.** Notwithstanding Sections 9.1 through 9.6 or any other provision of this Declaration, in the event the casualty insurance, boiler and machinery insurance, liability insurance and fidelity bond requirements established for condominium projects by FNMA or FHLMC are greater than the insurance and fidelity bond requirements specified in this Declaration, the FNMA and FHLMC requirements, whichever are greater, shall govern and such insurance or fidelity bond shall be maintained by the Association. This requirement as to FNMA or FHLMC shall be effective so long as FNMA or FHLMC is a Mortgagee, Insurer or Guarantor of a Mortgage or an Owner of a Condominium within the Development; provided, however, to the extent such coverage is not available or has been modified or waived in writing by FNMA or FHLMC, it need not be obtained.

**Section 9.9 General Policy Provisions; Notice to Owners.**

(a) Each of the policies of insurance obtained by the Association pursuant to this Article 9 shall include the Association, as trustee for the Owners, as a named insured and shall provide that the insurers may not cancel, change or refuse to renew the policies without first giving sixty (60) days' prior written notice to the Association, the Owners and the Mortgagees. Each such policy shall also provide that coverage shall not be prejudiced by any act or neglect of any Condominium Owner except to the extent such prejudice is unavoidably imposed by law or by any failure of the Association to comply with any warranty or condition regarding any portion of the Development over which the Association has no control. Each such policy shall contain both a full waiver of subrogation by the insurer as to any and all claims against the Association and any Owners and their respective agents, employees and tenants and a waiver of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured except to the extent such invalidity is unavoidably imposed by law. Each such policy shall also provide that the coverage provided with respect to any claim shall not be adjusted based on contribution related to insurance policies purchased by any Owner or his Mortgagee. Any of the policies required by this Article 9 may be acquired jointly with the Commercial Parcel(s) in accordance with the Reciprocal Easement Agreement.

(b) All such policies of insurance and bonds shall be obtained from insurance companies with both a financial rating of Class VI or better and a policyholder's rating of A or better by Best's insurance rating guide. In the event Best's should revise its rating system, the Association shall select insurance companies with equivalent financial and policyholder's ratings under the rating system then being used by Best's or, in the event Best's discontinues its rating system, insurance companies with equivalent financial and policyholder's ratings under such comparable rating system as the Board may select.

(c) It is the responsibility of each Condominium Owner to insure that Owner's own personal property and the improvements and betterments added to that Owner's Unit together with additional living expense coverage and personal liability insurance as the Owner deems appropriate.

(d) The Association shall provide the Owners with a summary of the Association's property, liability, earthquake, flood, and fidelity insurance policies, as required by Civil Code Section 1365(c)(1), at least thirty (30) days and not more than ninety (90) days prior to the beginning of the Association's fiscal year.

**Section 9.10 Payment of Premiums.** Insurance premiums for the policies required hereby shall be a Common Expense to be included in the monthly Assessment levied by the Association. The portion of Assessment payments necessary for the insurance premiums may be held in a separate account of the Association to be used solely for the payment of the premiums for such policies.

**Section 9.11 Material Damage or Destruction.** If any portion of the Development is Materially Damaged or destroyed by fire or other casualty, then, subject to the provisions of the Reciprocal Easement Agreement concerning casualty, the following events shall occur:

(a) A special Owners meeting shall be held within sixty (60) days of the date of the material damage or destruction. Said Owners meeting shall be called by the Board, the president or any two (2) Owners if the meeting has not been called within fifteen (15) days of the damage or destruction and the Secretary shall give thirty (30) days written notice of the meeting to each Owner and his Mortgagees of record. Said Owners meeting shall be held at a suitable location on the Development or as close thereto as practicable which location shall be specified in such notice.

(b) The Development shall be repaired or reconstructed in substantial accordance with the latest available construction plans and specifications as hereinafter provided unless in such special Owners meeting at least three-quarters (3/4) of the total voting power of each class of Owners casts votes against such repair or reconstruction in which event the provisions of Section 9.12 shall immediately become applicable.

(c) Unless, in the manner provided above, the requisite number of votes are cast against such repair or reconstruction, all of the insurance proceeds payable on account of such damage or destruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "Depository"). The Depository shall be appointed by the Association. Such funds shall be disbursed in accordance with the normal construction loan practices for the Depository and which shall be reasonably acceptable to the Board. The restoration or reconstruction shall be substantially in accordance with the latest available construction plans and specifications for the Development modified as may be required by available materials, state of the art construction and applicable building codes and regulations in force at the time of such repair or reconstruction or in accordance with such other plans and specifications as may be approved by a majority of all Owners; provided, however, any Owner's requested modification to the latest available construction plans and specifications of his Unit shall be approved unless (i) the cost of construction pursuant to the modification exceeds the cost of reconstruction according to the latest available construction plans and specifications, (ii) it affects the Common Area, or (iii) it affects the square footage of, permitted use of, utility service to, easements in favor of or number of Units.

(d) The Association shall designate a construction consultant (the "Construction Consultant"), general contractor (the "General Contractor") and architect (the "Architect") for the repair or reconstruction contemplated by this Section.

(e) The insurance proceeds payable on account of such damage or destruction shall be deposited with the Depository and shall be disbursed in accordance with the normal construction loan practices of the Depository upon the receipt of appropriate mechanics lien releases and upon the certification of the Construction Consultant, the General Contractor and the Architect dated not more than ten (10) days prior to any such request for disbursement setting forth the following:

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

(2) That such disbursement request represents monies which either have been paid by or on behalf of the Construction Consultant, the General Contractor or the Architect and/or is justly due to contractors, subcontractors, materialmen, engineers or other Persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work, giving a brief description of such services and materials and the principal categories thereof, the respective



amounts paid or due to each of said Persons in respect thereof and stating the progress of the work up to the date of said certificate;

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

(4) That no part of the cost of the services and materials described in Section 9.10(e)(1) has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

(5) That the amount held by the Depository will, after payment of the amount requested in the pending disbursement request, be sufficient to pay in full the cost of such repair or reconstruction.

(f) In the event the insurance proceeds available for repair or reconstruction are less than the total cost of such repair or reconstruction, the Association shall first use sums from its accounts and, if necessary, shall levy a Special Assessment on all of the Owners in accordance with Section 4.4 to restore or rebuild the Development.

(g) All such funds to be supplied by the Association shall be deposited with the Depository and shall be disbursed pursuant to the provisions of this Section.

**Section 9.12 Owners Vote Not to Rebuild.** In the event the Owners vote not to rebuild, the Association shall, acting as attorney-in-fact for all the Owners, sell the remaining property on terms satisfactory to the Board. The net proceeds of the sale, together with the insurance proceeds, accrued reserves, interest and other funds, shall thereupon be distributed to the Owners according to the following procedure: the Board shall retain, at the Association's expense, an appraiser who is a member of the American Institute of Appraisers or other nationally recognized appraiser's organization who shall determine the fair market value of each Condominium as it existed immediately prior to the damage or destruction and whose determination of value shall be final. The Board shall then distribute to each Owner and his Mortgagees the following amounts:

(a) That percentage of insurance and net sale proceeds equal to such Owner's Condominium's fair market value immediately prior to the damage or destruction divided by the total fair market value of all the Condominiums immediately prior to such damage or destruction; and

(b) That percentage of accrued reserves, interest and other funds equal to the Annual Assessment against such Owner's Condominium divided by the total Annual Assessments against all Condominiums, each as of the most recent Annual Assessment immediately prior to such damage or destruction.

**Section 9.13 Damage or Destruction Not Considered Material.** In the event that any portion of the Development is not Materially Damaged as a result of fire or other casualty the Development shall be repaired and reconstructed (after the holding of a special Owners meeting in which a Special Assessment is approved unless exempted by Section 9.11) in accordance with the provisions for repair and reconstruction as set forth in Section 9.11 hereinabove.

**Section 9.14 Substantially Full Insurance Settlement.** Notwithstanding any provision of Section 9.12 to the contrary, if the insurance carrier offers eighty-five percent (85%) or more of the full amount required to repair and restore all the damage, then the Board shall, without a vote of Members,

contract to repair or rebuild the damaged portions of the Development in the manner provided in Section 9.11 hereinabove.

**Section 9.15 Emergency Repairs.** In the event of a casualty, there may be a substantial possibility that immediate emergency repairs will be required to eliminate defective or dangerous conditions and to comply with applicable laws, ordinances and regulations pending settlement of insurance claims and prior to procuring bids for performance of restoration work. As such, without waiting to obtain insurance settlement or bids, the Board may undertake such emergency repair work after a casualty as it may deem necessary or desirable under the circumstances and the Board may charge the Association's operating accounts for the costs thereof.

**Section 9.16 Notice of Casualty.** Within (60) days after any damage or destruction occurs which invokes the provisions of Sections 9.11 through 9.15, the manager or the Board or, if they do not, any Owner, the insurer, the insurance trustee or any Mortgagee of any such Owner shall record a sworn declaration which shall state that such damage has occurred, shall describe such damage, shall name any insurer against whom claim is or may be made, shall name each insurance trustee and shall state that such sworn declaration is recorded pursuant to this Section of this Declaration and that a copy of such declaration has been served on each Owner pursuant to the provisions of this Declaration.

**Section 9.17 Condemnation.** In the event of any taking of any Unit, or a part thereof, by eminent domain, the Owner of such Unit shall be entitled to receive the award of such taking after all mortgages and liens on the Unit have been satisfied or otherwise discharged. After acceptance thereof and if such Owner shall vacate the Unit as a result of such taking, the Owner and his Mortgagees shall be divested of all interest in the Development.

In the event of a taking by eminent domain of the Common Area or more than one Unit, or any parts thereof, at the same time, the Association shall represent the affected Owners in the negotiations and shall propose the method of division of the proceeds of condemnation where the compensation is not apportioned among the affected Owners and their respective Mortgagees by a court judgment or by agreement between the condemning authority and each of the affected Owners. Such compensation available to the affected Owners shall be distributed among the affected Owners and their respective Mortgagees, as their interest may appear, according to the relative fair market value of the Condominiums affected by the condemnation as determined by an independent appraisal conducted by an appraiser who is a member of the American Institute of Appraisers or other nationally-recognized appraiser's organization and whose appraisal shall be final. Said appraiser shall be retained by the Board and paid by the Association.

Upon the taking of any Unit(s) which constitutes less than a total taking of all Units, the Board, acting as attorney-in-fact of all Owners, shall amend the Condominium Plan, the Map (if necessary) and this Declaration to eliminate from the Development the Units so taken and to adjust the undivided ownership interest of the remaining Owners to reflect the reduced number of Units in the Development and all Owners of the remaining Units shall convey to each remaining Owner an equal proportionate share of the undivided interests in the Common Area.



**(8)** The arbitrators shall be authorized to provide all recognized remedies available in law or equity for any cause.

**Section 10.2 Pre-Litigation Requirements.** Prior to initiating the prosecution of a civil action by the Association against any Owner(s) or by an Owner against the Association or any other Owner(s), the parties shall be subject to the following requirements in subsections (a) and (b) below.

**(a)** With respect to any internal dispute between the Association and an Owner involving their rights, duties, or liabilities under the Davis Stirling Act, under the Nonprofit Mutual Benefit Corporation Law, or under this Declaration or the Condominium Documents, the Board shall develop fair, reasonable, and expeditious dispute resolution procedures in accordance with the requirements of Civil Code Sections 1363.810-1363.850 (or defer to the default procedures in Section 1363.840). The parties to such a dispute shall comply with the meet and confer requirements set forth in Sections 1363.810-1363.850 of the Civil Code, including any procedures developed by the Association as described above. The dispute resolution procedures described Civil Code Sections 1363.810-1363.850 are intended to provide a simple and efficient intra-association dispute resolution method, and shall be undertaken in good faith by the parties to any such dispute.

**(b)** With respect to an action solely for declaratory, injunctive or writ relief to enforce the Condominium Documents, the Davis-Stirling Act, the Nonprofit Mutual Benefit Corporation Law, or for declaratory relief or injunctive relief to enforce the same in conjunction with a claim for monetary damages not in excess of five thousand dollars (\$5,000), the Board or the Owner, as applicable shall endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of Section 1369.520 of the Civil Code. This obligation shall not apply to actions in small claims court.

**(c)** As required by Civil Code Section 1369.590, Owners shall annually be provided with a summary of the provisions of Sections 1369.510-1369.580 of the Civil Code, which shall specifically reference Section 1369.520, and shall include the following language:

“Failure of a Member of the Association to comply with the alternative dispute resolution requirements of Section 1369.520 of the Civil Code may result in the loss of your right to sue the Association or another Member of the Association regarding enforcement of the governing documents or the applicable law.”

The summary shall be provided either at the time the pro forma budget is distributed (see Section 4.10 of this Declaration), or in the manner specified in Section 5016 of the Corporations Code. The summary shall include a description of the Association internal dispute resolution process, as required by Section 1363.850 of the Civil Code.

**Section 10.3 Required Actions Prior to Civil Actions Against Declarant.**

**(a)** Notwithstanding anything in this Declaration to the contrary, except as otherwise provided in this Section 10.3, the Board shall not cause nor permit the Association to institute any significant legal proceeding, including any mediation, arbitration or judicial reference proceeding, against Declarant or any person without providing the Owners with at least thirty (30) days' prior written notice of the Association's intention to institute such legal proceeding. The notice shall describe the purpose of the action or proceeding, the parties to the action or proceeding, the anticipated cost to the Association (including attorney fees) in prosecuting the action or proceeding, the source of funds to prosecute the action or proceeding (reserves or special or annual assessments), and suggested information that should be disclosed to third parties, such as prospective purchasers and lenders, while the action or proceeding is

being prosecuted. For purposes of this Section 10.3, "significant legal proceeding" shall mean any action or legal proceeding in which it reasonably could be anticipated that any of the following events could occur:

- (1) The levy of a special assessment to fund all or any portion of the action or proceeding;
- (2) The expenditure of funds from the Association's reserves in connection with the action or proceeding in an amount in excess of five (5%) percent of the then current reserves;
- (3) The amount of the claim is in excess of twenty-five thousand dollars (\$25,000); or
- (4) A material adverse effect on the ability to sell and/or refinance the Condominiums within the Project during the period the action or proceeding is being prosecuted.

Notwithstanding subsection (a) above, if the Board in good faith determines that there is insufficient time to provide prior notice to the Owners as required in this Section 10.3 before the expiration of any applicable statute of limitations or before the loss of any other significant right of the Association, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association, provided that as soon as is reasonably practical thereafter, and not later than 30 days following the commencement of the proceeding, the Board shall provide the Members with notice as required in this provision.

(b) Pursuant to Civil Code Section 1368.5, not later than thirty (30) days prior to the filing of any civil action by the Association against the Declarant for alleged damage to the Common Area, alleged damage to the Units that the Association is obligated to maintain or repair, or alleged damages to the Units that arise out of, or is integrally related to, damage to the Common Area or Units that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member who appears on the membership records when the notice is provided. This notice shall specify the following:

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

Notwithstanding subsection (b) above, if the Association has reason to believe that the applicable statute of limitations will expire before the Association files the civil action, the Board may give the notice, as described above, within thirty (30) days after the filing of the action.

(c) Notwithstanding anything to the contrary in this Declaration, the Board shall not cause nor permit the Association to institute any significant legal proceeding, including without limitation any civil action, mediation, arbitration, or judicial reference proceeding, against Declarant without first obtaining the affirmative vote of Members representing no less than seventy-five percent (75%) of the total voting power of the all of the Members of the Association at a duly noticed and properly held membership meeting.

**Section 10.4 Disputes Involving Declarant.** Notwithstanding any other provision in this Declaration, or in any of the Condominium Documents, any disputes, claims, issues or controversies between any Owner and Declarant or between the Association and Declarant regarding any matters that arise from or are in any way related to the Development, the relationship between an Owner and Declarant or the relationship between the Association and Declarant, whether contractual or tort, including but not limited to the purchase, sale, condition, design, construction, installation or materials used in the construction of any Unit or any portion of the Development, the agreement between Declarant and an Owner to purchase a Condominium or any related agreement, any Claimed Title 7 Violation as defined in the Title 7 Master Declaration or any deficiency as that term is defined in Section 896 of the California Civil Code shall be resolved in accordance with the Claims Processes and Dispute Resolution Procedures set forth in the Title 7 Master Declaration.

The provisions of this Section 10.4 may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing no less than seventy-five percent (75%) of the total voting power of the Association and no less than seventy-five percent (75%) of the affirmative vote or written consent of Members other than Declarant, or where the two class voting structure is still in effect, no less than seventy-five percent (75%) of each class of membership, and no less than seventy-five percent (75%) of the Mortgagees of First Mortgages.

**Section 10.5 Senate Bill 800 Notice.** The Owners are hereby advised of the existence of the procedures described in Senate Bill 800, codified at Title 7 of Part 2 of Division 2 of the California Civil Code (Section 895 et seq.), which became effective on January 1, 2003. The Senate Bill 800 procedures impact the legal rights of the Owners and the Association with respect to actions against Declarant for construction defects and related claims. Refer to the Title 7 Master Declaration for further information concerning the Senate Bill 800 procedures and the dispute resolution procedures regarding construction defect and related claims and other claims that will be binding on the Owners and the Association.

## **ARTICLE 11**

### **GENERAL PROVISIONS**

**Section 11.1 Severability.** Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this Development is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

**Section 11.2 Term.** The covenants and restrictions of this Declaration shall run with and bind the Development and shall inure to the benefit of and shall be enforceable by the Association or any Owner and their respective legal representatives, heirs, successors and assigns for a term of fifty (50) years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten (10) years unless a majority of the voting power of the Association elects otherwise.

**Section 11.3 Amendments.** Prior to closing of the first sale of a Condominium from Declarant to an individual Owner, this Declaration may be amended in writing by Declarant upon prior consent to such amendment by the DRE, if such consent is required by the DRE. After the closing of the first sale of a Condominium to an individual Owner and during such time as there are two classes of voting membership in the Association, this Declaration may be amended only by the vote or written assent of not less than seventy-five percent (75%) of the voting power of each class of voting Members and an appropriate percentage of Mortgagees of First Mortgages, if applicable. After the conversion of Class B memberships into Class A memberships as provided in Section 3.6, this Declaration may be amended only by the vote or written assent of sixty-seven percent (67%) of the voting power of the voting

Members of the Association as well as the vote or written assent of a majority of the total voting power of the voting Members other than Declarant and an appropriate percentage of Mortgagees of First Mortgages as set forth in Article 8 of this Declaration.

Notwithstanding anything contained herein, the percentage of the voting power of the voting Members of the Association or of voting Members other than Declarant necessary to amend a specific clause or provision of the Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under such clause or provision.

Notwithstanding anything to the contrary in this Section 11.3, the Board shall have the power to amend this Declaration without an Association vote if the amendment is technical in nature or to make necessary factual corrections.

Any amendment shall be evidenced by an instrument executed and acknowledged by the President, Secretary or other duly authorized officer of the Association, shall make appropriate reference to this Declaration and its amendments and shall be recorded in the Official Records of the Recorder of the City and County of San Francisco.

The proposed amendment shall be distributed to all Owners by first-class mail or personal delivery not less than fifteen (15) days and not more than sixty (60) days prior to a vote on the amendment by the Members of the Association. A copy of an amendment adopted by the Members of the Association shall be delivered to the Owners by first-class mail or personal delivery immediately upon its recordation.

Notwithstanding anything to the contrary in this Declaration or the Bylaws, any such voting of the Owners regarding amendment to the condominium documents shall be by secret ballot and shall comply with the applicable procedures in Civil Code Section 1363.03.

**Section 11.4 Limitations of Restrictions on Declarant.** Declarant is or may be undertaking the work of construction of incidental improvements and repairs to the existing buildings and appurtenances within the Development. The completion of that work and the sale, rental or other disposal of the Condominiums is essential to the establishment and welfare of the Development as a condominium community. In order that said work may be accomplished and the Development be established as a fully occupied condominium community as rapidly as possible, and for a period of time terminating upon sale of the final Unit owned by Declarant, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant or Declarant's contractors or subcontractors from doing on the Development or in any Unit whatever is reasonably necessary or advisable in connection with the completion of said work;

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Development such structures as may be reasonable or necessary for the conduct of its business of completing said work and establishing said Development as a community and disposing of the Condominiums by sale, lease or otherwise;

(c) Prevent Declarant from conducting on any part of the Development its business of completing said work and of establishing a plan of condominium ownership and of disposing of said Development by sale of Condominiums or otherwise, including use of a Unit, multiple Units or portion of the Common Area as a sales office or other buyer or resident service purpose;

(d) Prevent Declarant from maintaining such sign or signs on any part of the Development as may be necessary for the disposition of the Development by sale of Condominiums or otherwise; and/or

(e) Subject Declarant to the Architectural Control provisions of this Declaration for the construction of any Condominium or other improvement on the Development.

Declarant and Declarant's successors and assigns may use the Common Area and/or a Unit(s) owned by Declarant for a model Unit, design center, customer service center or display and sales office which promotes the Development until the last unit is sold.

So long as Declarant or Declarant's successors and assigns owns one or more of the Condominiums established and described herein, Declarant and its successors and assigns shall otherwise be subject to the provisions of this Declaration.

**Section 11.5 Termination of any Responsibility of Declarant.** In the event Declarant conveys its rights, title and interest in and to the Development to any individual, partnership or corporation and causes a "Notice of Substitution of Declarant" setting forth the name and business address of such individual, partnership or corporation and a reference to this Declaration to be recorded in the Official Records of the City and County of San Francisco, Declarant shall be relieved of any further duty or obligation hereunder and such individual, partnership or corporation shall accept all such duties and obligations of Declarant and shall be entitled to exercise the rights available to Declarant hereunder.

**Section 11.6 Enforcement of Obligation to Complete Improvements.** In the event that the Common Area of the Development has not been completed prior to the issuance of a final subdivision public report by the DRE, then Declarant shall enter into written agreements satisfactory to the DRE to secure the completion of such improvements. The Board shall consider and vote upon action by the Association to enforce the rights provided to the Association by such agreements if, within sixty (60) days after the completion date specified for a particular improvement by such agreement, no notice of completion as to such improvement has been filed and such improvement is not complete. If the Association has given an extension in writing for the completion of any Common Area, the Board shall consider and vote upon action if a notice of completion has not been filed within thirty (30) days after the expiration of such extension.

A special meeting of the Members of the Association, for the purpose of voting to override a decision by the Board not to initiate action to enforce the rights of the Association under the aforementioned agreements or on the failure of the Board to consider and vote upon action, shall be held not less than thirty-five (35) days nor more than forty-five (45) days after the receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) of the total voting power of voting Members of the Association. At such special meeting, a vote of a majority of the Members of the Association other than the Declarant shall be required to take action to enforce the rights of the Association under such agreements and such vote shall be deemed to be the decision of the Association. The Board shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the Association.

**Section 11.7 Inspection of Improvements and Release of Completion Arrangements.** The Board shall, within thirty (30) days of Declarant's providing the Board with a copy of the recorded notice of completion with respect to the improvements referred to in Section 11.6 above or otherwise notifying the Board that the improvements are complete, cause such improvements to be inspected in the manner determined by the Board to be appropriate under the circumstances. The Board shall notify Declarant within thirty (30) days of Declarant's notice whether such improvements have been satisfactorily



completed or if the Board's position is that there are remaining items to be constructed or repaired. If (a) either the Board confirms that such improvements are complete, or the Board fails to notify Declarant of any remaining items to be constructed or repaired, and (b) either (i) the statutory period for recording mechanics' liens has expired, or (ii) the Association has been provided with a title policy or endorsement, as applicable, with coverage in an amount not less than the cost of the improvements, insuring that the improvements are free of liens and claims, then Declarant shall be entitled to the release of any bonds, letters of credit or other security held by the Association with respect to such improvements, and the Board shall cooperate with Declarant respect to such release.

**Section 11.8 Owner's Compliance.** Each Owner of a Condominium and/or occupant of a Unit shall comply with the provisions of the Condominium Documents and the decisions and resolutions of the Association or its duly authorized representative as such may be lawfully amended from time to time and failure to comply with any such provisions, decisions or resolutions shall be grounds for action to recover sums due for damages or for injunctive relief. All arrangements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Bylaws shall be deemed to be binding on all Owners of Condominiums and their successors and assigns.

**Section 11.9 Conflict.** In the case of any conflict between the Articles and Bylaws and this Declaration, this Declaration shall control.

**Section 11.10 Use of Words.** Unless the context otherwise requires, singular nouns and pronouns used in this Declaration should be construed as including the plural thereof. For convenience and brevity, masculine pronouns have been used herein in their generic sense as a reference to all Persons without regard to sex. The use of the word "including" does not limit the possible examples of the matter discussed.

**Section 11.11 Statutory References.** All references in this Declaration to particular statutes or codes are references to the laws of the State of California and should be deemed to include the same statute as hereafter amended or, if repealed, to such other statutes as may thereafter govern the same subject as the statute to which specific reference was made.

**Section 11.12 Notices.** Any notice permitted or required by this Declaration, the Articles or the Bylaws may be delivered either personally or by mail. If delivered by mail, such notice shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each Person at the current address given by such Person to the Secretary of the Association or addressed to the Unit of such Person if no address has been given to the Secretary.

**Section 11.13 No Discrimination.** Notwithstanding anything that may be stated herein, no provision of this Declaration shall purport to restrict or abridge, directly or indirectly, the right of an Owner to sell or lease his Condominium because of the race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry of a proposed or actual buyer or occupant.

**Section 11.14 Power of Attorney.** Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Development and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Development may be had under Civil Code Section 1359 and under the circumstances authorizing partition under this Declaration. This power of attorney shall (i) be binding on all Owners whether they assume the obligations under this Declaration or not; (ii) be exercisable by a majority of the Board acting on behalf of the Association subject to obtaining the prior

approval by vote or written consent of sixty-seven percent (67%) of all Mortgagees of First Mortgages; and (iii) be exercisable only after recordation in the Official Records of the Recorder of the City and County of San Francisco of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under the authority of this Declaration. This certificate shall be conclusive evidence of proper exercise in favor of any Person relying on in it good faith.

**Section 11.15 Special Tax Assessment or Mello-Roos Community Facilities Districts.** The Development may lie within the boundaries of a special tax assessment district and Mello-Roos Community Facilities District that require the levy of a special tax for repayment of bonds issued for the purpose of paying the cost of services or capital improvements. The amount of the special tax and any other information pertaining to any such district(s) can be obtained from the County Assessor's office.

**Section 11.16 Natural Hazard Zone.**

(a) **Earthquakes.** California is subject to a wide range of earthquake activity. California has many known faults as well as yet undiscovered faults. Declarant has been advised that the Development is not located in an Earthquake Fault Zone as defined in the Alquist-Priolo Earthquake Fault Zoning Act (California Public Resources Code Section 2621 et seq.). Owners must evaluate the potential for future seismic activity that might seriously damage the Owner's Condominium. Although the Development is not located in a designated Earthquake Fault Zone, a major earthquake could cause very serious damage to the Development and the Condominiums, even if the epicenter of the earthquake is many miles from the development. A more moderate earthquake occurring on a minor fault, or on an undiscovered fault, could also cause serious damage to the Development and the Condominiums.

Declarant makes no representations or warranties as to the degree of earthquake risk within the Development. Please read "The Homeowner's Guide to Earthquake Safety" published by the California Seismic Safety Commission, and consult with the City, other public agencies, and appropriate experts to evaluate the potential risk.

(b) **Seismic Hazard Zone.** Many Portions of Northern California are subject to risks associated with seismic activity or earthquakes. Declarant has been informed that the Development is located within a Seismic Hazard Zone. A Seismic Hazard Zone is defined in the Seismic Hazards Mapping Act (California Public Resources Code Section 2690 et seq.) and shown on Maps that are released by the California Department of Conservation, Division of Mines and Geology. Copies of these maps are on file with the City. There are two types of Seismic Hazard Zones: a landslide zone and a liquefaction zone. "Liquefaction" is the process by which water-saturated soils become unstable under heavy shaking and thereby jeopardize foundations and other structures. Declarant makes no representations or warranties as to the degree of liquefaction risk within the Development. Please consult with the City, other public agencies and appropriate experts to evaluate the potential risk. For more information concerning seismic activity and risks, read "The Homeowner's Guide to Earthquake Safety" published by the California Seismic Safety Commission.

**[balance of page intentionally left blank]**

**[signatures on following page]**

**IN WITNESS WHEREOF**, the undersigned, being the Declarant herein, has issued this Declaration as of the day and year written below.

Date: 11/20/07

**55 PAGE STREET, LLC,**  
a Delaware limited liability company

By: 55 Page Street Associates LLC,  
a California limited liability company  
Its: Managing Member:

By: Page Street Venture, I.I.C.,  
a California limited liability company  
Its: Managing Member

By: Dean D. Givas

Name: DEAN D. GIVAS

Its: PRESIDENT

**NOTARY ACKNOWLEDGMENT**

State of California )  
County of SAN FRANCISCO )

On November 20, 2007 before me, DARYLL ANN TOLENTINO SANTURAY, a Notary Public in and for said State, personally appeared DEAN D. GIVAS

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

WITNESS my hand and official seal.

Signature *Daryll Ann Santuray* (Seal)



**EXHIBIT A**

**MINIMUM MAINTENANCE STANDARDS**

<b>ITEM</b>	<b>RESPONSIBILITY</b>
<b>UNIT OR BUILDING EXTERIOR</b>	
Unit Entry Door	Maintain interior surfaces, and all hardware, glass and the handle and lock mechanism. Replace door as necessary. Owner maintenance obligations do not include responsibility for painting, staining or waterproofing exterior surface.
Exclusive Use Areas – Terraces, Decks; Patios; Balconies	Sweep and clean terraces, decks, patios and balconies and keep free of debris and trash. Maintain any Owner landscaping. Change light bulbs for any lighting on terraces, decks, patios and balconies. Keep any drains and gutters located on terraces, decks, patios and balconies clear and free of obstruction.  No Owner is responsible for the periodic structural repair, resurfacing, sealing, caulking, replacement or painting of the fencing, floor and wall surfaces of any terraces, decks, patios or balconies so long as the need for such painting, repair or replacement is not caused by the willful or negligent acts of the Owner or his Family, tenants or guests.
Exterior Terrace, Deck, Patio or Balcony Doors	Maintain all portions, including weather proofing, sheathing, frame, and lock mechanism.
Mailbox	Owner is responsible for replacement of key and lock, in the event of lost key.
Windows	Maintain all interior glass, any screens and lock mechanism. The Association shall maintain frame, weather stripping and caulking.  Wash all exterior windows appurtenant to that Owner's Unit that may be reached safely from the ground or any walkways within the Development.
Exterior Building Lighting	Maintain light fixtures controlled by switches in Unit or separately metered to Unit. Replace light bulbs as necessary.
<b>UNIT INTERIOR</b>	
Unit Interior	Maintain all interior doors, interior wall surfaces (including paint), drywall, cabinets, floor coverings, ceilings, permanent fixtures, appliances, toilets, smoke detectors, washing machine water hoses, washer and dryer pan drains and connections, door frames, and door hardware. However, no bearing walls, ceilings, floors or other structural or utility bearing portions of the buildings housing the Units may be pierced or otherwise altered or repaired without approval from the Design Review Committee.
Water, Gas and Sewer Pipes, Water Pressure Regulator, Water Heater, Plumbing Outlets and Fixtures,	Maintain portions which are submetered to the Unit, or located within, or otherwise exclusively serve Unit (i.e., from the interior surface of the Unit's walls to the appliances, and kitchen and

Ducts (Heating, Dryer, Stove, Oven), Electrical, Circuit Breakers, Electrical Outlets and Fixtures	bathroom facilities within the Unit). An Owner may plunge blocked kitchen and bathroom facilities in his Unit, but may not use a snake, or cause a snake to be used, in any pipes unless instructed to do so by the Association. Owner is obligated to hire Association, or to hire a contractor approved by the Association to perform any maintenance of water, gas and sewer pipes located within the Unit.
<b>UTILITIES</b>	
Telephone Wiring	Maintain portions within or which exclusively serve Unit.
Gas, Telephone, and Electric	Owner responsible for obtaining and having serviced, unless otherwise provided in the Condominium Documents.

**Exhibit B**

**(attach Condominium Plan)**

**EXHIBIT "B"**  
**RESIDENTIAL CONDOMINIUM PLAN FOR**  
**55 PAGE STREET**  
**SAN FRANCISCO, CALIFORNIA**

BEING ALL THAT CERTAIN REAL PROPERTY ("PROPERTY") IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, SHOWN AS PARCEL 1, LOT 10 ON "FINAL MAP No. 3805, A 128 RESIDENTIAL UNIT AND 4 COMMERCIAL UNIT MIXED-USE CONDOMINIUM PROJECT A SUBDIVISION OF THAT REAL PROPERTY DESCRIBED IN THAT CERTAIN DEED RECORDED ON AUGUST 28, 2005 IN REEL 1962 AND IMAGE 120, CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA" FILED November 14, 2007, IN BOOK 403 OF CONDOMINIUM MAPS, PAGES 41-44. 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, AND WE CONSENT TO THE MAKING AND RECORDING OF SAID PLAN AND DESCRIPTION AS SHOWN.

OWNER: 55 PAGE STREET, LLC, A DELAWARE LIMITED LIABILITY COMPANY.

BY: 55 PAGE STREET ASSOCIATES LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, ITS MANAGING MEMBER

BY: 55 PAGE STREET VENTURE, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, ITS MANAGING MEMBER

BY: Alvan G. Givias

PRINT NAME OF OFFICER: Dean D. Givias

PRINT STATUS OF OFFICER: PRESIDENT

BY: J. Herrow

PRINT NAME OF OFFICER: J. HERROW

PRINT STATUS OF OFFICER: CFO



OWNER'S ACKNOWLEDGEMENT:

STATE OF California

COUNTY OF SAN FRANCISCO

ON November 20, 2007 BEFORE ME DARYLL ANN TOLENTINO SANTURAY A NOTARY PUBLIC, PERSONALLY APPEARED

DEAN D. GIVAS

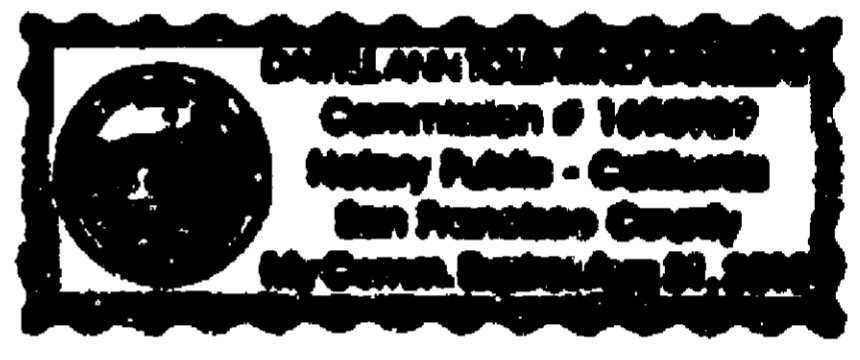
~~PERSONALLY KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES) AND BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT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

WITNESS MY HAND AND OFFICIAL SEAL.

SIGNATURE: Daryll Ann Tolentino Santuray

NAME: DARYLL ANN TOLENTINO SANTURAY

COMM. #: 1690929



OWNER'S ACKNOWLEDGEMENT:

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ON November 20, 2007 BEFORE ME, DARYLL ANN TOLENTINO SANTURAY A NOTARY PUBLIC, PERSONALLY APPEARED

DAVID HERRON

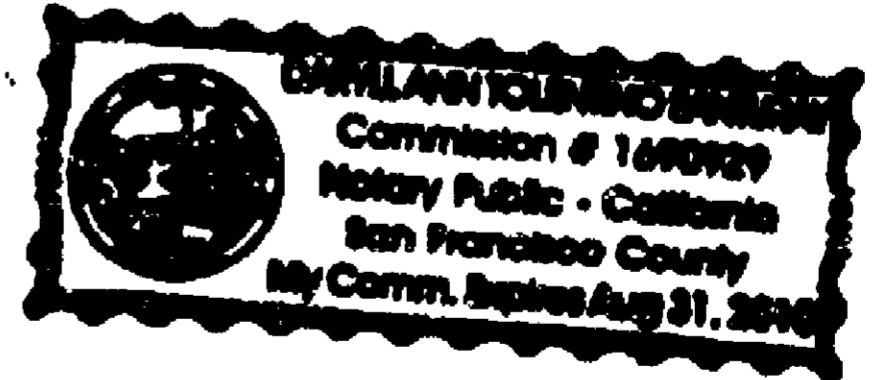
~~PERSONALLY KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES) AND BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT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

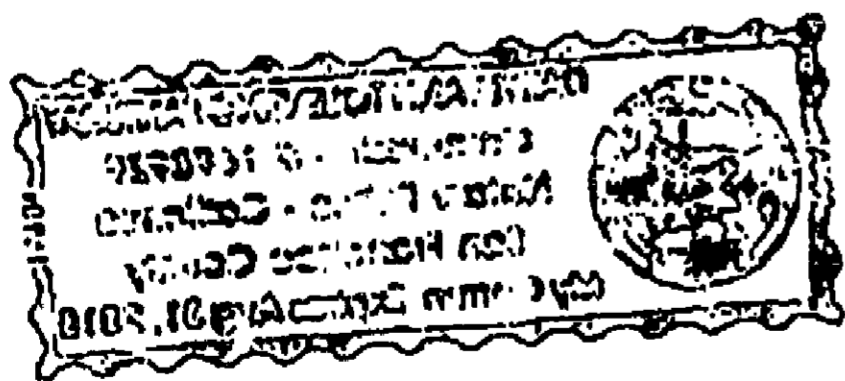
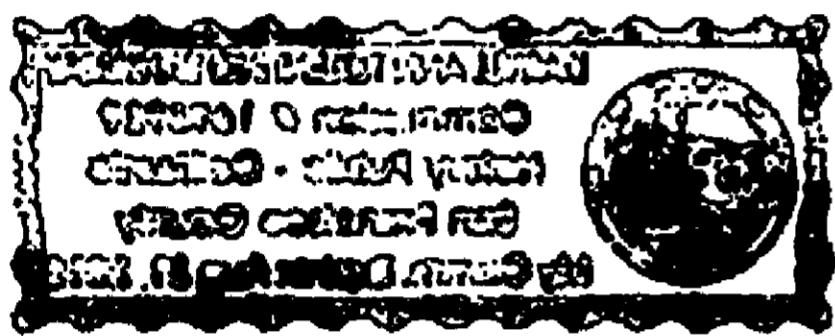
WITNESS MY HAND AND OFFICIAL SEAL.

SIGNATURE: Daryll Ann Tolentino Santuray

NAME: DARYLL ANN TOLENTINO SANTURAY

COMM. #: 1690929





## 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 34 SHEETS WAS PREPARED UNDER MY SUPERVISION AND THAT THIS PLAN TRULY REPRESENTS THE BOUNDARIES AND ELEVATIONS OF THE PARCELS AND COMMON AREA.

DATED 11-7-07

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



## GENERAL NOTES

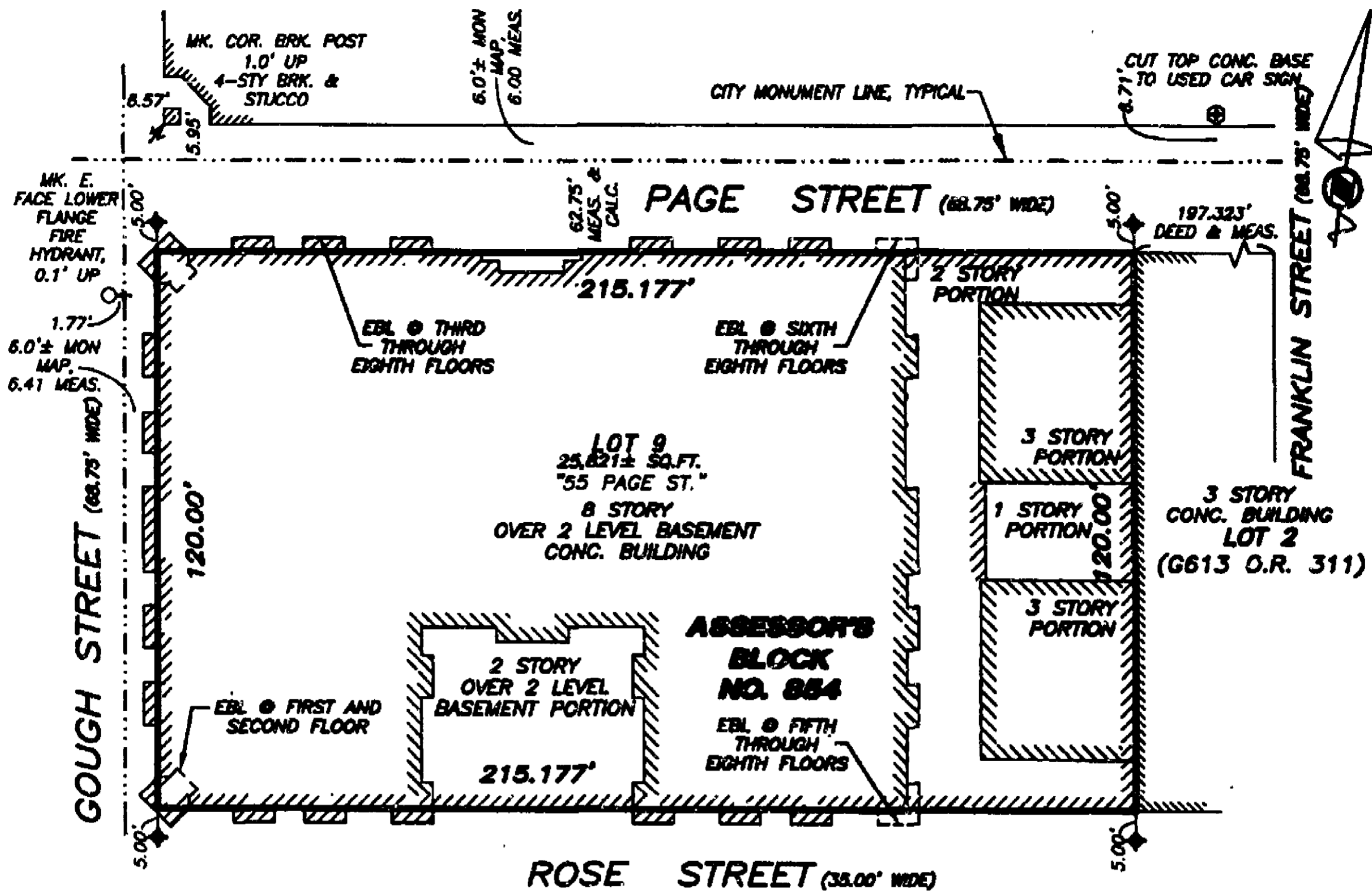
THIS IS A PLAN OF A "CONDOMINIUM PROJECT" AS THAT TERM IS DEFINED IN SECTION 1351 (f) OF THE CIVIL CODE OF THE STATE OF CALIFORNIA, AND THE SUBDIVISION DEPICTED HEREON IS SUBJECT TO THE PROVISIONS OF THE DAVIS-STIRLING COMMON INTEREST DEVELOPMENT ACT, TITLE 6, PART 4, DIVISION 2 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA. SHEETS 5 THROUGH 10 HEREOF ARE A PORTION OF THE SURVEY MAP OF THE SURFACE OF THE LAND INCLUDED WITHIN THE PROJECT AND SHEETS 11 THROUGH 32 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 11 THROUGH 32 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, EXCEPT AS SHOWN. DISTANCES ARE SHOWN IN FEET AND DECIMALS OF A FOOT.
5. BASIS OF SURVEY IS MONUMENT MAP 15 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-1", "P-2", "P-3", ETC. ARE PARKING AREAS. SUBJECT TO THE AVAILABILITY OF PARKING AREAS IN THE PROJECT, THE RIGHT TO LEASE A PARKING AREA SHALL BE ASSIGNED TO CERTAIN RESIDENTIAL OWNERS. USE OF THE PARKING AREAS SHALL BE SUBJECT TO THE TERMS AND CONDITIONS OF SECTION 2.2(C)(1) AND SECTION 7.3 OF THE DECLARATION, AS WELL AS ANY PARKING LEASE BETWEEN THE OWNER AND THE ASSOCIATION.
8. THE AREAS ENTITLED "HCP-74", "HCP-107" AND "HCP-108" ARE ACCESSIBLE HANDICAP PARKING AREAS. SUBJECT TO THE AVAILABILITY OF HANDICAP PARKING AREAS IN THE PROJECT, THE RIGHT TO LEASE A HANDICAP PARKING AREA SHALL BE ASSIGNED TO CERTAIN RESIDENTIAL OWNERS. USE OF THE HANDICAP PARKING AREAS SHALL BE SUBJECT TO THE TERMS AND CONDITIONS OF SECTION 2.2(C)(1) AND SECTION 7.3 OF THE DECLARATION, AS WELL AS ANY PARKING LEASE BETWEEN THE OWNER AND THE ASSOCIATION.
9. THE AREAS ENTITLED "B-411", "B-412", "B-419", ETC. ARE BALCONIES. AN EASEMENT FOR THE EXCLUSIVE USE OF EACH BALCONY SHALL BE GRANTED AS AN APPURTENANCE TO THE CORRESPONDINGLY NUMBERED UNIT.
10. THE AREAS ENTITLED "T-221", "T-222", "T-310", ETC. ARE TERRACES. AN EASEMENT FOR THE EXCLUSIVE USE OF EACH TERRACE SHALL BE GRANTED AS AN APPURTENANCE TO THE CORRESPONDINGLY NUMBERED UNIT.
11. FOR THE PERCENTAGE OF UNDIVIDED INTEREST IN THE OWNERSHIP OF THE COMMON AREA FOR THE UNITS, SEE TABLE ON SHEETS 33 AND 34.
12. BAY WINDOWS AND OTHER ENCROACHMENTS ON GOUGH, PAGE AND ROSE 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.

**THE FOLLOWING ARE EXCEPTIONS TO TITLE:**

- A. ENCROACHMENT AGREEMENT RECORDED OCTOBER 17, 1945, IN BOOK 4306, PAGE 376, OFFICIAL RECORDS.
- B. NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE RECORDED JULY 11, 2002, IN BOOK I177, PAGE 541, OFFICIAL RECORDS.
- C. DECLARATION OF USE RECORDED JANUARY 28, 2004, IN BOOK I562, PAGE 467, OFFICIAL RECORDS.
- D. TERMS AND PROVISIONS OF THE UNRECORDED "RETAIL AND PARKING UNITS AGREEMENT", AS DISCLOSED BY THE "SHORT FORM OF RETAIL AND PARKING UNITS AGREEMENT" RECORDED AUGUST 26, 2005, SERIAL NUMBER 2005-1020767, OFFICIAL RECORDS.
- E. TERMS AND PROVISIONS OF THE UNRECORDED "BMR UNITS AGREEMENT", AS DISCLOSED BY THE "SHORT FORM OF BMR UNITS AGREEMENT" RECORDED AUGUST 26, 2005, SERIAL NUMBER 2005-1020768, OFFICIAL RECORDS.



**LEGEND**

- BRK. BRICK
- CONC. CONCRETE
- COR. CORNER
- EBL EXTERIOR BUILDING LINE
- MEAS. MEASURED
- MK. MARK
- O.R. OFFICIAL RECORDS
- STY STORY
- L.E. LOWER ELEVATION
- U.E. UPPER ELEVATION
- (T) TOTAL
- ◆ SET NAIL & TAG, L.S. 5015

**BOUNDARY**

BY RW CHKD.      DATE 11/05/07 SCALE 1" = 40' SHEET 5 JOB NO. S-6080

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

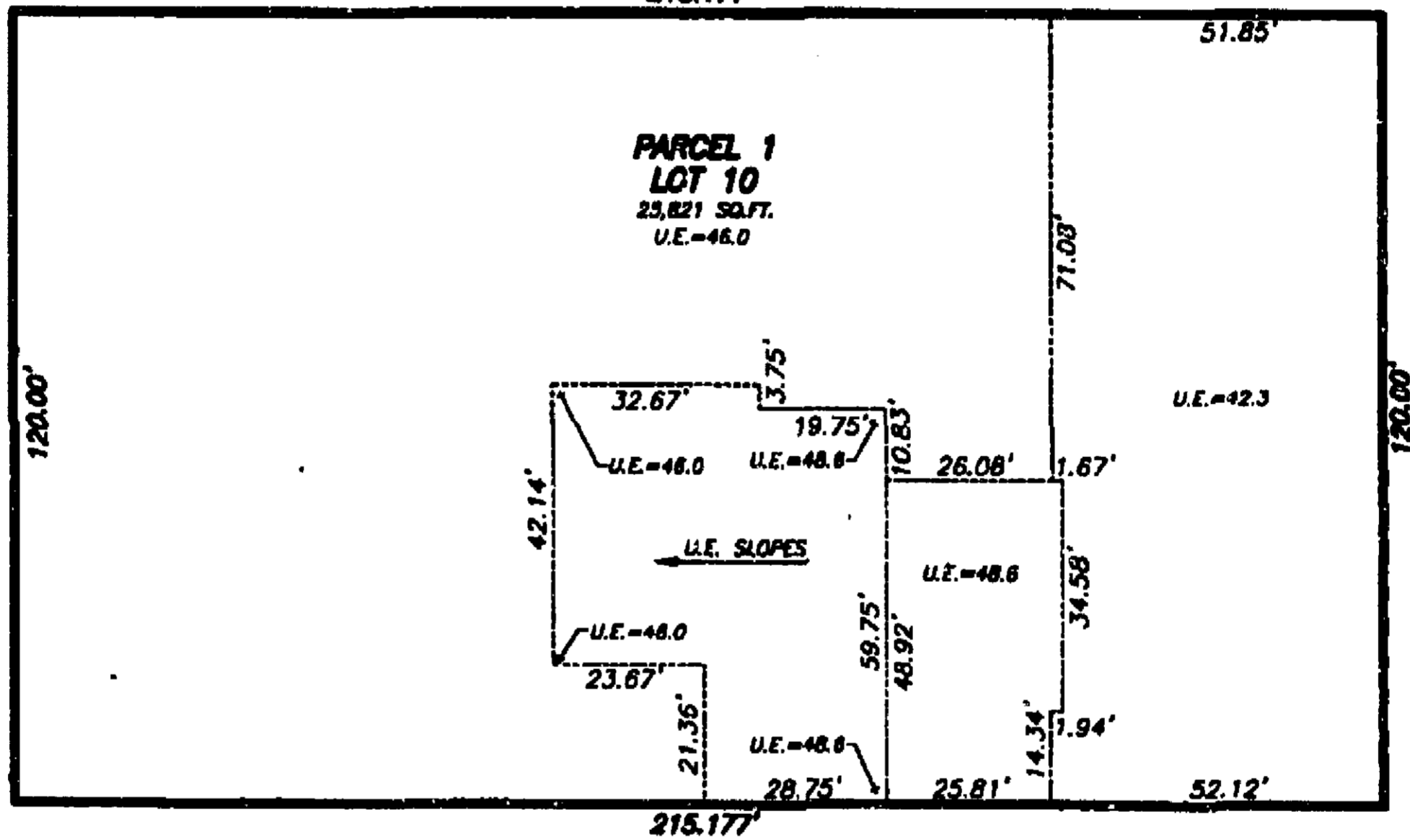
859 HARRISON STREET  
SAN FRANCISCO, CA. 94107  
(415) 543-4500



PAGE STREET

215.177'

GOUGH STREET



PARCEL 1  
LOT 10  
25,821 SQ. FT.  
U.E.=46.0

ROSE STREET

AIRSPACE — BASEMENT P1 FLOOR & BELOW  
U.E.=46.0 (EXCEPT AS SHOWN)  
L.E.=CENTER OF THE EARTH

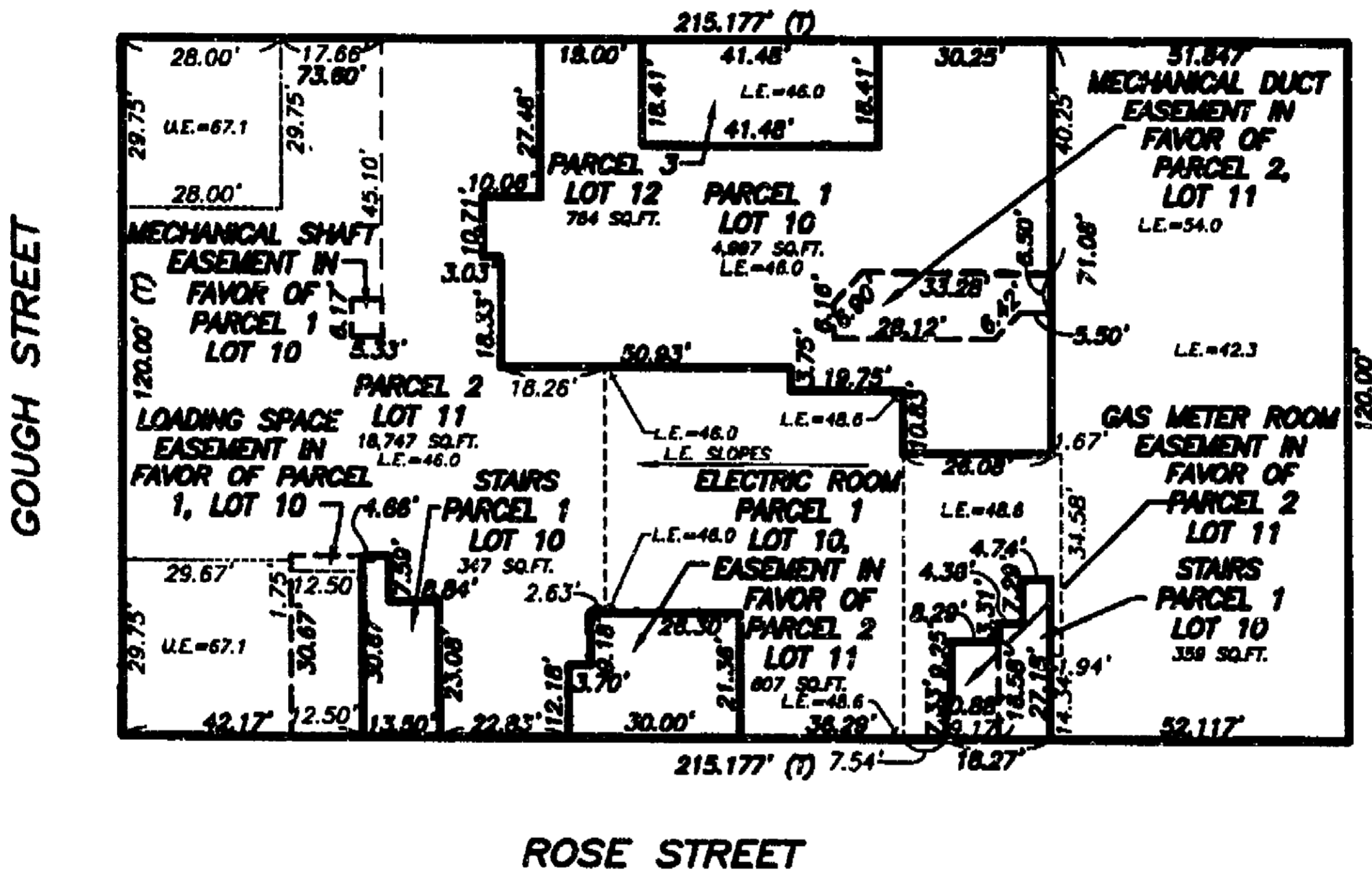
BY RW CHKD.      DATE 11/05/07 SCALE 1" = 40' SHEET 6 JOB NO. S-6080

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

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



PAGE STREET

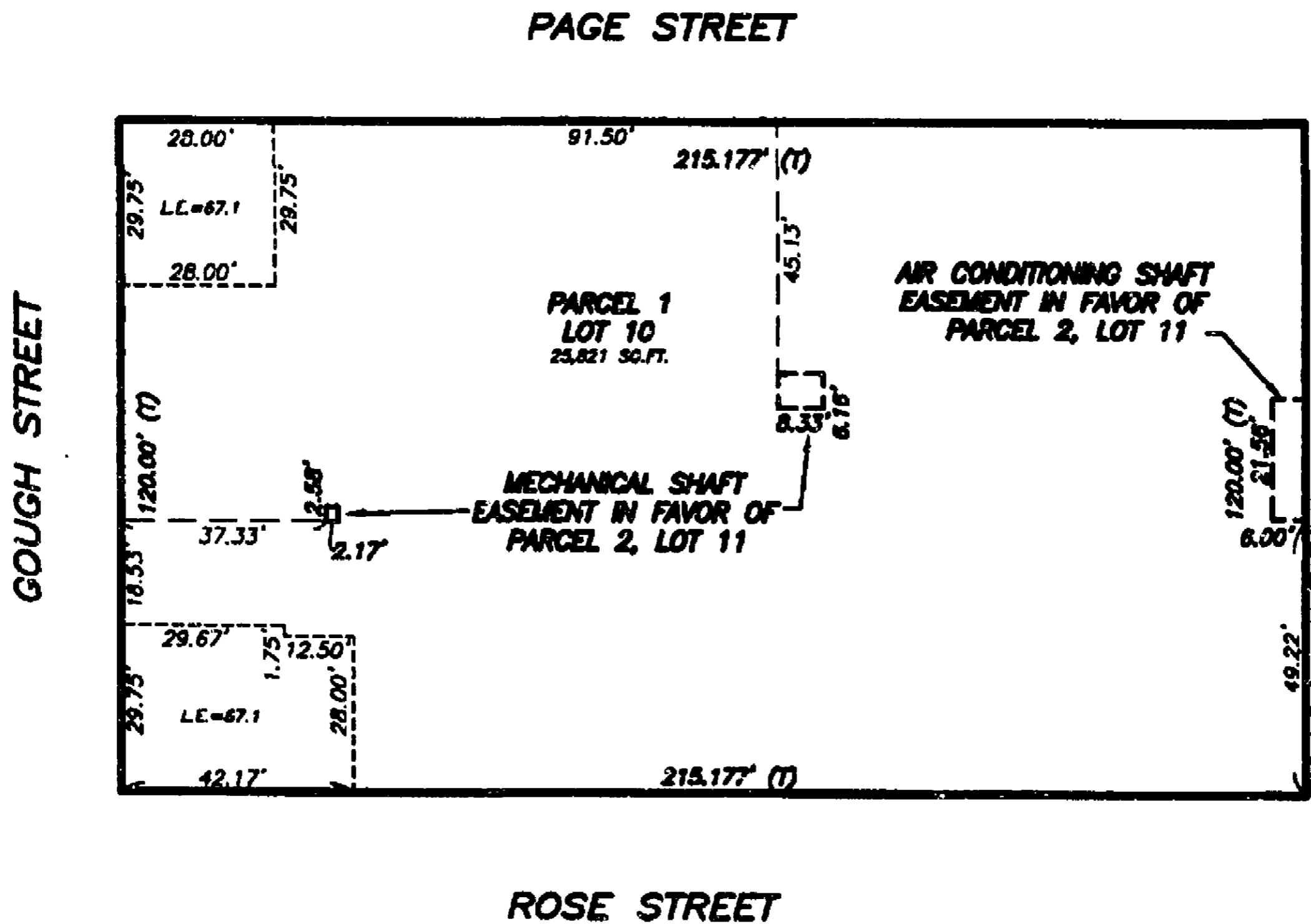


**AIRSPACE - FIRST FLOOR**  
 U.E.=57.4 (EXCEPT AS SHOWN)  
 L.E.=46.0 (EXCEPT AS SHOWN)

BY RW CHKD.        DATE 11/05/07 SCALE 1" = 40' SHEET 7 JOB NO. S-6080

MARTIN M. RON ASSOCIATES, INC.  
 LAND SURVEYORS

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



**AIRSPACE – SECOND FLOOR & THIRD FLOOR**  
 U.E.=78.4  
 L.E.=57.4 (EXCEPT AS SHOWN)

BY RW CHKD.      DATE 11/05/07 SCALE 1" = 40' SHEET 8 JOB NO. S-6080

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

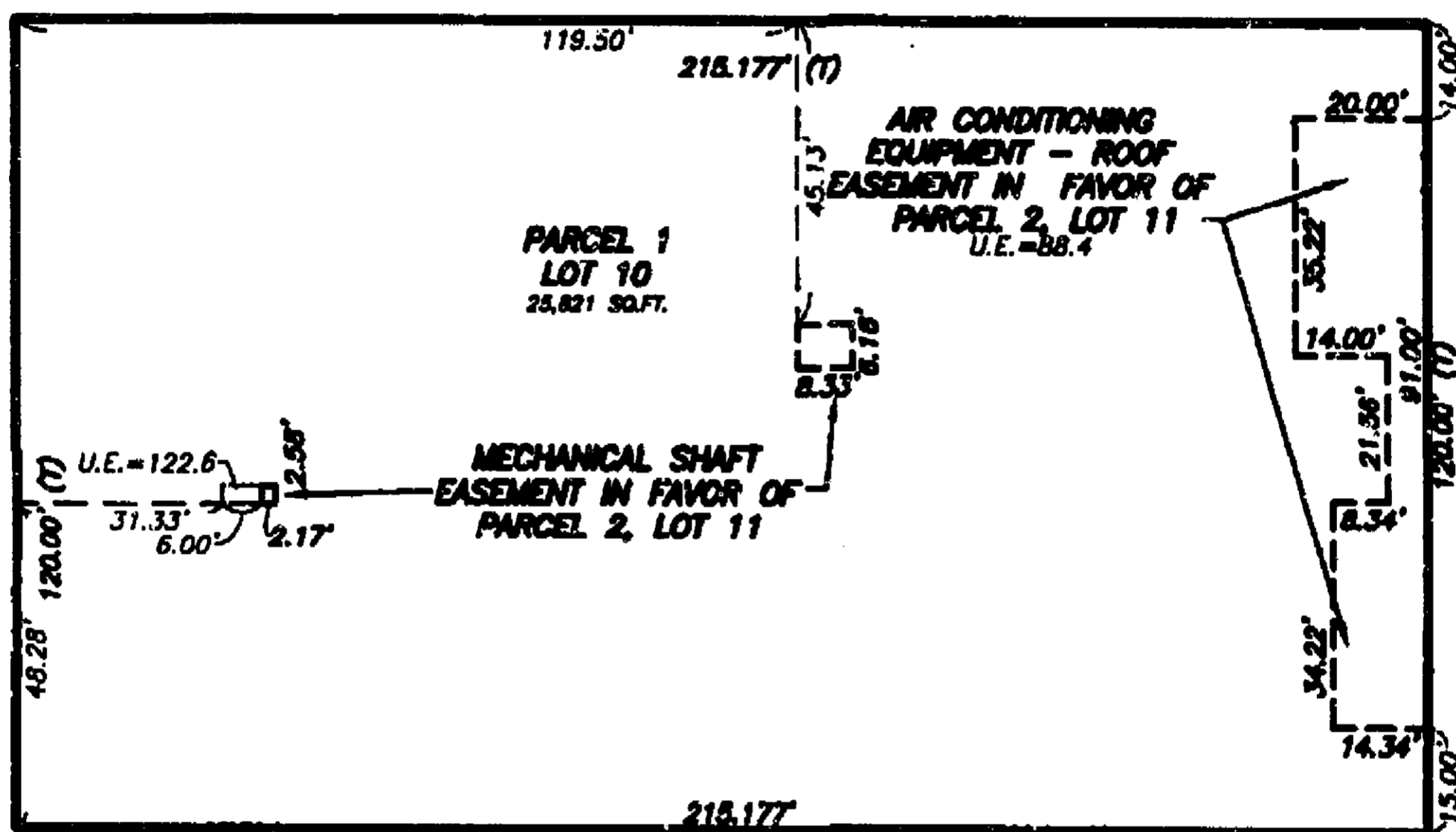
859 HARRISON STREET  
 SAN FRANCISCO, CA. 94107  
 (415) 543-4500





PAGE STREET

GOUGH STREET



ROSE STREET

**AIRSPACE — FOURTH FLOOR THROUGH EIGHTH FLOOR**  
 U.E.=125.7 (EXCEPT AS SHOWN)  
 L.E.=78.4

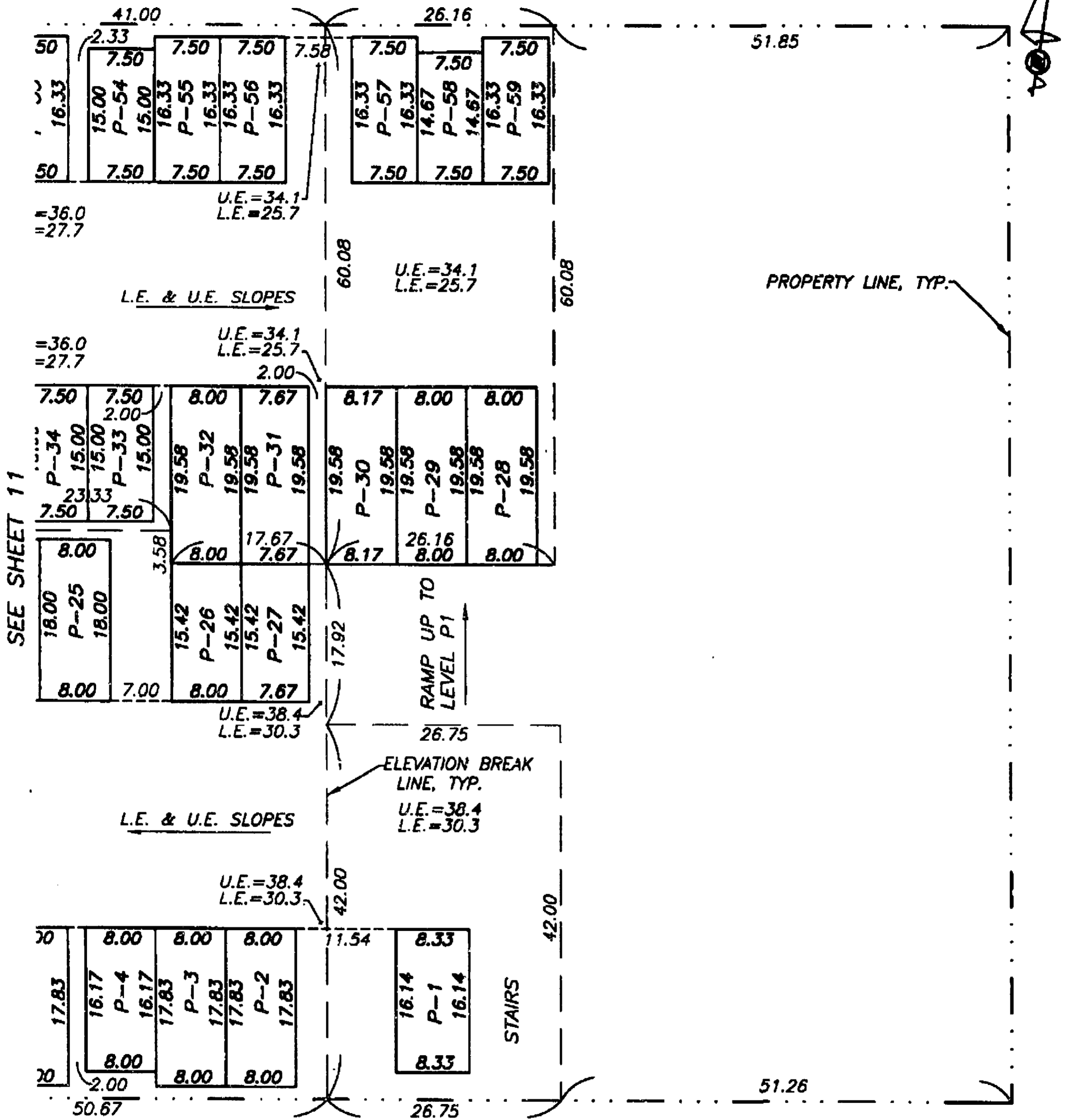
BY RW CHKD. \_\_\_\_\_ DATE 11/05/07 SCALE 1" = 40' SHEET 9 JOB NO. S-6080

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 LAND SURVEYORS

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# CONDOMINIUM PLAN - BASEMENT P2 FLOOR

U.E. = 36.0 (EXCEPT AS SHOWN)

L.E. = 27.7 (EXCEPT AS SHOWN)

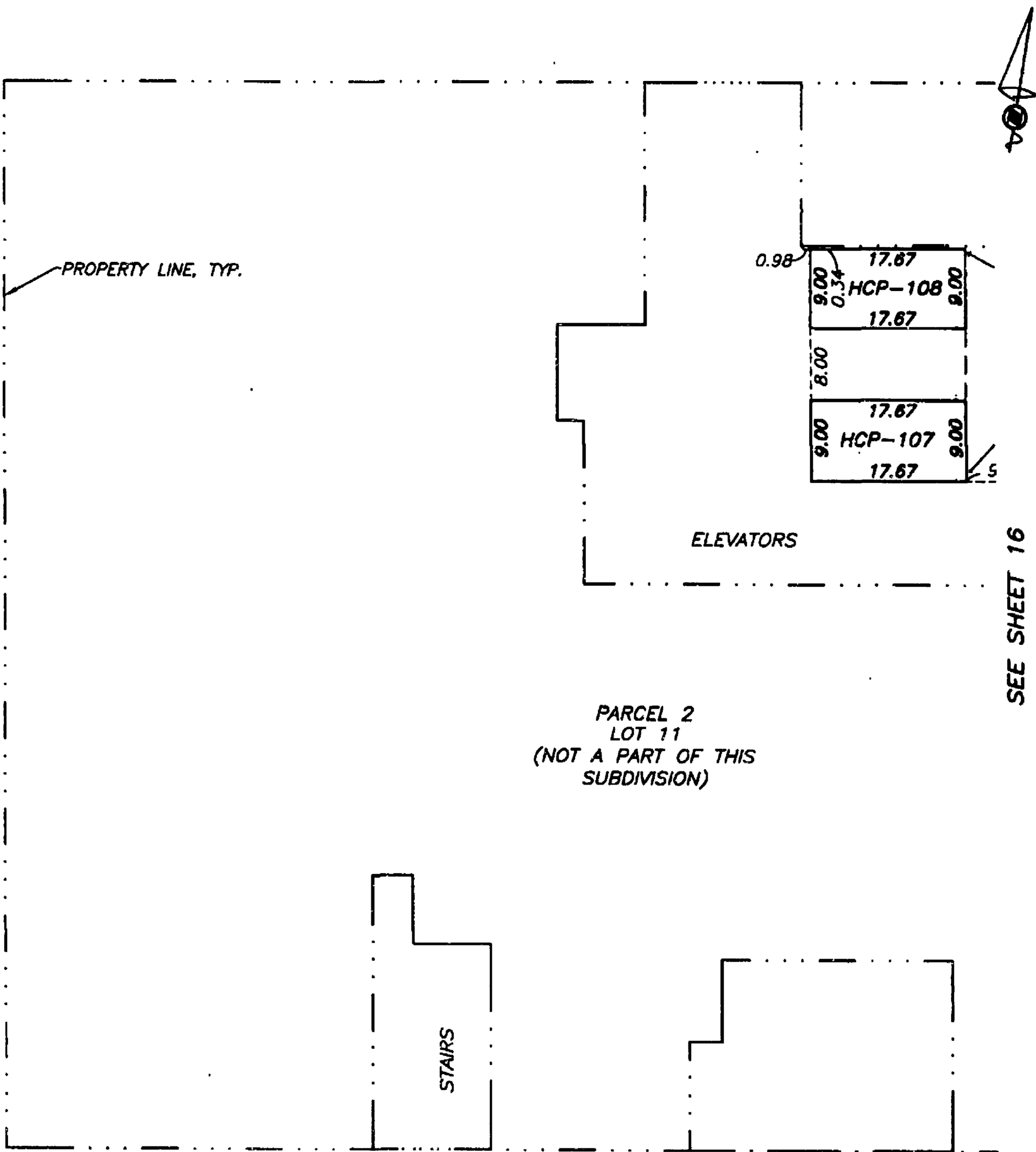
BY RW CHKD.        DATE 11/05/07 SCALE 1" = 16' SHEET 12 JOB NO. S-6080

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

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SAN FRANCISCO, CA. 94107  
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PARCEL 2  
 LOT 11  
 (NOT A PART OF THIS  
 SUBDIVISION)

SEE SHEET 16

**CONDOMINIUM PLAN — FIRST FLOOR**

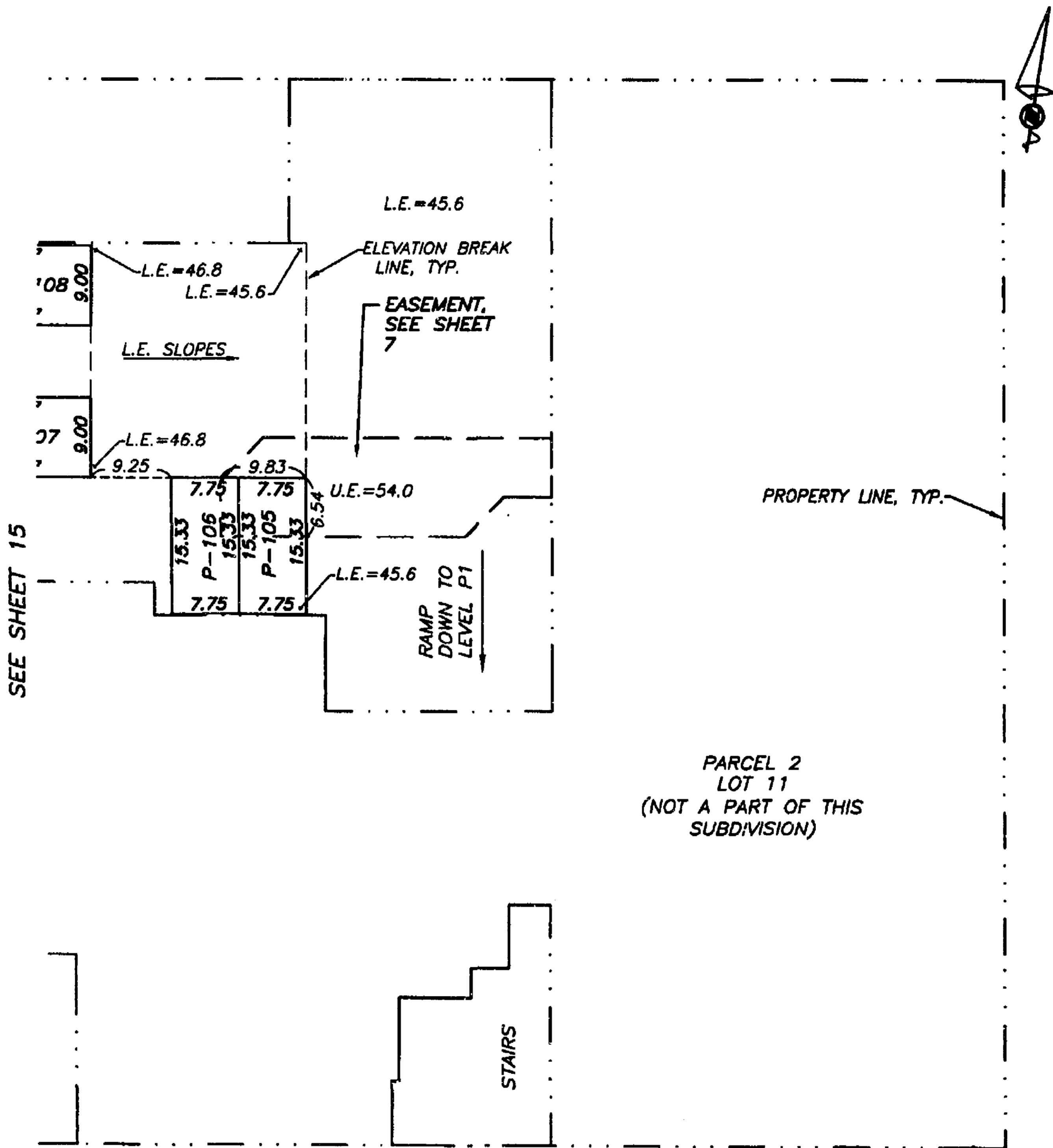
U.E.=57.1 (EXCEPT AS SHOWN)

L.E.=46.8 (EXCEPT AS SHOWN)

BY RW CHKD.      DATE 11/05/07 SCALE 1" = 16' SHEET 15 JOB NO. S-6080

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 SAN FRANCISCO, CA 94107  
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# CONDOMINIUM PLAN - FIRST FLOOR

U.E. = 57.1 (EXCEPT AS SHOWN)

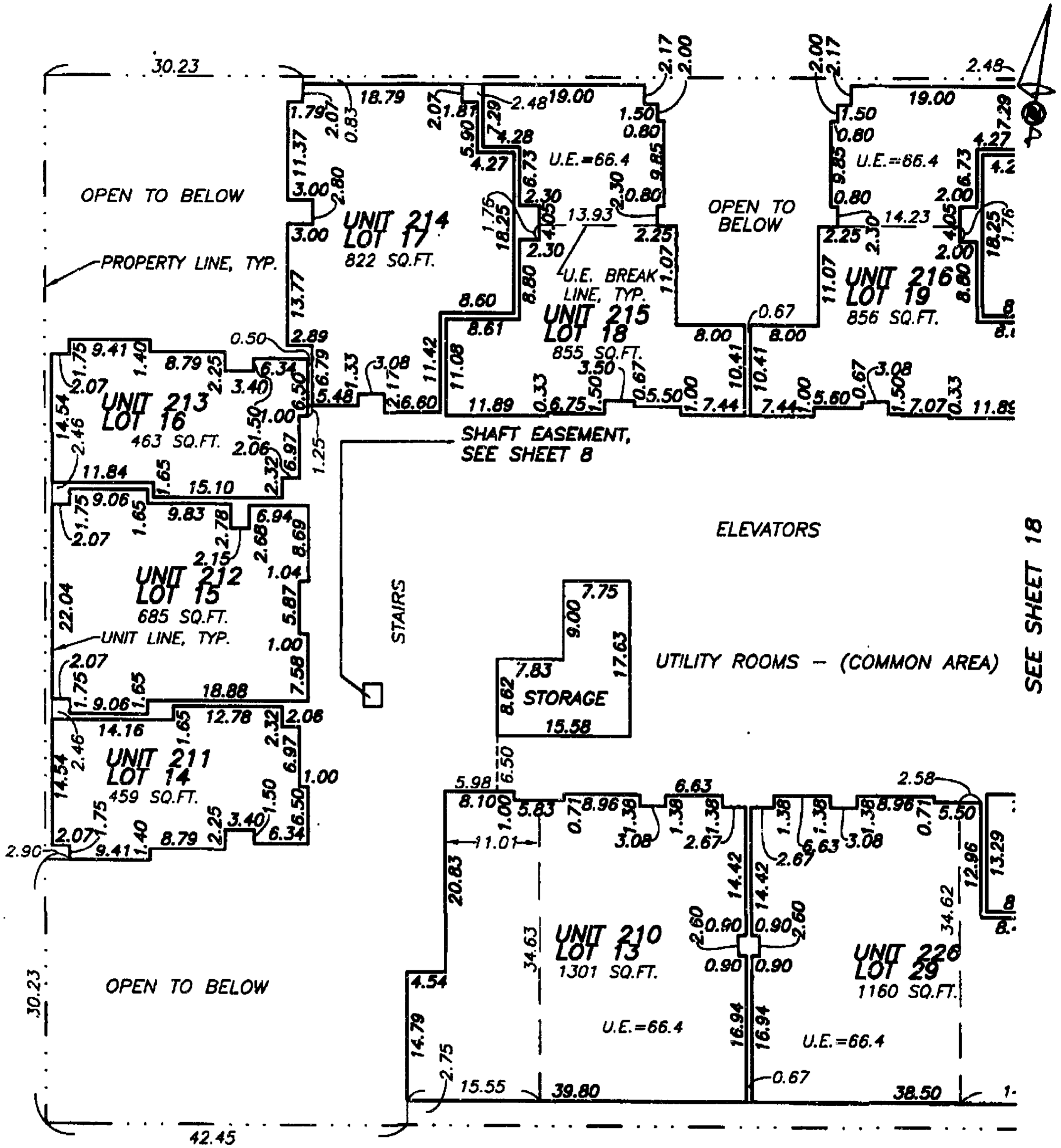
L.E. = 46.8 (EXCEPT AS SHOWN)

BY RW CHKD.      DATE 11/05/07 SCALE 1" = 16' SHEET 16 JOB NO. S-6080

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SEE SHEET 18

**CONDOMINIUM PLAN - SECOND FLOOR**

U.E.=67.1 (EXCEPT AS SHOWN)

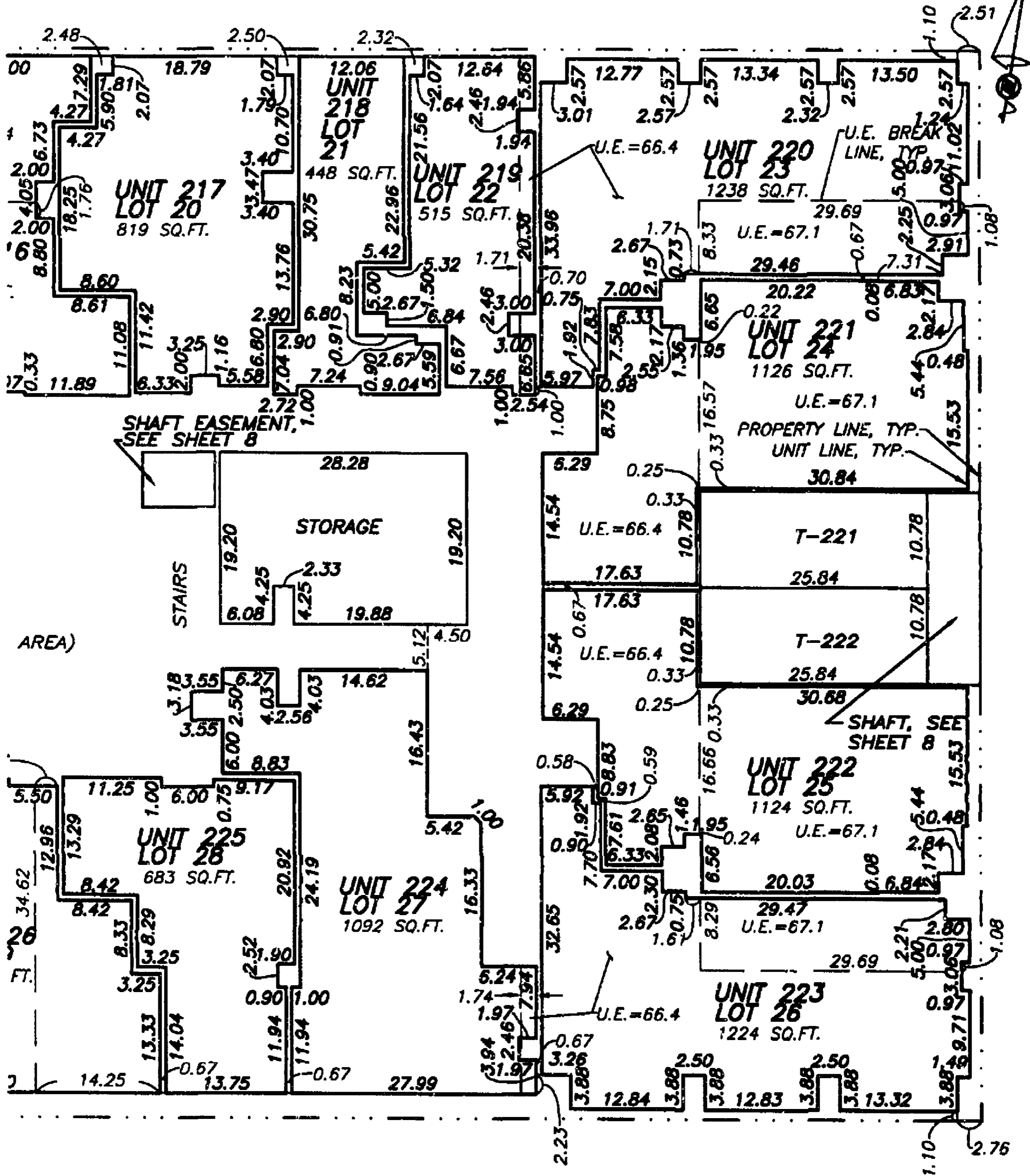
L.E.=57.8

BY <u>RW</u> CHKD. _____	DATE <u>11/05/07</u>	SCALE <u>1" = 16'</u>	SHEET <u>17</u>	JOB NO. <u>S-6080</u>
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SAN FRANCISCO, CA. 94107  
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SEE SHEET 17



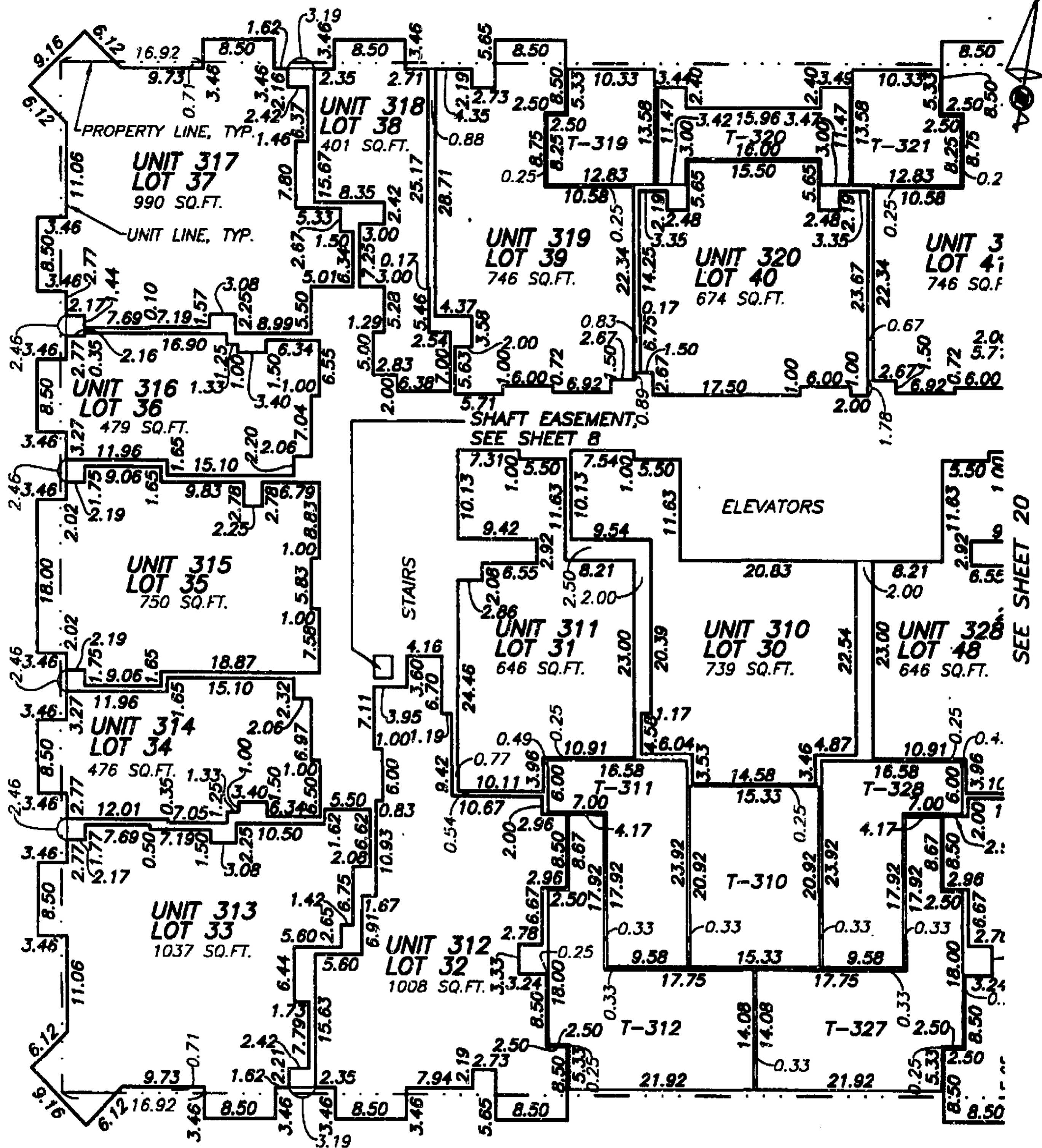
# CONDOMINIUM PLAN - SECOND FLOOR

U.E.=67.1 (EXCEPT AS SHOWN)  
L.E.=57.8

BY RW CHKD.      DATE 11/05/07 SCALE 1" = 16' SHEET 18 JOB NO. S-6080

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# CONDOMINIUM PLAN - THIRD FLOOR

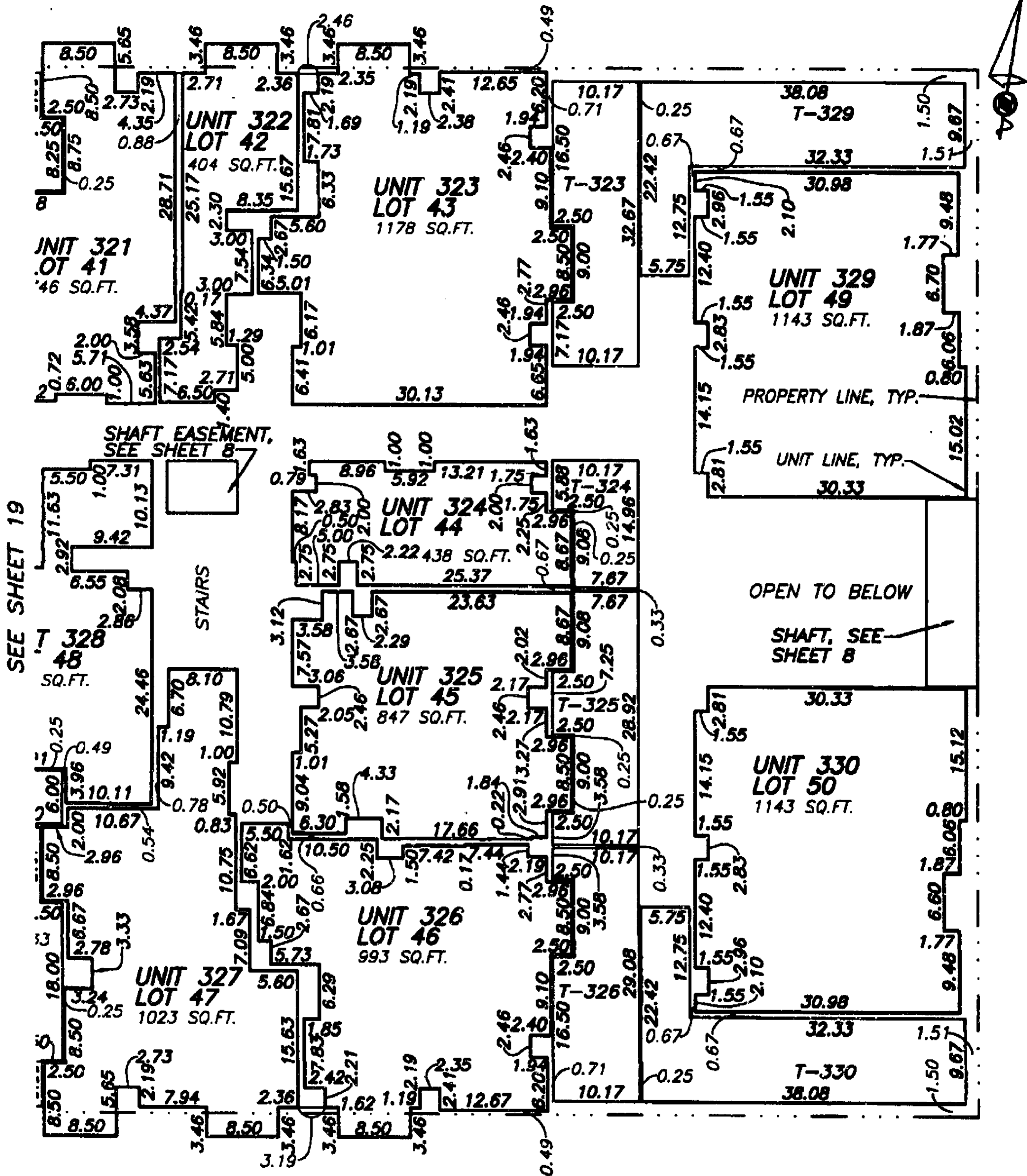
U.E. = 76.6

L.E. = 67.7

BY <u>RW</u> CHKD. <u>      </u>	DATE <u>11/05/07</u>	SCALE <u>1" = 16'</u>	SHEET <u>19</u>	JOB NO. <u>S-6080</u>
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SAN FRANCISCO, CA 94107  
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**CONDOMINIUM PLAN - THIRD FLOOR**

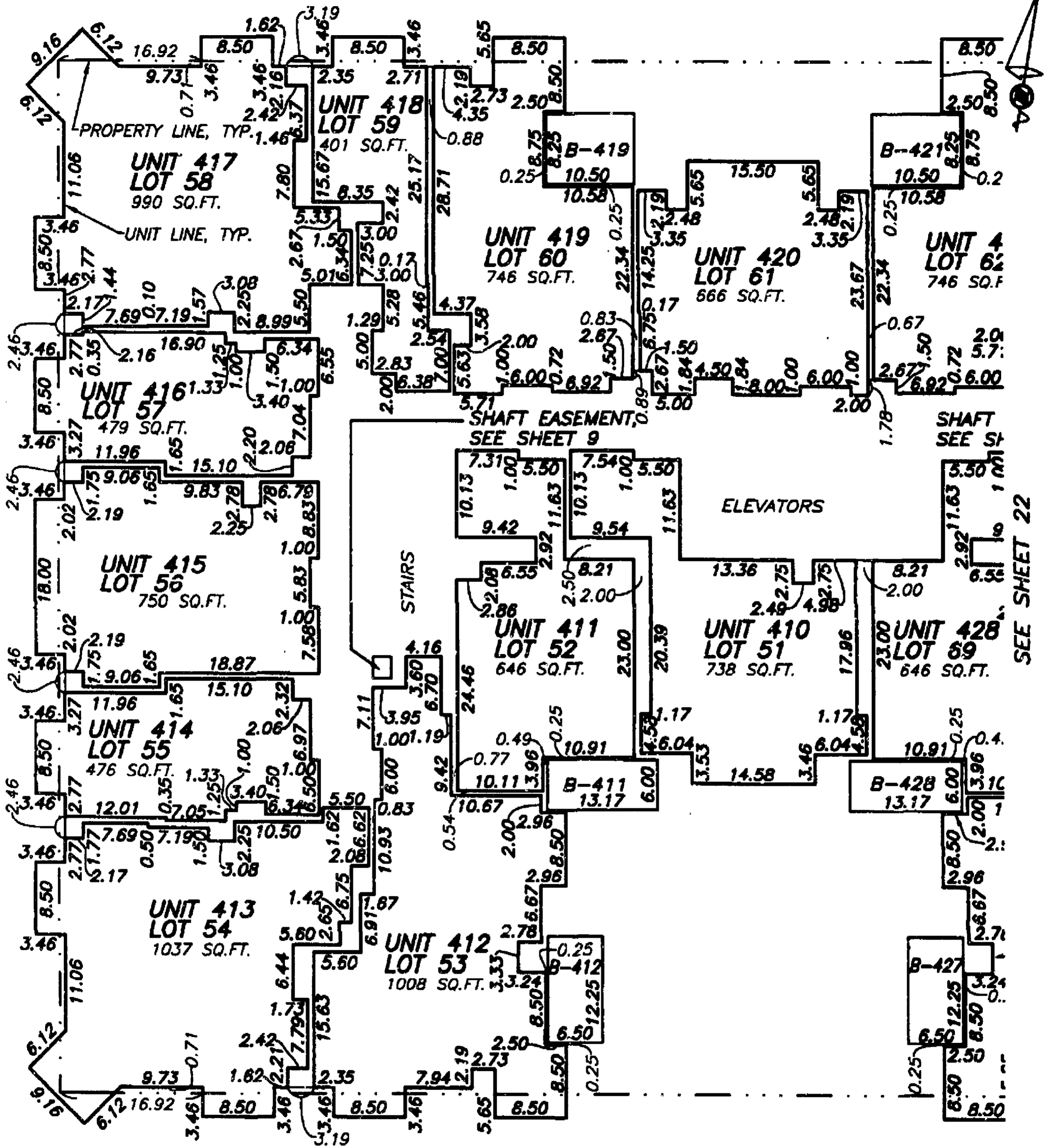
U.E. = 76.6

L.E. = 67.7

BY RW CHKD.        DATE 11/05/07 SCALE 1" = 16' SHEET 20 JOB NO. S-6080

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SAN FRANCISCO, CA 94107  
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**CONDOMINIUM PLAN - FOURTH FLOOR**

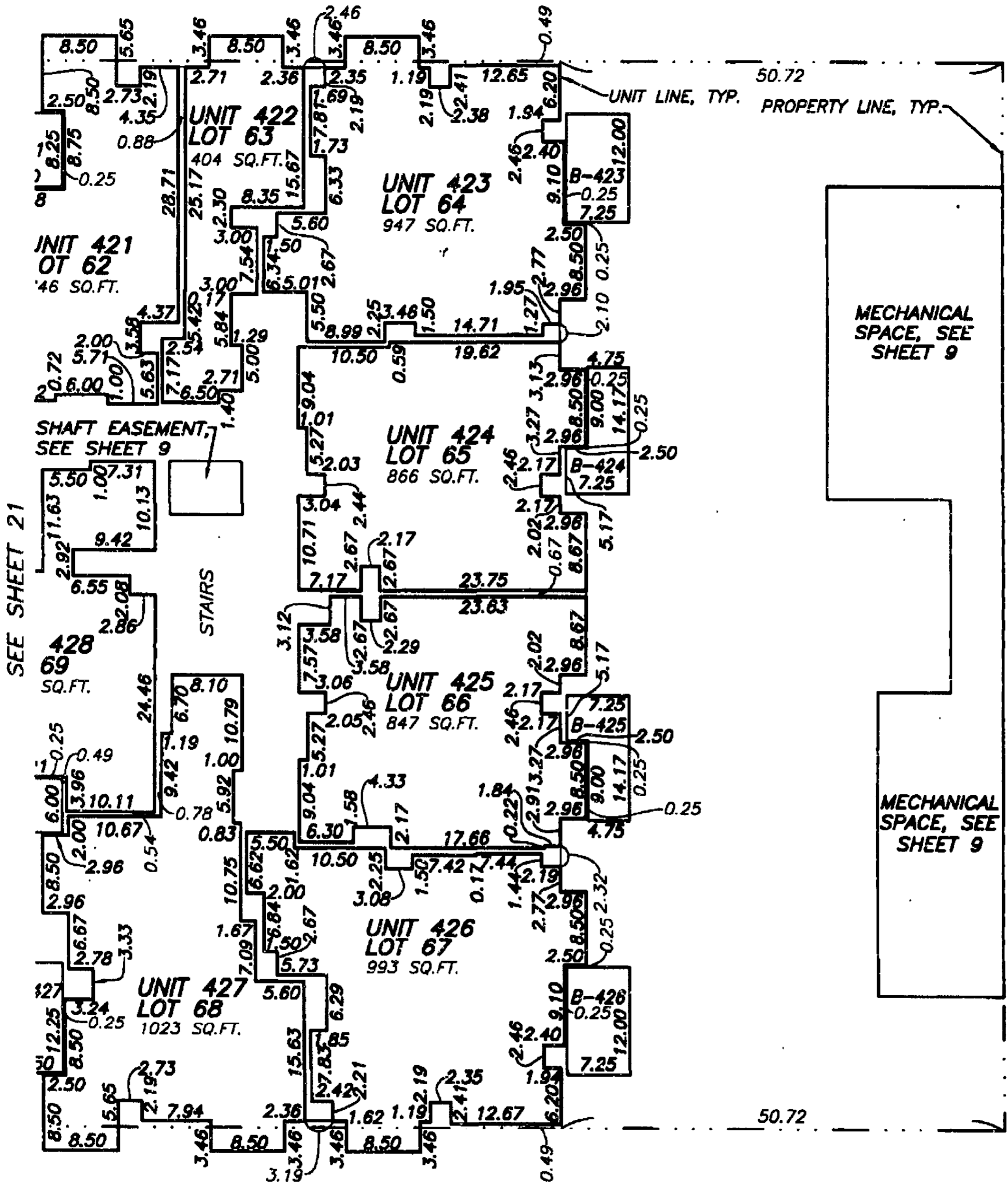
U.E. = 86.1

L.E. = 77.2

BY RW CHKD.        DATE 11/05/07 SCALE 1" = 16' SHEET 21 JOB NO. S-6080

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**CONDOMINIUM PLAN — FOURTH FLOOR**

U.E. = 86.1

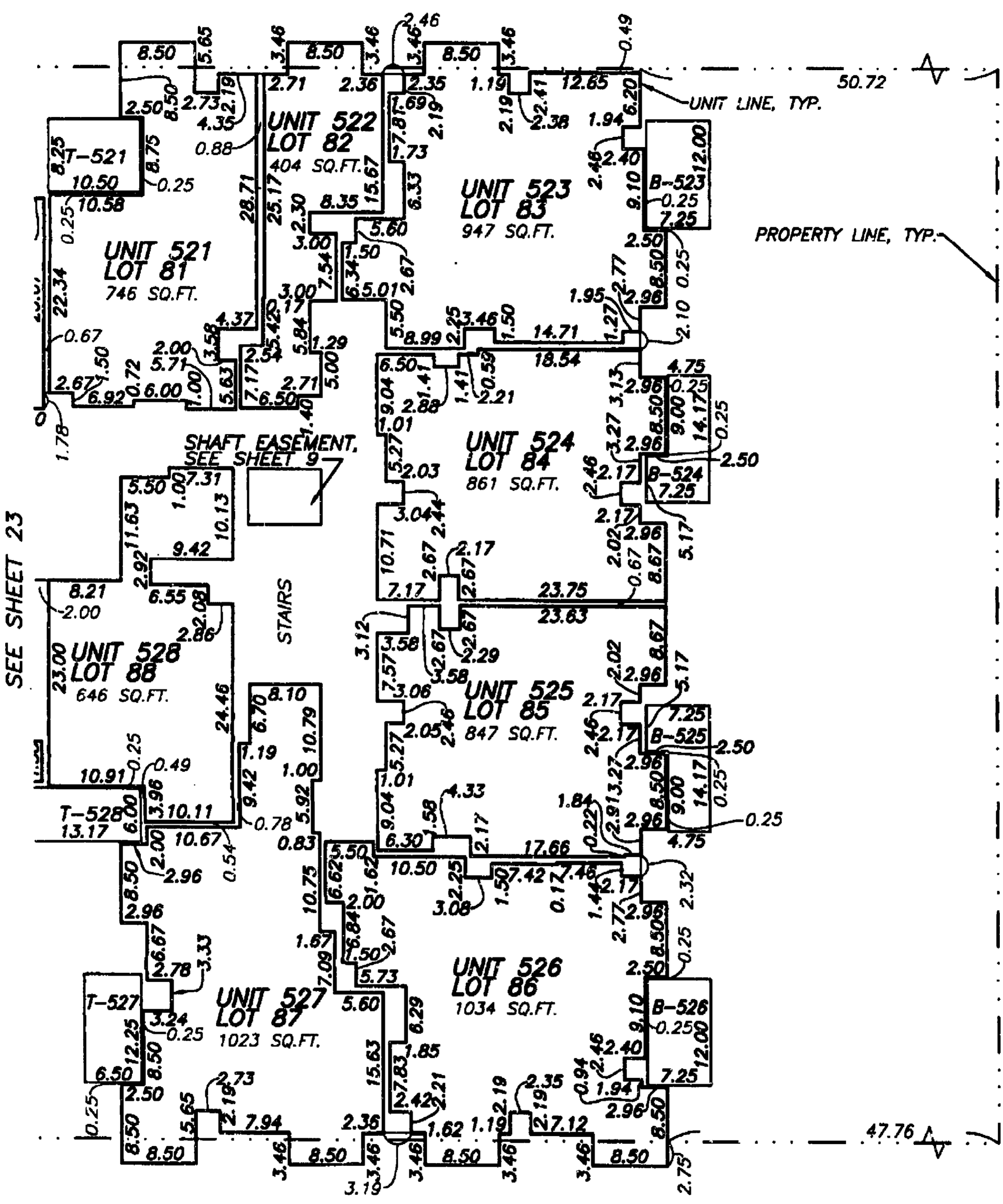
L.E. = 77.2

BY RW CHKD.        DATE 11/05/07 SCALE 1" = 16' SHEET 22 JOB NO. S-6080

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SAN FRANCISCO, CA. 94107  
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**CONDOMINIUM PLAN — FIFTH FLOOR**

U.E.=95.6

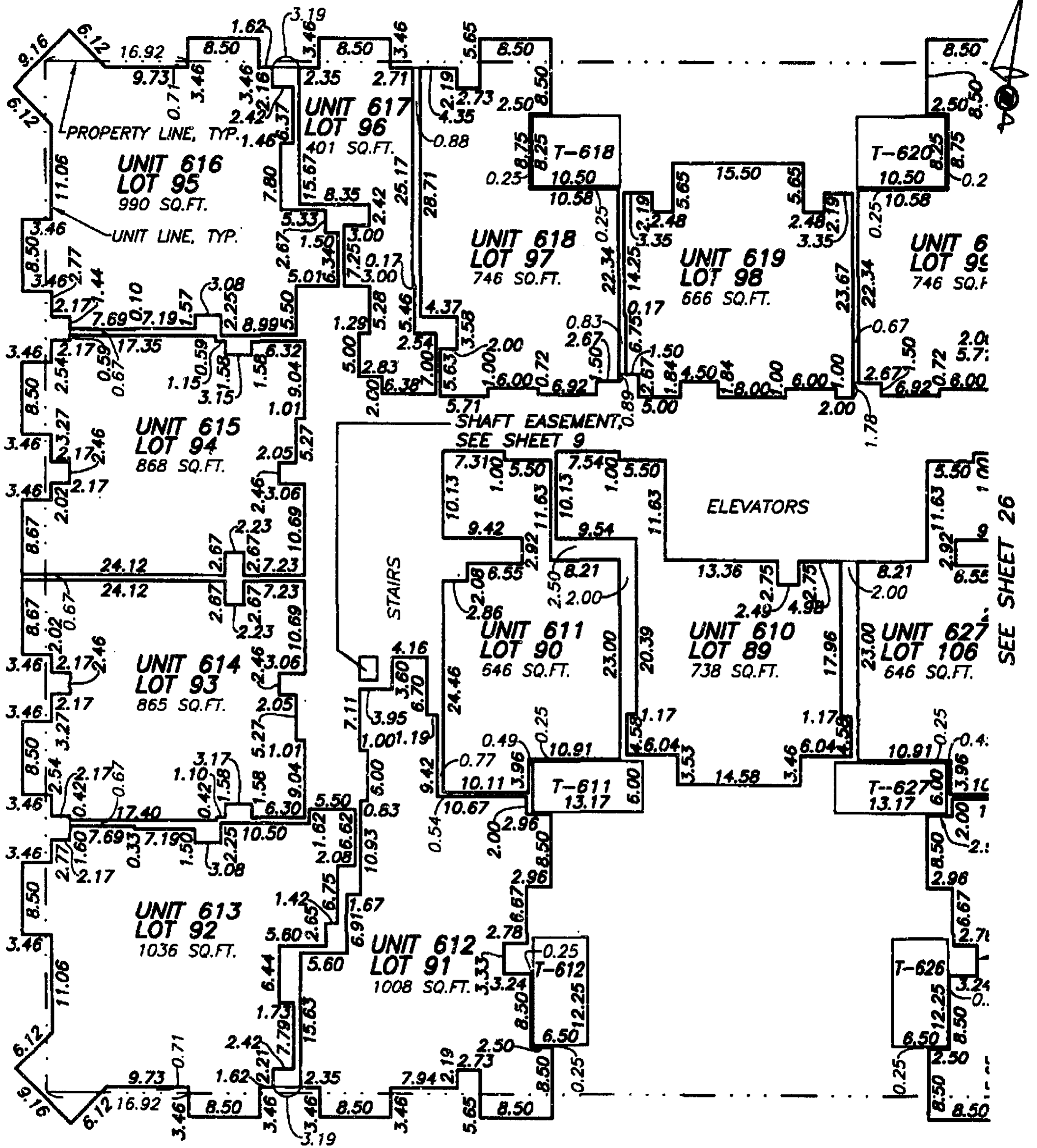
L.E.=86.7

BY RW CHKD. DATE 11/05/07 SCALE 1" = 16' SHEET 24 JOB NO. S-6080

**MARTIN M. RON ASSOCIATES, INC.**  
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SAN FRANCISCO, CA. 94107  
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# CONDOMINIUM PLAN - SIXTH FLOOR

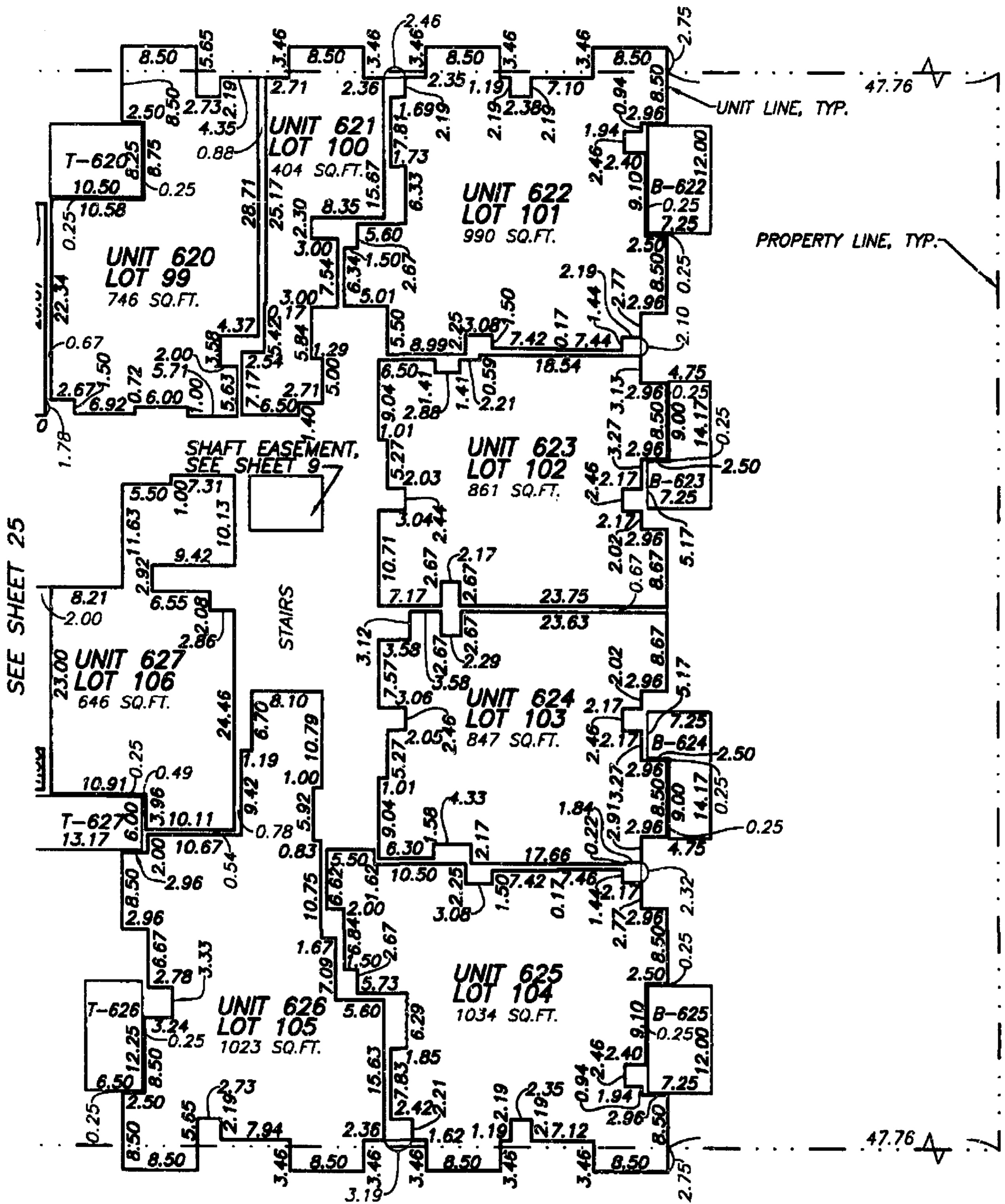
U.E. = 105.1

L.E. = 96.2

BY RW CHKD.            DATE 11/05/07 SCALE 1" = 16' SHEET 25 JOB NO. S-6080

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LAND SURVEYORS

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**CONDOMINIUM PLAN - SIXTH FLOOR**

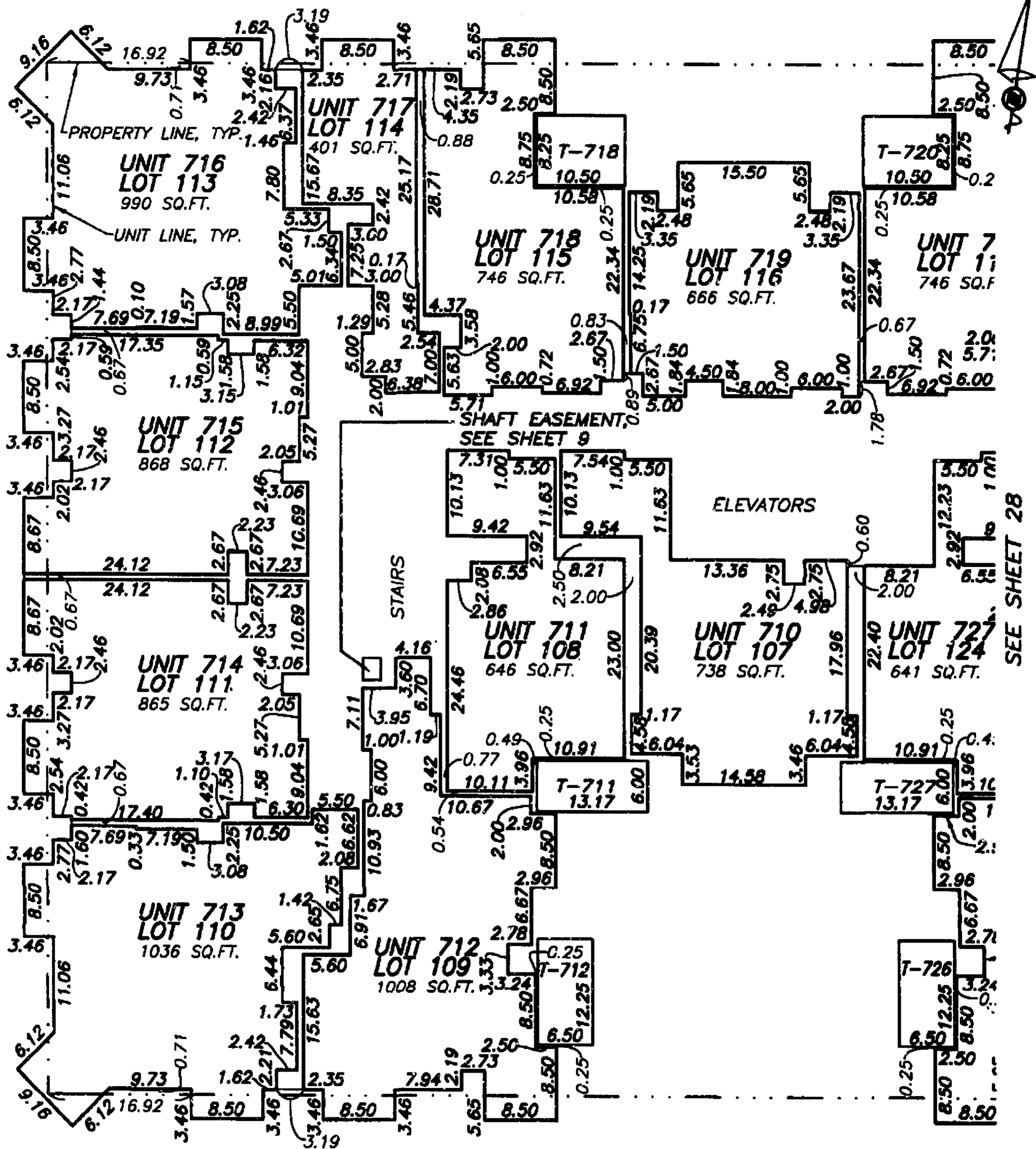
U.E. = 105.1

L.E. = 96.2

BY RW CHKD.        DATE 11/05/07 SCALE 1" = 16' SHEET 26 JOB NO. S-6080

**MARTIN M. RON ASSOCIATES, INC.**  
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SAN FRANCISCO, CA. 94107  
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# CONDOMINIUM PLAN - SEVENTH FLOOR

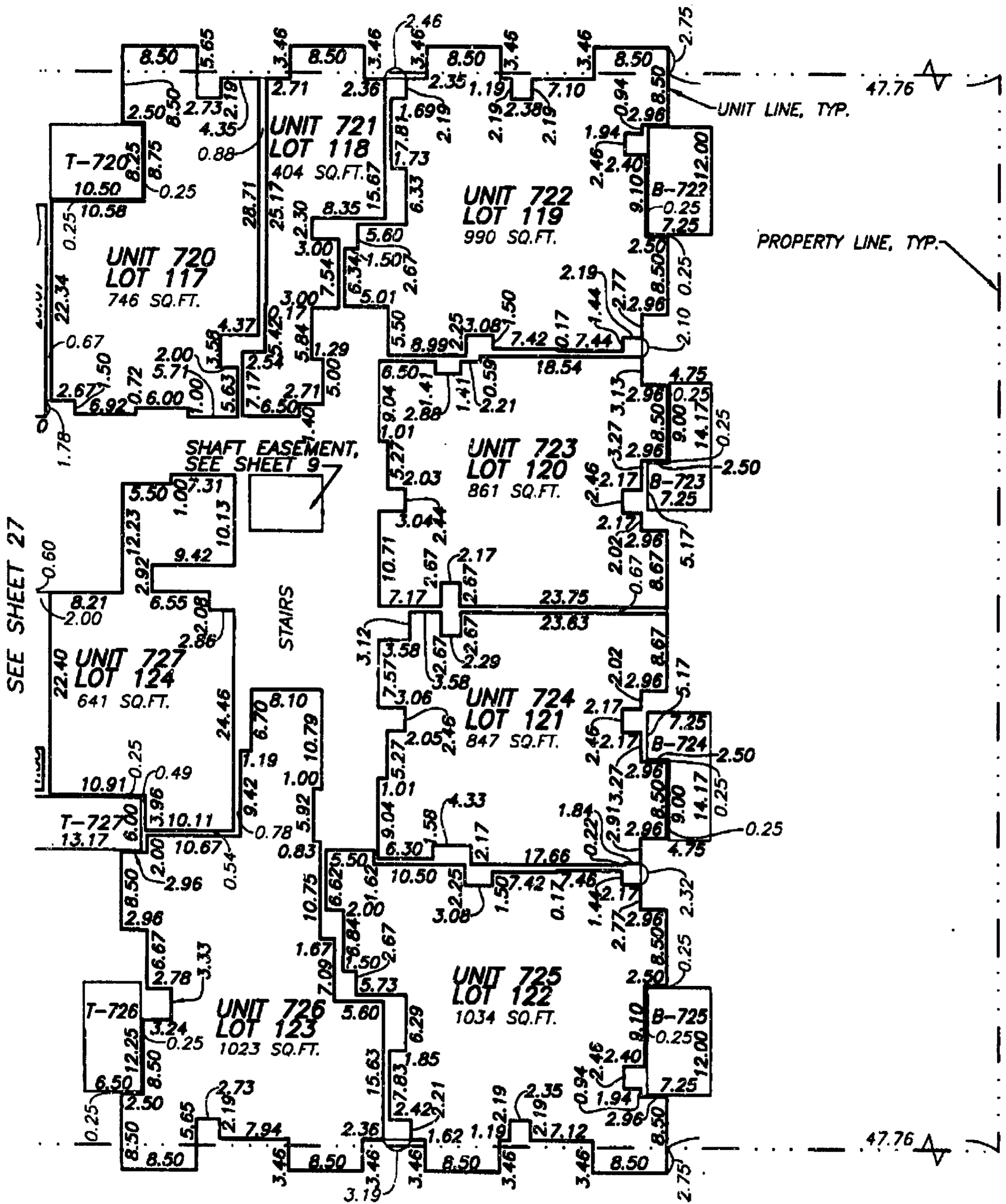
U.E. = 114.6

L.E. = 105.7

BY RW CHKD.          DATE 11/05/07 SCALE 1" = 16' SHEET 27 JOB NO. S-6080

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

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SAN FRANCISCO, CA. 94107  
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**CONDOMINIUM PLAN - SEVENTH FLOOR**

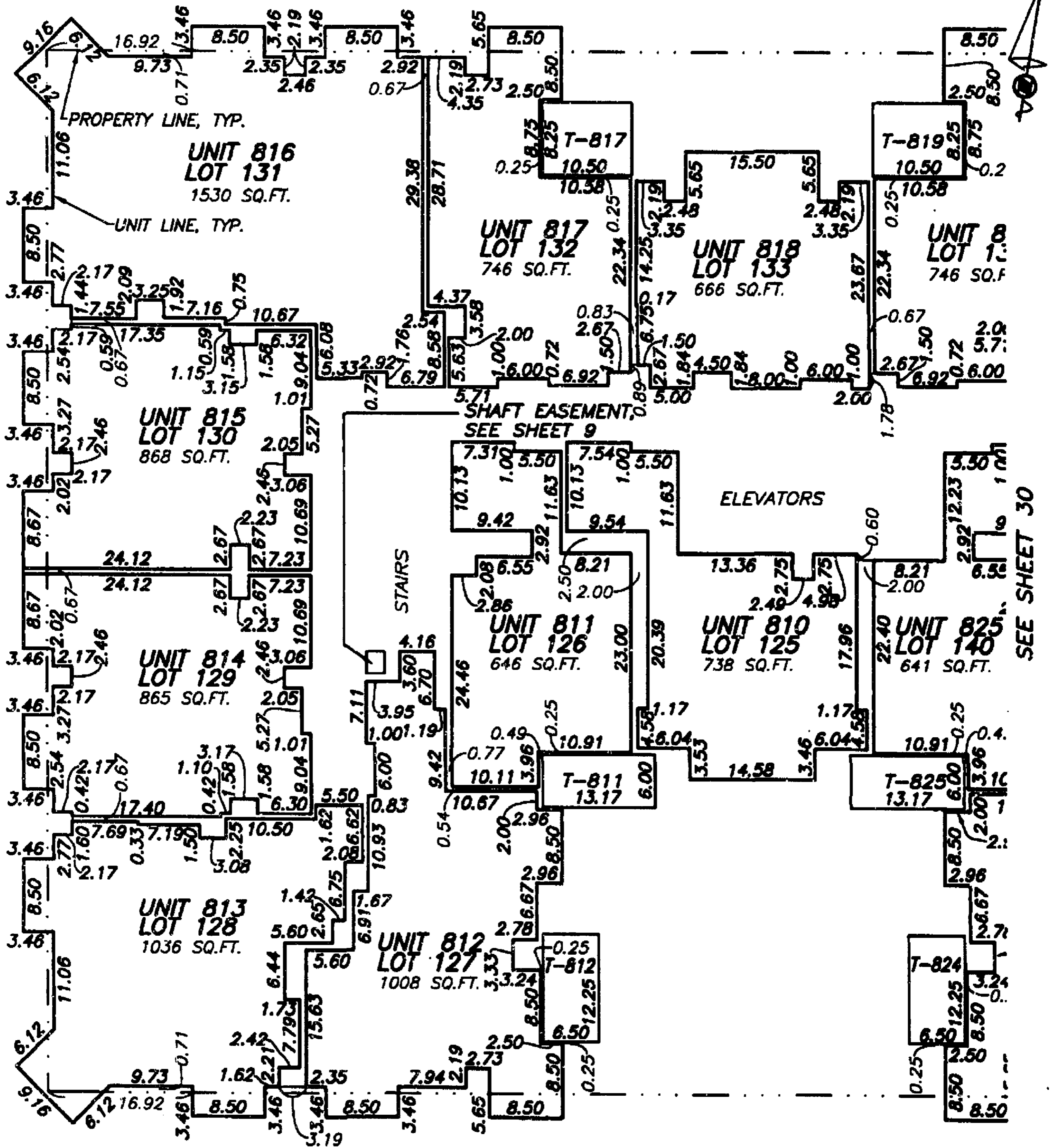
U.E. = 114.6

L.E. = 105.7

BY RW CHKD.            DATE 11/05/07 SCALE 1" = 16' SHEET 28 JOB NO. S-6080

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



**CONDOMINIUM PLAN - EIGHTH FLOOR**

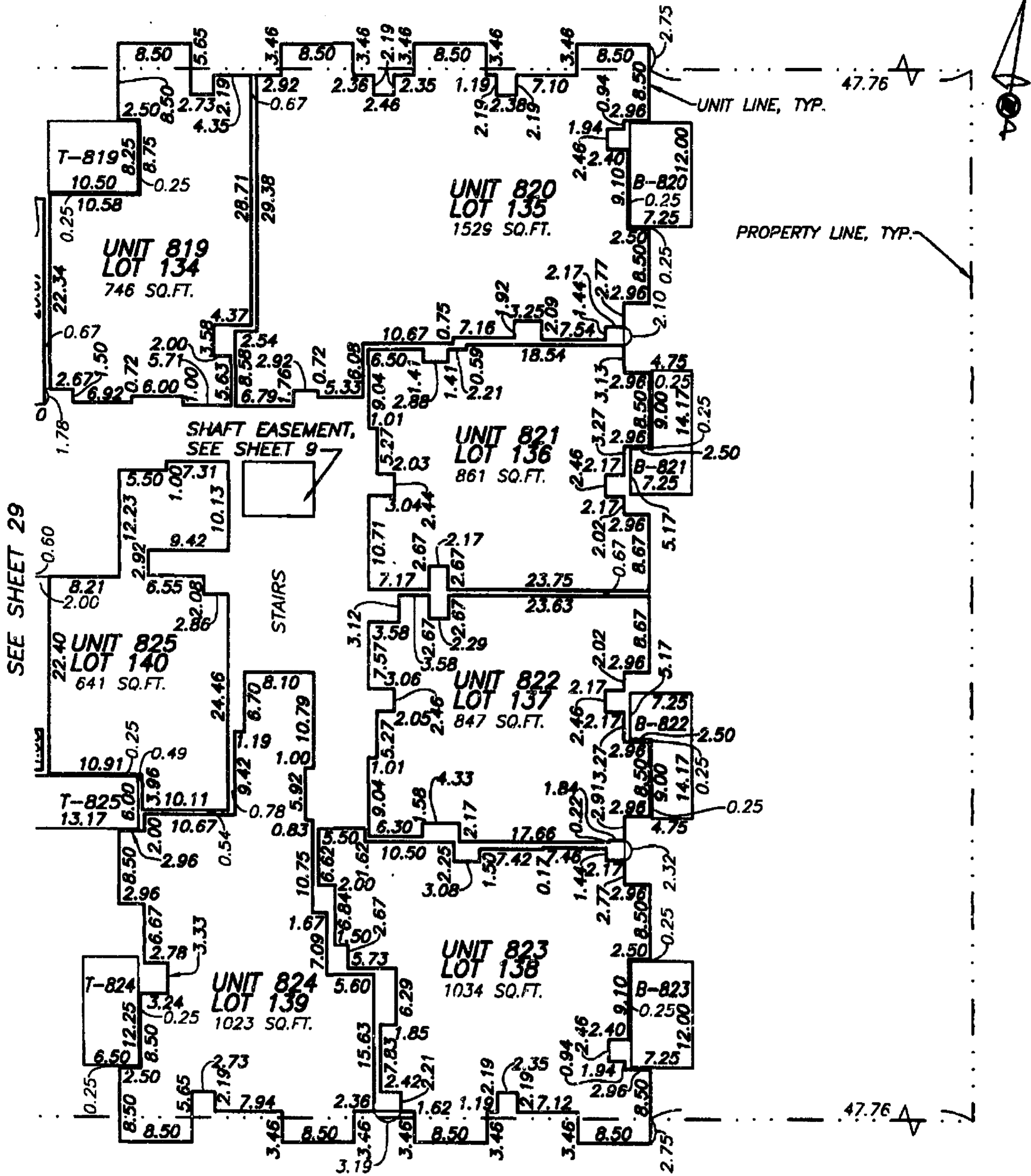
U.E. = 124.9

L.E. = 115.2

BY RW CHKD.        DATE 11/05/07 SCALE 1" = 16' SHEET 29 JOB NO. S-6080

**MARTIN M. RON ASSOCIATES, INC.**  
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SAN FRANCISCO, CA. 94107  
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# CONDOMINIUM PLAN — EIGHTH FLOOR

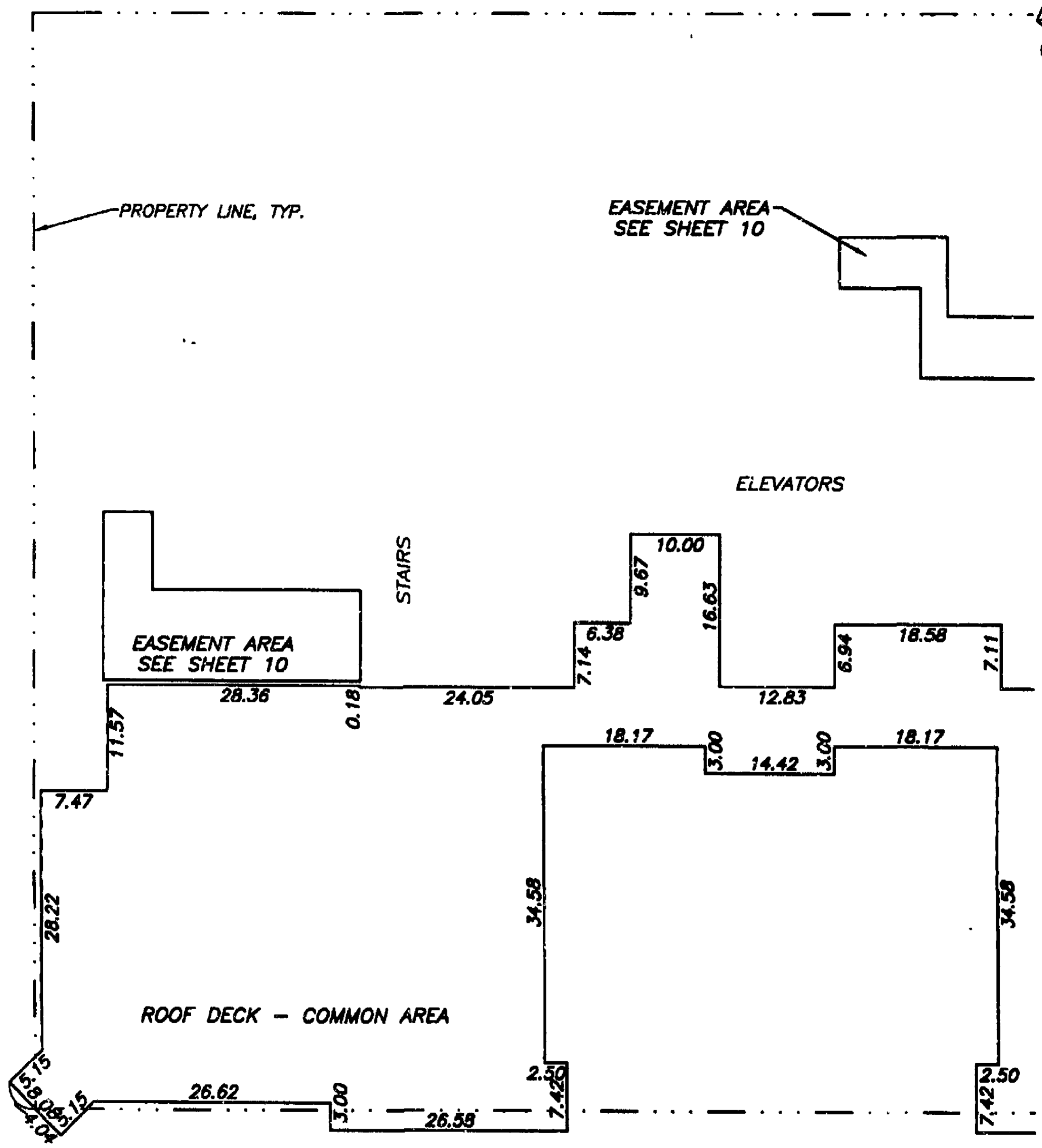
U.E. = 124.9

L.E. = 115.2

BY RW CHKD.            DATE 11/05/07 SCALE 1" = 16' SHEET 30 JOB NO. S-6080

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

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



**CONDOMINIUM PLAN - ROOF**  
 U.E. = 134.7  
 L.E. = 125.7

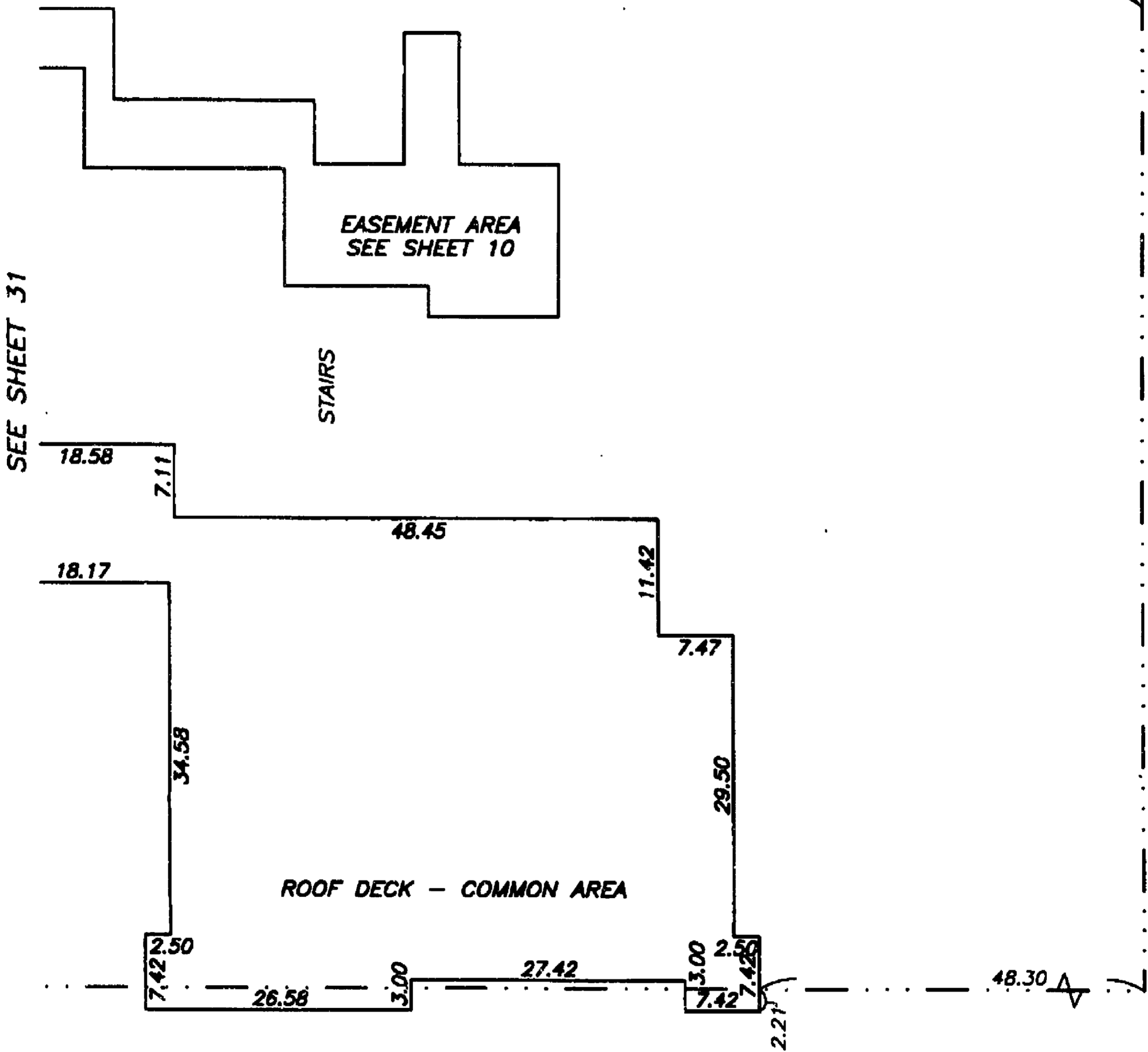
BY RW CHKD.      DATE 11/05/07 SCALE 1" = 16' SHEET 31 JOB NO. S-6080

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

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



PROPERTY LINE, TYP.



### CONDOMINIUM PLAN - ROOF

U.E. = 134.7

L.E. = 125.7

BY <u>RW</u>	CHKD. <u>    </u>	DATE <u>11/05/07</u>	SCALE <u>1" = 16'</u>	SHEET <u>32</u>	JOB NO. <u>S-6080</u>
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MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

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



## 55 Page Street

#	UNIT NO.	LOT	AREA SQ.FT.	%
1	210	13	1301	1.25%
2	211	14	459	0.44%
3	212	15	685	0.66%
4	213	16	463	0.44%
5	214	17	822	0.79%
6	215	18	855	0.82%
7	216	19	856	0.82%
8	217	20	819	0.79%
9	218	21	448	0.43%
10	219	22	515	0.49%
11	220	23	1238	1.19%
12	221	24	1126	1.08%
13	222	25	1124	1.08%
14	223	26	1224	1.18%
15	224	27	1092	1.05%
16	225	28	683	0.66%
17	226	29	1160	1.11%
18	310	30	739	0.71%
19	311	31	646	0.62%
20	312	32	1008	0.97%
21	313	33	1037	1.00%
22	314	34	476	0.46%
23	315	35	750	0.72%
24	316	36	479	0.46%
25	317	37	990	0.95%
26	318	38	401	0.39%
27	319	39	746	0.72%
28	320	40	674	0.65%
29	321	41	746	0.72%
30	322	42	404	0.39%
31	323	43	1178	1.13%
32	324	44	438	0.42%
33	325	45	847	0.81%
34	326	46	993	0.95%
35	327	47	1023	0.98%
36	328	48	646	0.62%
37	329	49	1143	1.10%
38	330	50	1143	1.10%

#	UNIT NO.	LOT	AREA SQ.FT.	%
39	410	51	738	0.71%
40	411	52	646	0.62%
41	412	53	1008	0.97%
42	413	54	1037	1.00%
43	414	55	476	0.46%
44	415	56	750	0.72%
45	416	57	479	0.46%
46	417	58	990	0.95%
47	418	59	401	0.39%
48	419	60	746	0.72%
49	420	61	666	0.64%
50	421	62	746	0.72%
51	422	63	404	0.39%
52	423	64	947	0.91%
53	424	65	866	0.83%
54	425	66	847	0.81%
55	426	67	993	0.95%
56	427	68	1023	0.98%
57	428	69	646	0.62%
58	510	70	738	0.71%
59	511	71	646	0.62%
60	512	72	1008	0.97%
61	513	73	1037	1.00%
62	514	74	476	0.46%
63	515	75	750	0.72%
64	516	76	479	0.46%
65	517	77	990	0.95%
66	518	78	401	0.39%
67	519	79	746	0.72%
68	520	80	666	0.64%
69	521	81	746	0.72%
70	522	82	404	0.39%
71	523	83	947	0.91%
72	524	84	861	0.83%
73	525	85	847	0.81%
74	526	86	1034	0.99%
75	527	87	1023	0.98%
76	528	88	646	0.62%

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

## 55 Page Street

#	UNIT NO.	LOT	AREA SQ.FT.	%
77	610	89	738	0.71%
78	611	90	646	0.62%
79	612	91	1008	0.97%
80	613	92	1036	1.00%
81	614	93	865	0.83%
82	615	94	868	0.83%
83	616	95	990	0.95%
84	617	96	401	0.39%
85	618	97	746	0.72%
86	619	98	666	0.64%
87	620	99	746	0.72%
88	621	100	404	0.39%
89	622	101	990	0.95%
90	623	102	861	0.83%
91	624	103	847	0.81%
92	625	104	1034	0.99%
93	626	105	1023	0.98%
94	627	106	646	0.62%
95	710	107	738	0.71%
96	711	108	646	0.62%
97	712	109	1008	0.97%
98	713	110	1036	1.00%
99	714	111	865	0.83%
100	715	112	868	0.83%
101	716	113	990	0.95%
102	717	114	401	0.39%
103	718	115	746	0.72%
104	719	116	666	0.64%
105	720	117	746	0.72%
106	721	118	404	0.39%
107	722	119	990	0.95%
108	723	120	861	0.83%
109	724	121	847	0.81%
110	725	122	1034	0.99%
111	726	123	1023	0.98%
112	727	124	641	0.62%

#	UNIT NO.	LOT	AREA SQ.FT.	%
113	810	125	738	0.71%
114	811	126	646	0.62%
115	812	127	1008	0.97%
116	813	128	1036	1.00%
117	814	129	865	0.83%
118	815	130	868	0.83%
119	816	131	1530	1.47%
120	817	132	746	0.72%
121	818	133	666	0.64%
122	819	134	746	0.72%
123	820	135	1529	1.47%
124	821	136	861	0.83%
125	822	137	847	0.81%
126	823	138	1034	0.99%
127	824	139	1023	0.98%
128	825	140	641	0.62%
TOTAL:			104040	100.00%

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

**NOTICE: THIS SUBORDINATION AGREEMENT MAY RESULT IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

**CONSENT AND SUBORDINATION**

The undersigned, as Beneficiary under the following Deed of Trust:

A deed of trust to secure an original indebtedness of \$12,461,684.00 recorded August 26, 2005 as Instrument No. 2005-1020769 of Official Records.

Dated: August 25, 2005

Trustor: 55 Page Street, LLC, a Delaware limited liability company

Trustee: First American Title Insurance Company

Beneficiary: Page Street Funding Company, a Delaware corporation

Assignment of Deed of Trust, Fixture Filing and Security Agreement from Page Street Funding Company to Page Street Funding Company and New York State Teachers' Retirement System recorded February 24, 2006 as Instrument No. 2006-1134432 of Official Records.

hereby certify that said Beneficiary, being record holder(s) of a security interest in the real property affected by the foregoing "Declaration of Covenants, Conditions and Restrictions Establishing a Plan for Condominium Ownership of The Hayes and Condominium Plan for The Hayes, San Francisco, California", hereby consents to the execution of, and subordinates all the right, title, interest and lien which said Beneficiary now has, to that of the foregoing Declaration, and hereby consents to the making and recording of the foregoing Condominium Plan as if and as though said Declaration and Condominium Plan had been made, executed and recorded prior to the execution and the recordation of said Deed of Trust.

Beneficiary: Page Street Funding Company

By: 

Print Name: **THOMAS B. HWANG**

Print Capacity: **VICE PRESIDENT REAL ESTATE**

~~By: \_\_\_\_\_~~

~~Print Name:~~

~~Print Capacity:~~

Dated: July 20, 2007

(Notary acknowledgment required).

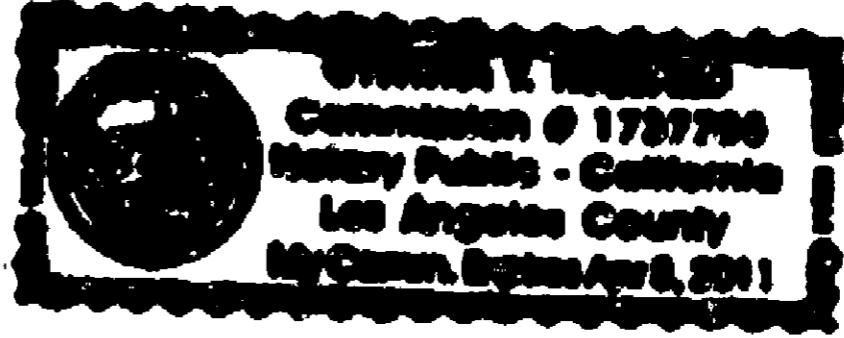
State of California )  
County of Los Angeles )

On July 20, 2007 before me, Cynthia Y. Hubbard, a Notary Public in and for said State, personally appeared

Thomas B. Hwang

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

Signature Cynthia Y. Hubbard (Seal)



**NOTICE: THIS SUBORDINATION AGREEMENT MAY RESULT IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

**CONSENT AND SUBORDINATION**

The undersigned, as Beneficiary under the following Deed of Trust:

A deed of trust to secure an original indebtedness of \$12,461,684.00 recorded August 26, 2005 as Instrument No. 2005-1020769 of Official Records.

Dated: August 25, 2005

Trustor: 55 Page Street, LLC, a Delaware limited liability company

Trustee: First American Title Insurance Company

Beneficiary: Page Street Funding Company, a Delaware corporation

Assignment of Deed of Trust, Fixture Filing and Security Agreement from Page Street Funding Company to Page Street Funding Company and New York State Teachers' Retirement System recorded February 24, 2006 as Instrument No. 2006-1134432 of Official Records.

hereby certify that said Beneficiary, being record holder(s) of a security interest in the real property affected by the foregoing "Declaration of Covenants, Conditions and Restrictions Establishing a Plan for Condominium Ownership of The Hayes and Condominium Plan for The Hayes, San Francisco, California", hereby consents to the execution of, and subordinates all the right, title, interest and lien which said Beneficiary now has, to that of the foregoing Declaration, and hereby consents to the making and recording of the foregoing Condominium Plan as if and as though said Declaration and Condominium Plan had been made, executed and recorded prior to the execution and the recordation of said Deed of Trust.

Beneficiary: New York State Teachers' Retirement System

By: *Terri A. Herubin*

Print Name: **TERRI A. HERUBIN**

Print Capacity: **ASSOCIATE REAL ESTATE OFFICER**

By: *Rosemarie C. Hewig*

Print Name: **Rosemarie C. Hewig**

Print Capacity: **Assistant General Counsel**

Dated: July 26, 2007.

(Notary acknowledgement required).

State of New York )  
County of Albany )

On July 26, 2007 before me, Debra L. Schenkel, a Notary Public in and for said State, personally appeared

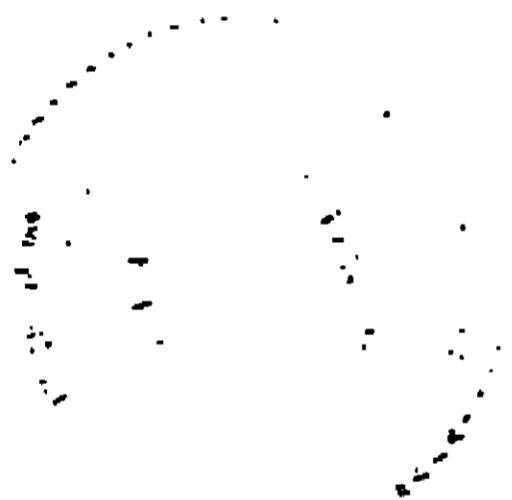
Terri A. Herubin, Associate Real Estate Officer

Rosemarie C. Hewig, Assistant General Counsel

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

Signature Debra L. Schenkel (Seal)

DEBRA L. SCHENKEL  
Notary Public, State of New York  
Registration No. 01SC5064687  
Qualified in Albany County  
Commission Expires 8/26/2012



**NOTICE: THIS SUBORDINATION AGREEMENT MAY RESULT IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

**CONSENT AND SUBORDINATION**

The undersigned, as Beneficiary under the following Deed of Trust:

A deed of trust to secure an original indebtedness of \$45,500,000.00 recorded August 14, 2006 as Instrument No. 2006-I228439 of Official Records.

Dated: July 31, 2006

Trustor: 55 Page Street, LLC

Trustee: First American Title Company

Beneficiary: HSH Nordbank AG, New York Branch, a branch of a German banking corporation

hereby certify that said Beneficiary, being record holder(s) of a security interest in the real property affected by the foregoing "Declaration of Covenants, Conditions and Restrictions Establishing a Plan for Condominium Ownership of The Hayes and Condominium Plan for The Hayes, San Francisco, California", hereby consents to the execution of, and subordinates all the right, title, interest and lien which said Beneficiary now has, to that of the foregoing Declaration, and hereby consents to the making and recording of the foregoing Condominium Plan as if and as though said Declaration and Condominium Plan had been made, executed and recorded prior to the execution and the recordation of said Deed of Trust.

Beneficiary: HSH Nordbank AG, New York Branch, a branch of a German banking corporation

By: 

Print Name: **Jack V. Confalone**  
Print Capacity: **Senior Vice President  
Deputy Head of Real Estate  
HSH Nordbank AG, New York Branch**

By: 

Print Name: **DAVID P. MESSING**  
Print Capacity: **SR. VICE PRESIDENT**

Dated: June 22, 2007.

(Notary acknowledgement required).

State of New York )  
County of New York )

On June 25, 2007 before me, Monica Kleinertz, a Notary Public in and for said State, personally appeared

Jack V. Confusione

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

**MONICA KLEINERTZ  
NOTARY PUBLIC, State of New York  
No. 01KLB14327  
Qualified in Nassau County  
Commission Expires April 24, 2010**

Signature Monica Kleinertz (Seal)





State of California )  
County of San Francisco )

On June 22, 2007 before me, Donna L. Lopez, a Notary Public in and for said State, personally appeared

David P. Messing

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

Signature Donna L. Lopez (Seal)

