

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
DIANA MEISTRELL,)
Appellant(s))
vs.)
DEPARTMENT OF BUILDING INSPECTION,)
PLANNING DEPARTMENT APPROVAL Respondent)

Appeal No. **23-003**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on January 24, 2023, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the ISSUANCE on January 11, 2023 to Dorian Mckelvy, of an Alteration Permit (Second floor only: remove and replace in kind according to plan bathroom/hall and 1/2 bath; infill hall bath window; replace nine interior doors; remove & replace 14 windows (not at the front street)) at 2322 North Point Street.

APPLICATION NO. 2022/04/07/1806

FOR HEARING ON February 22, 2023

Address of Appellant(s):

Address of Other Parties:

Diana Meistrell, Appellant(s)
2324 North Point Street
San Francisco, CA 94123

Dorian Mckelvy, Permit Holder(s)
c/o Evan Sprague, Agent for Permit Holder(s)



Date Filed: January 23, 2023

**CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS**

PRELIMINARY STATEMENT FOR APPEAL NO. 23-003

I / We, **Diana Meistrell**, hereby appeal the following departmental action: **ISSUANCE** of **Alteration Permit No. 2022/04/07/1806** by the **Department of Building Inspection** which was issued or became effective on: **January 11, 2023**, to: **Dorian Mckelvy**, for the property located at: **2322 North Point Street**.

BRIEFING SCHEDULE:

The Appellant may, but is not required to, submit a one page (double-spaced) supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

Appellant's Brief is due on or before: 4:30 p.m. on **February 2, 2023, (no later than three Thursdays prior to the hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, corey.teague@sfgov.org, tina.tam@sfgov.org and esprague@elshomebuilders.com.

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **February 16, 2023, (no later than one Thursday prior to hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, corey.teague@sfgov.org, tina.tam@sfgov.org and siriusjane@yahoo.com.

Hard copies of the briefs do NOT need to be submitted to the Board Office or to the other parties.

Hearing Date: **Wednesday, February 22, 2023, 5:00 p.m., Room 416 San Francisco City Hall, 1 Dr. Carlton B. Goodlett Place**. The parties may also attend remotely via Zoom. Information for access to the hearing will be provided before the hearing date.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any changes to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. to boardofappeals@sfgov.org. Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

Please note that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection on the Board's website at www.sfgov.org/boa. You may also request a hard copy of the hearing materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

The reasons for this appeal are as follows:

See attachment to the preliminary Statement of Appeal.

Appellant or Agent:

Signature: Via Email

Print Name: Diana Meistrell, appellant

I, Diana Meistrell, am submitting this document to appeal the permit granted for application #202204071806 as of 1/11/2023. I am submitting this individually as a member of the HOA at 2322/2324 North Point Street and also as Secretary for the NorthPoint HOA also at 2322/2324 North Point Street.

Under the CCR's for the Home Owner Association North Point HOA, this permit is in violation of Section 6.1 which states that any alterations to either the unit or to the common areas must notify the association and other owners and requires approval of the association. Neither of these actions have been taken.

I have attached a .pdf copy of the departmental action being appealed with its stages as well as stating them here:

| | |
|---------------------|--|
| Application Number: | 202204071806 |
| Form Number: | 8 |
| Address(es): | |
| Description: | 2ND FLOOR ONLY - REMOVE REPLACE IN KIND ACCORDING TO PLAN BATHROOM/HALL & 1/2 BATH; INFILL HALL BATH WINDOW. REPLACE (9) INTERIOR DOORS. REMOVE & REPLACE (14) WINDOWS NOT @ THE FRONT STREET. |
| Cost: | \$100,000.00 |
| Occupancy Code: | R-3 |
| Building Use: | 28 - 2 FAMILY DWELLING |

Disposition / Stage:

| Action Date | Stage | Comments |
|-------------|----------|----------|
| 4/7/2022 | TRIAGE | |
| 4/7/2022 | FILING | |
| 4/7/2022 | FILED | |
| 1/11/2023 | APPROVED | |
| 1/11/2023 | ISSUED | |

Permit Details Report**Report Date:** 1/23/2023 2:16:25 PM

Application Number: 202204071806
 Form Number: 8
 Address(es): 0918 / 026 / 0 2322 NORTH POINT ST
 Description: 2ND FLOOR ONLY - REMOVE REPLACE IN KIND ACCORDING TO PLAN BATHROOM/HALL & 1/2 BATH; INFILL HALL BATH WINDOW. REPLACE (9) INTERIOR DOORS. REMOVE & REPLACE (14) WINDOWS NOT @ THE FRONT STREET.
 Cost: \$100,000.00
 Occupancy Code: R-3
 Building Use: 28 - 2 FAMILY DWELLING

Disposition / Stage:

| Action Date | Stage | Comments |
|-------------|----------|----------|
| 4/7/2022 | TRIAGE | |
| 4/7/2022 | FILING | |
| 4/7/2022 | FILED | |
| 1/11/2023 | APPROVED | |
| 1/11/2023 | ISSUED | |

Contact Details:**Contractor Details:**

License Number: 1082324
 Name: JOHN CRANE MORRIS JR
 Company Name: JOHN CRANE MORRIS JR
 Address: 499 OAKWOOD DR DR * SANTA CLARA CA 95054-0000
 Phone:

Addenda Details:**Description:**

| Step | Station | Arrive | Start | In Hold | Out Hold | Finish | Checked By | Hold Description |
|------|---------|---------|---------|---------|----------|---------|---------------------|---|
| 1 | INTAKE | 4/7/22 | 4/7/22 | | | 4/7/22 | PANGELINAN MARIANNE | |
| 2 | INTAKE | 1/11/23 | 1/11/23 | | | 1/11/23 | STORM WILLIAM | NEW 7 PG PLAN SET SUBMITTED. SCOPE EXPANDED TO INCLUDE WINDOW REPLACEMENT. |
| 3 | CP-ZOC | 8/4/22 | 8/4/22 | | | 1/11/23 | LIANG XINYU | window replacement like for like in the rear and side, not visible from street. 2nd floor bathroom renovation. No change on the ground floor. |
| 4 | BLDG | 1/11/23 | 1/11/23 | | | 1/11/23 | WONG IRENE | Approved OTC 1/11/23. |
| 5 | MECH | 1/11/23 | 1/11/23 | | | 1/11/23 | SHAIKH MOHSIN | Approved OTC. Plans returned to the applicant. |
| 6 | SFPUC | 1/11/23 | 1/11/23 | | | 1/11/23 | ARRIOLA LAURA | OTC - Undersized Water Meter: Capacity Charge not applicable. Not enough additional fixtures/GPM but existing water fixtures indicate a larger meter would be appropriate. Permit applicant can contact PUC, New Installation 415.551.2900, for additional information. Return to Permit Applicant - 01/11/2023 |
| 7 | CPB | 1/11/23 | 1/11/23 | | | 1/11/23 | SHAWL HAREGGEWAIN | |

This permit has been issued. For information pertaining to this permit, please call 628-652-3450.

Appointments:

| Appointment Date | Appointment AM/PM | Appointment Code | Appointment Type | Description | Time Slots |
|------------------|-------------------|------------------|------------------|-------------|------------|
|------------------|-------------------|------------------|------------------|-------------|------------|

Inspections:

| Activity Date | Inspector | Inspection Description | Inspection Status |
|---------------|-----------|------------------------|-------------------|
|---------------|-----------|------------------------|-------------------|

Special Inspections:

| Addenda No. | Completed Date | Inspected By | Inspection Code | Description | Remarks |
|-------------|----------------|--------------|-----------------|-------------|---------|
|-------------|----------------|--------------|-----------------|-------------|---------|

For information, or to schedule an inspection, call 628-652-3400 between 8:30 am and 3:00 pm.

BRIEF SUBMITTED BY THE APPELLANT(S)

2/1/2023

To: Board of Appeals, City & County of San Francisco

49 South Van Ness Avenue, Suite 1475, San Francisco, CA 94103

Re: Appeal to revoke permit granted under application #20220407180

I am the owner (under Diana Ruth Meistrell revocable trust - see attached deed) of 2324 North Point Street, San Francisco, CA and a member and Secretary of the North Point Home Owner's Association 2322/2324 North Point. I have a 52.1% ownership in and to the common area as evidenced by the attached deed. The Association has CCRs (Declaration of Restrictions for 2322-2324 North Point Street, San Francisco, California - attached) that are applicable to all owners and members of the HOA.

The Condo association is made up of two individual units and has been in existence since 2006 when the 2-family home was converted to individual condominiums. As per Section 6.1 of the Declaration any planned modifications or improvement must notify

the HOA and its members of the fact and receive approval for the modification or

ARTICLE 6

Architectural Control

6.1 APPROVAL REQUIRED. The prior written approval of the Association is required before an Owner may make any improvements or modifications ("improvement") to any portion of the Common Area, including Exclusive Use Common Area appurtenant to the Owner's Unit, or make any improvements within his or her Unit that may affect structural Common Area, increase the burden on common building systems, result in an increase in sound transmission between Units, or otherwise adversely affect the Common Area or the other Unit.

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

improvement.

In January 2022, it was observed that a permit had been applied for by the new owner of 2322 North Point Street to do some modifications on his unit. Subsequent to that I mentioned the requirement to the occupant of 2322 North Point, Max McKelvy, the son of the new owners. After that, there was no action on the permit until January 2023, when that same application showed that a permit had been granted as evidenced on the Department of Building Departments database.

Some elements of the permit had changed, particularly reference to the replacement of 14 windows. This is the total number of exterior windows on the lower unit 2322 North Point. No notice was given to the HOA nor to any member and no approval had or has been made for this change or for any other modification to the building. As evidenced, this is in violation of Section 6.1 of the Declaration (CCRs) for the NorthPoint HOA.

In addition, under the CC&Rs the exterior windows are part of the common area, and unlike the unit interior, I am the 52% owner of those common area windows and object to the permit.

I am appealing the approval of the permit granted under application #20220407180 and that it be revoked or suspended pending notification and/or approval of the modification/improvement of the HOA and its members.

Sincerely,

Diana Meistrell

2324 North Point Street

San Francisco, CA 94123

Attachments:

Declaration of Restrictions

Grant Deed

Copy of Building Building Dept specific permit page

ATTACHMENT

Attached is the document you (or someone on your behalf) requested. As required by Section 12956.1(b)(1) of the California Government Code, please take note of the following:

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. 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.

If this cover page is a copy which has been transmitted to you by facsimile, email or other form of electronic transmission, please note that the notice above appears in the original cover page in 14-point bold face type.

3811-328049sf (DL)

When Recorded Return To:

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

APN: 0918-002D (New Lts 026+027).



San Francisco Assessor-Recorder

Phil Ting, Assessor-Recorder

DOC- 2006-I268445-00

Acct 3-FIRST AMERICAN Title Company

Wednesday, OCT 11, 2006 08:00:00

Ttl Pd \$124.00

Nbr-0003096761

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DECLARATION OF RESTRICTIONS

FOR

**2322-2324 NORTH POINT STREET
San Francisco, California**

a Condominium Project

Diana R. Meistrell, Steven L. Grossmann, and Gerri H. Grossmann

Declarant

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**DECLARATION OF RESTRICTIONS
FOR
2322-2324 NORTH POINT STREET
San Francisco, California**

a Condominium Project

Recitals

THIS DECLARATION is made by Diana R. Meistrell, Steven L. Grossmann, and Gerri H. Grossmann, "Declarant," with reference to the following:

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

All that real property as shown on that certain map entitled "Parcel Map 2297, 2322-2324 North Point Street, a Residential Condominium Project, Being a Subdivision of Lot 2D, Assessor's Block No. 0918, also Being a Portion of Western Addition Block No. 557, San Francisco, California" recorded on September 11, 2006, Condominium Map Book 96 pages 155 to 158 inclusive, San Francisco County Records.

B. The land has been improved with a building containing two Units.

C. By this Declaration, Declarant establishes a condominium project under the provisions of the Davis-Stirling Common Interest Development Act, Division 2, Part 4, Title 6 of the Civil Code (beginning at Section 1350), and imposes upon the real property mutually beneficial restrictions under a general plan of improvement for the benefit of all the Condominiums and Owners of Condominiums.

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

**ARTICLE 1
Definitions**

1.1 "Association" means the 2322-2324 North Point Street Homeowners' Association, an unincorporated association.

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

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

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

1.5 "Condominium Plan" means the three dimensional description of the Project in sufficient detail to identify the Common Area and the Units pursuant to California Civil Code Section 1351(e) and which was recorded on September 11, 2006, in Condominium Map Book 96, pages 155 to 158, inclusive, in the Official Records of the County of San Francisco and any amendments and corrections to it. A copy of the Condominium Plan is incorporated into this Declaration by this reference.

1.6 "County" means San Francisco County.

1.7 "Declarant" means Diana R. Meistrell, Steven L. Grossmann, and Gerri H. Grossmann and any successors and assigns who acquire Declarant's interest in the Project and expressly assume the rights and duties of the Declarant for purposes of this Declaration by a written instrument recorded in the County Recorder's office, or who is a Mortgagee that acquired Declarant's interest in the Project through foreclosure or deed in lieu of foreclosure.

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

1.9 "Exclusive Use Common Areas" mean those portions of the Common Area designated for the exclusive use of the Owners and which are appurtenant to the Units.

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

1.11 "Map" means the subdivision map referred to in Recital A and any amendments and

corrections to it.

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

1.13 "Mortgage, Mortgagee, Mortgagor" are defined in section 11.1.

1.14 "Owner" means the record holder of title to a Condominium in the Project. If a Condominium is sold under a recorded contract of sale to a purchaser, the purchaser rather than the seller is considered the Owner. "Owner" does not include a person who has an interest that is merely a security for the performance of an obligation. "Owner" also means a member of the Association whenever the context relates to an Owner acting in his or her capacity as a member.

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

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

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

ARTICLE 2

Easements and Property Rights

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

A. Units. Each Unit includes the elements defined in section 1.17. A Unit does not include those areas and things defined as Common Area in section 1.3. Each Unit is subject to

encroachments that now exist or that may be later caused or created in any manner referred to in section 2.3D. In interpreting deeds and plans, the then existing physical boundaries of a Unit, whether in its original state or reconstructed in substantial accordance with the original plans, is conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or Condominium Plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the Plan or deed and those of the building.

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

C. Exclusive Use Common Area. Portions of the Common Area, referred to as Exclusive Use Common Areas, are set aside and allocated for the exclusive use of the Owners. The Exclusive Use Common Areas consist of the parking spaces, laundry area, and storage area as designated on the Condominium Plan. An easement for the use of each of these Exclusive Use Common Areas will be granted as appurtenant to a Unit in the first deed for each Condominium. The Exclusive Use Common Areas also consist of internal and external wiring designed to serve a single Unit, fireplaces, windows, window frames, window boxes, screens, shutters, awnings, doorsteps, stoops, exterior doors, door frames and hardware.

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

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

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

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

use:

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

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

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

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

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

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

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

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

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

D. Encroachment Easements. Each Unit has an easement over all adjoining Units and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause as long as the encroachment exists. However, a valid encroachment is not created in favor of an Owner if it occurred due to the Owner's willful misconduct. If a structure is repaired or rebuilt, minor encroachments over adjoining Units and the Common Area are permitted and there are valid easements for the maintenance of these encroachments as long as they exist.

2.4 PARTITION; POWER OF ATTORNEY. Except as provided by Civil Code section 1359 or by sections 10.2 and 10.3 of this Declaration, judicial partition of the Project or any part of it is prohibited. Judicial partition by sale of a single Condominium owned by two or more persons and division of the sale proceeds is not prohibited, but partition of title to a single Condominium is prohibited.

If partition is authorized under Civil Code section 1359 or under sections 10.2 and 10.3 of this Declaration, and subject to obtaining the necessary approval of first Mortgagees and Owners as provided in Article 11, the Association may sell the entire Project, in one or more transactions, for the benefit of all Owners. Each Owner irrevocably appoints the Association as his or her attorney-in-fact to sell the Project under this section.

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

ARTICLE 3
Association, Administration, Membership and Voting Rights

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

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

3.3 ADMINISTRATION OF THE AFFAIRS OF THE ASSOCIATION. Since the Project consists of only two Condominiums, the customary manner of delegating management of the Project to a board of directors is inappropriate. Therefore, exercise of the powers and duties conferred on the Association in this Declaration requires the unanimous vote of the Owners. If a vote of the Owners on any matter is not unanimous, upon request of any Owner the matter must be determined in accordance with the provisions for alternative dispute resolution provided in section 12.1.

Notwithstanding the foregoing, one Owner may act on behalf of the Association to exercise the powers under section 4.5, 4.6 and 4.10 of this Declaration without the consent of the other Owner, provided the Owner complies with section 3.4 below and is not delinquent in the payment of assessments.

There is one vote for each Condominium. If a Condominium is owned by more than one Owner, the vote for the Condominium will be exercised as those Owners determine, but not more than one vote may be cast for any Condominium. If an Owner disputes the vote cast for his or her Condominium by a co-Owner, the vote for that Condominium will be counted as if it were cast the same as the vote for the other Condominium in the Project was cast.

3.4 EXERCISE OF ASSOCIATION POWER BY INDIVIDUAL OWNER. An Owner's right to act on behalf of the Association under section 3.3 is subject to the following provisions.

A. An Owner (the "exercising Owner") may take action only after the exercising Owner has sought the consent of the other Owner (the "non-exercising Owner") and the non-exercising Owner has refused to vote in favor of the action or has failed or refused to communicate with the exercising Owner on the matter.

B. The exercising Owner must notice a meeting of the Association. The notice must be in writing and delivered by personal delivery or first-class mail at least 10 days prior to the meeting at which the action will be considered. The notice must contain at a minimum the

date, time and place of the meeting, the action to be taken, a statement of the facts upon which the need for the action is based, and a statement that the Owner has a right to attend and to address the Association. The notice must include a copy of the written statement set forth in Civil Code section 1365.1(b).

C. If the Owners are unable to resolve the matter at the meeting or the non-exercising Owner fails to appear at the meeting, the exercising Owner must give the non-exercising Owner at least 10 days written notice of intention to act on behalf of the Association, delivered by personal delivery or first-class mail, prior taking action on behalf of the Association.

D. Nothing in this section is intended to preclude either Owner from seeking to resolve the dispute through alternative dispute resolution.

ARTICLE 4

Assessments

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

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

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

At least 30 days and not more than 90 days before the beginning of each fiscal year, the Association must establish the regular assessment for that fiscal year. If at any time during the year the Association decides that the amount of the regular assessment is inadequate or excessive, it may revise the assessment for the balance of the fiscal year, effective on the first day of the month

following the date of the revision. If the Association fails to establish the regular assessment for any fiscal year, the regular assessment will be the same as that of the prior fiscal year.

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

4.5 ASSESSMENTS FOR EMERGENCY PURPOSES. The Association may increase the regular assessment and impose special assessments if necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

- A. An extraordinary expense required by an order of a court;
- B. An extraordinary expense necessary to repair or maintain the Common Area where a threat to personal safety is discovered at the Project; or
- C. An extraordinary expense necessary to repair or maintain the Common Area that could not have been reasonably foreseen by the Association in preparing and distributing the pro forma operating budget described in the Bylaws. Before imposing or collecting an assessment under this section, the Association must pass a resolution containing written findings as to why the extraordinary expense is necessary and why the expense was not or could not have been reasonably foreseen in the budgeting process.

4.6 REIMBURSEMENT ASSESSMENTS. The Association may impose a reimbursement assessment to collect a charge levied to reimburse the Association for costs incurred by it in the repair of damage to the Common Area caused by an Owner or occupant of the Owner's Unit, or to collect a fine or penalty levied to bring an Owner and his or her Condominium into compliance with the Governing Documents. The Association may impose a reimbursement assessment on an Owner only after giving the Owner notice and the opportunity to be heard, as provided in the Bylaws. A reimbursement assessment becomes a lien upon a Unit upon the recording of a Notice of Delinquent Assessment as provided in section 12 of the Bylaws.

4.7 DIVISION OF ASSESSMENTS. The expenses for regular assessments are divided between the owners equally.

Special assessments are divided among the Owners on the same basis as regular assessments, except where the special assessment is levied to raise funds for the rebuilding or major repair of structural Common Area that houses the Units. In that case, the special assessment is divided upon the basis of the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of the floor area of all Units.

The square footage of the Units is the approximate square footage for the Units shown on the

Condominium Plan or, if not shown on the Condominium Plan, provided to the Association by Declarant. If the square footage of the Units is not shown on the Condominium Plan or provided to the Association by Declarant, then the square footage of the Units must be determined by reference to the final approved architectural plans for the Project.

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

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

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

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

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

B. Judicial Foreclosure or Power of Sale. The Association may bring an action for judicial or nonjudicial foreclosure according to the procedures set forth in the Bylaws or otherwise adopted by the Association provided that the amount of delinquent Assessments, the duration of the delinquency, or both comply with the requirements of Civil Code Section 1367.4.

C. Alternative Dispute Resolution. An assessment dispute may be resolved through alternative dispute resolution as provided in Civil Code sections 1367.1 and 1367.4 and section 12.1 of this Declaration.

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

4.12 MORTGAGEE'S LIABILITY FOR UNPAID ASSESSMENTS. The holder of a first Mortgage that obtains title to a Condominium pursuant to a foreclosure proceeding is not liable for unpaid assessments and charges that accrued prior to its acquisition of the Condominium. However, a first Mortgagee is liable for any assessments becoming due after the date of the transfer. Subsequently levied assessments may include previously unpaid assessments provided all Owners are required to pay their proportionate share of the previously unpaid assessments.

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

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

4.15 UNSEGREGATED REAL PROPERTY TAX BILL. If real property taxes have not been segregated by the County Assessor, each Owner must pay a proportionate share of that tax bill. The tax bill must be divided as agreed unless the property was owned by more than one person as tenants-in-common before the Map was recorded. In that case, the real property tax bill must be divided between the Owners according to the same formula used by the tenant-in-common owners for dividing the tax bill.

ARTICLE 5

Duties and Powers of the Association

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

A. Davis-Stirling Common Interest Development Act. The Association must comply with the requirements of the Davis-Stirling Common Interest Development Act (the "Act"). The act includes comprehensive regulations concerning the management of the affairs of the Association including, without limitation, election procedures, conduct of meetings.

enforcement of assessments, resolution of disputes, preparation and distribution of financial documents, notices required to be sent to Members, calculation and maintenance of reserve funds, retention and inspection of Association records, adoption of operating rules, and Association approval of physical improvements to the Project made by Members. The Association must adopt provisions in the Governing Documents as reasonably necessary to implement the act, and each Owner takes his or her interest in the Project subject to the provisions of the Bylaws, operating rules and policies of the Association in addition to the provisions of this Declaration.

B. Non-Profit Mutual Benefit Corporation Law. The Association may exercise all of the powers granted to a non-profit mutual benefit corporation as enumerated in Corporations Code section 7140 except that it may not adopt or use a corporate seal or issue membership certificates, subject only to the limitations on those powers set forth in the Act and in the Governing Documents. The Association has the power to do any lawful thing required or permitted to be done under the Act and the Governing Documents and necessary, appropriate or incidental to the exercise of the express powers or duties of the Association for the peace, health, comfort, safety and general welfare of the Owners.

5.2. DUTIES AND POWERS. The affairs of the Association must be conducted by the officers of the Association. The duties and powers of the Association include, but are not limited to, the following

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

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

C. Discharge of Liens. The Association must discharge any lien against the Common Area and levy a reimbursement assessment against the Owner responsible for the existence of the lien.

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

E. Enforcement. The Association must enforce the Governing Documents as provided in this Declaration, the Bylaws and any operating rules adopted by the Association.

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

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

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

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

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

J. Operating Rules. The Association has the authority to adopt reasonable operating rules consistent with this Declaration relating to the use of the Project by the Owners, their tenants, guests and invitees. An operating rule is valid and enforceable only if it is reasonable, in writing, within the authority of the Association conferred by law or by the Declaration, consistent with the Governing Documents.

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

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

M. Loans. The Association has the authority to borrow money and to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

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

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

- (1) make a decision to commence proceedings for mediation and arbitration or to file litigation when permitted under the Governing Documents or applicable law, record a lien, or foreclose upon a lien for default in payment of assessments;
- (2) make a decision to levy assessments;
- (3) make capital expenditures;
- (4) impose discipline and levy fines for violations of the Governing Documents; or
- (5) hold hearings required under the Governing Documents.

ARTICLE 6

Architectural Control

6.1 APPROVAL REQUIRED. The prior written approval of the Association is required before an Owner may make any improvements or modifications ("improvement") to any portion of the Common Area, including Exclusive Use Common Area appurtenant to the Owner's Unit, or make any improvements within his or her Unit that may affect structural Common Area, increase the burden on common building systems, result in an increase in sound transmission between Units, or otherwise adversely affect the Common Area or the other Unit.

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

6.2 PROCEDURES. The Association must establish procedures that comply with the

requirements of Civil Code section 1378 regarding application for and review of improvements.

6.3 IMPROVEMENTS TO FACILITATE ACCESS FOR PHYSICALLY DISABLED PERSONS. The Association may not deny approval of any improvement to a Unit to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons, without good cause. The requested improvements may include modifications of the route from the public way to the door of the Unit if the Unit is already accessible by an existing ramp or elevator. The Association may condition its approval of the improvement in accordance with the provisions of Civil Code section 1360. The cost of the improvement must be paid by the requesting Owner.

6.4 ANTENNAS. Approval of the installation or use of a satellite dish, video or television antenna with a diameter or diagonal measurement of one meter or less is subject to the provisions of Civil Code section 1376 and any standards set forth in the Bylaws or in operating rules. Approval of the installation or use of any other satellite dish, video or television antenna is within the discretion of the Association.

6.5 DECLARANT EXEMPT. Declarant is exempt from the approval requirements of this Article for a period of three years from the date of close of escrow on the first sale of a Unit in the Project.

ARTICLE 7

Use Restrictions

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

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

7.2 USE OF PARKING SPACES. Parking spaces may be used solely for parking of bicycles and non-commercial passenger motor vehicles -- such as automobiles, station wagons, pickup trucks, SUVs, motorcycles and light vans -- that fit entirely within the boundaries of the Owner's designated parking space and allow space to enter and exit the vehicle. No person may park a motor vehicle anywhere on the Project other than his or her designated parking space or parking areas designated by the Association for temporary parking. An Owner may not lease a parking space to any person who is not an Owner or a resident at the Project without the prior written approval of the other Owner.

Repair or washing of a motor vehicle is not permitted anywhere on the Project, except an emergency repair. Each Owner must keep his or her designated parking space neat and clean and immediately

remove any oil, grease or other waste emitted from his or her vehicle. Vehicles that emit offensive levels of exhaust pollution, oil, grease or noise, as such levels are determined by the Association, may not be operated at the Project. The Association may cause any vehicle that is in violation of this section to be towed and stored at the Owner's expense in compliance with Vehicle Code section 22658.2. Each Owner agrees to indemnify, defend and hold the Association, its Association members, officers, manager and employees harmless for any damage to person or property that may result.

7.3 NUISANCE. No person may interfere with the quiet enjoyment of any other resident of the Project, or carry on any activity in any part of the Project that is noxious, illegal, seriously annoying or offensive to a person of reasonable sensibility. No activity may be carried on that increases the rate of insurance for the Project, or causes any insurance policy to be canceled or not renewed, or that will impair the structural integrity of any building.

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

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

7.5 ANIMALS. Animals may not be kept in any Unit except for domestic dogs or cats (not to exceed a total of two per Unit), and a reasonable number of fish in aquariums and birds inside bird cages. Pure or mixed breed dog from the following breeds may not be kept at the Project: Pit Bull, Presa Canaria, Rottweiler, Doberman Pinscher, Mastiff, and any other fighting breed. Permitted animals may not be kept, bred, or raised for commercial purposes. Owners must clean up after their pets immediately. Pets are restricted from the Common Area.

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

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

designated by the Association.

7.7 RIGHT TO LEASE. No Owner may rent a Condominium for transient or hotel purposes, which are defined as rental for any period less than 30 days, or any rental if the occupants are provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen, and bellboy service. Subject to these restrictions, an Owner may lease his or her Condominium, provided the lease is in writing, is made subject to the Governing Documents, and a copy of the lease is sent to the Association. An Owner is responsible for a tenant's compliance with the Governing Documents. An Owner who rents his or her Condominium must provide the Association with his or her new address and telephone number, as well as the name and telephone number of the tenant.

7.8 CLOTHES LINES. Outside laundering or drying of clothes is not permitted.

7.9 ANTENNAS AND SATELLITE DISHES. Antennas, satellite dishes and cables for the reception of television, radio and other signals may not be installed within the Common Area without prior approval of the Association as provided in Article 6.

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

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

7.12 SOUND TRANSMISSION.

A. Floor Covering. Each hallway and room (other than the kitchen and bathrooms) in a Unit must have carpet and at least 1/4 pad or other noise deadening materials approved by the Board in 80 percent of its square footage. Except for replacing existing carpet and pad with carpet and pad of equal or greater acoustical insulation value as that being removed, an Owner must obtain the prior approval of the Board, according to the procedures set forth in the Bylaws or otherwise established by the Board for review of improvements, before removing or replacing carpet and pad or other existing flooring materials.

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

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

ARTICLE 8
Maintenance and Repair Obligations

8.1 OWNER'S MAINTENANCE AND REPAIR OBLIGATIONS.

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

B. Exclusive Use Common Areas. Each Owner must keep all Exclusive Use Common Areas appurtenant to his or her Unit clean and neat.

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

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

E. Maintenance Recommendations. Each Owner is subject to all maintenance recommendations provided by Declarant, including, without limitation, all guides and other documents and maintenance schedules, as they pertain to the Owner's Unit and those portions of the Common Area, if any, that an Owner is required to maintain and repair. Civil Code Sections 907 and 945.5 provide that Owners and the Association have an affirmative duty to maintain the Project pursuant to written maintenance recommendations.

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

A. In General. The Association must maintain in good condition, repair and replace the Common Area, all Exclusive Use Common Areas except for those to be maintained by Owners under section 8.1B, and landscaping.

B. Wood-Destroying Pests. The Association is responsible for the repair and maintenance of Common Area occasioned by the presence of wood-destroying pests and organisms in accordance with the procedure set forth in Civil Code section 1364.

C. Water Intrusion and Defective Conditions. The Association may periodically inspect the Common Area, including Exclusive Use Common Area, and the Units, for evidence of water intrusion or other defective conditions that the Association is required to repair, repair the water damage or other defective condition and, if the source of the condition is water intrusion, locate and correct the source.

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

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

F. Maintenance Recommendations. The Association is subject to all maintenance recommendations provided by Declarant, including, without limitation, all guides and other documents and maintenance schedules, as they pertain to the Common Area and those portions, if any, of the Units that the Association is required to maintain and repair. Civil Code Sections 907 and 945.5 provide that Owners and the Association have an affirmative duty to maintain the Project pursuant to written maintenance recommendations.

8.3 MAINTENANCE RESPONSIBILITY LIST. The types of items to be maintained by the Association and the individual Owners are set forth on the Maintenance List attached to this Declaration as Exhibit A. The Association has the sole authority to determine whether the Association or the Owners are responsible for maintenance of any item not included on the Maintenance List.

ARTICLE 9

Insurance Coverage

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

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

(1) The policy must include coverage for:

a. all Common Area improvements described in section 1.3 and landscaping located within the Common Area, but excluding land, foundations, excavations and other items typically excluded from property insurance coverage, and

b. standard components of the Unit as described in section 1.17 that were originally installed by the Declarant, and any equivalent replacements to them. However, any upgrades installed by an Owner are excluded to the extent the replacement cost of the upgraded improvements exceeds the insurable replacement value of the original Unit improvements, as determined on the date that immediately precedes the date of the damage or destruction. Personal property and trade fixtures located in a Unit are also excluded.

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

(3) The policy must be in a form and from an insurance carrier satisfactory to the Association and to any first Mortgagee that inquires of the Association as to the terms of the policy. The policy must be primary and non-contributing with any other insurance policy covering the same loss. The policy must waive all subrogation rights against any Owner or occupant and his or her family members and invitees.

B. Comprehensive General Liability. The Association must obtain and maintain comprehensive public liability insurance insuring the Association, any managing agent,

Declarant, and the Owners and occupants of the Condominiums, and their respective family members, guests, invitees, and the agents and employees of each of them, against any liability incident to the ownership or use of the Common Area or any other real or personal property owned or maintained by the Association, and including, if obtainable on commercially reasonable terms, a cross-liability or severability-of-interest clause or endorsement insuring the liability of each insured against claims by each other insured. The limits of the insurance may not be less than \$2,000,000, or any greater amount required by Civil Code section 1365.9, covering all claims for death, personal injury, and property damage arising from a single occurrence. This insurance must include coverage against water damage liability, liability for non-owned and hired automobiles, liability for the property of others, and any other liability or risk customarily covered with respect to developments similar in construction, location and use.

C. Director and Officer Liability Insurance. The Association must purchase and maintain insurance on behalf of any director, officer or member of a committee of the Association against any liability asserted against or incurred by any of these persons in their capacity or arising out of their status as agents of the Association, regardless of whether the Association has the power to indemnify these persons against liability under applicable law. The insurance must be in an amount of not less than \$500,000, or any greater amount required by Civil Code section 1365.7.

D. Fidelity Bond. If required by any institutional lender or at the discretion of the Association, a fidelity bond or policy of insurance against dishonest acts on the part of any person entrusted with or permitted to handle funds belonging to or administered by the Association, including a professional manager and its employees, naming the Association as the insured.

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

9.2 INSURANCE REQUIRED BY CERTAIN LENDERS. When FNMA or FHLMC is a Mortgagee, an insurer or guarantor of a Mortgage, or an Owner of a Condominium within the Project, a policy required under this Declaration must satisfy the minimum requirements imposed for this type of Project by FNMA or FHLMC with respect to amount, term coverage, deductible, named insureds, loss payees, standard mortgage clauses, notices of change and cancellation, and insurance company rating. However, to the extent that coverage is not available upon reasonable terms and at a reasonable cost, or has been modified or waived in writing by FNMA or FHLMC, it need not be obtained.

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

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

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

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

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

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

ARTICLE 10

Damage or Destruction; Condemnation

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

cost of repairing and rebuilding the Unit must be paid by the Owner.

10.2 DAMAGE TO BOTH UNITS OR COMMON AREA. If the damage extends to both Units or any part of the Common Area, the following applies:

A. Minor Casualty. A minor casualty means damage to the Project that extends to both Units or any part of the Common Area where the total of available insurance proceeds initially offered or paid by the insurer plus association reserve funds equals or exceeds ninety percent (90%) of the cost of repairing or rebuilding. In the event of a minor casualty, the Association must promptly contract to repair and rebuild the damaged portions of the Units and the Common Area. If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Owners must each contribute a pro-rata share of the unfunded repair costs based upon the ratio of the square footage of the floor area of each Unit to the total square footage of the floor area of all Units.

B. Major Casualty. A major casualty means damage to the Project that extends to both Units or any part of the Common Area where the total of available insurance proceeds initially offered or paid by the insurer plus association reserve funds is less than ninety percent (90%) of the cost of repairing or rebuilding. In the event of a major casualty, the Association must levy a special assessment against the Owners for the difference between the cost of repairing or rebuilding and the amount of insurance proceeds offered or paid by the insurer and, upon Owner approval of the special assessment, repair the Project. Failure of the Owners to approve the special assessment will be deemed an election not to repair and rebuild.

C. Reconstruction after Damage or Destruction to Two Units or Common Area. The following provisions apply if the Project is repaired or rebuilt.

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

(2) **Bids for Reconstruction.** The Association must retain a construction consultant, who is a licensed general contractor, architect, or engineer with at least 5 years experience in repair and rebuilding of property damaged through fire or other

casualty. In conjunction with the consultant, the Association must obtain firm bids from two or more responsible contractors to rebuild the Project, and may also obtain an estimate from the insurance carrier of the work it will perform for the amount of available insurance proceeds. The Association must accept the bid or insurance estimate it considers most favorable, conditional upon the levy of a special assessment if funds in excess of available insurance proceeds plus Association reserve funds are required to complete the reconstruction. If the Association determines that the amount of proceeds required to complete the repair and rebuilding is so small that the cost of a construction consultant is excessive in relation to the cost of the work, the Association may waive the requirement.

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

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

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

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

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

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

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

ARTICLE 11

Mortgage Protection Provisions

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

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

11.3 REQUIRED CONSENT OF ELIGIBLE MORTGAGE HOLDERS.

A. Eligible Mortgage Holder. As used in this section 11.3, "eligible mortgage holder" means a first Mortgagee, or the insurer or governmental guarantor of a first Mortgage, that has submitted a written request to the Association to notify it of any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

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

Except for minor, non-substantive changes, changes to provisions governing any of the following are of a material adverse nature: (1) voting rights; (2) increases in assessments that increase the previously assessed amount more than 25%, assessment liens or priority of such liens; (3) reductions in reserves for maintenance, repairs and replacement of the Common Area; (4) hazard or fidelity insurance requirements; (5) reallocation of interests in or rights to use the Common Area or Exclusive Use Common Area; (6) responsibility for maintenance and repair of the Project; (7) expansion or contraction of the Project or the addition,

annexation or withdrawal of property to or from the Project; (8) redefinition of boundaries of any Unit; (9) convertibility of Units into Common Area or of Common Area into Units; (10) imposition of any restrictions on the leasing of Units; (11) imposition of any right of first refusal or any other restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Condominium; (12) restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents; or (13) any provisions which are for the express benefit of mortgage holders, insurers or guarantors.

C. Termination of Legal Status of Project. Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs requires the approval by eligible mortgage holders that represent at least 51% of the votes of Units that are subject to mortgages held by eligible mortgage holders.

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

11.4 REQUIRED CONSENT OF FIRST MORTGAGEES. Except as provided by statute in case of condemnation or substantial loss to the Units and/or Common Area, unless at least 67% of all Owners or first Mortgagees (based on one vote for each Condominium encumbered) have given their prior written approval, neither the Association nor the Owners may do any of the following. For purposes of this section 11.4, a first Mortgagee is assumed to have approved a written proposal if it fails to submit a response to the proposal within 60 days after it has received proper notice of the proposal, provided the notice was delivered by certified or registered mail, "return receipt" requested.

A. By act or omission, seek to abandon or terminate the Project;

B. Change the pro-rata interest or obligations of any Condominium for purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro-rata share of ownership of each Condominium in the Common Area;

C. Partition or subdivide any Condominium;

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

E. Use hazard insurance proceeds for losses to the Project (whether to Units or Common Area) for other than the repair, replacement or reconstruction of the Project except as provided by statute in case of substantial loss of the Units or Common Area.

11.5 NOTICE TO MORTGAGE HOLDERS, INSURERS AND GUARANTORS. Upon written request to the Association identifying the name and address of the mortgage holder, insurer or guarantor and the Unit number or address of the Unit, a mortgage holder, insurer or guarantor is entitled to timely written notice of the following:

- A. Any condemnation loss or any casualty loss that affects a material portion of the Project or the Unit securing its mortgage;
- B. Any 60 day delinquency in the payment of assessments owed by the Owner of any Unit on which it holds the mortgage;
- C. Any lapse, cancellation or material modification of an insurance policy maintained by the Association; or
- D. Any proposed action that requires the consent of eligible mortgage holders, as specified in section 11.4.

11.6 RIGHTS TO INSPECT, RECEIVE STATEMENTS, ATTEND MEETINGS.

- A. All Owners and lenders, and all holders, insurers or guarantors of any first Mortgage are entitled to inspect current copies of the Declaration, Bylaws, the Association rules and any other rules concerning the Project and the books, records and financial statements of the Association. Inspection may be made upon request, during normal business hours or under other reasonable circumstances.
- B. If the Association has not prepared an audited financial statement, the holder, insurer or guarantor of any first Mortgage may have an audited financial statement for the immediately preceding fiscal year prepared at its own expense.
- C. Upon written request to the Association, a first Mortgagee is entitled to receive written notice of, and may appear (but not vote) at meetings of the Owners and the Association.

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

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

11.9 SUBORDINATION. Any lien created or claimed under the provisions of this Declaration is

subject and subordinate to the rights of any first Mortgagee with a first Mortgage that encumbers a Condominium, and will not defeat, invalidate or impair the obligation or priority of a first Mortgage unless the Mortgagee expressly subordinates its interest in writing.

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

ARTICLE 12

General Provisions

12.1 ACTIONS BY THE ASSOCIATION OR AN OWNER TO ENFORCE GOVERNING DOCUMENTS. The Association or any Owner may enforce the Governing Documents. An Owner or the Association may enforce the Governing Documents by legal action. However, neither the Association nor an Owner may file an action in the superior court for enforcement of the Governing Documents that includes a request for declaratory, injunctive, or writ relief in conjunction with a claim for monetary damages not in excess of \$5,000 unless the parties have endeavored to submit their dispute to alternative dispute resolution under section 12.2. In any legal action, the court, in determining the award, may consider whether a party's refusal to participate in alternative dispute resolution before commencement of the action was reasonable.

12.2 ALTERNATIVE DISPUTE RESOLUTION. The parties to a dispute between the Owners or between the Association and an Owner must use good faith efforts to resolve the dispute using the following alternative dispute resolution procedures.

A. "Alternative dispute resolution" means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decision making process. The form of alternative dispute resolution chosen pursuant to this article may be binding or nonbinding, with the voluntary consent of the parties.

B. Any party to a dispute may initiate alternative dispute resolution by serving on all other parties to the dispute a Request for Resolution. The Request for Resolution must include all of the following: (a) a brief description of the dispute between the parties; (b) a request for alternative dispute resolution, including the proposed type and provider; (c) a notice that the party receiving the Request for Resolution is required to respond within 30 days of receipt or the request will be deemed rejected; and (d) a copy of sections 1369.510 through 1369.590 of the Civil Code.

C. The Request for Resolution must be served by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the request.

D. A party on whom a Request for Resolution is served has 30 days following service to

accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party. If the party on whom a Request for Resolution is served accepts the request, the parties must complete the alternative dispute resolution within 90 days after the party initiating the request receives the acceptance, unless this period is extended by written stipulation signed by both parties.

E. The costs of the alternative dispute resolution must be borne by the parties.

F. The following matters are excluded from the requirement for alternative dispute resolution: (a) foreclosure of a delinquent assessment lien where the delinquent Owner has not sought alternative dispute resolution in accordance with subsection (1), and (b) any claim solely for monetary relief which is within the jurisdiction of a probate or small claims court.

12.3 TERM. The initial term of this Declaration is 50 years from the date it is recorded, unless it is terminated earlier because of damage and destruction or condemnation as provided in sections 10.2 and 10.3 or by partition as permitted by Civil Code section 1359. After that 50 year period, this Declaration will extend automatically for successive periods of 10 years, unless by unanimous vote the Owners vote to terminate it, and an instrument in writing to that effect is recorded within the year preceding the beginning of the next period of 10 years.

12.4 AMENDMENTS. Prior to close of escrow on the sale of the first Condominium, this Declaration may be amended by Declarant. Thereafter, this Declaration may be amended by an instrument in writing signed and acknowledged by the president or the secretary of the Association certifying under penalty of perjury that the amendment was adopted with the consent of Owners as provided in this section. The Declaration may be amended only by a unanimous vote of the Owners. An amendment must be recorded and becomes effective only upon being recorded in the County Recorder's Office. An amendment does not adversely affect the rights of the holder of any Mortgage of record recorded prior to the amendment. This Declaration may also be amended in accordance with the provisions of Civil Code section 1356.

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

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

12.7 NOTICES. Any notice permitted or required by the Governing Documents must be in writing. Unless expressly provided otherwise in a particular provision, delivery of a notice may be by any of

the following means: (1) personal delivery, (2) certified or registered U.S. mail, (3) delivery by commercially recognized courier service, or (4) email, facsimile or other electronic means if the recipient has previously agreed to that method of delivery. If delivery is by mail, the notice is deemed delivered 72 hours after a copy of it has been deposited in the United States mail, postage prepaid, addressed to the Owner at the current address given by to the Owner to the secretary of the Association or addressed to the Unit of the Owner if no address has been given to the secretary. Electronic notice is deemed delivered upon transmission to the current email address or facsimile number delivered to the Association in accordance with the provisions of this section.

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

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

12.10 NOTICE OF NEW OWNERSHIP. No later than five days after close of escrow on the purchase of a Condominium, the new Owner must inform the other Owner of his or her name and address and the date of close of escrow on the purchase.

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

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

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

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

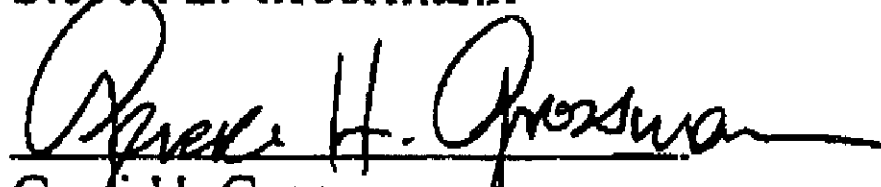
12.15 CONSTRUCTION OF PROVISIONS. The provisions of this Declaration must be construed liberally and in conjunction with the Bylaws and operating rules established by the Association to effect its purpose of creating a uniform plan for the development and operation of a condominium project pursuant to the provisions of section 1350 et seq. of the California Civil Code.

12.16 INCONSISTENCY IN DEFINITIONS. If there are any inconsistencies in the definitions contained in the Declaration and any notes on the Map or the Condominium Plan, the definitions contained in the Declaration control.

Declarant has executed this Declaration on 9/27, 2006


Diana R. Meistrell


Steven L. Grossmann


Geri H. Grossmann

STATE OF CALIFORNIA
COUNTY OF San Francisco

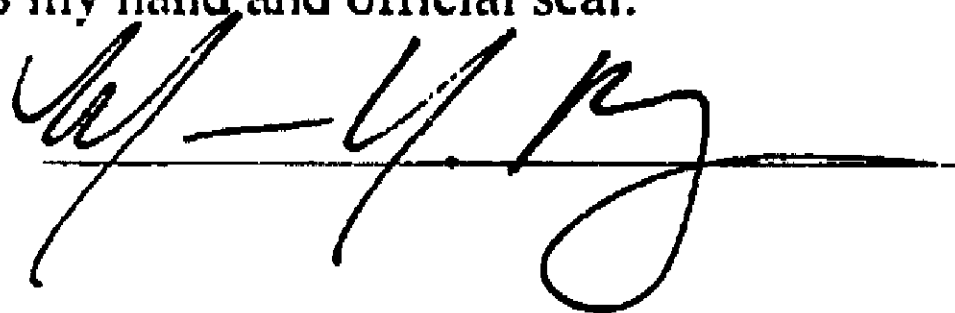
}
} SS.
}

On 9/27/06, before me, Moony Y. Bang, a notary public, personally
appeared Diana R. Meistrell

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



ACKNOWLEDGMENT

State of California

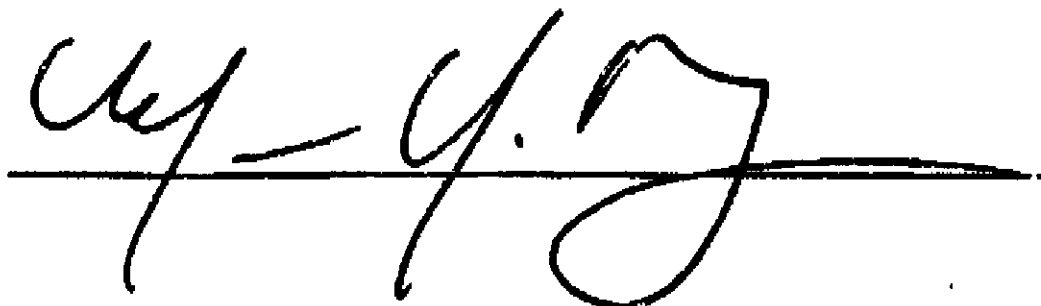
County of SAN FRANCISCO

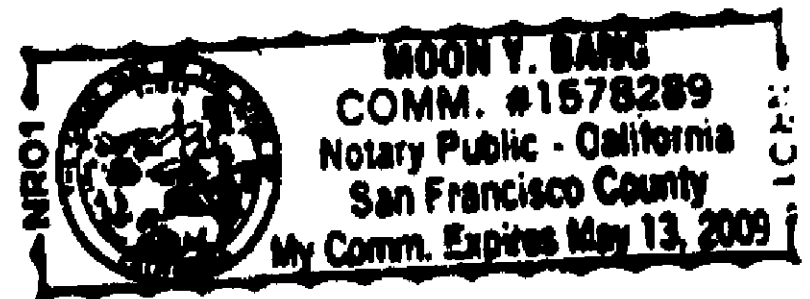
On 10/10/06 before me, MOON Y. BANG
(here insert name and title of the officer)

personally appeared Gerri H. Grossmann and Steven L.
Grossmann

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 



(Seal)

EXHIBIT A

Maintenance Responsibilities

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

Owner maintenance responsibilities include:

Appliances
Cabinets and other fixtures
Drywall and sheet rock
Exterior doors - see below
Exterior light fixtures at entry, deck, patio and yard, and other fixtures and bulbs where fixture is connected to Unit's electrical system
Heating system
Hot water heater
Interior Doors and hardware
Interior Light fixtures
Outlets and plugs for electrical and telecommunications wiring
Keys and garage door openers required for entry into the Unit
Partition walls
Plumbing fixtures (sinks, toilets, etc.)
Smoke detectors - battery operated
Wall, floor and ceiling surfaces (e.g. paint, wallpaper, carpet and other flooring materials)
Window coverings
Windows - see below

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

Association maintenance responsibilities include: Electrical fixtures and outlets serving the Common Area (except those maintained by an Owner)

Exterior doors - see below
Fences
Floor, wall and ceiling surfaces in common areas - clean, paint, repair, replace,
Irrigation System
Landscaping
Life Safety Systems - fire sprinkler system, including sprinkler heads within a Unit, hard-wired smoke alarms, fire alarm
Mailboxes
Retaining walls

Structural elements

Water proofing - roof, exterior paint

Exterior Doors and Windows: Responsibility for maintenance of exterior doors and windows is assigned as follows.

- **Exterior Doors.** Exterior doors include front doors, and doors to patios, balconies and decks, screen doors, and garage doors that serve a single Unit. The Association is responsible for maintenance, repair and replacement of the door frame, door casing and door, and repair, refinishing and painting of door exterior. The Owner is responsible for repair and replacement of those portions of the door accessible from inside the Unit, including, repairing and painting the interior of the door, hardware, seals, weather stripping, and any other portion of the door assembly accessible from inside the Unit.
- **Windows.** The Association is responsible for maintenance, repair and replacement of the window frame, exterior trim, and repair, refinishing and painting of window exterior. The Owner is responsible for repair and replacement of those portions of the window accessible from inside the Unit, including, repairing and painting the interior of the window frame and interior window trim, hardware, seals, weather stripping any other portion of the window assembly accessible from inside the Unit.
- **Window Washing.** Each Owner is responsible for washing the windows of his or her Unit, inside and out.

Recording Requested by Diana R Meistrell

WHEN RECORDED MAIL TO AND UNLESS
SPECIFIED BELOW, MAIL FUTURE TAX
STATEMENTS TO:

Diana Meistrell
2324 North Point Street
San Francisco, CA 94123



San Francisco Assessor-Recorder

Carmen Chu, Assessor-Recorder

DOC- 2016-K272384-00

Friday, JUN 10, 2016 13:41:55

Ttl Pd \$27.00

Rcpt # 0005393749

oma/DM/1-4

DOCUMENTARY TRANSFER TAX \$

SPACE ABOVE THIS LINE FOR RECORDER'S USE

.....Computed on the consideration or value of property conveyed; OR

.....Computed on the consideration or value less liens or encumbrances
remaining at time of sale.

Signature of Declarant or Agent determining tax - Firm Name

QUITCLAIM DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, I (We) Diana R Meistrell

NAME(S) OF GRANTOR(S)

hereby remise, release, and quitclaim to Diana Ruth Meistrell Revocable Trust

NAME(S) OF GRANTEE(S)

the following real property in the City of San Francisco, County of San Francisco, State of California,
described as:

2324 North Point St
San Francisco, CA 94123
Block 0918 Lot 027

DATED:

6/6/2016

Diana R. Meistrell

STATE OF

California

COUNTY OF

San Francisco

On

June 6 2016

, before me,

Marcella Ramos, Notary Public

personally appeared

Diana R. Meistrell

who proved to me on the basis of satisfactory evidence to be the person(s)

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

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

Witness my hand and official seal.

Signature

[Signature]

(seal)

MAIL TAX STATEMENTS TO: SAME AS ABOVE

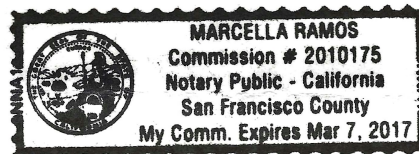


EXHIBIT "A"
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO, CITY OF SAN FRANCISCO, AND IS DESCRIBED AS FOLLOWS:

A CONDOMINIUM COMPRISED OF:

PARCEL I:

CONDOMINIUM UNIT NO. 2324 (LOT 027) AS SHOWN UPON THE CONDOMINIUM MAP AND DIAGRAMMATIC FLOOR PLAN ENTITLED "PARCEL MAP 2297. 2322-2324 NORTH POINT STREET. A RESIDENTIAL CONDOMINIUM PROJECT" WHICH WAS FILED FOR RECORD ON SEPTEMBER 11, 2006 IN CONDOMINIUM MAP BOOK 96. AT PAGES 155 TO 158, INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA (REFERRED TO HEREIN AS "THE MAP" AND AS FURTHER DEFINED IN THE DECLARATION OF RESTRICTIONS FOR 2322-2324 NORTH POINT STREET, SAN FRANCISCO, CALIFORNIA. A CONDOMINIUM PROJECT RECORDED ON OCTOBER 11, 2006, AS INSTRUMENT NO. 2006-1268445 IN BOOK/REEL 3243, PAGE/IMAGE 0151. OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA (REFERRED TO HEREIN AS "THE DECLARATION").

EXCEPTING THEREFROM, ANY PORTION OF THE COMMON AREA LYING WITHIN SAID UNIT.

PARCEL II:

AN UNDIVIDED 52.1% INTEREST IN AND TO THE COMMON AREA AS SHOWN AND DEFINED ON THE MAP, EXCEPTING THEREFROM THE FOLLOWING:

- (A) EXCLUSIVE EASEMENTS, OTHER THAN PARCEL III AS DESIGNATED ON THE MAP AND RESERVED BY GRANTOR TO UNITS FOR USE AS DESIGNATED IN THE DECLARATION; AND
- (B) NONEXCLUSIVE EASEMENTS APPURTENANT TO ALL UNITS FOR INGRESS AND EGRESS, SUPPORT, REPAIR AND MAINTENANCE.

PARCEL III:

- (A) THE EXCLUSIVE EASEMENT TO USE THE PARKING AREA(S) DESIGNATED P-2324 ON THE MAP.
- (B) THE EXCLUSIVE EASEMENT TO USE THE LAUNDRY AREA(S) DESIGNATED L-2324 ON THE MAP.
- (C) THE EXCLUSIVE EASEMENT TO USE THE STORAGE AREA(S) DESIGNATED S-2324 ON THE MAP.

PARCEL IV:

A NONEXCLUSIVE EASEMENT APPURTENANT TO PARCEL I ABOVE FOR SUPPORT, REPAIR AND MAINTENANCE, AND FOR INGRESS AND EGRESS THROUGH THE COMMON AREA IN ACCORDANCE WITH CALIFORNIA CIVIL CODE SECTION 1361 (A).

PARCEL V:

ENCROACHMENT EASEMENTS APPURTENANT TO THE UNIT IN ACCORDANCE WITH THE

Thank you for your order. We really appreciate your business.

Visit us at our website: www.ncslenders.com

Order No. 17-353647

EXHIBIT "A"
LEGAL DESCRIPTION continued

PROVISIONS OF THE DECLARATION.

PARCEL NUMBER(S): LOT 027 BLOCK 0918

GENERAL NOTES:

- THIS IS A MAP OF A "CONDOMINIUM PROJECT" AS THAT TERM IS DEFINED IN SECTION 1530110 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA AND THE SUBDIVISION DESCRIBED HEREIN IS A CONDOMINIUM PROJECT. THE SUBDIVISION IS THE CONDOMINIUM PROJECT DESCRIBED IN THE TITLE & PART 4, PARAGRAPH 2 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA, SHEET TWO OF FOUR THEREIN IS THE SURVEY MAP OF THE SURFACE OF THE LAND INCLUDED WITHIN THE PROJECT AND SHEET FOUR OF FOUR SHOWS THE INFORMATION FLOOR PLANS OF THE BUILDING AS PROVIDED IN SECTION 1530110 OF THE CIVIL CODE.
- THE UNIT CONSISTS OF THE AREA BOUNDED BY ITS PERIMETER WALLS, CEILING, FLOOR, AND EXTERIOR FINISHES ON THESE SURFACES. A UNIT INCLUDES (a) THE PART ON THE INTERIOR SURFACES OF THE WINDOW AND DOOR FRAMES LOCATED ON EXPOSED WITHIN THE UNIT, (b) PLUMBING, HEATING, AIR CONDITIONING AND ELECTRICAL FINISHES OR APPLIANCES LOCATED ON EXPOSED WITHIN THE UNIT, AND (c) WATER HEATERS, FURNACES OR AIR CONDITIONERS LOCATED WITHIN THE UNIT. A UNIT DOES NOT INCLUDE (a) STRUCTURAL COMPONENTS OF WALLS, CEILING OR FLOOR, (b) EXTERIOR FINISHES, (c) EXTERIOR WALLS, (d) EXTERIOR ROOFS, (e) WINDOWS, (f) PORTIONS OF PLUMBING, HEATING, AIR CONDITIONING, OR ELECTRICAL SYSTEMS SERVING MORE THAN ONE UNIT.
- COMMON AREA: THE COMMON AREA CONSISTS OF THE ENTIRE PROPERTY EXCEPT FOR THE UNITS.
- DIMENSIONS SHOWN AND ELEVATIONS NOTED ON SHEET FOUR ARE INTENDED TO BE THE UNFINISHED INTERIOR SURFACES OF THE WALLS, FLOORS AND CEILINGS.
- BUILDING WALLS OF THE UNITS ARE AT NINETEEN INCHES AND WALLS ARE 0.5 FEET THICK UNLESS OTHERWISE INDICATED. DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
- FOR PERCENTAGE OF UNFINISHED INTEREST IN THE OWNERSHIP OF THE COMMON AREA, SEE TABLE ON SHEET FOUR.
- THE AREAS ENTITLED "P-2322" AND "P-2324" ARE EXCLUSIVE USE EXTERIOR AREAS FOR PARKING PURPOSES, AND SHALL BE GRANTED AS AN APPROPRIATION TO THE CORRESPONDINGLY NAMED UNIT. ONE PARKING SPACE SHALL BE ASSIGNED TO EACH CORRESPONDINGLY NAMED UNIT.
- THE AREA ENTITLED "P-2324" IS AN EXCLUSIVE USE EXTERIOR AREA FOR LAUNDRY PURPOSES, AND SHALL BE GRANTED AS AN APPROPRIATION TO THE CORRESPONDINGLY NAMED UNIT.
- THE AREA ENTITLED "P-2324" IS AN EXCLUSIVE USE EXTERIOR AREA FOR STORAGE PURPOSES, AND SHALL BE GRANTED AS AN APPROPRIATION TO THE CORRESPONDINGLY NAMED UNIT.
- THE CITY OF SAN FRANCISCO HAS NOT INSPECTED OR EXAMINED THE PLANNING PANELS PREPARED FOR THIS PROJECT. THE CITY DOES NOT WARRANT THAT SUCH PLANNING PANELS MEET MINIMUM PLANNING CODE REQUIREMENTS FOR DIMENSION, LOCATION, ARRANGEMENT, OR ACCESSIBILITY.
- ELEVATIONS SHOWN HEREIN WERE OBTAINED FROM A GROUP OF CITY BENCHMARKS, LOCATED AT THE INTERSECTION OF NORTH POINT AND BROADWAY STREETS, ELEVATIONS ARE BASED ON CITY OF SAN FRANCISCO DATUM A.L.C. CORNER + CUT CORNER CORNER CORNER ELEVATION = 4.100'.
- SHOWN ON THE PLANNING PANELS ARE THE EXISTING PRIVATE PROPERTIES IS HEREBY NOTED THAT THE PLANNING PANELS ARE NOT TO BE USED FOR ANY PURPOSES OTHER THAN THAT FOR WHICH THEY WERE PREPARED. ANY ISSUES WHICH MAY ARISE THEREFROM THIS MAP DOES NOT CONVEY ANY OWNERSHIP INTERESTS.
- THE DOCUMENT SHOWN HEREIN IS SUBJECT TO THE TERMS AND PROVISIONS IN THE FOLLOWING RECORDED DOCUMENT: RECORD MAP NUMBER 2006-108888-00, ON REEL 1918, RECORDED JANUARY 6, 2006 UNDER DOCUMENT NUMBER 2006-108888-00, ON REEL 1918, IT MADE COPIES IN THE CITY AND COUNTY OF SAN FRANCISCO.

PARCEL MAP 2297
2322-2324 NORTH POINT STREET
A RESIDENTIAL CONDOMINIUM PROJECT

BEING A SUBDIVISION OF THAT CERTAIN REAL PROPERTY AS DESCRIBED IN THAT CERTAIN DEED FILED FOR RECORD ON JUNE 27, 2007, ON REEL 1918 AT IMAGE 0146 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA.

ALSO BEING A SUBDIVISION OF LOT 22, ASSessor's BLOCK NO. 0918 ALSO BEING A PART OF WESTERN ADDITION BLOCK NO. 357

CITY AND COUNTY OF SAN FRANCISCO

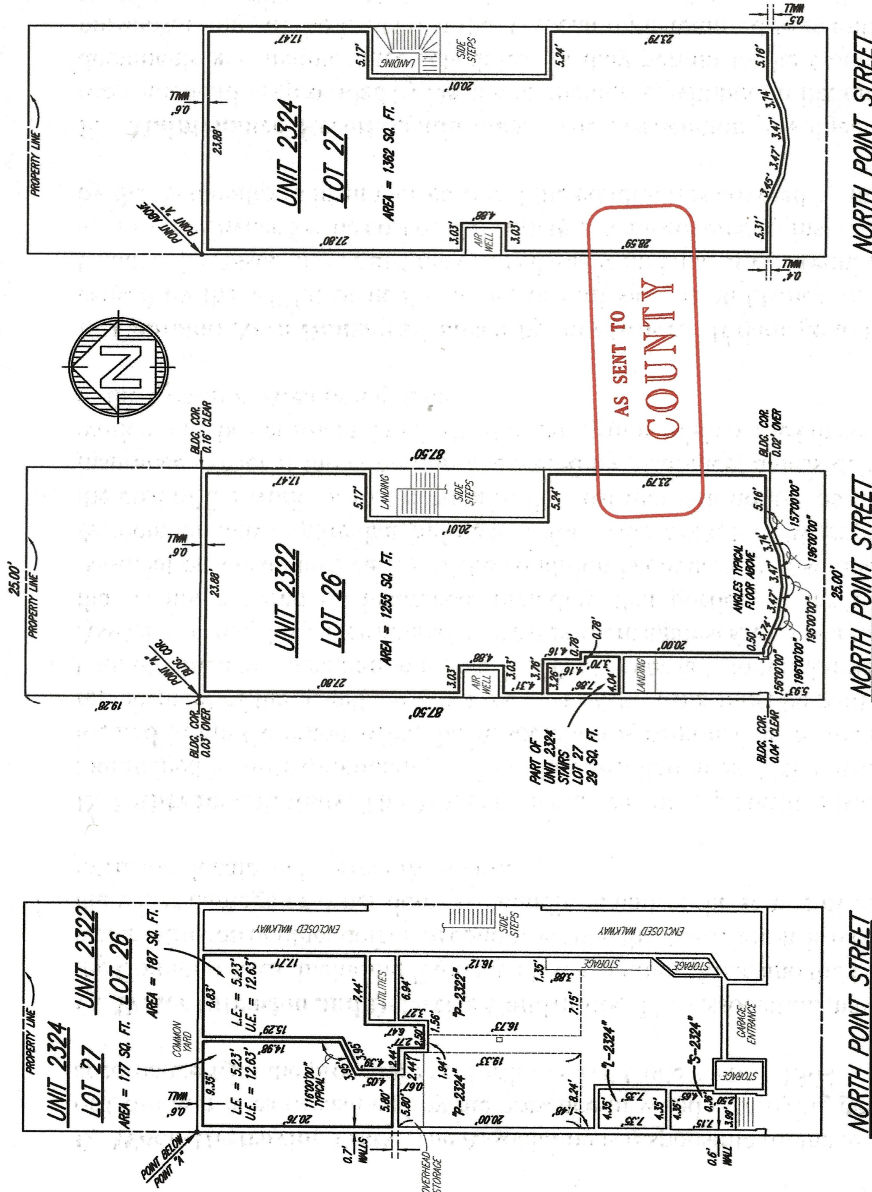
SCALE: 1/8" = 1'

CALIFORNIA
AUGUST, 2006



Frederick T. Seher & Associates, Inc.
PROFESSIONAL LAND SURVEYORS
841 LOMBARD STREET, SAN FRANCISCO, CA 94115
PHONE (415) 861-7880

SHEET FOUR OF FOUR SHEETS



1ST FLOOR

LOWEST ELEVATION 13.59'
UPPERMOST ELEVATION 22.33'

2ND FLOOR

LOWEST ELEVATION 23.45'
UPPERMOST ELEVATION 32.36'

TABLE
PERCENT OF INTEREST IN COMMON AREA PER UNIT

| UNIT NO. | LOT NO. | PERCENT % | SQ. FT. |
|----------|---------|-----------|---------|
| 2322 | 26 | 47.98 | 1442 |
| 2324 | 27 | 52.18 | 1568 |

1' 0" 4' 8' 12' 16' 20' 24'
SCALE: 1/8" = 1'-0"

Permit Details Report**Report Date:** 1/26/2023 10:39:47 AM

Application Number: 202204071806
Form Number: 8
Address(es): 0918 / 026 / 0 2322 NORTH POINT ST
Description: 2ND FLOOR ONLY - REMOVE REPLACE IN KIND ACCORDING TO PLAN
BATHROOM/HALL & 1/2 BATH; INFILL HALL BATH WINDOW. REPLACE (9)
INTERIOR DOORS. REMOVE & REPLACE (14) WINDOWS NOT @ THE FRONT
STREET.
Cost: \$100,000.00
Occupancy Code: R-3
Building Use: 28 - 2 FAMILY DWELLING

Disposition / Stage:

| Action Date | Stage | Comments |
|-------------|----------|-----------------------|
| 4/7/2022 | TRIAGE | |
| 4/7/2022 | FILING | |
| 4/7/2022 | FILED | |
| 1/11/2023 | APPROVED | |
| 1/11/2023 | ISSUED | |
| 1/24/2023 | SUSPEND | Per BOA Appeal 23-003 |

Contact Details:**Contractor Details:**

License Number: 1082324
Name: JOHN CRANE MORRIS JR
Company Name: JOHN CRANE MORRIS JR
Address: 499 OAKWOOD DR DR * SANTA CLARA CA 95054-0000
Phone:

Addenda Details:**Description:**

| Step | Station | Arrive | Start | In Hold | Out Hold | Finish | Checked By | Hold Description |
|------|---------|---------|---------|---------|----------|---------|------------------------|--|
| 1 | INTAKE | 4/7/22 | 4/7/22 | | | 4/7/22 | PANGELINAN MARIANNE | |
| 2 | INTAKE | 1/11/23 | 1/11/23 | | | 1/11/23 | STORM WILLIAM | NEW 7 PG PLAN SET SUBMITTED. SCOPE EXPANDED TO INCLUDE WINDOW REPLACEMENT. |
| 3 | CP-ZOC | 8/4/22 | 8/4/22 | | | 1/11/23 | LIANG XINYU | window replacement like for like in the rear and side, not visible from street. 2nd floor bathroom renovation. No change on the ground floor. |
| 4 | BLDG | 1/11/23 | 1/11/23 | | | 1/11/23 | WONG IRENE | Approved OTC 1/11/23. |
| 5 | MECH | 1/11/23 | 1/11/23 | | | 1/11/23 | SHAIKH MOHSIN | Approved OTC. Plans returned to the applicant. |
| 6 | SFPUC | 1/11/23 | 1/11/23 | | | 1/11/23 | ARRIOLA LAURA | OTC - Undersized Water Meter: Capacity Charge not applicable. Not enough additional fixtures/GPM but existing water fixtures indicate a larger meter would be appropriate. Permit applicant can contact PUC, New Installation 415-551.2900, for additional information. Return to Permit Applicant - 01/11/2023 |
| 7 | CPB | 1/11/23 | 1/11/23 | | | 1/11/23 | SHAWL HAREGGEWAIN | |

This permit has been issued. For information pertaining to this permit, please call 628-652-3450.

Appointments:

| Appointment Date | Appointment AM/PM | Appointment Code | Appointment Type | Description | Time Slots |
|------------------|-------------------|------------------|------------------|-------------|------------|
|------------------|-------------------|------------------|------------------|-------------|------------|

Inspections:

| Activity Date | Inspector | Inspection Description | Inspection Status |
|---------------|-----------|------------------------|-------------------|
|---------------|-----------|------------------------|-------------------|

Special Inspections:

| Addenda No. | Completed Date | Inspected By | Inspection Code | Description | Remarks |
|-------------|----------------|--------------|-----------------|-------------|---------|
|-------------|----------------|--------------|-----------------|-------------|---------|

For information, or to schedule an inspection, call 628-652-3400 between 8:30 am and 3:00 pm.

BRIEF SUBMITTED BY THE PERMIT HOLDER(S)

DENISE LEADBETTER (SBN 136328)
THOMAS KOSTER (SBN 313562)
Koster & Leadbetter, LLP
870 Market Street, Suite 450
San Francisco, CA 94102
Tel: (415) 713-8680
Fax: (415) 449-3670

Attorneys for Respondent
Dorian McKelvy and Max McKelfy

SAN FRANCISCO BOARD OF APPEALS

DIANA MEISTRELL

Appellant,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, SAN FRANCISCO
DEPARTMENT OF BUILDING
INSPECTION,

Respondents.

Appeal No.: 23-003

RESPONDENT'S BRIEF

BPA No.: 2022/04071806
Subject Address: 2322 North Point Street
Hearing Date: February 22, 2023

I. ISSUE PRESENTED AND INTRODUCTION

Appellant appealed the issuance of Department of Building Inspection Permit Application #202204071806 (the “Permit”). From the DBI Permit Detail Report (Exhibit A, attached) the description for the work is as follows:

“2ND FLOOR ONLY - REMOVE REPLACE IN KIND ACCORDING TO PLAN BATHROOM/HALL & 1/2 BATH; INFILL HALL BATH WINDOW. REPLACE (9) INTERIOR DOORS. REMOVE & REPLACE (14) WINDOWS NOT @ THE FRONT STREET.”

Respondent Max McKelvy is the owner of 2322 North Point, having purchased the condo for \$1,405,000. Respondent submits that the approval of the Permit and issuance thereof is appropriate and is not in error.

Appellant’s appeal is based on the alleged violation of a private contract between parties – the Declaration of Covenants, Conditions and Restrictions (the “CC&Rs”) for the two-unit residential Condominium Project located at 2322 – 2324 North Point Street, San Francisco (the (the “Property”). Both units are owner-occupied – full time by Respondent and part-time by Appellant.

A dispute as to the alleged violation of CC&Rs is not within the purview of the Board. The issues are subject to the alternative dispute resolution processes as reflect in the CC&RS, or the Davis Sterling Act and/or the court system. Appellant’s Appeal of the issuance of the Permit, a permit to replace internal elements solely owned by Respondent, is yet another of Appellant’s desperate acts to exact further damage to/upon Respondent’s real and personal property and to Respondent’s health. Appellant appealed the permit out of vindictiveness and spite, in response to Respondent’s filing of a lawsuit in San Francisco Superior Court on June 16, 2022 – CGC-22-600239 - for among other things nuisance and breach of contract due to Appellant’s unlawful use of a basement room for short term rental by guests who constantly, consistently violate the normal and reasonable standards of safety, security and quiet enjoyment of Respondent’s home. Please review Exhibits B, C and D attached.

/

II. NO VIOLATION OF CC&Rs ARTICLE 6.1

The work reflected on the plans and pursuant to the Permit are not subject to approval by the HOA/Appellant. All the work described in the Permit and plans (Exhibit A-1, attached) submitted at the time of the application, describes work to be performed in and affecting only elements of Respondent's condo unit (the "Unit").

The pertinent of Section 6.1 of the CC&Rs states as follows:

6.1. APPROVAL REQUIRED. The prior written approval of the Association is required before an owner may make any improvements or modifications ("improvement") to a portion of the Common Area, including Exclusive Use Common Area appurtenant to the Owner's Unit, or make any improvements within his or her Unit that may affect structural Common Area, increase the burden on common building systems, result in an increase in sour transmission between Units, or otherwise adversely affect the Common Area or other Unit"... (Highlight added.)

"Unit" is a specifically defined term in the CC&Rs, as follows:

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

III. SUMMARY AND CONCLUSION

The Permit should be reinstated and the suspension lifted. The DBI Permit Details Report (the "Report") confirms at least seven (7) different Department of Building Inspection

employees review the Application and referenced documentation in the Report. Not only is the Appellant's underlying motivation abhorrent and malicious, the provisions of the CC&Rs upon which Appellant relies to bring this Appeal do not support Appellant's claim.

Please see Exhibit C referencing calls by Respondent to San Francisco Police Department regarding the activities of Appellant and others at the Property.

Exhibit D attached describes an incident of false reporting by Appellant of a non-existent "trapped person" at the Property to the San Francisco Fire Department by Appellant Meistrell which, with said incident occurring only two days ago.

Respondent respectfully requests the Commissioners to reinstate the Permit and/or lift the Permit Suspension

February 16, 2023

Respectfully submitted,

KOSTER & LEADBETTER LLP

Denise A. Leadbetter

Denise A. Leadbetter
Attorneys for Respondent

List of Exhibits:

- A. BPA Permit Detail Report (Permit) #: 2022/04071806
- A-1: Plans related to BPA Permit
- B. San Francisco Superior Court #CGC22-6600239 – McKelvy v. Meistrell
- C. List of SFPD CAD numbers and description related to each call
- D. Description of San Francisco Fire Dept. activity on February 14, 2023

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| Activity Date | Inspector | Inspection Description | Inspection Status |
|---------------|-----------|------------------------|-------------------|
|---------------|-----------|------------------------|-------------------|

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| Addenda No. | Completed Date | Inspected By | Inspection Code | Description | Remarks |
|-------------|----------------|--------------|-----------------|-------------|---------|
|-------------|----------------|--------------|-----------------|-------------|---------|

For information, or to schedule an inspection, call 628-652-3400 between 8:30 am and 3:00 pm.

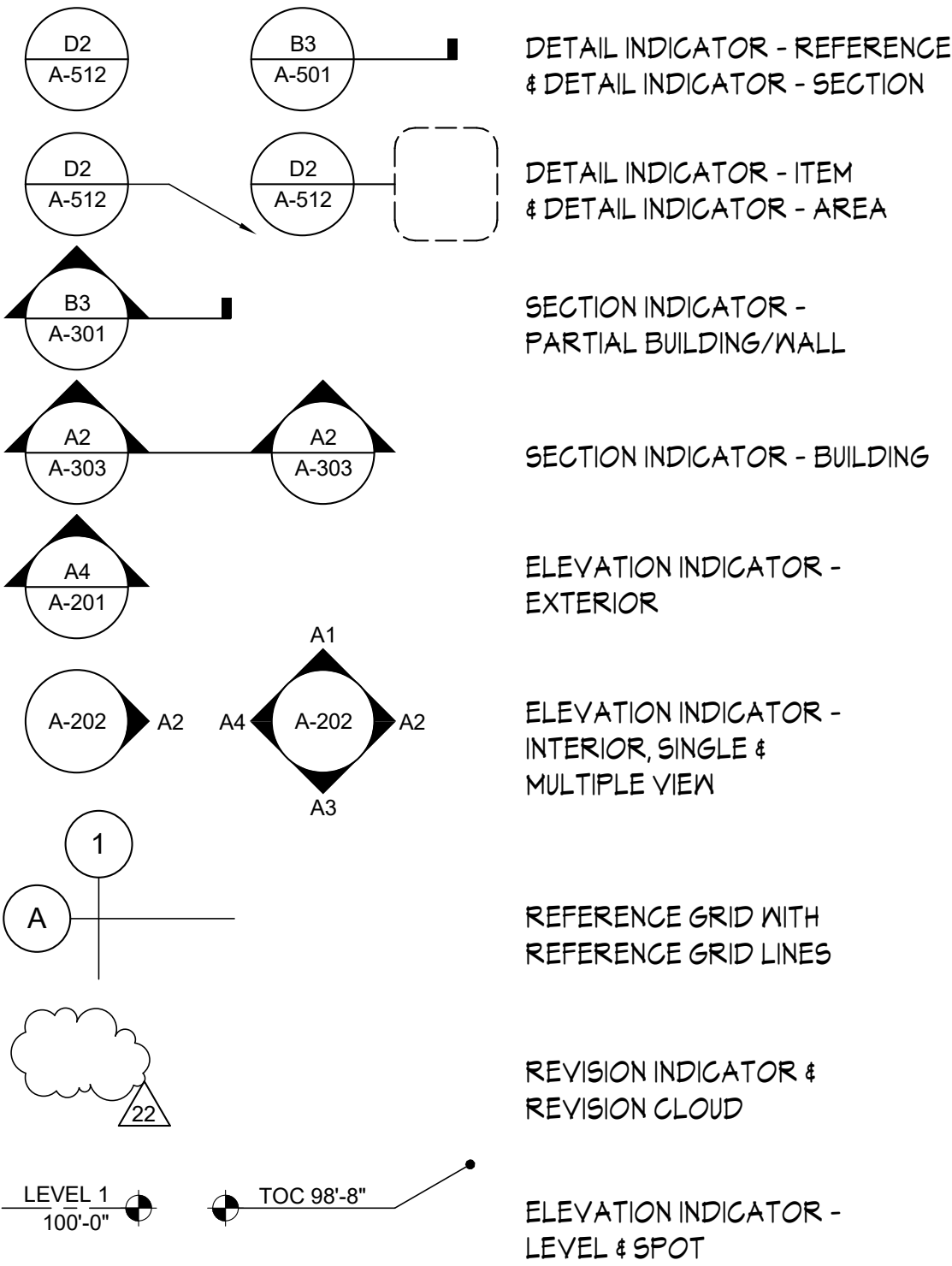
IF THIS SHEET IS NOT 24"x36", IT HAS BEEN RESIZED - SCALE ACCORDINGLY

0 1/4" 1/2" 1"

GENERAL PROJECT NOTES

- A. Written dimensions on these drawings shall have precedence over scaled dimensions, written dimensions are approximate and must be verified. Contractor to verify and be responsible for all existing conditions and dimensions prior to and during all phases of work.
- B. If the contractor or sub-contractor should find any lack of information, discrepancy in and/or omissions from these drawings or if the contractor should be in question as to their meaning or intent, the contractor should contact Jason Mundy at once for interpretation or clarification before proceeding with that portion of the work.
- C. No changes, modifications or deviations shall be made from the drawings or specifications without first securing written permission from Jason Mundy or the owner.
- D. All works as outlined in these documents, shall strictly conform to all applicable codes and ordinances. In the event of a conflict, the more stringent requirements shall govern and be met.
- E. All materials used shall be equal to or exceed all applicable state or local codes and requirements.
- F. Contractor shall remove promptly and legally all accumulated debris, protect all exposed portions of work from elements, avoid over-loading structure, and securely store all items to be used for construction.
- G. All glass in hazardous area (including tubs & showers), all glass within 18" of floor, and all glass within 24" of an operable door shall be safety glass & be permanently label as such.
- H. All existing utilities and city service are to be maintained, kept in service, and protected again damage during construction.
- I. Contractor to verify location of underground utilities prior to excavation.
- J. All electrical calculations and wire size to be provided by a licensed electrical contractor. Receptacle fixture, and equipment locations to be found on floor plans and site plan. Contractor to verify location, fixture types and equipment with owner prior to purchase and installation.
- K. The contractor shall take all necessary precautionary measures to protect the public and adjacent properties from damage throughout construction.
- L. Any existing utilities to be abandoned shall be properly disconnected, plugged or capped as required by code or sound construction practice.
- M. Provide adequate concealed blocking and anchoring for all ceiling and wall mounted equipment, hardware and accessories.
- N. Unless otherwise noted, electrical conduits, plumbing lines, etc., shall be run concealed and framing shall be adequately sized to accomplish result without causing any changes in the wall plan.
- O. Interior dimensions are shown from finish surface to finish surface and exterior dimensions are from sheathing unless noted otherwise.
- P. If fire sprinkler system is required it shall be installed as required, per NFPA and local regulations. The contractor shall submit shop drawings to the governing jurisdiction for permit.
- Q. Each bedroom shall have one exterior egress compliant window or door that is operable from interior without the use of a key or special tools, knowledge or effort.
- R. All products listed by ICC/NER number shall be installed per the report and manufacturer's written instructions. Product substitution for products listed shall also have ICC approved evaluation report and be approved and listed by other nationally recognized testing agencies.
- S. Exterior operable windows and doors will be weather-stripped. All open joints, penetrations and other openings in the building envelope shall be sealed, caulked, gasketed or weather-stripped to limit air leakage.
- T. Sink faucets used for other safety purposes shall be equipped with flow control devices. Total flow to a maximum of three gallons per minute & certified by the C.E.C.
Fixtures shall comply with the flow rates below:
1. All sink faucets, shower heads, toilets and urinals shall comply with California Civil Code Section 1101.1 through 1101.5 & CGBC 4.303.
2. Kitchen Faucets shall not exceed 1.8 gals/min at 60 psi but may have a temporary flow rate of 2.2 gpm at 60 psi and default to 1.8 gpm at 60 psi. (CGBC 4.303)
3. Lavatory faucets shall not exceed 1.2 gals/min. at 60 psi, but not less than 0.8 at 20 psi.
4. Shower heads shall not exceed 1.8 gals/min at 80 psi. When a shower is served by more than one showerhead, the combined flow rate of all showerheads shall not exceed 1.8 gallons per minute at 80 psi, or the shower shall be designed to allow only one shower outlet to be in operation at a time.
5. Water Closets shall not exceed 1.28 gals/flush
- U. See structural sheets for project construction notes and details.
- V. See attached Title 24 forms and/or calculations for project energy efficiency requirements.
- W. General contractor to provide an operation and maintenance manual will be provided to the building owner at the completion of the project. (4.410.1)

SYMBOLS LEGEND



PROJECT SUMMARY

| | |
|-----------------------|---|
| SCOPE OF WORK: | 51 SF OWNER BATHROOM REMODEL 15 SF HALL BATHROOM REMODEL 225 SF DINING ROOM REMODEL REPLACE 2EA EXTERIOR DOORS REPLACE 18EA WINDOWS |
| ZONING: | RH-3 |
| OCCUPANCY: | R1-8 |
| TYPE OF CONSTRUCTION: | V-B / NON-SPRINKLERED |
| YEAR BUILT: | 1929 |
| APN: | 0918026 |

AREA CALCULATIONS

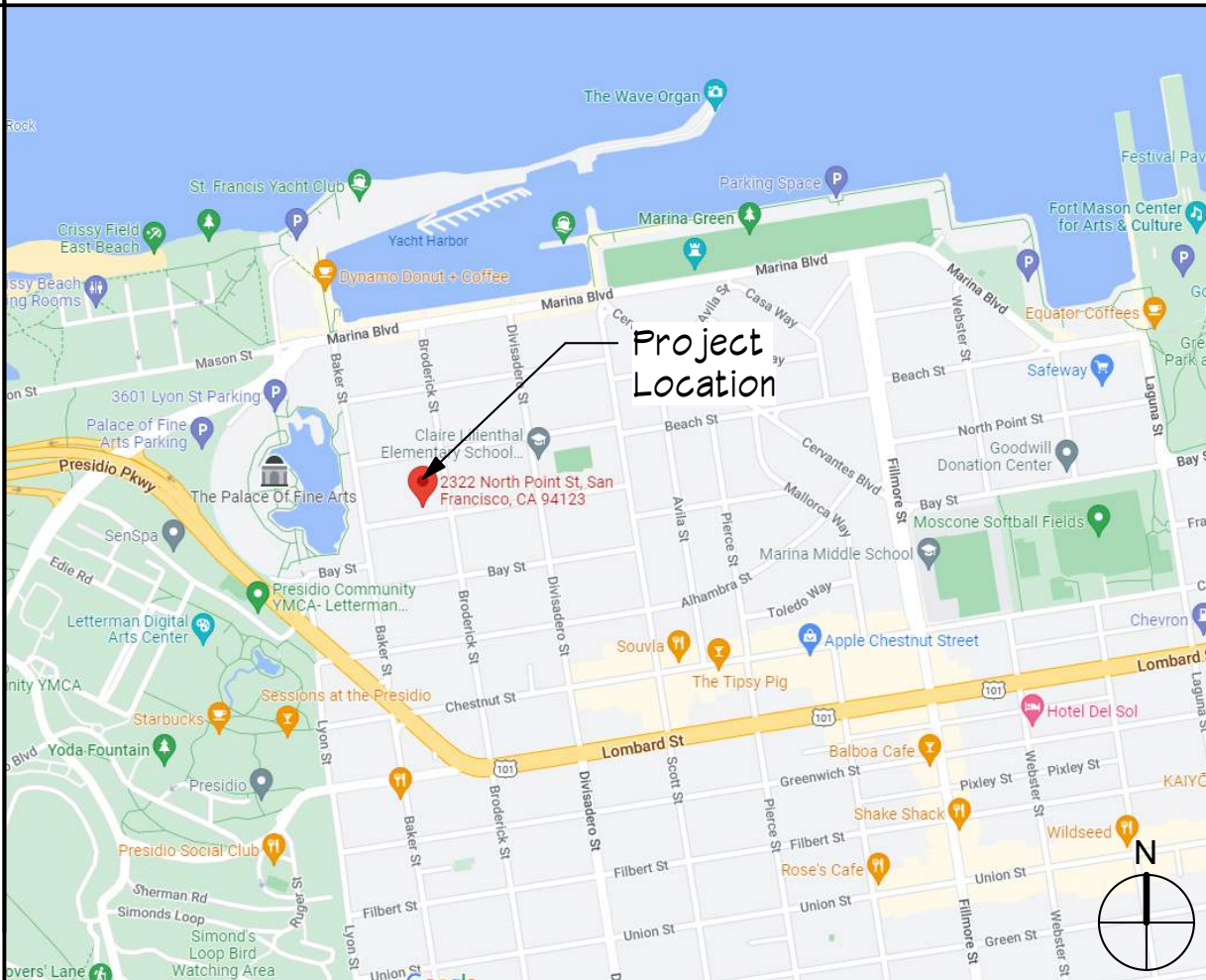
| | EXISTING | DEMO | PROPOSED | TOTAL |
|---------------|----------------|----------------|----------------|----------------|
| LOT: | | | | 0 SF. |
| FIRST FLOOR: | 529 SF. | 0 SF. | 0 SF. | 529 SF. |
| SECOND FLOOR: | 1,475 SF. | 0 SF. | 0 SF. | 1,475 SF. |
| GARAGE: | 697 SF. | 0 SF. | 0 SF. | 697 SF. |
| TOTAL: | 2,701 SF. | 0 SF. | 0 SF. | 2,701 SF. |
| FLOOR AREA: | 0 SF. 0.00% | 0 SF. 0.00% | 0 SF. 0.00% | 0 SF. 0.00% |

APPLICABLE CODES

| | |
|---------------|---|
| BUILDING - | 2019 CALIFORNIA BUILDING CODE* |
| RESIDENTIAL - | 2019 CALIFORNIA RESIDENTIAL CODE* |
| MECHANICAL - | 2019 CALIFORNIA MECHANICAL CODE* |
| ELECTRICAL - | 2019 CALIFORNIA ELECTRICAL CODE* |
| PLUMBING - | 2019 CALIFORNIA PLUMBING CODE* |
| FIRE - | 2019 CALIFORNIA FIRE CODE* |
| ENERGY - | 2019 CALIFORNIA ENERGY CODE (TITLE 24)* |
| GREEN - | 2019 CALGREEN CODE* |

*INCLUDING ALL CITY OF SAN FRANCISCO AMENDMENTS

VICINITY MAP



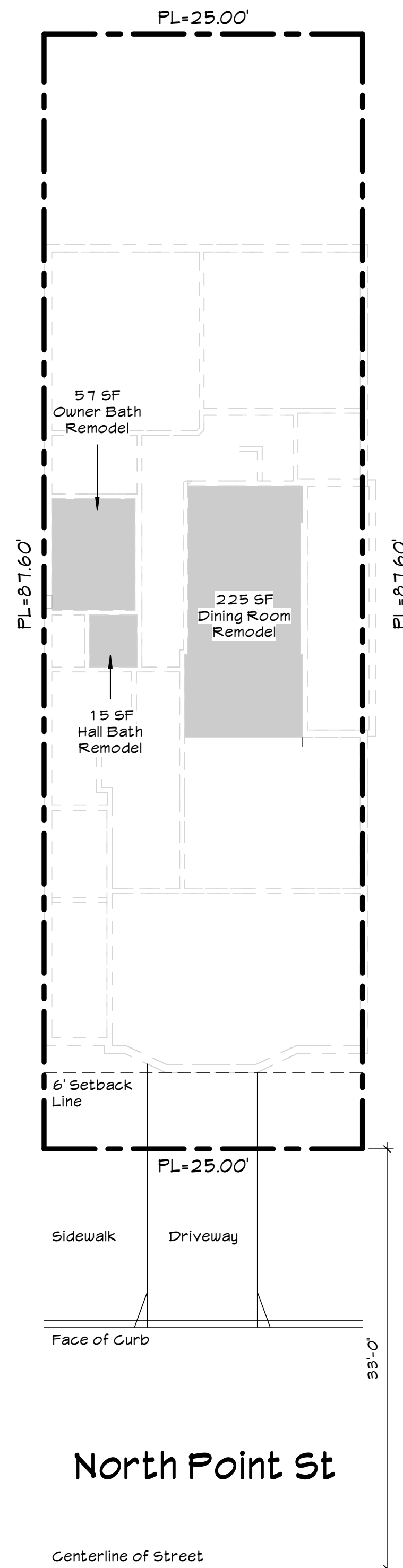
PROJECT CONTACTS

| | |
|------------------------------------|--|
| OWNER: | MAX MCKELVY 2322 NORTH POINT STREET SAN FRANCISCO, CA 94123 ph: (650) 683-2205 email: maxmckelvy@gmail.com |
| DESIGNER & TITLE 24 CONSULTANT: | MUNDY CREATIVE SERVICES ATTN: M. JASON MUNDY, ASSOC. AIA 817 MILDRED STREET VERSAILLES, KY 40383 ph: (408) 761-4483 email: jason@mundycs.com |
| GENERAL CONTRACTOR: | ELS HOME BUILDERS ATTN: EVAN SPRAGUE 2043 ANNERLY COURT SAN JOSE, CA 95121 ph: (408) 916-6196 email: esprague@elshomebuilders.com CA LIC# 1017251 |
| JURISDICTION: | SAN FRANCISCO DEPARTMENT OF BUILDING INSPECTION 49 SOUTH VAN NESS AVENUE SAN FRANCISCO, CA 94103 ph: (628) 652-3200 fx: (628) 652-3239 email: dbicustomerservice@sfgov.org |

SHEET INDEX

| | |
|------|--|
| A0.0 | COVER SHEET |
| A0.1 | PROJECT NOTES & T24 MANDATORY MEASURES |
| A0.2 | TITLE 24 DOCUMENTS |
| A0.3 | CALGREEN MANDATORY MEASURES |
| A0.4 | CALGREEN MANDATORY MEASURES |
| A1.0 | EXISTING/DEMO - FLOOR PLANS |
| A2.0 | PROPOSED FLOOR PLAN |

MCKELVY RESIDENCE



1 SITE PLAN
1/8" = 1'-0"



817 Mildred Street
Versailles, KY 40383
888.866.3327
www.mundycs.com

ELS
HOMEBUILDERS

CLIENT INFO:

PROJECT DETAILS:

Mckelvy
CONSTRUCTION DRAWINGS
2322 North Point Street
San Francisco, CA 94123

DATE: Nov 10, 2022
PROJECT: 2022-051

PROJECT REVISIONS

| # | DATE | DESCRIPTION |
|---|------|-------------|
| | | |
| | | |
| | | |

All ideas, design, arrangements and plans indicated or represented by this drawing are owned by and the property of Mundy Creative Services and were created, evolved and developed for use on and in connection with the specified project contained herein. None of such ideas, designs, arrangements or plans shall be used by or disclosed to any person, firm, or corporation for any purpose whatsoever, without the written permission of Mundy Creative Services.

Written dimensions on these drawings shall have precedence over scaled dimensions, written dimensions are approximate and must be verified, contractor to verify and be responsible for all existing conditions and dimensions prior to and during all phases of work. This office must be notified of any variation from the dimensions and conditions shown by these drawings.

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
SHEET TITLE

COVER SHEET


SHEET NUMBER

A0.0


| A. General Information | | | | | |
|------------------------|-------------------|-------------------------|----|---|-------------|
| 01 | Project Name: | McKelvy | 02 | Date Prepared: | 11/10/2022 |
| 03 | Project Location: | 2322 North Point Street | 04 | Building Front Orientation (deg or cardinal): | (S) 180 deg |
| 05 | CA City: | San Francisco | 06 | Number of Altered Dwelling Units: | 1 |
| 07 | Zip Code: | 94123 | 08 | Fuel Type: | Natural Gas |
| 09 | Climate Zone: | 3 | 10 | Total Conditioned Floor Area (ft²): | 1,475.0 |
| 11 | Building Type: | Single Family | 12 | Slab Area (ft²): | 0 |
| 13 | Project Scope: | Alteration | | | |

| | | | |
|--|----------|--|------------|
| STATE OF CALIFORNIA | |  | |
| Prescriptive Residential Alterations That Do Not Require HERS Field Verification CEC-CFIR-ALT-05-E (Revised 01/19) | | | |
| CERTIFICATE OF COMPLIANCE | | CALIFORNIA ENERGY COMMISSION | |
| Prescriptive Residential Alterations That Do Not Require HERS Field Verification | | CFIR-ALT-05-E | |
| Project Name: | McKelvey | Date Prepared: | 11/10/2022 |


CA Building Energy Efficiency Standards - 2019 Residential Compliance

| | | | |
|--|----------------------------------|--|--|
| STATE OF CALIFORNIA | |  CALIFORNIA ENERGY COMMISSION | |
| Prescriptive Residential Alterations That Do Not Require HERS Field Verification CEC-CFIR-ALT-05-E (Revised 01/19) | | | |
| CERTIFICATE OF COMPLIANCE | | CFIR-ALT-05-E | |
| Prescriptive Residential Alterations That Do Not Require HERS Field Verification | | (Page 7 of 8) | |
| Project Name: McKelvy | Date Prepared: 11/10/2022 | | |

CA Building Energy Efficiency Standards - 2019 Residential Compliance


| | | | |
|--|----------|---|------------|
| STATE OF CALIFORNIA | |  | |
| Prescriptive Residential Alterations That Do Not Require HERS Field Verification CEC-CF1R-ALT-05-E (Revised 01/19) | | | |
| CERTIFICATE OF COMPLIANCE | | CALIFORNIA ENERGY COMMISSION | |
| Prescriptive Residential Alterations That Do Not Require HERS Field Verification | | CF1R-ALT-05-E | |
| Project Name: | McKelvey | Date Prepared: | 11/10/2022 |
| | | (Page 2 of 8) | |

CA Building Energy Efficiency Standards - 2019 Residential Compliance January 2019


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| STATE OF CALIFORNIA | |  | |
| Prescriptive Residential Alterations That Do Not Require HERS Field Verification CEC-CF1R-ALT-05-E (Revised 01/19) | | | |
| CERTIFICATE OF COMPLIANCE | | CALIFORNIA ENERGY COMMISSION | |
| Prescriptive Residential Alterations That Do Not Require HERS Field Verification | | CF1R-ALT-05-E | |
| Project Name: McKelvey | | (Page 5 of 8) | |
| Date Prepared: 11/10/2022 | | | |

| | | | |
|----|----------------------|--|--|
| 32 | Compliance Statement | Proposed Fenestration SHGC \leq Required Fenestration SHGC | <input type="checkbox"/> Yes <input type="checkbox"/> No |
|----|----------------------|--|--|

CA Building Energy Efficiency Standards - 2019 Residential Compliance


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|--|--|---|-------------------|
| STATE OF CALIFORNIA | |  | |
| Prescriptive Residential Alterations That Do Not Require HERS Field Verification CEC-CF1R-ALT-05-E (Revised 01/19) | | | |
| CERTIFICATE OF COMPLIANCE | | CALIFORNIA ENERGY COMMISSION | |
| Prescriptive Residential Alterations That Do Not Require HERS Field Verification | | CF1R-ALT-05-E | |
| Project Name: McKelvy | | (Page 8 of 8) | |
| | | Date Prepared: | 11/10/2022 |

CA Building Energy Efficiency Standards - 2019 Residential Compliance

| | | | |
|--|---------|---|------------|
| STATE OF CALIFORNIA | |  | |
| Prescriptive Residential Alterations That Do Not Require HERS Field Verification CEC-CF1R-ALT-05-E (Revised 01/19) | | | |
| CERTIFICATE OF COMPLIANCE | | CALIFORNIA ENERGY COMMISSION | |
| Prescriptive Residential Alterations That Do Not Require HERS Field Verification | | CF1R-ALT-05-E | |
| Project Name: | McKelvy | Date Prepared: | 11/10/2022 |

| D. Fenestration/Glazing Allowed Areas and Efficiencies (Section 150.2(b)(1)) | | | | | | | | | |
|--|--|--|---|--|------------------------------------|--------------------------------------|--------------------------------|----------------------------------|----------------------------|
| 01 | 02 | 03 | 04 | 05 | | 06 | | 07 | |
| Alteration Type | Maximum Allowed Fenestration Area For All Orientations (ft²) | Maximum Allowed West-Facing Fenestration Area Only (ft²) | Existing Fenestration Area For All Orientations (ft²) | Existing West-Facing Fenestration Area (ft²) | Maximum Allowed U-factor (Windows) | Maximum Allowed U-factor (Skylights) | Maximum Allowed SHGC (Windows) | Maximum Allowed SHGC (Skylights) | Comments |
| Alt | n/a | n/a | 248.3 | 8.0 | 0.30 | 0.55 | n/a | n/a | West facing not restricted |

CA Building Energy Efficiency Standards - 2019 Residential Compliance January 2019

| | | | |
|--|----------|---|------------|
| STATE OF CALIFORNIA | |  | |
| Prescriptive Residential Alterations That Do Not Require HERS Field Verification CEC-CFIR-ALT-05-E (Revised 01/19) | | | |
| CERTIFICATE OF COMPLIANCE | | CALIFORNIA ENERGY COMMISSION | |
| | | CFIR-ALT-05-E | |
| Prescriptive Residential Alterations That Do Not Require HERS Field Verification | | (Page 6 of 8) | |
| Project Name: | McKelvey | Date Prepared: | 11/10/2022 |

CA Building Energy Efficiency Standards - 2019 Residential Compliance

ELS
HOMEBUILDERS

Mckelvy
CONSTRUCTION DRAWINGS
2322 North Point Street
San Francisco, CA 94123

PROJECT REVISIONS

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DRAWN BY: JM

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11/11/11

SHEET TITLE

TITLE 24 DOCUMENTS


SHEET NUMBER

A0.2


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IF THIS SHEET IS NOT 24"x36", IT HAS BEEN RESIZED - SCALE ACCORDINGLY


0 1/4" 1/2" 1"

| | |
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| <div><div></div><div>CALGreen.</div></div> <div>2019 CALGREEN RESIDENTIAL MANDATORY MEASURES EFFECTIVE JANUARY 1, 2020 HCD SHL 615 (New 01/20)</div> | |
| See specific referenced sections for complete details on CALGreen mandatory requirements. | |
| 2019 CALGREEN CODE | |
| SECTION | REQUIREMENTS |
| Construction waste management | |
| 4.408.1 | <ul style="list-style-type: none">Recycle and/or salvage for reuse a minimum of 65% of the nonhazardous construction and demolition waste in accordance with either Section 4.408.2, 4.408.3 or 4.408.4, or meet a more stringent local construction and demolition waste management ordinance.Provide documentation to the enforcing agency per Section 4.408.5. |
| | Exceptions: <ol style="list-style-type: none">Excavated soil and land-clearing debris.Alternative waste reduction methods developed by working with local enforcing agencies if diversion or recycle facilities capable of compliance with this item do not exist or are not located reasonably close to the jobsite.The enforcing agency may make exceptions to the requirements of this section when isolated jobsites are located in areas beyond the haul boundaries of the diversion facility. |
| | |
| Construction waste management plan | |
| 4.408.2 | Submit a construction waste management plan meeting Items 1 through 5 in Section 4.408.2. Plans shall be updated as necessary and shall be available for examination during construction. |
| Waste management company | |
| 4.408.3 | Utilize a waste management company, approved by the enforcing agency, which can provide verifiable documentation that diverted construction and demolition waste materials meet the requirements in Section 4.408.1. |


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| <div><div></div><div>CALGreen.</div></div> <div>2019 CALGREEN RESIDENTIAL MANDATORY MEASURES EFFECTIVE JANUARY 1, 2020 HCD SHL 615 (New 01/20)</div> | |
| See specific referenced sections for complete details on CALGreen mandatory requirements. | |
| 2019 CALGREEN CODE | |
| SECTION | REQUIREMENTS |
| Waste stream reduction alternative [LR] | |
| 4.408.4 & 4.408.4.1 | <ul style="list-style-type: none">Projects that generate a total combined weight of construction and demolition waste disposed in landfills, which do not exceed 3.4 pounds per square foot of the building area shall meet the minimum 65% construction waste reduction requirement in Section 4.408.1.Projects that generate a total combined weight of construction and demolition waste disposed in landfills, which do not exceed 2 pounds per square foot of the building area, shall meet the minimum 65% construction waste reduction requirement in Section 4.408.1. |
| | |
| Operation and maintenance manual | |
| 4.410.1 | At the time of final inspection, a manual, compact disc, web-based reference or other media acceptable to the enforcing agency which covers 10 specific subject areas shall be placed in the building. |
| Recycling by occupants | |
| 4.410.2 | Where 5 or more multifamily dwelling units are constructed on a building site, provide readily accessible area(s) that serves all buildings on the site and is identified for the depositing, storage and collection of nonhazardous materials for recycling, including (at minimum) paper, corrugated cardboard, glass, plastics, organic waste, and metals, or meet a lawfully enacted local recycling ordinance, if more restrictive. |
| | Exception: Rural jurisdictions that meet and apply for the exemption in Public Resources Code Section 42649.82 (a)(2)(A) et seq. are not required to comply with the organic waste portion of this section. |
| Division 4.5 – ENVIRONMENTAL QUALITY | |
| Fireplaces - General | |
| 4.503.1 | Any installed gas fireplace shall be a direct-vent sealed-combustion type. Any installed woodstove or pellet stove shall comply with U.S. EPA New Source Performance Standards (NSPS) emission limits as applicable, and shall have a permanent label indicating they are certified to meet the emission limits. Woodstoves, pellet stoves, and fireplaces shall also comply with all applicable local ordinances. |


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| <div><div></div><div>CALGreen.</div></div> <div>2019 CALGREEN RESIDENTIAL MANDATORY MEASURES EFFECTIVE JANUARY 1, 2020 HCD SHL 615 (New 01/20)</div> | |
| See specific referenced sections for complete details on CALGreen mandatory requirements. | |
| 2019 CALGREEN CODE | |
| SECTION | REQUIREMENTS |
| Protection of mechanical equipment during construction | |
| 4.504.1 | At the time of rough installation, during storage on the construction site and until final startup of the heating, cooling and ventilating equipment, all duct and other related air intake and distribution component openings shall be covered. Tape, plastic, sheetmetal or other methods acceptable to the enforcing agency to reduce the amount of water, dust and debris entering the system may be used. |
| | |
| Adhesives, sealants and caulks | |
| 4.504.2.1 | Adhesives, sealants and caulks used on the project shall meet the requirements of the following standards unless more stringent local or regional air pollution or air quality management district rules apply: <ol style="list-style-type: none">Adhesives, adhesive bonding primers, adhesive primers, sealants, sealant primers, and caulks shall comply with local or regional air pollution control or air quality management district rules where applicable or SCAQMD Rule 1168 VOC limits, as shown in Table 4.504.1 or 4.504.2, as applicable. Such products shall also comply with the Rule 1168 prohibition on the use of certain toxic compounds (chloroform, ethylene dichloride, methylene chloride, perchloroethylene and trichloroethylene), except for aerosol products, as specified in Subsection 2.Aerosol adhesives, and smaller unit sizes of adhesives, and sealant or caulking compounds (in units of product, less packaging, which do not weigh more than 1 pound and do not consist of more than 16 fluid ounces) shall comply with statewide VOC standards and other requirements, including prohibitions on use of certain toxic compounds, of California Code of Regulations (CCR), Title 17, commencing with Section 94507. |
| | |
| Paints and coatings | |
| 4.504.2.2 | Architectural paints and coatings shall comply with VOC limits in Table 1 of the Air Resources Board Architectural Suggested Control Measure, as shown in Table 4.504.3, unless more stringent local limits apply. The VOC content limit for coatings that do not meet the definitions for the specialty coatings categories listed in Table 4.504.3 shall be determined by classifying the coating as a Flat, Nonflat, or Nonflat-high Gloss coating, based on its gloss, as defined in subsections 4.21, 4.36, and 4.37 of the 2007 California Air Resources Board, Suggested Control Measure, and the corresponding Flat, Nonflat, or Nonflat-high Gloss VOC limit in Table 4.504.3 shall apply. |
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| <div><div></div><div>CALGreen.</div></div> <div>2019 CALGREEN RESIDENTIAL MANDATORY MEASURES EFFECTIVE JANUARY 1, 2020 HCD SHL 615 (New 01/20)</div> | |
| See specific referenced sections for complete details on CALGreen mandatory requirements. | |
| 2019 CALGREEN CODE | |
| SECTION | REQUIREMENTS |
| Aerosol paints and coatings | |
| 4.504.2.3 & 4.504.2.4 | <ul style="list-style-type: none">Aerosol paints and coatings shall meet the Product-weighted MIR Limits for ROC in Section 94522(a)(2) and other requirements, including prohibitions on use of certain toxic compounds and ozone depleting substances, in Sections 94522(e)(1) and (f)(1) of California Code of Regulations, Title 17, commencing with Section 94520; and in areas under the jurisdiction of the Bay Area Air Quality Management District shall additionally comply with the percent VOC by weight of product limits of Regulation 8, Rule 49.Documentation is required per Section 4.504.2.4. |
| | |
| Carpet systems | |
| 4.504.3 | Carpet installed in the building interior shall meet the testing and product requirements of 1 of the following: <ol style="list-style-type: none">Carpet and Rug Institute's Green Label Plus Program.California Department of Public Health, "Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions from Indoor Sources Using Environmental Chambers," Version 1.1, February 2010 (also known as Specification 01350).NSF/ANSI 140 at the Gold level.Scientific Certifications Systems Indoor Advantage™ Gold. |
| | |
| Carpet cushion | |
| 4.504.3.1 | Carpet cushion installed in the building interior shall meet the requirements of the Carpet and Rug Institute's Green Label program. |
| | |
| Carpet adhesive | |
| 4.504.3.2 | Carpet adhesives shall meet the requirements of Table 4.504.1. |
| | |


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| <div><div></div><div>CALGreen.</div></div> <div>2019 CALGREEN RESIDENTIAL MANDATORY MEASURES EFFECTIVE JANUARY 1, 2020 HCD SHL 615 (New 01/20)</div> | |
| See specific referenced sections for complete details on CALGreen mandatory requirements. | |
| 2019 CALGREEN CODE | |
| SECTION | REQUIREMENTS |
| Resilient flooring systems | |
| 4.504.4 | Where resilient flooring is installed, at least 80% of floor area receiving resilient flooring shall comply with 1 or more of the following: <ol style="list-style-type: none">Products compliant with the California Department of Public Health, "Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions from Indoor Sources Using Environmental Chambers," Version 1.1, February 2010 (also known as Specification 01350), certified as a CHPS Low-Emitting Material in the Collaborative for High Performance Schools (CHPS) High Performance Products Database.Products certified under UL GREENGUARD Gold (formerly the Greenguard Children & Schools program).Certification under the Resilient Floor Covering Institute (RFCI) FloorScore program.Meet the California Department of Public Health, "Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions from Indoor Sources Using Environmental Chambers," Version 1.1, February 2010 (also known as Specification 01350). |
| | |
| | |
| Composite wood products | |
| 4.504.5 & 4.504.5.1 | <ul style="list-style-type: none">Hardwood plywood, particleboard and medium density fiberboard composite wood products used on the interior or exterior of the building shall meet the requirements for formaldehyde as specified in the Air Resources Board's Air Toxics Control Measure for Composite Wood (17 CCR 93120 et seq.), as shown in Table 4.504.5.Documentation is required per Section 4.504.5.1. |
| | <ul style="list-style-type: none">Definition of Composite Wood Products: Composite wood products include hardwood plywood, particleboard, and medium density fiberboard. "Composite wood products" do not include hardboard, structural plywood, structural panels, structural composite lumber, oriented strand board, glued laminated timber, prefabricated wood joists, or finger-joined lumber, all as specified in CCR, Title 17, Section 93120.1(a). |


Page 13 of 16

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|---|--|
| <div><div></div><div>CALGreen.</div></div> <div>2019 CALGREEN RESIDENTIAL MANDATORY MEASURES EFFECTIVE JANUARY 1, 2020 HCD SHL 615 (New 01/20)</div> | |
| See specific referenced sections for complete details on CALGreen mandatory requirements. | |
| 2019 CALGREEN CODE | |
| SECTION | REQUIREMENTS |
| Concrete slab foundations | |
| 4.505.2 | Concrete slab foundations or concrete slab-on-ground floors required to have a vapor retarder by the California Building Code, Chapter 19, or the California Residential Code, Chapter 5, respectively, shall also comply with this section. |
| | |
| Capillary break | |
| 4.505.2.1 | A capillary break shall be installed in compliance with at least 1 of the following: <ol style="list-style-type: none">A 4-inch thick base of ½ inch or larger clean aggregate shall be provided with a vapor retarder in direct contact with concrete and a concrete mix design, which will address bleeding, shrinkage, and curling, shall be used. For additional information, see American Concrete Institute, ACI 302.2R-06.Other equivalent methods approved by the enforcing agency.A slab design specified by a licensed design professional. |
| | |
| Moisture content of building materials | |
| 4.505.3 | Building materials with visible signs of water damage shall not be installed. Wall and floor framing shall not be enclosed when the framing members exceed 19% moisture content. Moisture content shall be verified in compliance with the following: <ol style="list-style-type: none">Moisture content shall be determined with either a probe-type or a contact-type moisture meter. Equivalent moisture verification methods may be approved by the enforcing agency and shall satisfy requirements in Section 101.8.Moisture readings shall be taken at a point 2 feet to 4 feet from the grade stamped end of each piece to be verified.At least 3 random moisture readings shall be performed on wall and floor framing with documentation acceptable to the enforcing agency provided at the time of approval to enclose the wall and floor framing. |
| | Insulation products which are visibly wet or have a high moisture content shall be replaced or allowed to dry prior to enclosure in wall or floor cavities. Manufacturers' drying recommendations shall be followed for wet-applied insulation products prior to enclosure. |

Page 14 of 16

| | |
|---|---|
| <div><div></div><div>CALGreen.</div></div> <div>2019 CALGREEN RESIDENTIAL MANDATORY MEASURES EFFECTIVE JANUARY 1, 2020 HCD SHL 615 (New 01/20)</div> | |
| See specific referenced sections for complete details on CALGreen mandatory requirements. | |
| 2019 CALGREEN CODE | |
| SECTION | REQUIREMENTS |
| Bathroom exhaust fans | |
| 4.506.1 | Each bathroom shall be mechanically ventilated and shall comply with the following: <ol style="list-style-type: none">Fans shall be ENERGY STAR compliant and be ducted to terminate outside the building.Unless functioning as a component of a whole house ventilation system, fans must be controlled by a humidity control.<ol style="list-style-type: none">Humidity controls shall be capable of manual or automatic adjustment between a relative humidity range of ≤ 50% to a maximum of 80%.A humidity control may be a separate component to the exhaust fan and is not required to be integral or built-in. <p>Note: For CALGreen, a bathroom is a room which contains a bathtub, shower, or tub/shower combination. Fans or mechanical ventilation is required in each bathroom.</p> |
| | |
| Heating and air-conditioning system design | |
| 4.507.2 | Heating and air-conditioning systems shall be sized, designed and equipment selected using the following methods: <ol style="list-style-type: none">The heat loss and heat gain is established according to ANSI/ACCA 2 Manual J – 2016 (Residential Load Calculation), ASHRAE handbooks or other equivalent design software or methods.Duct systems are sized according to ANSI/ACCA 1 Manual D – 2016 (Residential Duct Systems), ASHRAE handbooks or other equivalent design software or methods.Select heating and cooling equipment according to ANSI/ACCA 3 Manual S – 2014 (Residential Equipment Selection) or other equivalent design software or methods. |
| | Exception: Use of alternate design temperatures necessary to ensure the systems function are acceptable. |

Page 15 of 16

| | |
|---|--|
| <div><div></div><div>CALGreen.</div></div> <div>2019 CALGREEN RESIDENTIAL MANDATORY MEASURES EFFECTIVE JANUARY 1, 2020 HCD SHL 615 (New 01/20)</div> | |
| See specific referenced sections for complete details on CALGreen mandatory requirements. | |
| 2019 CALGREEN CODE | |
| SECTION | REQUIREMENTS |
| CHAPTER 7 – INSTALLER & SPECIAL INSPECTOR QUALIFICATIONS | |
| Installer training | |
| 702.1 | HVAC system installers shall be trained and certified in the proper installation of HVAC systems and equipment by a recognized training or certification program. Examples of acceptable HVAC training and certification programs include, but are not limited to, the following: <ol style="list-style-type: none">State certified apprenticeship programs.Public utility training programs.Training programs sponsored by trade, labor or statewide energy consulting or verification organizations.Programs sponsored by manufacturing organizations.Other programs acceptable to the enforcing agency. |
| | |
| Special inspection | |
| 702.2 | When required by the enforcing agency, special inspectors must be qualified and able to demonstrate competence to the enforcing agency in the discipline in which they are inspecting. |
| | |
| Documentation | |
| 703.1 | Documentation of compliance shall include, but is not limited to, construction documents, plans, specifications, builder or installer certification, inspection reports, or other methods acceptable to the local enforcing agency. Other specific documentation or special inspections necessary to verify compliance are specified in appropriate sections of CALGreen. |
| | |

Page 16 of 16

CG-2



817 Mildred Street
Versailles, KY 40383
888.866.3327
www.mundycs.com



CLIENT INFO:

PROJECT DETAILS:

Mckelvy
CONSTRUCTION DRAWINGS
2322 North Point Street
San Francisco, CA 94123

DATE: Nov 10, 2022
PROJECT: 2022-051

PROJECT REVISIONS

| # | DATE | DESCRIPTION |
|---|------|-------------|
| | | |
| | | |
| | | |

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SHEET TITLE

CALGREEN MANDATORY MEASURES

SHEET NUMBER

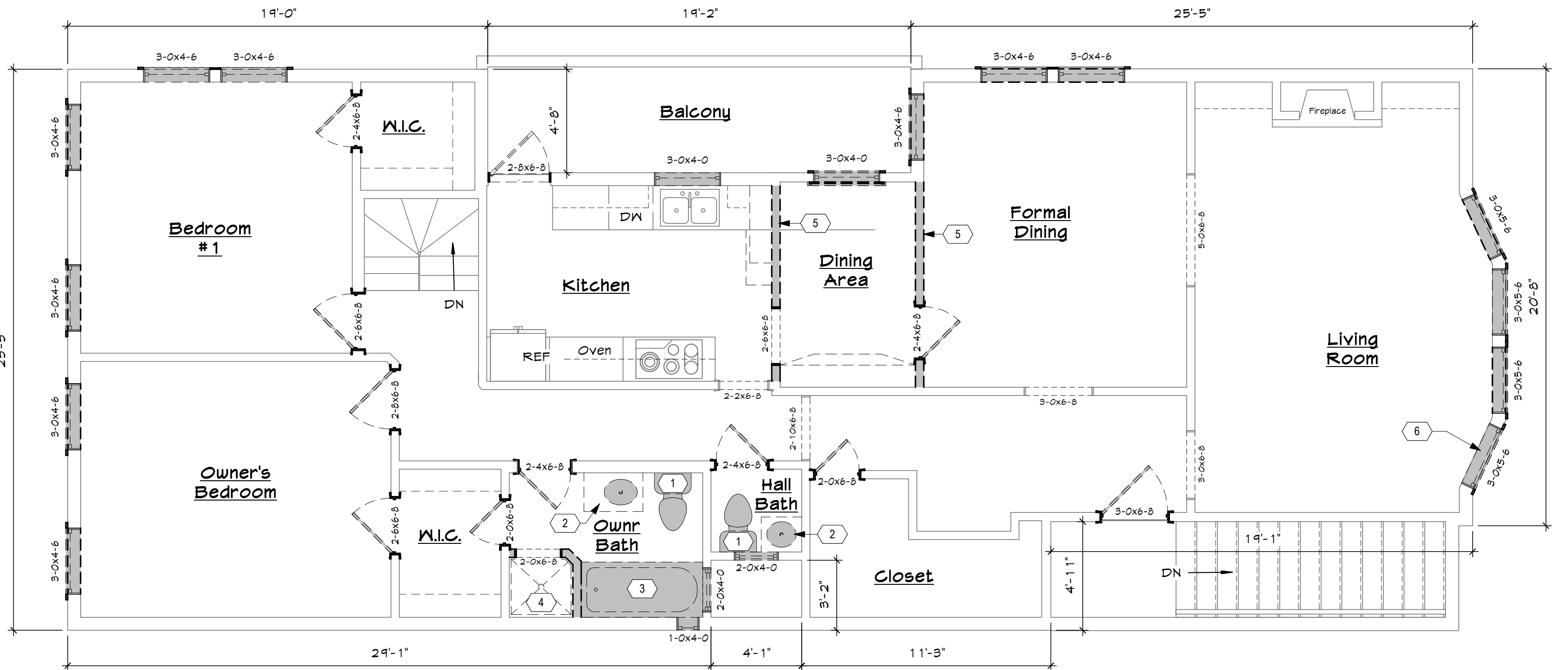
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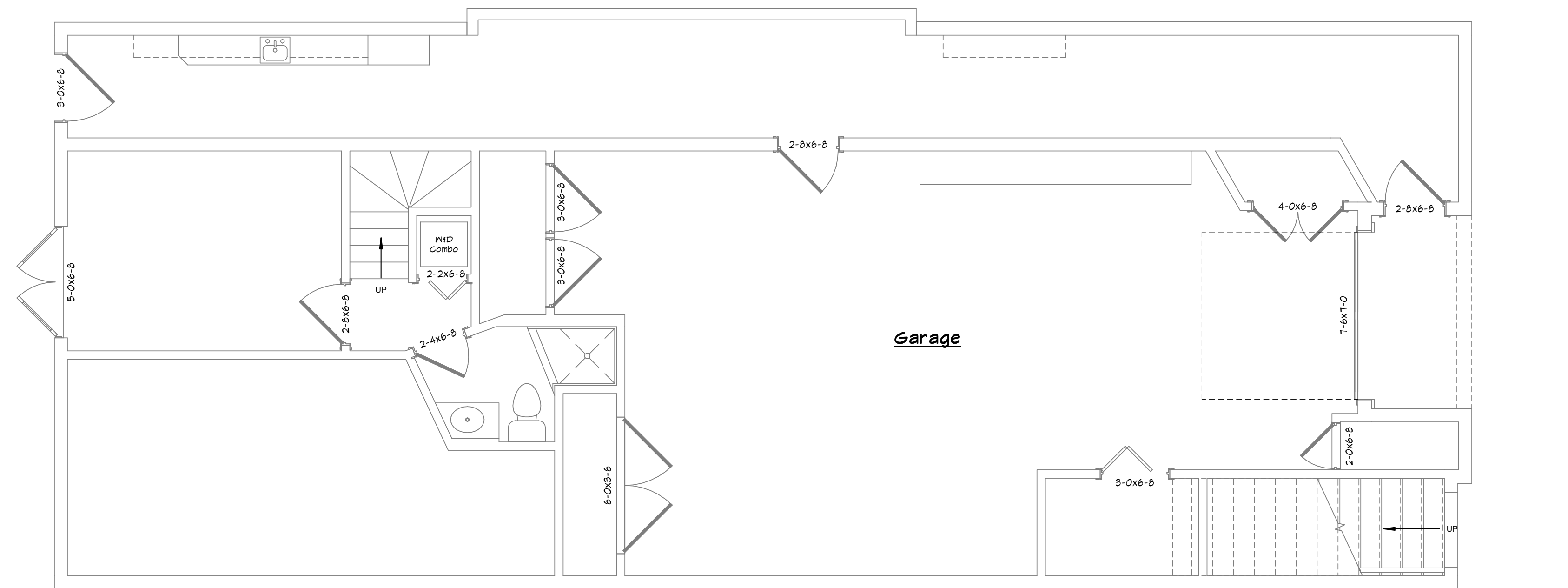
Rear View



Street View



2 EXISTING/DEMO FLOOR PLAN
1/4" = 1'-0"



1 EXISTING/DEMO FLOOR PLAN - GARAGE
1/4" = 1'-0"

DEMO LEGEND

- EXISTING WALL
- WALL TO BE DEMOLISHED
- EXISTING
- TO BE DEMOLISHED
- KEYNOTE

DEMOLITION NOTES

- DEMOLITION PLAN IS INTENDED TO AID CONTRACTOR IN DETERMINING THE EXTENT OF THE NECESSARY WORK. IT DOES NOT NECESSARILY DEPICT THE ACTUAL, OR ALL OF THE DEMOLITION WORK. CONTRACTOR IS RESPONSIBLE FOR ALL DEMOLITION WORK REQUIRED TO COMPLETE THIS PROJECT. CONTRACTOR TO STUDY THESE CONSTRUCTION DOCUMENTS AND PERFORM A THOROUGH FIELD INVESTIGATION PRIOR TO BIDDING THE PROJECT. CONTRACTOR IS RESPONSIBLE FOR ANY AND ALL REQUIRED ENGINEERED SHORING FOR THE PROJECT.
- CONTRACTOR SHALL BE RESPONSIBLE FOR IDENTIFYING HAZARDOUS MATERIALS FOUND IN PROJECT AREA DURING DEMOLITION, SUCH AS ASBESTOS, LEAD PAINT, ETC. SEE GENERAL NOTES FOR FURTHER INFORMATION.
- PRIOR TO ANY DEMOLITION WORK, CONTRACTOR SHALL CONSULT WITH OWNER REGARDING EXISTING ITEMS OWNER MAY WISH TO KEEP. THE CONTRACTOR IS RESPONSIBLE FOR DISCARDING ALL CONSTRUCTION DEBRIS. THE OWNER WILL REMOVE ALL FURNITURE AND ANY OTHER (NON-FIXED) ITEMS THEY WISH TO KEEP. ALL DEMO'D FIXTURES, EQUIPMENT, ETC. KEPT BY THE OWNER SHALL REMAIN ON SITE.
- CONTRACTOR TO STRIP AS NEEDED, PATCH, REPAIR AND PREP ALL EXISTING SURFACES (FLOOR, WALLS AND CEILING) RECEIVING NEW OR TOUCH UP FINISHES.

KEYNOTES

- EXISTING TOILET TO BE REPLACED
- EXISTING VANITY TO BE REPLACED
- EXISTING TUB TO BE REPLACED
- EXISTING SHOWER TO BE REPLACED
- EXISTING NON-BEARING WALL TO BE REMOVED
- REPLACE WINDOW, TO MATCH EXISTING SIZE, WITH ANDERSEN ALUMINUM CLAD WOOD, WINDOW MUNTINS TO MATCH EXISTING PATTERN, BLOCK-FRAME REPLACEMENT, INSTALL PER SAN FRANCISCO REPLACEMENT REQUIREMENTS TYP, SEE SCHEDULE FOR ADDITIONAL INFORMATION

Scan QR code below to access 3D walk-thru of existing



MUNDY CREATIVE SERVICES
817 Mildred Street
Versailles, KY 40383
888.866.3327
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ELS HOMEBUILDERS

CLIENT INFO:

PROJECT DETAILS:

Mckelvy
CONSTRUCTION DRAWINGS
2322 North Point Street
San Francisco, CA 94123

DATE: Nov 10, 2022
PROJECT: 2022-051

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SHEET TITLE
EXISTING/DEMO - FLOOR PLANS

SHEET NUMBER
A 1.0

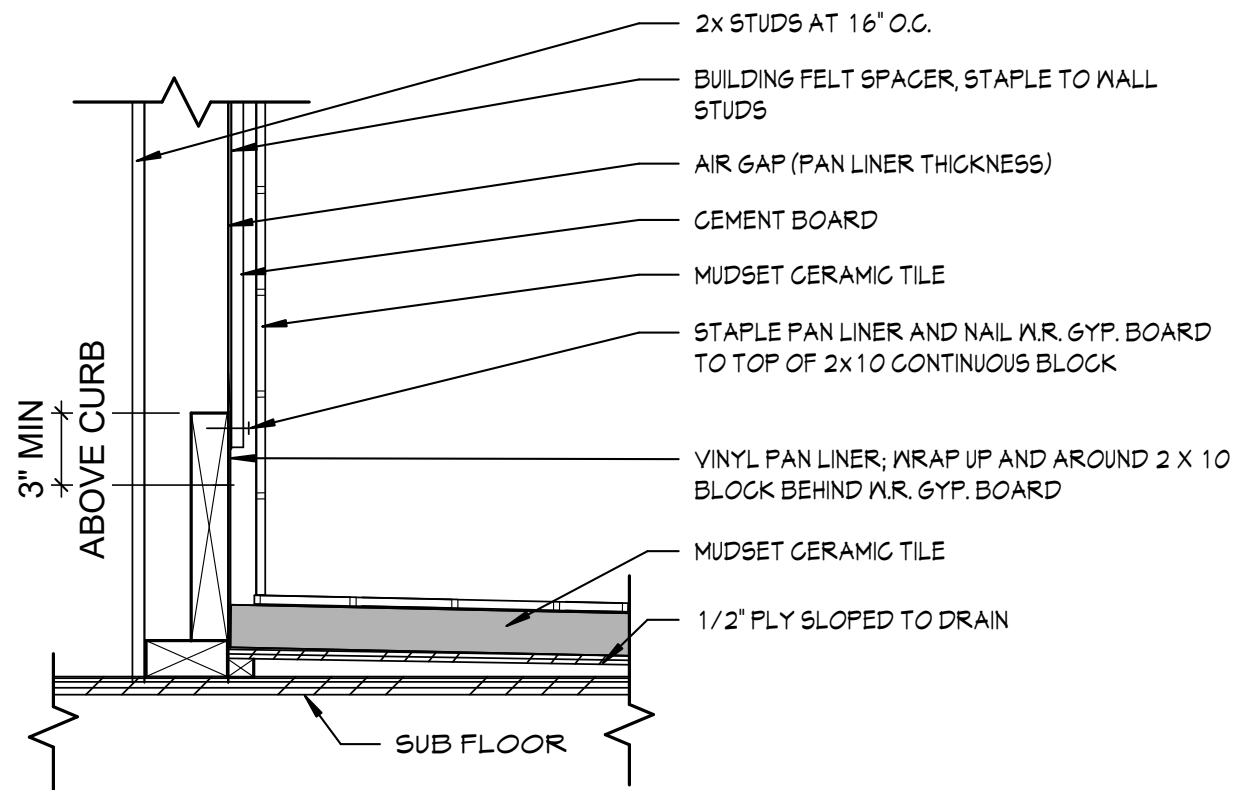
IF THIS SHEET IS NOT 24"x36", IT HAS BEEN RESIZED - SCALE ACCORDINGLY

WINDOW SCHEDULE - SECOND FLOOR

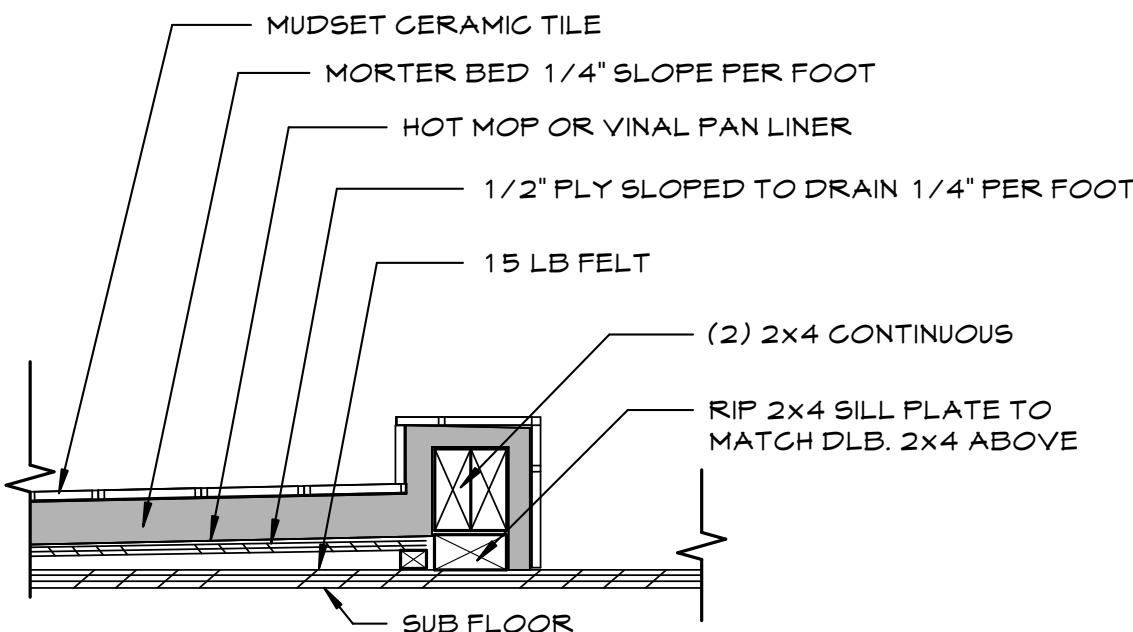
| MARK | UNIT SIZE | | SASH OPERATION | TYPE | GLAZING | | | MFR. | LOCATION |
|------|-----------|--------|----------------|-------|----------|------|-------|------|-----------------|
| | WIDTH | HEIGHT | | | U-FACTOR | SHGC | TEMP. | | |
| W1 | 1'-0" | 4'-0" | FIXED | LOW-E | 0.30 | 0.35 | Yes | TBD | OWNER BATH |
| W2 | 2'-0" | 4'-0" | DOUBLE HUNG | LOW-E | 0.30 | 0.35 | Yes | TBD | OWNER BATH |
| W3 | 2'-0" | 4'-0" | DOUBLE HUNG | LOW-E | 0.30 | 0.35 | -- | TBD | HALL BATH |
| W4 | 3'-0" | 5'-6" | FIXED | LOW-E | 0.30 | 0.35 | -- | TBD | LIVING ROOM |
| W5 | 3'-0" | 5'-6" | FIXED | LOW-E | 0.30 | 0.35 | -- | TBD | LIVING ROOM |
| W6 | 3'-0" | 5'-6" | FIXED | LOW-E | 0.30 | 0.35 | -- | TBD | LIVING ROOM |
| W7 | 3'-0" | 5'-6" | FIXED | LOW-E | 0.30 | 0.35 | -- | TBD | LIVING ROOM |
| W8 | 3'-0" | 4'-6" | DOUBLE HUNG | LOW-E | 0.30 | 0.35 | -- | TBD | DINING ROOM |
| W9 | 3'-0" | 4'-6" | DOUBLE HUNG | LOW-E | 0.30 | 0.35 | -- | TBD | DINING ROOM |
| W10 | 3'-0" | 4'-6" | DOUBLE HUNG | LOW-E | 0.30 | 0.35 | -- | TBD | DINING ROOM |
| W11 | 3'-0" | 4'-0" | DOUBLE HUNG | LOW-E | 0.30 | 0.35 | -- | TBD | KITCHEN |
| W12 | 3'-0" | 4'-0" | DOUBLE HUNG | LOW-E | 0.30 | 0.35 | -- | TBD | KITCHEN |
| W13 | 3'-0" | 4'-6" | DOUBLE HUNG | LOW-E | 0.30 | 0.35 | -- | TBD | BEDROOM #1 |
| W14 | 3'-0" | 4'-6" | DOUBLE HUNG | LOW-E | 0.30 | 0.35 | -- | TBD | BEDROOM #1 |
| W15 | 3'-0" | 4'-6" | FIXED | LOW-E | 0.30 | 0.35 | -- | TBD | BEDROOM #1 |
| W16 | 3'-0" | 4'-6" | FIXED | LOW-E | 0.30 | 0.35 | -- | TBD | BEDROOM #1 |
| W17 | 3'-0" | 4'-6" | FIXED | LOW-E | 0.30 | 0.35 | -- | TBD | OWNER'S BEDROOM |
| W18 | 3'-0" | 4'-6" | FIXED | LOW-E | 0.30 | 0.35 | -- | TBD | OWNER'S BEDROOM |

DOOR SCHEDULE - SECOND FLOOR

| MARK | DOOR | | DESCRIPTION | TYPE | GLAZING | | | HARDWARE |
|------|-------|--------|-------------|-------|----------|------|-------|----------|
| | WIDTH | HEIGHT | | | U-FACTOR | SHGC | TEMP. | |
| D1 | 3'-0" | 6'-8" | SWING | -- | -- | -- | YES | KEYED |
| D2 | 2'-0" | 6'-8" | SWING | -- | -- | -- | -- | PASSAGE |
| D3 | 2'-4" | 6'-8" | SWING | -- | -- | -- | -- | PRIVACY |
| D4 | 2'-4" | 6'-8" | SWING | -- | -- | -- | -- | PRIVACY |
| D5 | 2'-0" | 6'-8" | SWING | -- | -- | -- | -- | PASSAGE |
| D6 | 2'-6" | 6'-8" | SWING | -- | -- | -- | -- | PASSAGE |
| D7 | 2'-8" | 6'-8" | SWING | -- | -- | -- | -- | PRIVACY |
| D8 | 2'-6" | 6'-8" | SWING | -- | -- | -- | -- | PRIVACY |
| D9 | 2'-4" | 6'-8" | SWING | -- | -- | -- | -- | PASSAGE |
| D10 | 2'-8" | 6'-8" | FRENCH | LOW-E | 0.30 | 0.35 | YES | KEYED |

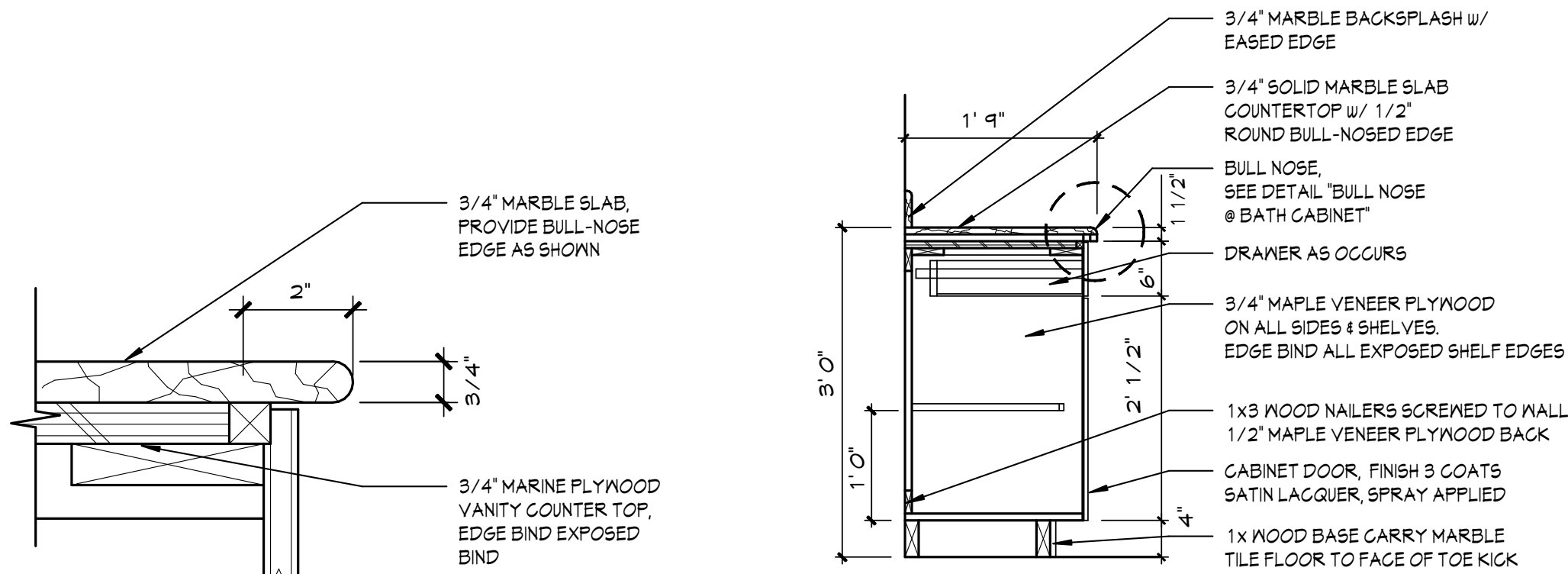


NOTE: PAN LINER SHALL BE 'SCHLUTER-KERDI' PAN LINER OR EQUAL



TYP. SHOWER WALL DETAIL

1 1/2" = 1'-0"

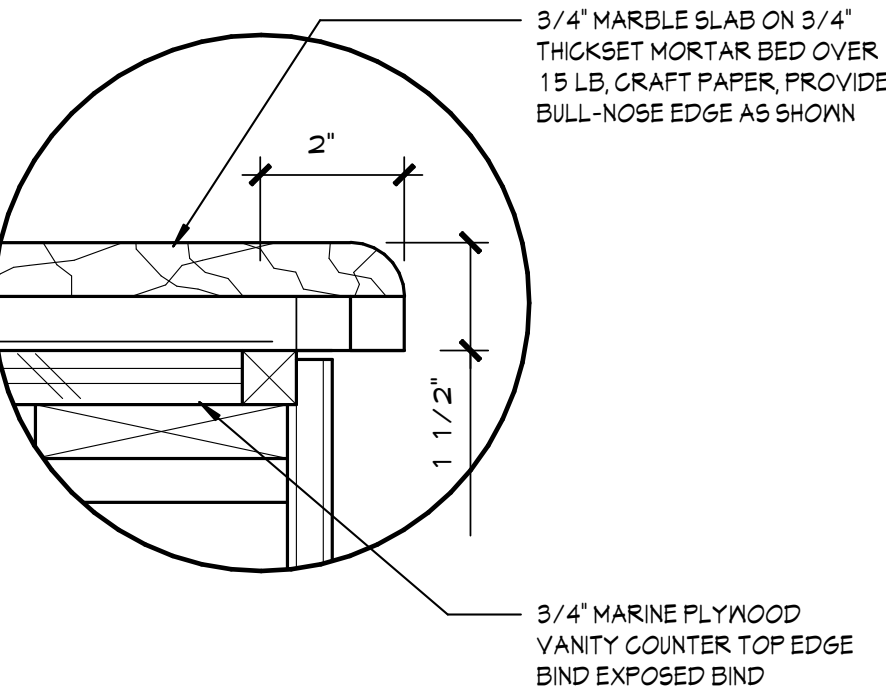


TYP. BULL NOSE DTL.

3" = 1'-0"

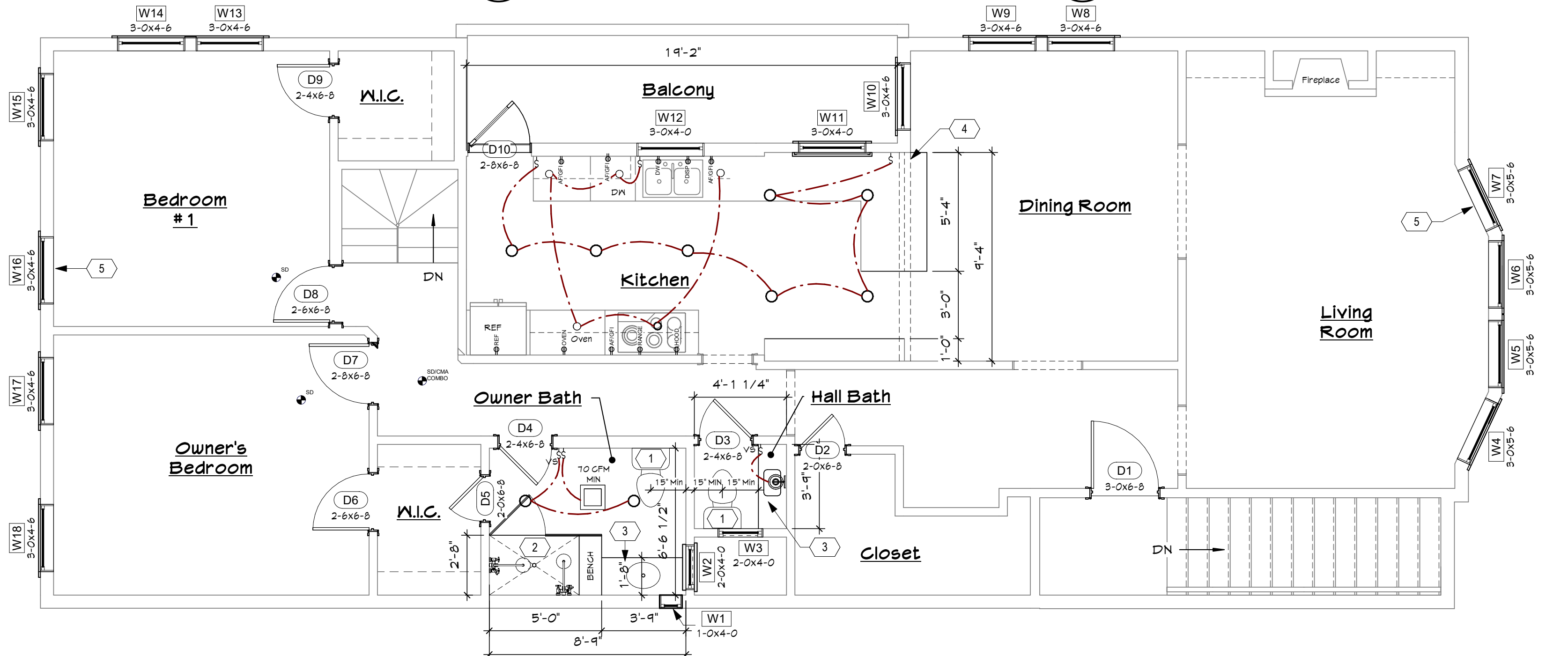
TYP. BATH CABINET DTL.

3" = 1'-0"



BULL NOSE @ BATH CAB.

3" = 1'-0"



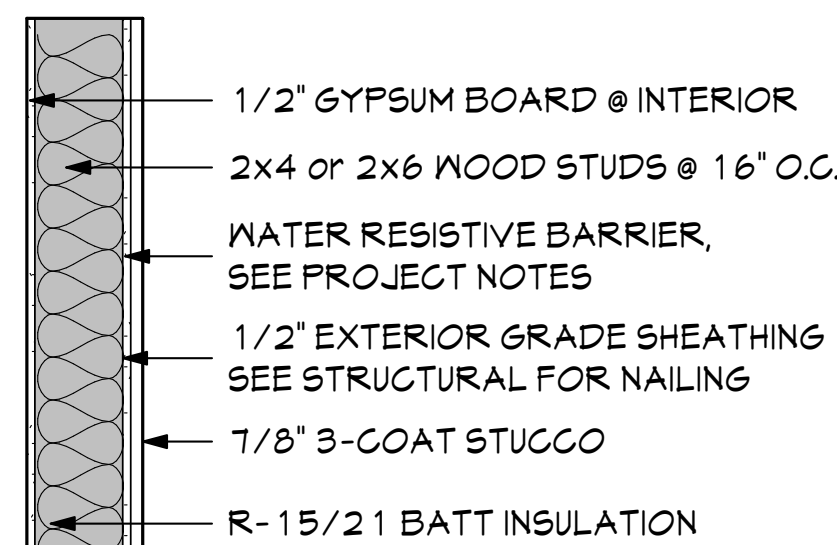
PROPOSED PROPOSED PLAN

1/4" = 1'-0"

GENERAL ELECTRICAL NOTES

- SEE SHEET A0.1 "PROJECT NOTES" FOR ELECTRICAL AND LIGHTING SPECIFICATIONS OPTIONS FOR SWITCHING METHODS AND CODE REQUIREMENT INFORMATION.
- NEW EXTERIOR OUTLET(S) TO BE ON A DEDICATED 20 AMP CIRCUIT.
- ALL 15-AMP AND 20-AMP 125V DWELLING UNIT RECEPTACLES OUTLETS SHALL BE LISTED AS TAMPER-RESISTANT RECEPTACLES AS PER CEC SECTION 406.12.
- VENTILATION HEATING AND AIR CONDITIONING SYSTEMS SHALL HAVE MERV 6 FILTERS OR BETTER.
- ALL BRANCH CIRCUITS THAT SUPPLY 120 VOLT, SINGLE PHASE, 15 AMP OUTLETS INSTALLED IN DWELLING UNIT (EXCLUDING GFCI RECEPTACLES) SHALL BE ARC-FAULT CIRCUIT INTERRUPTER (AFCI) PROTECTED PER CEC 210.12(B).
- RECEPTACLE OUTLETS SHALL BE SPACED SUCH THAT ANY POINT ALONG THE WALL AT THE FLOOR LEVEL IS NOT MORE THAN 6' FROM A RECEPTACLE WITHOUT CROSSING A DOORWAY. WALL SPACES GREATER THAN 2' IN WIDTH SHALL BE PROVIDED WITH A RECEPTACLE. THESE RECEPTACLES SHALL BE PROVIDED IN KITCHENS, FAMILY ROOMS, DINING ROOMS, LIVING ROOMS, DENS, BEDROOMS, OR SIMILAR ROOMS. (CEC 210.52)
- AT KITCHEN, GFI PROTECTION SHALL BE PROVIDED FOR OUTLETS THAT SUPPLY DISHWASHERS AND DISPOSALS.
- DISHWASHER SHALL BE GFI PROTECTED PER 210.8(D) CEC.
- WHEN A NATURAL GAS-POWERED COOKTOP OR RANGE IS PROVIDED, THE FOLLOWING IS ALSO REQUIRED:
 - A DEDICATED 240-VOLT, 30-AMP OR GREATER ELECTRICAL RECEPTACLE THAT IS CONNECTED TO THE ELECTRIC PANEL WITH CONDUCTORS OF ADEQUATE CAPACITY, WITHIN 3 FEET OF THE APPLIANCE AND ACCESSIBLE WITH NO OBSTRUCTIONS;
 - BOTH ENDS OF THE UNUSED CONDUCTOR SHALL BE LABELED WITH THE WORDS "FOR FUTURE ELECTRIC RANGE" AND BE ELECTRICALLY ISOLATED;
 - A RESERVED DOUBLE-POLE CIRCUIT BREAKER SPACE IN THE ELECTRICAL PANEL ADJACENT TO THE CIRCUIT BREAKER FOR THE BRANCH CIRCUIT AND LABELED WITH THE WORDS "FOR FUTURE ELECTRIC RANGE;" AND OTHER ELECTRICAL COMPONENTS, INCLUDING CONDUCTORS, RECEPTACLES, OR BLANK COVERS, RELATED TO THIS SECTION SHALL BE INSTALLED IN ACCORDANCE WITH THE CALIFORNIA ELECTRICAL CODE. EXCEPTION TO 100.0(E)(2)(F)(2): IF GAS OR PROPANE PLUMBING IS NOT INSTALLED FOR A COOKTOP OR RANGE, THESE REQUIREMENTS DO NOT APPLY.
- PROVIDE MINIMUM SEPARATE ELECTRICAL CIRCUITS FOR:
 - DISHWASHER
 - GARBAGE DISPOSAL
 - DRYER-- 30 AMP MIN 220V
 - MOTOR (HEATING & COOLING)

WALL TYPES



X6 - EXTERIOR WALL

HIGH EFFICACY LIGHT SOURCES

Light sources shall comply with one of the columns below:

| | |
|--|--|
| Light sources in the column other than those installed in ceiling recessed downlight luminaires are classified as high efficacy and are not required to comply with Reference Joint Appendix JAB | Light sources in this column are only considered to be high efficacy if they are certified to the Commission as High Efficacy Light Sources in accordance with Reference Joint Appendix JAB and marked as required by JAB |
| <ol style="list-style-type: none">Pin-based linear fluorescent or compact fluorescent light sources using electronic ballasts. Pulse-start metal halide light sources.High pressure sodium light sources.Luminaires with hardwired high frequency generator and induction lamp.LED light sources installed outdoors.Inseparable SSL luminaires containing colored light sources that are installed to provide decorative lighting. | <ol style="list-style-type: none">All light sources in ceiling recessed downlight luminaires. Note that ceiling recessed downlight luminaires shall not have screw bases regardless of lamp type as described in Section 500.0(k) 1(c).Any light source not otherwise listed in this table. |

FLOOR PLAN LEGEND

- NEW WALL, SEE WALL TYPES LEGEND
- HEADERED OPENING
- KEYNOTE
- WALL-MOUNTED LED VANITY LIGHT, JAB-2019-E LABEL REQUIRED
- 6" LED CAN LIGHT, RATED FOR WET LOCATIONS, JAB-2019-E LABEL REQUIRED
- SWITCH
- VACANCY SENSOR
- FAN - EXHAUST W/ LIGHT W/ HUMIDSTAT JAB-2019-E LABEL REQUIRED
- OUTLET, TAMPER-RESISTANT

KEYNOTES

- NEW TOILET
- NEW SHOWER
- NEW VANITY
- NEW 12" TALL ARCHITECTURAL DROP BEAM
- REPLACE WINDOW, TO MATCH EXISTING SIZE, WITH ANDERSEN ALUMINUM GLAD WOOD, WINDOW MUNTINS TO MATCH EXISTING PATTERN, BLOCK-FRAME REPLACEMENT, INSTALL PER SAN FRANCISCO REPLACEMENT REQUIREMENTS TYP, SEE SCHEDULE FOR ADDITIONAL INFORMATION

PLUMBING FIXTURE NOTES

- ALL SINK FAUCETS, SHOWER HEADS, TOILETS AND URINALS SHOULD COMPLY WITH CALIFORNIA CIVIL CODE SECTION 1101.1 THROUGH 1101.8 AND CALGREEN SECTION 301.1.
- TOILETS SHALL NOT EXCEED 1.28 GALS/FLUSH.
- LAVATORY FAUCETS SHALL NOT EXCEED 1.2 GALS/MIN.
- SHOWER HEADS SHALL NOT EXCEED 1.8 GALS/MIN.

*WHEN THE RESIDENCE WAS BUILT BEFORE JAN. 1, 1994 ALL PLUMBING FIXTURES SHALL BE BROUGHT INTO COMPLIANCE WITH CURRENT PLUMBING CODE.

GENERAL LIGHTING NOTES

- SEE SHEET A0.1 FOR "PROJECT NOTES" FOR ADDITIONAL NOTES AND SPECIFICATIONS.
- ALL INSTALLED LUMINAIRES MUST MEET THE REQUIREMENTS IN CA ENERGY CODE TABLE 150.0-A.
- ALL LIGHTING IN BATHROOM AREAS SHALL BE HIGH EFFICACY LUMINAIRES CONTROLLED BY VACANCY SENSORS.
- ALL LIGHT FIXTURES AND SWITCHES SHALL BE IN ACCORD WITH THE TYPE REQUIRED BY THE TITLE 24 DOCUMENTATION AND AS OUTLINED ON THE T24- MF 1R FORM.
- KITCHEN EXHAUST SHALL BE 100 CFM MINIMUM INTERMITTENT AIRFLOW FOR THE KITCHEN RANGE HOOD/MICRO COMBINATION, OR PROVIDED THRU AN EXHAUST FAN CAPABLE OF PROVIDING AT LEAST 5 AIR CHANGES PER HOUR.
- BATHROOMS EXHAUST FANS SHALL BE 50 CFM MINIMUM.
- VENTILATION HEATING AND AIR CONDITIONING SYSTEMS SHALL HAVE MERV 13 FILTERS OR BETTER.
- RECESSED LIGHTING SHALL BE LISTED AS 'IC' (ZERO CLEARANCE TO INSULATION) AND 'AT' (AIR TIGHT), TO BE SEALED/ CAULKED BETWEEN THE FIXTURE HOUSING AND CEILING, SHALL NOT CONTAIN SCREW BASE SOCKET, CONTAIN BULBS MARKED WITH JAB-2019-E EFFICIENCY LABEL.
- ALL LIGHTING FIXTURES SHALL BE CONTROLLED BY EITHER A DIMMER SWITCH OR BY A VACANCY SENSOR SWITCH THAT REQUIRES A MANUAL ON ACTIVATION (DOES NOT AUTOMATICALLY TURN ON) AND AUTOMATICALLY TURNS OFF WITHIN 30 MINUTES AFTER THE ROOM IS VACATED. EXCEPT THAT BATHROOMS, LAUNDRY ROOMS, GARAGES, AND UTILITY ROOMS SHALL HAVE ONE LIGHT FIXTURE CONTROLLED BY A VACANCY SENSOR. ALL OTHER LIGHTING IN THESE ROOMS SHALL BE CONTROLLED BY A VACANCY SENSOR OR A DIMMER SWITCH.
- SMOKE ALARM SHOWN ADJACENT TO THE KITCHEN IS REQUIRED TO BE AT LEAST 20 FEET HORIZONTAL DISTANCE FROM THE STOVE/OVEN.
 - ALTERNATIVELY, IONIZATION TYPE SMOKE ALARMS WITH ALARM SILENCING SWITCHES OR PHOTOELECTRIC SMOKE ALARMS ARE PERMITTED TO BE INSTALLED 10 FEET OR GREATER FROM THE COOKING APPLIANCE. CRC, SEC. R3 14.3.3

CLIENT INFO:

PROJECT DETAILS:

DATE: Nov 10, 2022
PROJECT: 2022-051

PROJECT REVISIONS

| # | DATE | DESCRIPTION |
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SHEET TITLE

PROPOSED FLOOR PLAN

SHEET NUMBER

A2.0

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A. Thomas Koster (SBN 313562)
Shoshana Raphael (SBN 312254)
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Attorneys for Plaintiff,
Maximilian H. McKelvy

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

06/16/2022
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO -- UNLIMITED CIVIL JURISDICTION

MAXIMILIAN H. MCKELVY,

Plaintiff,

v.

DIANA MEISTRELL, individually and as
trustee of the Diana Ruth Meistrell Revocable
Trust; and DOES 1 through 10, inclusive,

Defendant.

Case No.: _____ **CGC-22-600239**

**COMPLAINT FOR DAMAGES and
EQUITABLE RELIEF**

- 1) Declaratory Relief
- 2) Nuisance
- 3) Breach of Contract

Plaintiff MAXIMILIAN H. MCKELVY alleges as follows:

1. Plaintiff MAXIMILIAN H. MCKELVY is an individual over the age of 18 who is a co-owner and holder of title to real property commonly known as 2322 North Point Street, San Francisco, CA 94123 (the "McKelvy Premises"), which is located in the County of San Francisco. The McKelvy Premises is located within 2322-2324 North Point Street, San Francisco, CA 94123 (the "Property"), a two-unit residential condominium building. Plaintiff resides at the McKelvy Premises.

2. Defendant DIANA MEISTRELL is an individual over the age of 18 who, in her

1 capacity as trustee of the Diana Ruth Meistrell Revocable Trust, is the owner and holder of title to
2 real property commonly known as 2324 North Point Street, San Francisco, CA 94123 (the “Meistrell
3 Premises”). Defendant resides at the Meistrell Premises, but spends a portion of each year in Portugal.

4 3. Plaintiff does not know the true names and capacities of defendants sued herein as
5 DOES 1 through 20, and will seek leave to amend this Complaint under CCP § 474 to state the true
6 names and capacities of said DOE defendants, at such time as their true names and capacities become
7 known. Plaintiff is informed and believes that each DOE defendant is directly responsible for the acts
8 and omissions alleged herein, or else is responsible as the employee, agent, alter ego, or representative
9 of Defendant Diana Meistrell.

10 4. The Property is a typical San Francisco residential building with two full-floor flats
11 over a ground-floor garage level. The McKelvy Premises is located on the floor above the garage and
12 the Meistrell Premises is located on the top floor. Each unit has an appurtenant storage room on the
13 garage level.

14 5. Previously, the Property was a residential rental building. Sometime around 2006,
15 Defendant and two other owners converted the building into condominiums via a process commonly
16 known as condo conversion which requires approvals from various city and county agencies,
17 including the San Francisco Planning Department.

18 6. As a condition of the condo conversion, on or around January 5, 2005, Defendant
19 signed a Notice of Special Restrictions (“NSR”). The NSR was subsequently recorded on or around
20 January 6, 2006. The NSR restricts use of the “non-habitable storage rooms” on the garage level (i.e.,
21 ground floor). The NSR provides, in part:

22 The restrictions and conditions of which notice is hereby given are:

23 1. That said ground floor area shall be used only as accessory to the
24 dwellings above...

25 2. That said ground floor area shall not be used as separate dwelling
26 units or rooming unit, and no boarder shall reside therein; that utility, other
27 services, mailbox and doorbells shall be provided for this building solely on
28 a two-family basis; and

...

1 The use of said property contrary to these special restrictions shall constitute
2 a violation of the Planning Code, and no release, modification or elimination
3 of these restrictions shall be valid unless notice thereof is recorded on the
Land Records by the Zoning Administrator of the City and County of San
Francisco. (NSR, p. 2.)

4 A true and correct copy of the NSR is attached hereto as Exhibit A and incorporated herein
5 by reference.

6 7. Also, in furtherance of the condo conversion, on or around September 27, 2006,
7 Defendant signed a Declaration of Restrictions ("CC&Rs") which were subsequently recorded on or
8 around October 11, 2006. A true and correct copy of the CC&Rs is attached hereto as Exhibit B and
9 incorporate herein by reference.

10 8. The CC&Rs provide, in relevant part:

11 **6.1 APPROVAL REQUIRED.** The prior written consent of the
12 Association is required before an Owner may make any improvements
13 or modifications ("improvement") to any portion of the Common Area,
14 including Exclusive Use Common Area appurtenant to the Owner's
Unit, or make any improvements within his or her unit that may affect
15 structural [sic] Common Area, increase the burden on common
building systems, result in an increase in sound transmission between
16 Units, or otherwise adversely affect the Common Area or the other
Unit. [...]

17 ...

17 **7.3 NUISANCE.** No person may interfere with the quiet enjoyment of
18 any other resident of the Project, or carry on any activity in any part of
the Project that is noxious, illegal, seriously annoying or offensive to a
19 person of reasonable sensibility. [...]

20 ...

20 **7.7 RIGHT TO LEASE.** No owner may rent a Condominium for
21 transient or hotel purposes, which are defined as rental for any period
less than 30 days, or any rental if the occupants are provided customary
22 hotel services such as room service for food and beverage, maid
service, furnishing laundry or linen, and bellboy service. [...] (CC&Rs,
23 pp. 14, 16-17.)

24 9. The CC&Rs further provide that "any Owner may enforce the Governing
25 Documents...by legal action" if "the parties have endeavored to submit their dispute to alternative
26 dispute resolution under Section 12.2" and that "the court, in determining the award, may consider
27 whether a party's refusal to participate in alternative dispute resolution before commencement of the
28

1 action was reasonable.” (CC&Rs, p. 28.) Section 12.2 in turn requires that good faith efforts using
2 alternative dispute resolution according to the following procedure:

3 **B.** Any party to a dispute may initiate alternative dispute resolution by
4 serving on all other parties to the dispute a Request for Resolution. The
5 Request for Resolution must include all of the following: (a) a brief
6 description of the dispute between the parties; (b) a request for alternative
7 dispute resolution, including the proposed type and provider; (c) a notice
8 that the party receiving the Request for Resolution is required to respond
9 within 30 days of receipt or the request will be deemed rejected; and (d) a
10 copy of sections 1369.510 through 1369.690 of the Civil Code. (CC&Rs, p.
11 28.)

12 10. At some time after the condo conversion, Defendant converted her storage room into
13 an en-suite bedroom, installing an illegal bathroom and shower, and began renting the storage room
14 on a short-term basis on Airbnb.com, in violation of the San Francisco Residential Unit Conversion
15 Ordinance, commonly known as the Short Term Rental Ordinance (San Francisco Administrative
16 Code Chapter 41A).

17 11. On or around January 3, 2022, the San Francisco Planning Department initiated two
18 enforcement actions (2022-000027ENF and 2022-000025ENF) against Defendant on the basis that
19 she was

20 Illegally renting out a storage space via Airbnb on a short term basis.
21 The property NSR under the Planning Code clearly states that theses
22 storage spaces are non-habitable and that no boarder shall reside
23 therein. The property CC&R also clearly ban short term rentals.

24 12. The Planning Department’s Office of Short Term Rentals suspended Defendant’s
25 short-term rental certificate pursuant to a separate enforcement action initiated on February 1, 2022
26 (2022-000855ENF). Subsequently, the Planning Department further noted that it “Appears host Diana
27 Meistrell ignored suspension and continued to illegally offer short-term rentals on Airbnba s[sic] of
28 11FEB2022. Matter elevated to Airbnb to remove listing.” A true and correct copy of a Complaint
and Appeals Report printed from the Planning Department’s Property Information Map website
(<https://sfplanninggis.org/pim/>) for the Meistrell Premises is attached hereto as Exhibit C and
incorporated herein by reference.

 13. Defendant’s Airbnb listing has since been removed and two enforcement actions

1 (2022-000027ENF and 2022-000025ENF) remain active and unabated as of the filing of this
2 Complaint.

3 14. On or around February 9, 2022, the San Francisco Department of Building Inspection
4 (“DBI”) issued a Notice of Violation to Defendant for unpermitted construction of a shower within
5 the storage space. A true and correct copy of DBI’s Complaint Data Sheet, accessed on June 12, 2022,
6 is attached hereto as Exhibit D and incorporated herein by reference.

7 15. On or around February 23, 2022, Defendant applied for a permit to legalize the
8 unpermitted shower (DBI Application No. 202202147907). As of the date of filing, the permit has
9 not been issued. A true and correct copy of DBI’s Permit Details Report, accessed on June 12, 2022,
10 is attached hereto as Exhibit E and incorporated herein by reference.

11 16. On or around March 9, 2022, Defendant filed an application with the Planning
12 Department to legalize the unpermitted shower in order to abate DBI’s Notice of Violation (Planning
13 Application No. 2022-000025PRJ). The Planning application also seeks to legalize the storage room
14 as a dwelling unit, contrary to the NSR. As of filing, the Planning application has not been approved.
15 A true and correct copy of Defendant’s Project Application is attached hereto as Exhibit F and
16 incorporated herein by reference.

17 17. Defendant did not seek Plaintiff’s consent prior to filing either the DBI permit
18 application or the Planning Department project application.

19 18. As of the date of filing, the shower remains unpermitted and illegal.

20 19. Defendant continues to rent and allow residential occupancy of her accessory storage
21 room in violation of the CC&Rs and NSR. As part of this usage, Defendant provides guests with
22 linens.

23 20. Because the McKelvy Premises is adjacent to Defendant’s storage room, use of the
24 storage room as a dwelling unit greatly increases the transmission of sound into the McKelvy
25 Premises. Plaintiff is often woken in the night by strangers’ conversations and noises coming from
26 the storage space. On one occasion, Plaintiff could hear – from within the McKelvy Premises –
27 Defendant’s guest violently vomiting in the storage room for hours throughout the night. Plaintiff
28 regularly encounters a variety of strangers on the Property that claim to be Defendants’ guests, often

1 late at night and without warning. Plaintiff no longer feels safe at the Property. In addition, Defendant
2 has permitted guests to store property in the garage appurtenant to Plaintiff's unit and the yard shared
3 by both units. Defendant's guest as of June 6, 2022 stored in a large suitcase containing a bicycle in
4 Plaintiff's deeded garage, without Plaintiff's prior knowledge or consent.

5 21. On March 23, 2022, Plaintiff (via counsel) sent Defendant a letter via mail and email
6 demanding that she cease renting the storage room in violation of the CC&Rs and NSR. The letter
7 also included a Request for Resolution in accordance with Sections 12.1 and 12.2 of the CC&Rs. A
8 true and correct copy of the letter is attached hereto as Exhibit G and is incorporated herein by
9 reference.

10 22. On March 29, 2022, after receiving Plaintiff's letter via email, Defendant informed
11 Plaintiff that she would be going to Portugal for six weeks. No persons were observed in the storage
12 room from her departure. Plaintiff believed that Defendant had ceased using the storage room for
13 illegal purposes until Defendant resumed doing so on or around May 14, 2022 upon her return from
14 Portugal, when it became clear that the cessation was not in response to Plaintiff's letter but a result
15 of Defendant's absence.

16 23. On May 13, 2022, Defendant told Plaintiff that the person staying in her storage room
17 was not paying and therefore she was not violating the law or CC&Rs. Defendant has allowed the
18 storage room to be continuously or nearly continuously occupied since that date, as of the filing of
19 this Complaint. As recently as June 3, 2022, guests were observed occupying Defendant's storage
20 room with her consent and permission.

21 24. On June 3, 2022, Defendant sent a letter to Plaintiff via email stating that she
22 understands there is a dispute, but there is no prohibition on friends using the storage space. A true
23 and correct copy of that letter is attached hereto as Exhibit H and is incorporated herein by reference.

24 25. On June 6, 2022, Defendant emailed a letter (dated June 3, 2022) directly to Plaintiff's
25 counsel stating that she did not respond to Plaintiff's March 23 letter earlier because she was out of
26 the country; that she has ceased paying rentals, but believes non-paying guests are allowed to dwell
27 in the storage room; and that "there is nothing to arbitrate". A true and correct copy of that letter is
28 attached hereto as Exhibit I and incorporated herein by reference.

26. Defendant does not deny that she has granted permission for guests to reside in the non-habitable storage room. She claims that all of the many guests who cycle through her storage room are simply friends, and not paying guests, and contends that non-paying guests are permissible under the CC&Rs and NSR.

27. On information and belief, Defendant did not appeal the issuance of the DBI Notice of Violation or the Planning Department enforcement actions. By failing to appeal the Notice of Violation or Planning Enforcement action, Defendant is estopped from arguing that the rentals and unpermitted shower are illegal and violate both the CC&Rs and NSR under the doctrine of administrative collateral estoppel.

28. The notice period required by Section 12.2 of the CC&Rs following receipt of Plaintiff's Request for Resolution expired on April 22, 2022 without a response from Defendant. In addition, Defendant has explicitly refused to participate in alternative dispute resolution. Accordingly, Plaintiff has satisfied the CC&Rs prerequisites to legal action.

FIRST CAUSE OF ACTION
(Declaratory Relief)

29. Plaintiff incorporates Paragraphs 1 through 28 as if fully set forth herein.

30. An actual controversy has arisen and now exists between Plaintiff and Defendant regarding the interpretation of the CC&Rs and NSR. Plaintiff contends that all use as a dwelling is prohibited by the terms of both documents, whether paid or unpaid; Defendant contends that only paid rentals are prohibited.

31. Plaintiff thus seeks a judicial determination of the Parties' rights and obligations, particularly a judicial determination that Defendant must cease all use of the storage room as a dwelling, whether paid or unpaid.

32. A judicial declaration is necessary and property at this time so that the Parties may ascertain their rights and obligations in connection with the existing usage, and prevent further violations of the Parties' rights.

SECOND CAUSE OF ACTION

(Breach of Contract)

33. Plaintiff re-alleges Paragraphs 1 through 28 as if fully set forth herein.

1 34. Defendant breached and continues to breach Section 7.7 of the CC&Rs by renting the
2 storage room for transient or hotel purposes, i.e., for periods of less than 30 days and providing linens
3 to paying guests regardless of duration.

4 35. Defendant breached and continues to breach Section 7.3 of the CC&RS with illegal
5 activity that is seriously annoying or offensive to a person of reasonable sensibility. Defendant's rental
6 of the storage space is illegal under: (1) The Residential Unit Conversion Ordinance, commonly
7 known as the Short Term Rental Ordinance (San Francisco Administrative Code Chapter 41A); and
8 (2) The Planning Code, pursuant to the NSR.

9 36. Defendant's use of the storage room as a dwelling unit, even if unpaid, violates the
10 Planning Code by the terms of the NSR, which provides that: (1) the storage room may not be used
11 as a separate dwelling unit or rooming unit; (2) any use must accessory to the appurtenant unit; (3)
12 the storage room is not habitable space; and (4) any violation of the NSRs provisions constitutes a
13 violation of the Planning Code.

14 37. Defendant's construction and maintenance of the unpermitted shower is illegal
15 pursuant to the Building Code.

16 38. Defendant breached Section 6.1 of the CC&Rs by filing for a permit with DBI to
17 legalize the unpermitted shower – an improvement to an Exclusive Use Common Area – without
18 obtaining prior written consent of the Association, and by filing a Project Application with the
19 Planning Department to “legalize the space as a dwelling unit”, thereby increasing the number of
20 units at the Property from two to three in violation of the NSR. Legalizing the storage room as a
21 dwelling unit would also result in an increase on the burden on common building systems; result in
22 an increase in sound transmission between units; and adversely affect the common area and other
23 unit.

24 39. Because the Association comprises two members with equal voting rights – Plaintiff
25 and Defendant – Defendant was required to obtain Plaintiff's permission prior to the DBI permit
26 application and Planning Project Application. Defendant did not do so.

27 40. As a result of Defendant's conduct, Plaintiff has suffered and continues to suffer
28 damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION
(Nuisance)

41. Plaintiff incorporates Paragraphs 1 through 28 as if fully set forth herein.

42. By renting and utilizing the storage room as a dwelling, Defendant obstructed Plaintiff's quiet enjoyment of the McKelvy Premises, thereby creating a private nuisance within the meaning of Cal. Civ. §3479.

43. Any ordinary person would be annoyed or disturbed by such conduct and the interference with use and quiet enjoyment of the McKelvy Premises.

44. As a result of Defendant's conduct, Plaintiff has suffered and continues to suffer damages in an amount to be determined at trial.

PRAYER FOR RELIEF

Plaintiff prays for judgment against Defendant as follows:

As to the First Cause of Action for Declaratory Relief:

1. For a declaration confirming and decreeing that the storage room is not habitable space;
2. For a declaration confirming and decreeing that the storage room may not be used as dwelling unit or for habitation of any kind, whether guests are paying or otherwise, pursuant to the recorded Notice of Special Restrictions and Declaration of Restrictions governing 2322-2324 North Point Street;

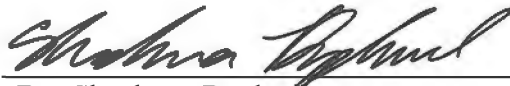
As to All Causes of Action:

1. For an injunction directing Defendant to cease renting the storage room on a short term or any other basis and prohibiting such conduct in the future;
2. For an injunction directing Defendant to cease utilizing the storage room as a dwelling unit or for habitation of any kind and prohibiting such conduct in the future;
3. For an injunction directing Defendant to withdraw her Planning Department Project Application (Planning Application No. 2022-000025PRJ) to legalize the illegal shower and legalize the storage room as a dwelling unit;
4. For an injunction directing Defendant to withdraw her DBI Permit Application (DBI Application No. 202202147907) to legalize the unpermitted shower;

- 1 5. For general damages for diminution of value of the McKelvy Premises that resulted from
2 Defendant's improper and illegal usage of her storage room;
- 3 6. For damages in an amount to be determined at trial;
- 4 7. For attorney's fees pursuant to Civil Code Section 5975;
- 5 8. For costs incurred in this action; and
- 6 9. For such other relief as the Court may deem proper.

7

8 Dated: June 16, 2022



By: Shoshana Raphael
KOSTER & LEADBETTER, LLP
Attorneys for Plaintiff,
Maximilian H. McKelvy

-- EXHIBIT A --

-- EXHIBIT A --

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

RECORDING REQUESTED BY:

And When Recorded Mail To:

Name: Tiffany Flaming
Daniels Development Group, Inc.

Address: 372 7th Avenue

City: Suite 100
San Francisco

State: California

San Francisco Assessor-Recorder

Phil Ting, Assessor-Recorder

DOC- 2006-I106668-00

Check Number 1434

Friday, JAN 06, 2006 12:51:55

Ttl Pd \$13.00

Nbr-0002916467

REEL J051 IMAGE 0253

091/AB/1-3

Space Above this Line For Recorder's Use

I, (We) Diana R. Meistrell and Steven L. Grossmann and Gerri H. Grossmann, the owner(s) of that certain real property situated in the City and County of San Francisco, State of California more particularly described as follows: (LEGAL DESCRIPTION AS ON DEED).

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

Beginning at a point on the Northerly line of North Point Street; distant thereon 93 feet 9 inches Westerly from the Westerly line of Broderick Street; running thence Westerly and along said line of North Point Street 25 feet; thence at a right angle Northerly 87 feet and 6 inches; thence at a right angle Easterly 25 feet; thence at a right angle Southerly 87 feet and 6 inches to the point of beginning.

| | |
|---------------------------------------|-------------------|
| Buyer Received 1 - 3 pages | |
| Received by <u>Diana Meistrell</u> | DATE 9/27/2021 |
| Signature | DATE |
| Sign | DATE |

BEING Assessor's Block 0918, Lot 002D, commonly known as 2322 - 2324 North Point Street, hereby give notice that there are special restrictions on the use of said property under Part II, Chapter II of the San Francisco Municipal Code (Planning Code).

Said restrictions consist of conditions attached to the approval of Building Permit Application No. 2005.07.01.6702 by the Planning Department, and are conditions that had to be so attached in order that said application could be approved under the Planning Code.

The plans filed with the present application indicate on the ground floor of the two-family dwelling at 2322 - 2324 North Point Street: two non-habitable storage rooms (one assigned to 2322 North Point Street and one assigned to 2324 North Point Street and two 25 square foot half bathrooms (with no shower or bathtub), said rooms having indirect access to the street through the rear yard and a side passageway, and a total lack of visual and spatial connection to the dwelling units on the floors above.

DocuSign Envelope ID: 4F76D2B2-A87F-4CCE-A83F-F6DFAB40E22C

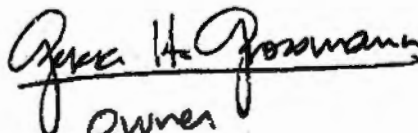
NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

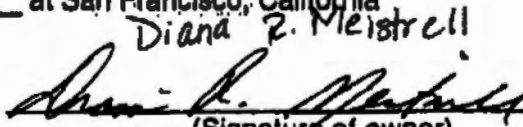
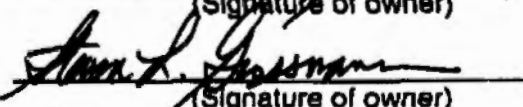
The restrictions and conditions of which notice is hereby given are:

1. That said ground floor area shall be used only as accessory to the dwellings above, as under the RH-3 zoning of the subject property, Section 209.1 of the Planning Code provides that not more than one (1) three-family dwelling shall occupy a lot, AND that Section 15.1 of said Code provides that one (1) independently accessible, on-site, off-street parking space shall be provided for any new dwelling unit and the subject property contains no such additional space(s); and
2. That said ground floor area shall not be used as separate dwelling units or rooming units, and no boarder shall reside therein; that utility, other services, mailbox and doorbells shall be provided for this building solely on a two-family basis; and
3. That for the purposes of this restriction, and the Planning Code, installation of any appliances for cooking, such as a stove or hot plate, in the ground floor area shall be deemed creation of a kitchen and therefore creation of an additional separate dwelling unit as defined in Section 102.7 of the Planning Code; and

The use of said property contrary to these special restrictions shall constitute a violation of the Planning Code, and no release, modification or elimination of these restrictions shall be valid unless notice thereof is recorded on the Land Records by the Zoning Administrator of the City and County of San Francisco.

Dated: January 5, 2005 at San Francisco, California


owner
Gerri H. Grossmann


Diana Z. Meistrick
(Signature of owner)

(Signature of owner)
Steven L. Grossmann

This signature must be notarized prior to recordation; add Notary Public Certification and Official Notarial Seal.

DRL:\documents\2322-2324 North PointNSR

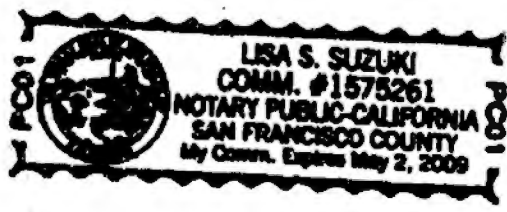
State of California
County of San Francisco

On January 5, 2006 before me, LISA S. SUZUKI, NOTARY PUBLIC
(DATE) (NAME/TITLE OF OFFICER-I.e., "JANE DOE, NOTARY PUBLIC")

personally appeared GERRI H. GROSSMANN,
(NAME(S) OF SIGNER(S))

STEVEN L. GROSSMANN AND DIANA R. MEISTRELL

☐ 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.

(SEAL)

Lisa S. Suzuki
(SIGNATURE OF NOTARY)

ATTENTION NOTARY

The information requested below and in the column to the right is **OPTIONAL**. Recording of this document is not required by law and is also optional. It could, however, prevent fraudulent attachment of this certificate to any unauthorized document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Title or Type of Document Notice of Special Restrictions Under the Planning Code
Number of Pages 2 Date of Document Jan. 5, 2006
Signer(s) Other Than Named Above _____

RIGHT THUMBPRINT (Optional)

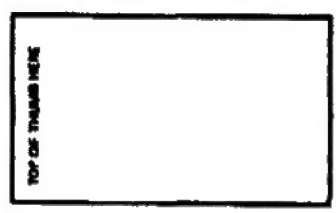


CAPACITY CLAIMED BY SIGNER(S)
☐ INDIVIDUAL(S)
☐ CORPORATE _____

OFFICER(S) _____
(TITLE(S))
☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY IN FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
(Name of Person(s) or Entity(ies))

RIGHT THUMBPRINT (Optional)



CAPACITY CLAIMED BY SIGNER(S)
☐ INDIVIDUAL(S)
☐ CORPORATE _____

OFFICER(S) _____
(TITLE(S))
☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY IN FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
(Name of Person(s) or Entity(ies))



-- EXHIBIT B --

-- EXHIBIT B --

3811-328049sf (DL)

When Recorded Return To:

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



San Francisco Assessor-Recorder
Phil Ting, Assessor-Recorder
DOC- 2006-I268445-00

Acct 3-FIRST AMERICAN Title Company
Wednesday, OCT 11, 2006 08:00:00
Ttl Pd \$124.00 Nbr-0003096761
REEL J243 IMAGE 0151
es1/GG/1-40

APN: 0918-002D (New Lts 026+027).

Buyer Received 1 - A1 pages

| | |
|---|-------------------|
| Digitally signed by <i>Diana R. Meistrell</i> DN: cn=Diana R. Meistrell | 9/27/2021 DATE |
| Sign: | DATE |

63

DECLARATION OF RESTRICTIONS

FOR

**2322-2324 NORTH POINT STREET
San Francisco, California**

a Condominium Project

40
EW

Diana R. Meistrell, Steven L. Grossmann, and Gerri H. Grossmann

Declarant

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**DECLARATION OF RESTRICTIONS
FOR
2322-2324 NORTH POINT STREET
San Francisco, California**

a Condominium Project

Recitals

THIS DECLARATION is made by Diana R. Meistrell, Steven L. Grossmann, and Gerri H. Grossmann, "Declarant," with reference to the following:

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

All that real property as shown on that certain map entitled "Parcel Map 2297, 2322-2324 North Point Street, a Residential Condominium Project, Being a Subdivision of Lot 2D, Assessor's Block No. 0918, also Being a Portion of Western Addition Block No. 557, San Francisco, California" recorded on September 11, 2006, Condominium Map Book 96 pages 155 to 158 inclusive, San Francisco County Records.

B. The land has been improved with a building containing two Units.

C. By this Declaration, Declarant establishes a condominium project under the provisions of the Davis-Stirling Common Interest Development Act, Division 2, Part 4, Title 6 of the Civil Code (beginning at Section 1350), and imposes upon the real property mutually beneficial restrictions under a general plan of improvement for the benefit of all the Condominiums and Owners of Condominiums.

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

**ARTICLE 1
Definitions**

1.1 "Association" means the 2322-2324 North Point Street Homeowners' Association, an unincorporated association.

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

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

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

1.5 "Condominium Plan" means the three dimensional description of the Project in sufficient detail to identify the Common Area and the Units pursuant to California Civil Code Section 1351(e) and which was recorded on September 11, 2006, in Condominium Map Book 96, pages 155 to 158, inclusive, in the Official Records of the County of San Francisco and any amendments and corrections to it. A copy of the Condominium Plan is incorporated into this Declaration by this reference.

1.6 "County" means San Francisco County.

1.7 "Declarant" means Diana R. Meistrell, Steven L. Grossmann, and Gerri H. Grossmann and any successors and assigns who acquire Declarant's interest in the Project and expressly assume the rights and duties of the Declarant for purposes of this Declaration by a written instrument recorded in the County Recorder's office, or who is a Mortgagee that acquired Declarant's interest in the Project through foreclosure or deed in lieu of foreclosure.

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

1.9 "Exclusive Use Common Areas" mean those portions of the Common Area designated for the exclusive use of the Owners and which are appurtenant to the Units.

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

1.11 "Map" means the subdivision map referred to in Recital A and any amendments and

corrections to it.

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

1.13 "Mortgage, Mortgagee, Mortgagor" are defined in section 11.1.

1.14 "Owner" means the record holder of title to a Condominium in the Project. If a Condominium is sold under a recorded contract of sale to a purchaser, the purchaser rather than the seller is considered the Owner. "Owner" does not include a person who has an interest that is merely a security for the performance of an obligation. "Owner" also means a member of the Association whenever the context relates to an Owner acting in his or her capacity as a member.

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

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

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

ARTICLE 2

Easements and Property Rights

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

A. Units. Each Unit includes the elements defined in section 1.17. A Unit does not include those areas and things defined as Common Area in section 1.3. Each Unit is subject to

encroachments that now exist or that may be later caused or created in any manner referred to in section 2.3D. In interpreting deeds and plans, the then existing physical boundaries of a Unit, whether in its original state or reconstructed in substantial accordance with the original plans, is conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or Condominium Plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the Plan or deed and those of the building.

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

C. Exclusive Use Common Area. Portions of the Common Area, referred to as Exclusive Use Common Areas, are set aside and allocated for the exclusive use of the Owners. The Exclusive Use Common Areas consist of the parking spaces, laundry area, and storage area as designated on the Condominium Plan. An easement for the use of each of these Exclusive Use Common Areas will be granted as appurtenant to a Unit in the first deed for each Condominium. The Exclusive Use Common Areas also consist of internal and external wiring designed to serve a single Unit, fireplaces, windows, window frames, window boxes, screens, shutters, awnings, doorsteps, stoops, exterior doors, door frames and hardware.

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

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

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

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

use:

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

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

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

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

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

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

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

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

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

D. Encroachment Easements. Each Unit has an easement over all adjoining Units and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause as long as the encroachment exists. However, a valid encroachment is not created in favor of an Owner if it occurred due to the Owner's willful misconduct. If a structure is repaired or rebuilt, minor encroachments over adjoining Units and the Common Area are permitted and there are valid easements for the maintenance of these encroachments as long as they exist.

2.4 PARTITION; POWER OF ATTORNEY. Except as provided by Civil Code section 1359 or by sections 10.2 and 10.3 of this Declaration, judicial partition of the Project or any part of it is prohibited. Judicial partition by sale of a single Condominium owned by two or more persons and division of the sale proceeds is not prohibited, but partition of title to a single Condominium is prohibited.

If partition is authorized under Civil Code section 1359 or under sections 10.2 and 10.3 of this Declaration, and subject to obtaining the necessary approval of first Mortgagees and Owners as provided in Article 11, the Association may sell the entire Project, in one or more transactions, for the benefit of all Owners. Each Owner irrevocably appoints the Association as his or her attorney-in-fact to sell the Project under this section.

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

ARTICLE 3

Association, Administration, Membership and Voting Rights

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

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

3.3 ADMINISTRATION OF THE AFFAIRS OF THE ASSOCIATION. Since the Project consists of only two Condominiums, the customary manner of delegating management of the Project to a board of directors is inappropriate. Therefore, exercise of the powers and duties conferred on the Association in this Declaration requires the unanimous vote of the Owners. If a vote of the Owners on any matter is not unanimous, upon request of any Owner the matter must be determined in accordance with the provisions for alternative dispute resolution provided in section 12.1.

Notwithstanding the foregoing, one Owner may act on behalf of the Association to exercise the powers under section 4.5, 4.6 and 4.10 of this Declaration without the consent of the other Owner, provided the Owner complies with section 3.4 below and is not delinquent in the payment of assessments.

There is one vote for each Condominium. If a Condominium is owned by more than one Owner, the vote for the Condominium will be exercised as those Owners determine, but not more than one vote may be cast for any Condominium. If an Owner disputes the vote cast for his or her Condominium by a co-Owner, the vote for that Condominium will be counted as if it were cast the same as the vote for the other Condominium in the Project was cast.

3.4 EXERCISE OF ASSOCIATION POWER BY INDIVIDUAL OWNER. An Owner's right to act on behalf of the Association under section 3.3 is subject to the following provisions.

A. An Owner (the "exercising Owner") may take action only after the exercising Owner has sought the consent of the other Owner (the "non-exercising Owner") and the non-exercising Owner has refused to vote in favor of the action or has failed or refused to communicate with the exercising Owner on the matter.

B. The exercising Owner must notice a meeting of the Association. The notice must be in writing and delivered by personal delivery or first-class mail at least 10 days prior to the meeting at which the action will be considered. The notice must contain at a minimum the

date, time and place of the meeting, the action to be taken, a statement of the facts upon which the need for the action is based, and a statement that the Owner has a right to attend and to address the Association. The notice must include a copy of the written statement set forth in Civil Code section 1365.1(b).

C. If the Owners are unable to resolve the matter at the meeting or the non-exercising Owner fails to appear at the meeting, the exercising Owner must give the non-exercising Owner at least 10 days written notice of intention to act on behalf of the Association, delivered by personal delivery or first-class mail, prior taking action on behalf of the Association.

D. Nothing in this section is intended to preclude either Owner from seeking to resolve the dispute through alternative dispute resolution.

ARTICLE 4

Assessments

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

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

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

At least 30 days and not more than 90 days before the beginning of each fiscal year, the Association must establish the regular assessment for that fiscal year. If at any time during the year the Association decides that the amount of the regular assessment is inadequate or excessive, it may revise the assessment for the balance of the fiscal year, effective on the first day of the month

following the date of the revision. If the Association fails to establish the regular assessment for any fiscal year, the regular assessment will be the same as that of the prior fiscal year.

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

4.5 ASSESSMENTS FOR EMERGENCY PURPOSES. The Association may increase the regular assessment and impose special assessments if necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

- A. An extraordinary expense required by an order of a court;
- B. An extraordinary expense necessary to repair or maintain the Common Area where a threat to personal safety is discovered at the Project; or
- C. An extraordinary expense necessary to repair or maintain the Common Area that could not have been reasonably foreseen by the Association in preparing and distributing the pro forma operating budget described in the Bylaws. Before imposing or collecting an assessment under this section, the Association must pass a resolution containing written findings as to why the extraordinary expense is necessary and why the expense was not or could not have been reasonably foreseen in the budgeting process.

4.6 REIMBURSEMENT ASSESSMENTS. The Association may impose a reimbursement assessment to collect a charge levied to reimburse the Association for costs incurred by it in the repair of damage to the Common Area caused by an Owner or occupant of the Owner's Unit, or to collect a fine or penalty levied to bring an Owner and his or her Condominium into compliance with the Governing Documents. The Association may impose a reimbursement assessment on an Owner only after giving the Owner notice and the opportunity to be heard, as provided in the Bylaws. A reimbursement assessment becomes a lien upon a Unit upon the recording of a Notice of Delinquent Assessment as provided in section 12 of the Bylaws.

4.7 DIVISION OF ASSESSMENTS. The expenses for regular assessments are divided between the owners equally.

Special assessments are divided among the Owners on the same basis as regular assessments, except where the special assessment is levied to raise funds for the rebuilding or major repair of structural Common Area that houses the Units. In that case, the special assessment is divided upon the basis of the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of the floor area of all Units.

The square footage of the Units is the approximate square footage for the Units shown on the

Condominium Plan or, if not shown on the Condominium Plan, provided to the Association by Declarant. If the square footage of the Units is not shown on the Condominium Plan or provided to the Association by Declarant, then the square footage of the Units must be determined by reference to the final approved architectural plans for the Project.

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

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

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

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

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

B. Judicial Foreclosure or Power of Sale. The Association may bring an action for judicial or nonjudicial foreclosure according to the procedures set forth in the Bylaws or otherwise adopted by the Association provided that the amount of delinquent Assessments, the duration of the delinquency, or both comply with the requirements of Civil Code Section 1367.4.

C. Alternative Dispute Resolution. An assessment dispute may be resolved through alternative dispute resolution as provided in Civil Code sections 1367.1 and 1367.4 and section 12.1 of this Declaration.

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

4.12 MORTGAGEE'S LIABILITY FOR UNPAID ASSESSMENTS. The holder of a first Mortgage that obtains title to a Condominium pursuant to a foreclosure proceeding is not liable for unpaid assessments and charges that accrued prior to its acquisition of the Condominium. However, a first Mortgagee is liable for any assessments becoming due after the date of the transfer. Subsequently levied assessments may include previously unpaid assessments provided all Owners are required to pay their proportionate share of the previously unpaid assessments.

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

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

4.15 UNSEGREGATED REAL PROPERTY TAX BILL. If real property taxes have not been segregated by the County Assessor, each Owner must pay a proportionate share of that tax bill. The tax bill must be divided as agreed unless the property was owned by more than one person as tenants-in-common before the Map was recorded. In that case, the real property tax bill must be divided between the Owners according to the same formula used by the tenant-in-common owners for dividing the tax bill.

ARTICLE 5

Duties and Powers of the Association

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

A. Davis-Stirling Common Interest Development Act. The Association must comply with the requirements of the Davis-Stirling Common Interest Development Act (the "Act"). The act includes comprehensive regulations concerning the management of the affairs of the Association including, without limitation, election procedures, conduct of meetings.

enforcement of assessments, resolution of disputes, preparation and distribution of financial documents, notices required to be sent to Members, calculation and maintenance of reserve funds, retention and inspection of Association records, adoption of operating rules, and Association approval of physical improvements to the Project made by Members. The Association must adopt provisions in the Governing Documents as reasonably necessary to implement the act, and each Owner takes his or her interest in the Project subject to the provisions of the Bylaws, operating rules and policies of the Association in addition to the provisions of this Declaration.

B. Non-Profit Mutual Benefit Corporation Law. The Association may exercise all of the powers granted to a non-profit mutual benefit corporation as enumerated in Corporations Code section 7140 except that it may not adopt or use a corporate seal or issue membership certificates, subject only to the limitations on those powers set forth in the Act and in the Governing Documents. The Association has the power to do any lawful thing required or permitted to be done under the Act and the Governing Documents and necessary, appropriate or incidental to the exercise of the express powers or duties of the Association for the peace, health, comfort, safety and general welfare of the Owners.

5.2. DUTIES AND POWERS. The affairs of the Association must be conducted by the officers of the Association. The duties and powers of the Association include, but are not limited to, the following

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

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

C. Discharge of Liens. The Association must discharge any lien against the Common Area and levy a reimbursement assessment against the Owner responsible for the existence of the lien.

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

E. Enforcement. The Association must enforce the Governing Documents as provided in this Declaration, the Bylaws and any operating rules adopted by the Association.

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

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

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

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

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

J. Operating Rules. The Association has the authority to adopt reasonable operating rules consistent with this Declaration relating to the use of the Project by the Owners, their tenants, guests and invitees. An operating rule is valid and enforceable only if it is reasonable, in writing, within the authority of the Association conferred by law or by the Declaration, consistent with the Governing Documents.

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

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

M. Loans. The Association has the authority to borrow money and to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

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

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

- (1) make a decision to commence proceedings for mediation and arbitration or to file litigation when permitted under the Governing Documents or applicable law, record a lien, or foreclose upon a lien for default in payment of assessments;
- (2) make a decision to levy assessments;
- (3) make capital expenditures;
- (4) impose discipline and levy fines for violations of the Governing Documents; or
- (5) hold hearings required under the Governing Documents.

ARTICLE 6

Architectural Control

6.1 APPROVAL REQUIRED. The prior written approval of the Association is required before an Owner may make any improvements or modifications ("improvement") to any portion of the Common Area, including Exclusive Use Common Area appurtenant to the Owner's Unit, or make any improvements within his or her Unit that may affect structural Common Area, increase the burden on common building systems, result in an increase in sound transmission between Units, or otherwise adversely affect the Common Area or the other Unit.

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

6.2 PROCEDURES. The Association must establish procedures that comply with the

requirements of Civil Code section 1378 regarding application for and review of improvements.

6.3 IMPROVEMENTS TO FACILITATE ACCESS FOR PHYSICALLY DISABLED PERSONS. The Association may not deny approval of any improvement to a Unit to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons, without good cause. The requested improvements may include modifications of the route from the public way to the door of the Unit if the Unit is already accessible by an existing ramp or elevator. The Association may condition its approval of the improvement in accordance with the provisions of Civil Code section 1360. The cost of the improvement must be paid by the requesting Owner.

6.4 ANTENNAS. Approval of the installation or use of a satellite dish, video or television antenna with a diameter or diagonal measurement of one meter or less is subject to the provisions of Civil Code section 1376 and any standards set forth in the Bylaws or in operating rules. Approval of the installation or use of any other satellite dish, video or television antenna is within the discretion of the Association.

6.5 DECLARANT EXEMPT. Declarant is exempt from the approval requirements of this Article for a period of three years from the date of close of escrow on the first sale of a Unit in the Project.

ARTICLE 7

Use Restrictions

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

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

7.2 USE OF PARKING SPACES. Parking spaces may be used solely for parking of bicycles and non-commercial passenger motor vehicles -- such as automobiles, station wagons, pickup trucks, SUVs, motorcycles and light vans -- that fit entirely within the boundaries of the Owner's designated parking space and allow space to enter and exit the vehicle. No person may park a motor vehicle anywhere on the Project other than his or her designated parking space or parking areas designated by the Association for temporary parking. An Owner may not lease a parking space to any person who is not an Owner or a resident at the Project without the prior written approval of the other Owner.

Repair or washing of a motor vehicle is not permitted anywhere on the Project, except an emergency repair. Each Owner must keep his or her designated parking space neat and clean and immediately

remove any oil, grease or other waste emitted from his or her vehicle. Vehicles that emit offensive levels of exhaust pollution, oil, grease or noise, as such levels are determined by the Association, may not be operated at the Project. The Association may cause any vehicle that is in violation of this section to be towed and stored at the Owner's expense in compliance with Vehicle Code section 22658.2. Each Owner agrees to indemnify, defend and hold the Association, its Association members, officers, manager and employees harmless for any damage to person or property that may result.

7.3 NUISANCE. No person may interfere with the quiet enjoyment of any other resident of the Project, or carry on any activity in any part of the Project that is noxious, illegal, seriously annoying or offensive to a person of reasonable sensibility. No activity may be carried on that increases the rate of insurance for the Project, or causes any insurance policy to be canceled or not renewed, or that will impair the structural integrity of any building.

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

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

7.5 ANIMALS. Animals may not be kept in any Unit except for domestic dogs or cats (not to exceed a total of two per Unit), and a reasonable number of fish in aquariums and birds inside bird cages. Pure or mixed breed dog from the following breeds may not be kept at the Project: Pit Bull, Presa Canaria, Rottweiler, Doberman Pinscher, Mastiff, and any other fighting breed. Permitted animals may not be kept, bred, or raised for commercial purposes. Owners must clean up after their pets immediately. Pets are restricted from the Common Area.

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

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

designated by the Association.

7.7 RIGHT TO LEASE. No Owner may rent a Condominium for transient or hotel purposes, which are defined as rental for any period less than 30 days, or any rental if the occupants are provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen, and bellboy service. Subject to these restrictions, an Owner may lease his or her Condominium, provided the lease is in writing, is made subject to the Governing Documents, and a copy of the lease is sent to the Association. An Owner is responsible for a tenant's compliance with the Governing Documents. An Owner who rents his or her Condominium must provide the Association with his or her new address and telephone number, as well as the name and telephone number of the tenant.

7.8 CLOTHES LINES. Outside laundering or drying of clothes is not permitted.

7.9 ANTENNAS AND SATELLITE DISHES. Antennas, satellite dishes and cables for the reception of television, radio and other signals may not be installed within the Common Area without prior approval of the Association as provided in Article 6.

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

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

7.12 SOUND TRANSMISSION.

A. Floor Covering. Each hallway and room (other than the kitchen and bathrooms) in a Unit must have carpet and at least 1/4 pad or other noise deadening materials approved by the Board in 80 percent of its square footage. Except for replacing existing carpet and pad with carpet and pad of equal or greater acoustical insulation value as that being removed, an Owner must obtain the prior approval of the Board, according to the procedures set forth in the Bylaws or otherwise established by the Board for review of improvements, before removing or replacing carpet and pad or other existing flooring materials.

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

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

ARTICLE 8

Maintenance and Repair Obligations

8.1 OWNER'S MAINTENANCE AND REPAIR OBLIGATIONS.

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

B. Exclusive Use Common Areas. Each Owner must keep all Exclusive Use Common Areas appurtenant to his or her Unit clean and neat.

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

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

E. Maintenance Recommendations. Each Owner is subject to all maintenance recommendations provided by Declarant, including, without limitation, all guides and other documents and maintenance schedules, as they pertain to the Owner's Unit and those portions of the Common Area, if any, that an Owner is required to maintain and repair. Civil Code Sections 907 and 945.5 provide that Owners and the Association have an affirmative duty to maintain the Project pursuant to written maintenance recommendations.

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

A. In General. The Association must maintain in good condition, repair and replace the Common Area, all Exclusive Use Common Areas except for those to be maintained by Owners under section 8.1B, and landscaping.

B. Wood-Destroying Pests. The Association is responsible for the repair and maintenance of Common Area occasioned by the presence of wood-destroying pests and organisms in accordance with the procedure set forth in Civil Code section 1364.

C. Water Intrusion and Defective Conditions. The Association may periodically inspect the Common Area, including Exclusive Use Common Area, and the Units, for evidence of water intrusion or other defective conditions that the Association is required to repair, repair the water damage or other defective condition and, if the source of the condition is water intrusion, locate and correct the source.

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

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

F. Maintenance Recommendations. The Association is subject to all maintenance recommendations provided by Declarant, including, without limitation, all guides and other documents and maintenance schedules, as they pertain to the Common Area and those portions, if any, of the Units that the Association is required to maintain and repair. Civil Code Sections 907 and 945.5 provide that Owners and the Association have an affirmative duty to maintain the Project pursuant to written maintenance recommendations.

8.3 MAINTENANCE RESPONSIBILITY LIST. The types of items to be maintained by the Association and the individual Owners are set forth on the Maintenance List attached to this Declaration as Exhibit A. The Association has the sole authority to determine whether the Association or the Owners are responsible for maintenance of any item not included on the Maintenance List.

ARTICLE 9

Insurance Coverage

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

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

(1) The policy must include coverage for:

a. all Common Area improvements described in section 1.3 and landscaping located within the Common Area, but excluding land, foundations, excavations and other items typically excluded from property insurance coverage, and

b. standard components of the Unit as described in section 1.17 that were originally installed by the Declarant, and any equivalent replacements to them. However, any upgrades installed by an Owner are excluded to the extent the replacement cost of the upgraded improvements exceeds the insurable replacement value of the original Unit improvements, as determined on the date that immediately precedes the date of the damage or destruction. Personal property and trade fixtures located in a Unit are also excluded.

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

(3) The policy must be in a form and from an insurance carrier satisfactory to the Association and to any first Mortgagee that inquires of the Association as to the terms of the policy. The policy must be primary and non-contributing with any other insurance policy covering the same loss. The policy must waive all subrogation rights against any Owner or occupant and his or her family members and invitees.

B. Comprehensive General Liability. The Association must obtain and maintain comprehensive public liability insurance insuring the Association, any managing agent,

Declarant, and the Owners and occupants of the Condominiums, and their respective family members, guests, invitees, and the agents and employees of each of them, against any liability incident to the ownership or use of the Common Area or any other real or personal property owned or maintained by the Association, and including, if obtainable on commercially reasonable terms, a cross-liability or severability-of-interest clause or endorsement insuring the liability of each insured against claims by each other insured. The limits of the insurance may not be less than \$2,000,000, or any greater amount required by Civil Code section 1365.9, covering all claims for death, personal injury, and property damage arising from a single occurrence. This insurance must include coverage against water damage liability, liability for non-owned and hired automobiles, liability for the property of others, and any other liability or risk customarily covered with respect to developments similar in construction, location and use.

C. Director and Officer Liability Insurance. The Association must purchase and maintain insurance on behalf of any director, officer or member of a committee of the Association against any liability asserted against or incurred by any of these persons in their capacity or arising out of their status as agents of the Association, regardless of whether the Association has the power to indemnify these persons against liability under applicable law. The insurance must be in an amount of not less than \$500,000, or any greater amount required by Civil Code section 1365.7.

D. Fidelity Bond. If required by any institutional lender or at the discretion of the Association, a fidelity bond or policy of insurance against dishonest acts on the part of any person entrusted with or permitted to handle funds belonging to or administered by the Association, including a professional manager and its employees, naming the Association as the insured.

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

9.2 INSURANCE REQUIRED BY CERTAIN LENDERS. When FNMA or FHLMC is a Mortgagee, an insurer or guarantor of a Mortgage, or an Owner of a Condominium within the Project, a policy required under this Declaration must satisfy the minimum requirements imposed for this type of Project by FNMA or FHLMC with respect to amount, term coverage, deductible, named insureds, loss payees, standard mortgage clauses, notices of change and cancellation, and insurance company rating. However, to the extent that coverage is not available upon reasonable terms and at a reasonable cost, or has been modified or waived in writing by FNMA or FHLMC, it need not be obtained.

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

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

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

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

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

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

ARTICLE 10

Damage or Destruction; Condemnation

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

cost of repairing and rebuilding the Unit must be paid by the Owner.

10.2 DAMAGE TO BOTH UNITS OR COMMON AREA. If the damage extends to both Units or any part of the Common Area, the following applies:

A. Minor Casualty. A minor casualty means damage to the Project that extends to both Units or any part of the Common Area where the total of available insurance proceeds initially offered or paid by the insurer plus association reserve funds equals or exceeds ninety percent (90%) of the cost of repairing or rebuilding. In the event of a minor casualty, the Association must promptly contract to repair and rebuild the damaged portions of the Units and the Common Area. If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Owners must each contribute a pro-rata share of the unfunded repair costs based upon the ratio of the square footage of the floor area of each Unit to the total square footage of the floor area of all Units.

B. Major Casualty. A major casualty means damage to the Project that extends to both Units or any part of the Common Area where the total of available insurance proceeds initially offered or paid by the insurer plus association reserve funds is less than ninety percent (90%) of the cost of repairing or rebuilding. In the event of a major casualty, the Association must levy a special assessment against the Owners for the difference between the cost of repairing or rebuilding and the amount of insurance proceeds offered or paid by the insurer and, upon Owner approval of the special assessment, repair the Project. Failure of the Owners to approve the special assessment will be deemed an election not to repair and rebuild.

C. Reconstruction after Damage or Destruction to Two Units or Common Area. The following provisions apply if the Project is repaired or rebuilt.

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

(2) Bids for Reconstruction. The Association must retain a construction consultant, who is a licensed general contractor, architect, or engineer with at least 5 years experience in repair and rebuilding of property damaged through fire or other

casualty. In conjunction with the consultant, the Association must obtain firm bids from two or more responsible contractors to rebuild the Project, and may also obtain an estimate from the insurance carrier of the work it will perform for the amount of available insurance proceeds. The Association must accept the bid or insurance estimate it considers most favorable, conditional upon the levy of a special assessment if funds in excess of available insurance proceeds plus Association reserve funds are required to complete the reconstruction. If the Association determines that the amount of proceeds required to complete the repair and rebuilding is so small that the cost of a construction consultant is excessive in relation to the cost of the work, the Association may waive the requirement.

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

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

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

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

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

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

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

ARTICLE 11

Mortgage Protection Provisions

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

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

11.3 REQUIRED CONSENT OF ELIGIBLE MORTGAGE HOLDERS.

A. Eligible Mortgage Holder. As used in this section 11.3, "eligible mortgage holder" means a first Mortgagee, or the insurer or governmental guarantor of a first Mortgage, that has submitted a written request to the Association to notify it of any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

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

Except for minor, non-substantive changes, changes to provisions governing any of the following are of a material adverse nature: (1) voting rights; (2) increases in assessments that increase the previously assessed amount more than 25%, assessment liens or priority of such liens; (3) reductions in reserves for maintenance, repairs and replacement of the Common Area; (4) hazard or fidelity insurance requirements; (5) reallocation of interests in or rights to use the Common Area or Exclusive Use Common Area; (6) responsibility for maintenance and repair of the Project; (7) expansion or contraction of the Project or the addition,

annexation or withdrawal of property to or from the Project; (8) redefinition of boundaries of any Unit; (9) convertibility of Units into Common Area or of Common Area into Units; (10) imposition of any restrictions on the leasing of Units; (11) imposition of any right of first refusal or any other restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Condominium; (12) restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents; or (13) any provisions which are for the express benefit of mortgage holders, insurers or guarantors.

C. Termination of Legal Status of Project. Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs requires the approval by eligible mortgage holders that represent at least 51% of the votes of Units that are subject to mortgages held by eligible mortgage holders.

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

11.4 REQUIRED CONSENT OF FIRST MORTGAGEES. Except as provided by statute in case of condemnation or substantial loss to the Units and/or Common Area, unless at least 67% of all Owners or first Mortgagees (based on one vote for each Condominium encumbered) have given their prior written approval, neither the Association nor the Owners may do any of the following. For purposes of this section 11.4, a first Mortgagee is assumed to have approved a written proposal if it fails to submit a response to the proposal within 60 days after it has received proper notice of the proposal, provided the notice was delivered by certified or registered mail, "return receipt" requested.

A. By act or omission, seek to abandon or terminate the Project;

B. Change the pro-rata interest or obligations of any Condominium for purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro-rata share of ownership of each Condominium in the Common Area;

C. Partition or subdivide any Condominium;

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

E. Use hazard insurance proceeds for losses to the Project (whether to Units or Common Area) for other than the repair, replacement or reconstruction of the Project except as provided by statute in case of substantial loss of the Units or Common Area.

11.5 NOTICE TO MORTGAGE HOLDERS, INSURERS AND GUARANTORS. Upon written request to the Association identifying the name and address of the mortgage holder, insurer or guarantor and the Unit number or address of the Unit, a mortgage holder, insurer or guarantor is entitled to timely written notice of the following:

- A. Any condemnation loss or any casualty loss that affects a material portion of the Project or the Unit securing its mortgage;
- B. Any 60 day delinquency in the payment of assessments owed by the Owner of any Unit on which it holds the mortgage;
- C. Any lapse, cancellation or material modification of an insurance policy maintained by the Association; or
- D. Any proposed action that requires the consent of eligible mortgage holders, as specified in section 11.4.

11.6 RIGHTS TO INSPECT, RECEIVE STATEMENTS, ATTEND MEETINGS.

- A. All Owners and lenders, and all holders, insurers or guarantors of any first Mortgage are entitled to inspect current copies of the Declaration, Bylaws, the Association rules and any other rules concerning the Project and the books, records and financial statements of the Association. Inspection may be made upon request, during normal business hours or under other reasonable circumstances.
- B. If the Association has not prepared an audited financial statement, the holder, insurer or guarantor of any first Mortgage may have an audited financial statement for the immediately preceding fiscal year prepared at its own expense.
- C. Upon written request to the Association, a first Mortgagee is entitled to receive written notice of, and may appear (but not vote) at meetings of the Owners and the Association.

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

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

11.9 SUBORDINATION. Any lien created or claimed under the provisions of this Declaration is

subject and subordinate to the rights of any first Mortgagee with a first Mortgage that encumbers a Condominium, and will not defeat, invalidate or impair the obligation or priority of a first Mortgage unless the Mortgagee expressly subordinates its interest in writing.

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

ARTICLE 12

General Provisions

12.1 ACTIONS BY THE ASSOCIATION OR AN OWNER TO ENFORCE GOVERNING DOCUMENTS. The Association or any Owner may enforce the Governing Documents. An Owner or the Association may enforce the Governing Documents by legal action. However, neither the Association nor an Owner may file an action in the superior court for enforcement of the Governing Documents that includes a request for declaratory, injunctive, or writ relief in conjunction with a claim for monetary damages not in excess of \$5,000 unless the parties have endeavored to submit their dispute to alternative dispute resolution under section 12.2. In any legal action, the court, in determining the award, may consider whether a party's refusal to participate in alternative dispute resolution before commencement of the action was reasonable.

12.2 ALTERNATIVE DISPUTE RESOLUTION. The parties to a dispute between the Owners or between the Association and an Owner must use good faith efforts to resolve the dispute using the following alternative dispute resolution procedures.

A. "Alternative dispute resolution" means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decision making process. The form of alternative dispute resolution chosen pursuant to this article may be binding or nonbinding, with the voluntary consent of the parties.

B. Any party to a dispute may initiate alternative dispute resolution by serving on all other parties to the dispute a Request for Resolution. The Request for Resolution must include all of the following: (a) a brief description of the dispute between the parties; (b) a request for alternative dispute resolution, including the proposed type and provider; (c) a notice that the party receiving the Request for Resolution is required to respond within 30 days of receipt or the request will be deemed rejected; and (d) a copy of sections 1369.510 through 1369.590 of the Civil Code.

C. The Request for Resolution must be served by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the request.

D. A party on whom a Request for Resolution is served has 30 days following service to

accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party. If the party on whom a Request for Resolution is served accepts the request, the parties must complete the alternative dispute resolution within 90 days after the party initiating the request receives the acceptance, unless this period is extended by written stipulation signed by both parties.

E. The costs of the alternative dispute resolution must be borne by the parties.

F. The following matters are excluded from the requirement for alternative dispute resolution: (a) foreclosure of a delinquent assessment lien where the delinquent Owner has not sought alternative dispute resolution in accordance with subsection (1), and (b) any claim solely for monetary relief which is within the jurisdiction of a probate or small claims court.

12.3 TERM. The initial term of this Declaration is 50 years from the date it is recorded, unless it is terminated earlier because of damage and destruction or condemnation as provided in sections 10.2 and 10.3 or by partition as permitted by Civil Code section 1359. After that 50 year period, this Declaration will extend automatically for successive periods of 10 years, unless by unanimous vote the Owners vote to terminate it, and an instrument in writing to that effect is recorded within the year preceding the beginning of the next period of 10 years.

12.4 AMENDMENTS. Prior to close of escrow on the sale of the first Condominium, this Declaration may be amended by Declarant. Thereafter, this Declaration may be amended by an instrument in writing signed and acknowledged by the president or the secretary of the Association certifying under penalty of perjury that the amendment was adopted with the consent of Owners as provided in this section. The Declaration may be amended only by a unanimous vote of the Owners. An amendment must be recorded and becomes effective only upon being recorded in the County Recorder's Office. An amendment does not adversely affect the rights of the holder of any Mortgage of record recorded prior to the amendment. This Declaration may also be amended in accordance with the provisions of Civil Code section 1356.

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

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

12.7 NOTICES. Any notice permitted or required by the Governing Documents must be in writing. Unless expressly provided otherwise in a particular provision, delivery of a notice may be by any of

the following means: (1) personal delivery, (2) certified or registered U.S. mail, (3) delivery by commercially recognized courier service, or (4) email, facsimile or other electronic means if the recipient has previously agreed to that method of delivery. If delivery is by mail, the notice is deemed delivered 72 hours after a copy of it has been deposited in the United States mail, postage prepaid, addressed to the Owner at the current address given by to the Owner to the secretary of the Association or addressed to the Unit of the Owner if no address has been given to the secretary. Electronic notice is deemed delivered upon transmission to the current email address or facsimile number delivered to the Association in accordance with the provisions of this section.

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

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

12.10 NOTICE OF NEW OWNERSHIP. No later than five days after close of escrow on the purchase of a Condominium, the new Owner must inform the other Owner of his or her name and address and the date of close of escrow on the purchase.

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

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

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

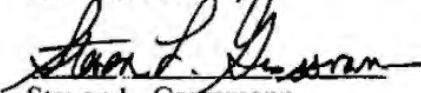
12.14 SEVERABILITY OF PROVISIONS. The provisions of this Declaration are independent and severable, and the invalidity or unenforceability of one does not affect the validity or enforceability of the others.

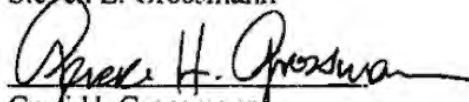
12.15 CONSTRUCTION OF PROVISIONS. The provisions of this Declaration must be construed liberally and in conjunction with the Bylaws and operating rules established by the Association to effect its purpose of creating a uniform plan for the development and operation of a condominium project pursuant to the provisions of section 1350 et seq. of the California Civil Code.

12.16 INCONSISTENCY IN DEFINITIONS. If there are any inconsistencies in the definitions contained in the Declaration and any notes on the Map or the Condominium Plan, the definitions contained in the Declaration control.

Declarant has executed this Declaration on 9/27, 2006


Diana R. Meistrell


Steven L. Grossmann


Geri H. Grossmann

STATE OF CALIFORNIA

COUNTY OF San Francisco

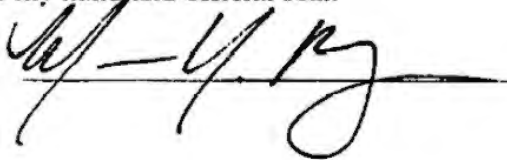
} SS.

On 9/27/06, before me, Mon Y. Bang, a notary public, personally appeared Diana R. Meistrell

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



ACKNOWLEDGMENT

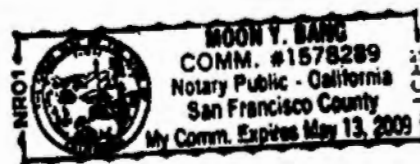
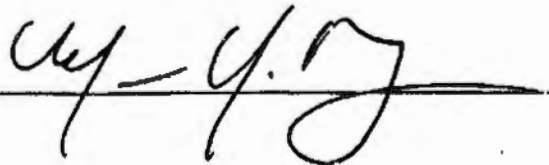
State of California

County of SAN FRANCISCOOn 10/10/06 before me, MOON Y. BANG
(here insert name and title of the officer)personally appeared Gerrit H. Grossmann and Steven L.
Grossmann

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



(Seal)

EXHIBIT A

Maintenance Responsibilities

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

Owner maintenance responsibilities include:

- Appliances
- Cabinets and other fixtures
- Drywall and sheet rock
- Exterior doors - see below
- Exterior light fixtures at entry, deck, patio and yard, and other fixtures and bulbs where fixture is connected to Unit's electrical system
- Heating system
- Hot water heater
- Interior Doors and hardware
- Interior Light fixtures
- Outlets and plugs for electrical and telecommunications wiring
- Keys and garage door openers required for entry into the Unit
- Partition walls
- Plumbing fixtures (sinks, toilets, etc.)
- Smoke detectors - battery operated
- Wall, floor and ceiling surfaces (e.g. paint, wallpaper, carpet and other flooring materials)
- Window coverings
- Windows - see below

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

Association maintenance responsibilities include: Electrical fixtures and outlets serving the Common Area (except those maintained by an Owner)

- Exterior doors - see below
- Fences
- Floor, wall and ceiling surfaces in common areas - clean, paint, repair, replace,
- Irrigation System
- Landscaping
- Life Safety Systems - fire sprinkler system, including sprinkler heads within a Unit, hard-wired smoke alarms, fire alarm
- Mailboxes
- Retaining walls

Structural elements

Water proofing - roof, exterior paint

Exterior Doors and Windows: Responsibility for maintenance of exterior doors and windows is assigned as follows.

- **Exterior Doors.** Exterior doors include front doors, and doors to patios, balconies and decks, screen doors, and garage doors that serve a single Unit. The Association is responsible for maintenance, repair and replacement of the door frame, door casing and door, and repair, refinishing and painting of door exterior. The Owner is responsible for repair and replacement of those portions of the door accessible from inside the Unit, including, repairing and painting the interior of the door, hardware, seals, weather stripping, and any other portion of the door assembly accessible from inside the Unit.
- **Windows.** The Association is responsible for maintenance, repair and replacement of the window frame, exterior trim, and repair, refinishing and painting of window exterior. The Owner is responsible for repair and replacement of those portions of the window accessible from inside the Unit, including, repairing and painting the interior of the window frame and interior window trim, hardware, seals, weather stripping any other portion of the window assembly accessible from inside the Unit.
- **Window Washing.** Each Owner is responsible for washing the windows of his or her Unit, inside and out.

ATTACHMENT

Attached is the document you (or someone on your behalf) requested. As required by Section 12956.1(b)(1) of the California Government Code, please take note of the following:

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. 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.

If this cover page is a copy which has been transmitted to you by facsimile, email or other form of electronic transmission, please note that the notice above appears in the original cover page in 14-point bold face type.

-- EXHIBIT C --

-- EXHIBIT C --



Report for: **2324 NORTH POINT ST**

Complaints

The Planning Department and the Department of Building Inspection operate programs that ensure compliance with the San Francisco Planning Code and Building Inspection Commission Codes respectively. Additionally, they respond to customer complaints of potential code violations and initiate fair and unbiased enforcement action to correct those violations and educate property owners to maintain code compliance.

Planning Department Complaints

Active

2022-000025ENF Enforcement (ENF) 2324 North Point Street

Opened: 1/3/2022

Status: Under Review 2/15/2022

Assigned Planner: Jones Dario: dario.jones@sfgov.org / 628-652-7405

Illegally renting out a storage space via Airbnb on a short term basis. The property NSR under the Planning Code clearly states that theses storage spaces are non-habitable and that no boarder shall reside therein. The property CC&R also clearly ban short term rentals.

Address: 2324 NORTH POINT ST 94123

Further Info:

Related Records:

Related Documents

-2022-000025PRJ

Accela Citizen Access [↗](#)

2022-000025ENF

2022-000027ENF Enforcement (ENF) 2324 North Point Street Short-Term Rental Neighborhood Concern

Opened: 1/3/2022

Status: Pending Review 4/20/2022

Assigned Planner: Sanchez Diego: diego.sanchez@sfgov.org / 628-652-7523

2324 North Point Street Neighborhood Concern over Possible Un-permitted shower and use of storage space (alleged) for short-term rental usage <https://www.airbnb.com/rooms/7547105> . Item under review by Department of Building Inspection and Planning Code Enforcement. Appears host Diana Meistrell ignored suspension and continued to illegally offer short-term rentals on Airbnba s of 11FEB2022. Matter elevated to Airbnb to remove listing.

Address: 2324 NORTH POINT ST 94123

Further Info:

Related Records: None

Related Documents

Accela Citizen Access [↗](#)

Completed

2022-000855ENF Enforcement (ENF) 2324 North Point Street Short-Term Rental Neighborhood Concern CLOSED**Opened:** 2/1/2022**Status:** Closed - Abated 2/11/2022**Assigned Planner:** Masry Omar: omar.masry@sfgov.org / 628-652-7393

2324 North Point Street Short-term rental certificate SUSPENDED due to Unresolved Building Code and Planning Code Complaints. Airbnb and host instructed to cease short-term rentals. See Separate Planning and Building Complaints. Appears STR activity ceased so this complaint CLOSED

Address: 2324 NORTH POINT ST 94123**Further Info:****Related Records:** None

Related Documents

Accela Citizen Access [↗](#)**Department of Building Inspection Complaints**View Complaint 202285933 (2324 NORTH POINT ST) [↗](#)

Appeals

Appeals related to Planning Department review. More information on Board of Appeals records can be found [here](#).

Board of Appeals

None

Other Appeals

None

-- EXHIBIT D --

-- EXHIBIT D --

Permit Details Report**Report Date:** 6/12/2022 11:37:17 AM

Application Number: 202202147907

Form Number: 8

Address(es): 0918 / 027 / 0 2324 NORTH
POINT ST

Description: TO LEGALIZE UNPERMITTED SHOWER NOV 202285933

Cost: \$1.00

Occupancy Code: R-3

Building Use: 28 - 2 FAMILY DWELLING

Disposition / Stage:

| Action Date | Stage | Comments |
|-------------|--------|----------|
| 2/14/2022 | TRIAGE | |
| 2/14/2022 | FILING | |
| 2/14/2022 | FILED | |

Contact Details:**Contractor Details:**

License Number: OWN

Name: OWNER OWNER

Company Name: OWNER

Address: OWNER * OWNER CA 00000-0000

Phone:

Addenda Details:**Description:**

| Step | Station | Arrive | Start | In Hold | Out Hold | Finish | Checked By | Phone | Hold Description |
|------|----------|---------|---------|---------|----------|---------|------------------|--------------|---|
| 1 | INTAKE | 2/14/22 | 2/14/22 | | | 2/14/22 | GLADNEY JACQUINE | 415-999-9999 | |
| 2 | BID-INSP | 2/14/22 | 2/14/22 | | | 2/14/22 | | 415-558-6096 | OK TO PROCESS T.BYRNE |
| 3 | CP-ZOC | 2/14/22 | | | | | CORRETTE MOSES | 628-652-7300 | 2.14.22 - Intake to EGJ - NSR I106668 Two non-nonhabitable storage rooms (one assigned to 2322 North Point Street and one assigned to 2324 North Point Street and two 25 square foot half bathrooms (with no shower or bathtub). Permit No.: 200507016702 |
| 4 | BLDG | | | | | | | 628-652-3780 | |
| 5 | CPB | | | | | | | 628-652-3240 | |

Appointments:

| Appointment Date | Appointment AM/PM | Appointment Code | Appointment Type | Description | Time Slots |
|------------------|-------------------|------------------|------------------|-------------|------------|
|------------------|-------------------|------------------|------------------|-------------|------------|

Inspections:

| Activity Date | Inspector | Inspection Description | Inspection Status |
|---------------|-----------|------------------------|-------------------|
|---------------|-----------|------------------------|-------------------|

Special Inspections:

| Addenda No. | Completed Date | Inspected By | Inspection Code | Description | Remarks |
|-------------|----------------|--------------|-----------------|-------------|---------|
|-------------|----------------|--------------|-----------------|-------------|---------|

For information, or to schedule an inspection, call 628-652-3400 between 8:30 am and 3:00 pm.

Station Code Descriptions and Phone Numbers

[Online Permit and Complaint Tracking home page.](#)

Technical Support for Online Services

If you need help or have a question about this service, please visit our FAQ area.

-- EXHIBIT E --

-- EXHIBIT E --

Permit Details Report**Report Date:** 6/12/2022 11:37:17 AM

Application Number: 202202147907

Form Number: 8

Address(es): 0918 / 027 / 0 2324 NORTH
POINT ST

Description: TO LEGALIZE UNPERMITTED SHOWER NOV 202285933

Cost: \$1.00

Occupancy Code: R-3

Building Use: 28 - 2 FAMILY DWELLING

Disposition / Stage:

| Action Date | Stage | Comments |
|-------------|--------|----------|
| 2/14/2022 | TRIAGE | |
| 2/14/2022 | FILING | |
| 2/14/2022 | FILED | |

Contact Details:**Contractor Details:**

License Number: OWN

Name: OWNER OWNER

Company Name: OWNER

Address: OWNER * OWNER CA 00000-0000

Phone:

Addenda Details:**Description:**

| Step | Station | Arrive | Start | In Hold | Out Hold | Finish | Checked By | Phone | Hold Description |
|------|----------|---------|---------|---------|----------|---------|-------------------|--------------|---|
| 1 | INTAKE | 2/14/22 | 2/14/22 | | | 2/14/22 | GLADNEY JACQULINE | 415-999-9999 | |
| 2 | BID-INSP | 2/14/22 | 2/14/22 | | | 2/14/22 | | 415-558-6096 | OK TO PROCESS T.BYRNE |
| 3 | CP-ZOC | 2/14/22 | | | | | CORRETTE MOSES | 628-652-7300 | 2.14.22 - Intake to EGJ - NSR I106668 Two non-nonhabitable storage rooms (one assigned to 2322 North Point Street and one assigned to 2324 North Point Street and two 25 square foot half bathrooms (with no shower or bathtub). Permit No.: 200507016702 |
| 4 | BLDG | | | | | | | 628-652-3780 | |
| 5 | CPB | | | | | | | 628-652-3240 | |

Appointments:

| Appointment Date | Appointment AM/PM | Appointment Code | Appointment Type | Description | Time Slots |
|------------------|-------------------|------------------|------------------|-------------|------------|
|------------------|-------------------|------------------|------------------|-------------|------------|

Inspections:

| Activity Date | Inspector | Inspection Description | Inspection Status |
|---------------|-----------|------------------------|-------------------|
|---------------|-----------|------------------------|-------------------|

Special Inspections:

| Addenda No. | Completed Date | Inspected By | Inspection Code | Description | Remarks |
|-------------|----------------|--------------|-----------------|-------------|---------|
|-------------|----------------|--------------|-----------------|-------------|---------|

For information, or to schedule an inspection, call 628-652-3400 between 8:30 am and 3:00 pm.

| |
|---|
| Station Code Descriptions and Phone Numbers |
|---|

[Online Permit and Complaint Tracking home page.](#)

Technical Support for Online Services

If you need help or have a question about this service, please visit our FAQ area.

-- EXHIBIT F --

-- EXHIBIT F --



PROJECT APPLICATION (PRJ)

A Project Application must be submitted for any Building Permit Application that requires an intake for Planning Department review, including for environmental evaluation or neighborhood notification, or for any project that seeks an entitlement from the Planning Department, such as a Conditional Use Authorization or Variance. For more, see the [Project Application Informational Packet](#).

Cost for Time and Materials: Any time and materials exceeding initial fees charged for services provided are subject to billing.

For questions, you can call the Planning counter at 628.652.7300 or email pic@sfgov.org where planners are able to assist you.

Español: Si desea ayuda sobre cómo llenar esta solicitud en español, por favor llame al 628.652.7550. Tenga en cuenta que el Departamento de Planificación requerirá al menos un día hábil para responder.

中文: 如果您希望獲得使用中文填寫這份申請表的幫助，請致電628.652.7550。請注意，規劃部門需要至少一個工作日來回應。

Filipino: Kung gusto mo ng tulong sa pagkumpleto ng application na ito sa Filipino, paki tawagan ang 628.652.7550. Paki tandaan na mangangailangan ang Planning Department ng hindi kukulangin sa isang araw na pantrabaho para makasagot.

BUILDING PERMIT APPLICATIONS

HOW TO SUBMIT:

For projects that do not require an entitlement action by the Planning Department, but require Planning Department review of a Building Permit Application, please present a complete signed Project Application along with the Building Permit Application for intake at <https://sfdbi.org/inhousereview>.

WHAT TO SUBMIT:

- ☐ One (1) complete and signed application.
- ☐ Two (2) hard copy sets of plans that meet the Department of Building Inspection's submittal standards. Please see the [Planning Department's Plan Submittal Guidelines](#) for more information.
- ☐ A Letter of Authorization from the owner(s) designating an Authorized Agent to communicate with the Planning Department on their behalf.
- ☐ Pre-Application Meeting materials, if required. See the [Pre-Application Meeting Informational Packet](#) for more information.

Note: The applicable fee amount for Building Permit Applications will be assessed and collected at intake by the Department of Building Inspection at the Permit Center at 49 South Van Ness Ave, 2nd Floor.

(See [Fee Schedule and/or Calculator](#)).

ENTITLEMENTS

HOW TO SUBMIT:

For projects that require an entitlement from the Planning Department (e.g., Conditional Use, Variance), submit a Project Application with any required supplemental applications online at sfplanning.org/resource/prj-application.

WHAT TO SUBMIT:

- ☐ One (1) complete and signed PRJ application, or complete online submittal, including the following:
- ☐ An electronic copy of plans in pdf format, formatted to print at 11" x 17". Please see the [Department's Plan Submittal Guidelines](#) for more information about the required contents of plan submittals.
- ☐ A Letter of Authorization from the owner(s) designating an Authorized Agent to communicate with the Planning Department on their behalf.
- ☐ Pre-Application Meeting materials, if required. See the [Pre-Application Meeting Informational Packet](#) for more information.
- ☐ Current or historic photograph(s) of the property.
- ☐ All supplemental entitlement applications (e.g., Conditional Use, Variance) and information for environmental review, as indicated in this Project Application or in the Preliminary Project Assessment (PPA) letter.
- ☐ Payment for the required intake fee amount (See [Fee Schedule and/or Calculator](#)). Electronic payment is preferred. Non-electronic forms of payment are also accepted. For questions related to the Fee Schedule or fee payment, you can call the Planning counter at 628.652.7300 or email pic@sfgov.org.



PROJECT APPLICATION (PRJ)

GENERAL INFORMATION

Property Information

Project Address: 2324 North Point Street, San Francisco, CA 94123

Block/Lot(s): 0918/027

Property Owner's Information

Name: Diana Meistrell

Address: 2324 North Point St

Email Address: siriusjane@yahoo.com

Telephone: 4152448378

Applicant Information

☒ Same as above

Name:

Company/Organization:

Address:

Email Address:

Telephone:

Please Select Billing Contact:

☒ Owner

☐ Applicant

☐ Other (see below for details)

Name: Diana Meistrell

Email: siriusjane@yahoo.com

Phone: 415-244-8378

Please Select Primary Project Contact:

☒ Owner

☐ Applicant

☐ Billing

RELATED APPLICATIONS

Related Building Permit Applications (any active building permits associated with the project)

☐ N/A

Building Permit Application No(s): 202285933

Related Preliminary Project Assessments (PPA)

☒ N/A

PPA Application No:

PPA Letter Date:

PROJECT INFORMATION

PROJECT DESCRIPTION:

Please provide a narrative project description that summarizes the project and its purpose. Please list any required approvals (e.g. Variance) or changes to the Planning Code or Zoning Maps if applicable.

To remove the special restrictions imposed in 2005 on ground level room of 2324 North Point in order to comply with NOV 202285933 and to legalize the space as a dwelling unit. No additions or construction required.

PROJECT DETAILS:

☒ Change of Use ☐ New Construction ☐ Demolition ☐ Facade Alterations ☐ ROW Improvements
☐ Additions ☐ Legislative/Zoning Changes ☐ Lot Line Adjustment-Subdivision ☐ Other: _____

Residential: ☐ Senior Housing ☐ 100% Affordable ☐ Student Housing ☒ Dwelling Unit Legalization
 ☐ Inclusionary Housing Required ☐ State Density Bonus ☐ Accessory Dwelling Unit

Indicate whether the project proposes rental or ownership units: ☐ Rental Units ☒ Ownership Units ☐ Don't Know

Indicate whether a Preliminary Housing Development Application (SB-330) is or has been submitted: ☐ Yes ☒ No

Non-Residential: ☐ Formula Retail ☐ Medical Cannabis Dispensary ☐ Tobacco Paraphernalia Establishment
 ☐ Financial Service ☐ Massage Establishment ☐ Other: _____

Estimated Construction Cost: 1.00

ENVIRONMENTAL EVALUATION SCREENING FORM




This form will determine if further environmental review is required.

If you are submitting a Building Permit Application only, please respond to the below questions to the best of your knowledge. You do not need to submit any additional materials at this time, and an environmental planner will contact you with further instructions.

If you are submitting an application for entitlement, please submit the required supplemental applications, technical studies, or other information indicated below along with this Project Application.

| Environmental Topic | Information | Applicable to Proposed Project? | Notes/Requirements |
|--|--|---|--|
| 1a. General | Estimated construction duration (months): | N/A | |
| 1b. General | Does the project involve replacement or repair of a building foundation? If yes, please provide the foundation design type (e.g., mat foundation, spread footings, drilled piers, etc.) | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| 1c. General | Does the project involve a change of use of 10,000 square feet or greater? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| 1d. General | Does Chapter 29 of the San Francisco Administrative Code apply to the proposed project? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | If yes, please attach feasibility study to application. If applicant is unclear about Chapter 29 applicability, please contact your City Attorney. Planning will not accept the application without applicant verification that Chapter 29 does not apply, or a completed feasibility study. |
| 2a. Transportation | Does the project involve a child care facility or school with 30 or more students, or a location 1,500 square feet or greater? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | If yes, submit an Environmental Supplemental- <u>School and Child Care Drop-Off & Pick-Up Management Plan</u> . |
| 2b. Transportation | Would the project involve the intensification of or a substantial increase in vehicle trips at the project site or elsewhere in the region due to autonomous vehicle or for-hire vehicle fleet maintenance, operations, or charging? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| 3. Shadow  | Would the project result in any construction over 40 feet in height? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | If yes, an initial review by a shadow expert, including a recommendation as to whether a shadow analysis is needed, may be required, as determined by Planning staff. (If the project already underwent Preliminary Project Assessment, refer to the shadow discussion in the PPA letter.) An additional fee for a shadow review may be required. |
| 4a. Historic Preservation | Would the project involve changes to the front façade or an addition visible from the public right-of-way of a structure built 45 or more years ago or located in a historic district? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | If yes, submit a complete <u>Historic Resource Determination Supplemental Application</u> . Include all materials required in the application, including a complete record (with copies) of all building permits. |
| 4b. Historic Preservation | Would the project involve demolition of a structure constructed 45 or more years ago, or a structure located within a historic district? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | If yes, a historic resource evaluation (HRE) report will be required. The scope of the HRE will be determined in consultation with CPC-HRE@sfgov.org . |

 Please see the [Property Information Map](#) or speak with staff at the Planning Counter to determine if this applies.

| Environmental Topic | Information | Applicable to Proposed Project? | Notes/Requirements |
|--|--|---|--|
| 5. Archeology | Would the project result in soil disturbance/ modification greater than two (2) feet below grade in an archeologically sensitive area or eight (8) feet below grade in a non-archeologically sensitive area? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | If Yes, provide depth of excavation/ disturbance below grade (in feet*): <u>*Note this includes foundation work</u> |
| 6a. Geology and Soils  | Is the project located within a Landslide Hazard Zone, Liquefaction Zone or on a lot with an average slope of 25% or greater? ----- Area of excavation/disturbance (in square feet): _____ Amount of excavation (in cubic yards): _____ | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | A geotechnical report prepared by a qualified professional must be submitted if one of the following thresholds apply to the project: The project involves: <ul style="list-style-type: none"> • new building construction, except one-story storage or utility occupancy; • horizontal additions, if the footprint area increases more than 50%; • horizontal and vertical additions increase more than 500 square feet of new projected roof area; or • grading performed at a site in the landslide hazard zone. A geotechnical report may also be required for other circumstances as determined by Environmental Planning staff. |
| 6b. Geology and Soils  | Does the project involve a lot split located on a slope equal to or greater than 20 percent? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | A categorical exemption cannot be issued. Please contact CPC.EPIntake@sfgov.org , once a Project Application has been submitted. |
| 7. Air Quality  | Would the project add new sensitive receptors (residences, schools, child care facilities, hospitals or senior-care facilities) within an Air Pollutant Exposure Zone? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | If yes, submit an Article 38 Compliance application with the Department of Public Health. |
| 8a. Hazardous Materials | Is the project site located within the Maher area or on a site containing potential subsurface soil or groundwater contamination and would it involve ground disturbance of at least 50 cubic yards or a change of use from an industrial use to a residential or institutional use? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | If yes, submit a Maher Application Form to the Department of Public Health and submit documentation of Maher enrollment with this Project Application. Certain projects may be eligible for a waiver from the Maher program. For more information, refer to the Department of Public Health's Environmental Health Division . <u>Maher enrollment may also be required for other circumstances as determined by Environmental Planning staff.</u> |
| 8b. Hazardous Materials | Is the project site located on a Cortese site or would the project involve work on a site with an existing or former gas station, parking lot, auto repair, dry cleaners, or heavy manufacturing use, or a site with current or former underground storage tanks? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | If yes, submit documentation of enrollment in the Maher Program (per above), or a Phase I Environmental Site Assessment prepared by a qualified consultant. |
| 9. FEMA Floodplan | Is the project site located within a FEMA Special Flood Hazard Area (AE, AO, and/or VE Zone)? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | If yes, please submit a Flood Hazard Zone Protection Checklist with the Department of Building Inspection. |

 Please see the [Property Information Map](#) or speak with staff at the Planning Counter to determine if this applies.

PROJECT AND LAND USE TABLES

All fields relevant to the project **must be completed** in order for this application to be accepted.

| General Land Use | | Existing | Proposed |
|------------------|--|----------|----------|
| | Parking GSF | | |
| | Residential GSF | | |
| | Retail/Commercial GSF | | |
| | Office GSF | | |
| | Industrial-PDR | | |
| | Medical GSF | | |
| | Visitor GSF | | |
| | CIE (Cultural, Institutional, Educational) | | |

| Project Features | Dwelling Units - Affordable | | |
|------------------|------------------------------|---|---|
| | Dwelling Units - Market Rate | | |
| | Dwelling Units - Total | 0 | 1 |
| | Hotel Rooms | | |
| | Number of Building(s) | | |
| | Number of Stories | | |
| | Parking Spaces | | |
| | Loading Spaces | | |
| | Bicycle Spaces | | |
| | Car Share Spaces | | |
| | Useable Open Space GSF | | |
| | Public Open Space GSF | | |
| | Roof Area GSF - Total | | |
| | Living Roof GSF | | |
| | Solar Ready Zone GSF | | |
| | Other: _____ | | |

| Land Use - Residential | Studio Units | | |
|------------------------|--|--|--|
| | One Bedroom Units | | |
| | Two Bedroom Units | | |
| | Three Bedroom (or +) Units | | |
| | Group Housing - Rooms | | |
| | Group Housing - Beds | | |
| | SRO Units | | |
| | Micro Units | | |
| | Accessory Dwelling Units For ADUs, list all ADUs and include unit type (e.g. studio, 1 bedroom, 2 bedroom, etc.) and the square footage area for each unit. | | |

APPLICANT'S AFFIDAVIT

Under penalty of perjury the following declarations are made:

- a) The undersigned is the owner or authorized agent of the owner of this property.
- b) The information presented is true and correct to the best of my knowledge.
- c) Other information or applications may be required.
- d) I hereby authorize City and County of San Francisco Planning staff to conduct a site visit of this property as part of the City's review of this application, making all portions of the interior and exterior accessible through completion of construction and in response to the monitoring of any condition of approval.
- e) I attest that personally identifiable information (PII) - i.e. social security numbers, driver's license numbers, bank accounts - have not been provided as part of this application. Furthermore, where supplemental information is required by this application, PII has been redacted prior to submittal to the Planning Department. I understand that any information provided to the Planning Department becomes part of the public record and can be made available to the public for review and/or posted to Department websites.

Signature

Diana R Meistrell

Name (Printed)

March 9, 2022

Date

Owner

415-244-8378

siriusjane@yahoo.com

Relationship to Project
(i.e. Owner, Architect, etc.)

Phone

Email

For Department Use Only

Application received by Planning Department:

By: _____

Date: _____

-- EXHIBIT G --

-- EXHIBIT G --

Shoshana Raphael, Esq.
T: (415) 713 8680
F: (415) 449 3670
E: Shoshana@KosterLeadbetterLaw.com

March 23, 2022

VIA FIRST-CLASS MAIL AND EMAIL
To:

Diana Meistrell
2324 North Point Street
San Francisco, CA 94123
siriusjane@yahoo.com

**RE: 2322-2324 North Point Street, San Francisco, CA 94123 (“Property”) –
CEASE AND DESIST and REQUEST FOR RESOLUTION**

Dear Ms. Meistrell:

This office has been retained by Max McKelvy, co-owner of 2322 North Point Street and member of the 2322-2324 North Point Street Homeowners’ Association. I write in reference to your illegal residential rental of the non-habitable storage space accessory to your unit located at 2324 North Point Street.

As you have been previously made aware, your residential rental of the storage space violates the Declaration of Restrictions (“CC&Rs”) that govern the Property; the San Francisco Planning Code; and the San Francisco Residential Unit Conversion Ordinance (also known as the Short Term Rental Ordinance, San Francisco Administrative Code Chapter 41A).

The CC&Rs provide, in part:

7.7 RIGHT TO LEASE. No owner may rent a Condominium for transient or hotel purposes, which are defined as rental for any period less than 30 days, or any rental if the occupants are provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry or linen, and bellboy service. [...]

7.3 NUISANCE. No person may interfere with the quiet enjoyment of any other resident of the Project, or carry on any activity in any part of the Project that is noxious, illegal, seriously annoying or offensive to a person of reasonable sensibility. [...]

Further, the Notice of Special Restrictions recorded on the Property (“NSR”), which you signed on January 5, 2005, provides that the “ground floor area shall not be used as a separate dwelling units or rooming units, and no boarder shall reside therein” and that the “ground floor area shall

be used only as accessory to the dwellings above.” The NSR further states that use of the Property “contrary to these special restrictions shall constitute a violation of the Planning Code[.]”

On January 3, 2022, the San Francisco Planning Department initiated two enforcement actions (2022-000027ENF and 2022-000025ENF) on the basis that you are:

Illegally renting out a storage space via Airbnb on a short term basis.
The property NSR under the Planning Code clearly states that these storage spaces are non-habitable and that no boarder shall reside therein. The property CC&R also clearly ban short term rentals.

The Office of Short Term Rentals suspended your short-term rental certificate pursuant to a separate enforcement action initiated on February 1, 2022 (2022-000855ENF). Subsequently, the Planning Department further noted that it “Appears host Diana Meistrell ignored suspension and continued to illegally offer short-term rentals on Airbnba s[sic] of 11FEB2022. Matter elevated to Airbnb to remove listing.”

As indicated above and highlighted by the current active enforcement actions against you, residential rental of the storage space is absolutely prohibited by the CC&Rs and local law, not to mention short term rentals. Nonetheless, you have rented the storage unit residentially – likely for a period of less than 30 days – as recently as March 20, 2022. Not only is this behavior a flagrant violation of the law, it also disturbs your neighbors’ quiet enjoyment of his unit at the Property, constituting a nuisance under Paragraph 7.3 of the CC&Rs. The noise and disruption caused by your paying guests has a negative impact on Mr. McKelvy, whose unit is adjacent to the storage space.

WE DEMAND THAT YOU CEASE RESIDENTIAL RENTAL OF THE STORAGE SPACE IMMEDIATELY AND COMPLY WITH THE TERMS OF THE CC&RS.

Our aim is to resolve this matter amicably, without resort to the courts, and to prevent further disputes related to the storage space. To that end, **please also consider this letter a formal Request for Resolution pursuant to Paragraph 12.2 of the CC&Rs.**

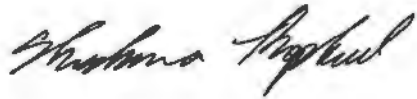
Resolution is requested to resolve your violations of the CC&Rs by residentially renting the non-habitable storage space accessory to your unit and the resulting disturbances as described above. We request non-binding mediation with Lyssa Paul of the Paul Law Group, or another mediator by mutual agreement, to resolve this dispute. You are required to respond to this Request within 30 days of receipt or the Request will be deemed rejected. No copy of Civil Code §§ 1369.510-1369.590 is enclosed here as these code sections have been repealed since the implementation of the CC&Rs.

If you continue to flout the law by renting this non-habitable space and refuse to participate in alternative dispute resolution, we will have no choice but to seek an injunction against you in

superior court to enforce the terms of the CC&Rs and seek reimbursement of costs and attorneys' fees to the full extent of the law.

Thank you for your time and attention to this matter. Please do not hesitate to contact me if you wish to discuss this further.

Sincerely,

A handwritten signature in black ink, appearing to read "Shoshana Raphael", written in a cursive style.

Shoshana Raphael

-- EXHIBIT H --

-- EXHIBIT H --

Diana Meistrell

June 3, 2022

Max McKelvy
2322 North Point Street
San Francisco, CA 94123

Dear Max,

I understand that we have different views concerning the use of my guest room/office on the ground level. However, there is no prohibition on friends using that space.

If you would like, I can alert you to when a guest of mine is going to be staying in the accessory unit. I would appreciate it if you would refrain from any verbal interactions with my friends and guests in the future.

Sincerely yours,

Diana Meistrell

Diana Meistrell

2324 NORTH POINT ST., SAN FRANCISCO, CA 94123

-- EXHIBIT I --

-- EXHIBIT I --

From: Diana M siriusjane@yahoo.com
Subject: Fwd: 2324 North Point Street
Date: June 6, 2022 at 9:36 AM
To: Shoshana Raphael shoshana@kosterleadbetterlaw.com



Dear Ms. Shoshana,

Please see the attached correspondence in response to your letter of March 23. I will also mail a copy to you.

- Diana Meistrell
2324 North Point St.
San Francisco, CA 94123



Letter to Max
attorney.pages

Begin forwarded message:

From: Shoshana Raphael <shoshana@kosterleadbetterlaw.com>
Subject: 2324 North Point Street
Date: March 23, 2022 at 4:38:41 PM PDT
To: siriusjane@yahoo.com

Dear Ms. Meistrell,

Please see the attached correspondence regarding 2324 North Point Street. A copy will also be mailed to you at 2324 North Point Street.

Best,

Shoshana Raphael
Attorney at Law
Koster & Leadbetter, LLP
The Flood Building
870 Market Street, Suite 450
San Francisco, CA 94102
Tel: 415.408.6044
Fax: 415.449.3870
Email: shoshana@kosterleadbetterlaw.com

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2022.03.23 LTR
to Meistrell.pdf

Diana Meistrell

June 3, 2022

Shoshana Raphael, Esq.
Koster & Leadbetter
870 Market Street, Suite 450
San Francisco, CA 94102

Dear Ms. Raphael,

Please excuse the delay in responding to your letter of March 23, 2022. I was out of the country from late March and into May.

I don't agree with your analysis of "flout the law" as I have complied completely with the notice to suspend my short-term rentals. And your mention of "it appears Diana Meistrell ignored suspension and continued...etc." is incorrect. As of February 1st when I received the notice from the Office of STR, my airbnb was suspended and no further rentals were initiated.

I also just want to mention that there is no prohibition on me letting my friends stay in my accessory unit. I have written Max McKelvy to inform him of this as he did approach me and a friend of mine that was staying with me recently and seemed to think I couldn't have a friend or non-paying guest down there. I have asked him to refrain from verbal interaction with my guests.

I have been trying to figure out a way to replace my lost income but at this point there is nothing to arbitrate. I may be in touch in the future.

Sincerely yours,

Diana Meistrell

Diana Meistrell

SFPD CAD NUMBERS FROM RESPONDENT MAX McKELVY
AND DESCRIPTION OF EACH CALL

1/10/2023 Call to Police (CAD 230103181)

- I went back to Home Depot to purchase latches (\$50) to replace the ones Diana stole on Sunday
- At home, I installed a latch on the journeyman door just as I had on Sunday and Diana confronted me. She pulled out her phone, started recording, and followed me around the property asking me questions in her usual aggressive and emotional tone. This went on for about 10 minutes.
- I asked her to leave me alone and didn't say much.
- She lost control, unsurprisingly, and grabbed my bag of home depot tools and hardware, brought it into the garage and tossed it into the trash.
- I called SFPD and returned to my unit
- The police arrived and told Diana not to touch my personal property. She complained to them about the locks.
- Diana returned to her unit and I collected the CAD number from the officers on the street. One officer said something along the lines of "she seems very difficult to deal with" and "she only wants things her way"
- Diana came back outside to film the officers as they provided me with the CAD number (230103181). The officers told her that this is already being recorded by their body cameras. She continued to film and ask them petty questions.
- Neighbors noticed the police lights and came outside to watch.

1/12/2023 Call to Police (CAD 230120884)

- Diana hired a handyman to take down latches we agreed upon. I called the police who stopped her in the act. She managed to steal the journeyman door latch before the police arrived. On 1/16/2023 Diana took a hammer to the rear gate latch and broke it off violently. None of this was discussed or approved by the HOA.

2/6/2023 Call to Police (CAD 230371983)

- Midday a man unknown to me entered the backyard and began to dismantle my furniture and exercise equipment and take it from my backyard.
- I called the police and reported the activity. It turns out that Diana had hired this man to dismantle my property and remove it from the backyard.
- Diana moved the dismantled outdoor furniture and exercise equipment into the garage, blocking my parking spot.
- She paid the man \$65 out of the HOA account without my approval.

2/10/2023 Diana calls the police (CAD 230410431)

- I left my apartment around 6am to head to work and 10 minutes into my commute I realized I had forgotten something so I turned around and headed back to my apartment.
- Upon my return, I found Diana moving my dismantled outdoor furniture into the garage to block my parking spot. She had been doing this all week.
- We got into an argument over all the HOA money she had spent without my approval and the vandalism of my personal property.
- Diana called the police.

October 10th , 2022 break-in and theft - On this day, one of Diana's guests left the journeyman door unlocked and burglars subsequently broke-in to the garage. My \$6,000 bicycle was stolen. (police report: 220700280)

Diana's ongoing vandalism and assault - I filed a police report for (a) the camera mount damage on 12/14 (b) the camera damage on 12/22 and (c) the theft of my latches and physical assault on 1/8. (police report: 230022927)



Denise Leadbetter <denise@kosterleadbetterlaw.com>

Re: Fire Hazard - message from Lieutenant Ginotti

Max Mckelvy <maxmckelvy@gmail.com>
To: Diana M <dianam@outahere.com>

Tue, Feb 14, 2023 at 5:52 PM

Diana,

You seem to be missing a few very important details - allow me to set the record straight.

You indeed called the San Francisco Fire Department, but you lied to them claiming that someone was trapped in our backyard.

At least 5 fire fighters showed up with axes and equipment to free the person you claimed was trapped in our backyard. Once the fire fighters cleared the hallway and entered the backyard, it became apparent to them that no one was trapped; no guest was in our backyard. You then faked a phone call to this person, and told the fire fighters the alleged trapped person had jumped the fence and was free.

You have outdone yourself. Once again, your behavior has left me speechless...

Needless to say I will be taking this up with my attorneys (Bcc'd) and reporting this to the San Francisco Fire Department.

Let me also remind you why my outdoor furniture now resides in the hallway. You hired someone with HOA money to dismantle my outdoor furniture and exercise equipment and then moved it into the garage, blocking my parking spot. Per my previous emails, if you don't want my outdoor furniture in the hallway, please reassemble it, put it back to where you found it; in the shared backyard.

Best,

Max

Max McKelvy

Phone: 1 (650) 683 2205

Email: maxmckelvy@gmail.com

On Tue, Feb 14, 2023 at 3:44 PM Diana M <dianam@outahere.com> wrote:

Max, I had to call the fire department to remove your furniture and gym equipment in order to access the garden. Lieutenant Ginotti said to call him to talk to him about needing to leave the common passageway clear.

His number is 415-558-3216. Please call him as soon as possible.

- Diana

Diana Meistrell

415-244-8378

dianam@outahere.com

micetrail.com