LAW OFFICES OF
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November 9, 2009

Homeowners
Daniel Burnham Court Homeowners Association

Re: Building Exterior and Window Repairs

Dear Owners:

This letter is sent to respond to issues that have been raised with respect to the Association's repair of exterior building surfaces and the Owners' repair of their windows.

A few Owners, perhaps motivated by their personal financial concerns, continue to claim that the building exteriors are at fault, or that he Association is responsible for leaking windows. Such is not the case. The exterior maintenance project will conclusively insure that the building exterior does not leak. The CC&Rs are, in fact, quite clear that the Owners are responsible for their windows. No one is happy that the windows leak. However the facts cannot be ignored, and the windows must be repaired.

At its meeting in February, 2009, the Board decided to proceed with the inspection and repair of their exterior building surfaces. One of the factors in making this decision was to reassure the Owners that the building envelope was watertight. Some Owners have resisted repairing their windows, thinking that the building exterior was leaking. The inspection and repair of the entire exterior will conclusively resolve this issue.

The Association has reserve funds allocated for this project, and a special assessment will not be required. The reserves are maintained by the Master Association, and specific line items for this project can be found at page 10 of the Master Association's Pro Forma Budget and page 5 of the Reserve Funding Plan.

In order to have this project done competently and professionally, the Board's first task was to select a project manager to conduct a thorough inspection and create a scope of work for contracting purposes. In March 2009, management consulted with representatives of Dow Corning and DM Figley for recommendations as to the services required and potential project management companies for the job. On April 8, 2009, management sent requests for proposals to five (5) project management companies.

In April 2009, management met with the bidders on site. Each bidder was informed that the building was experiencing water intrusion issues, and that the Association wanted to eliminate any possibility that the building exterior "EFIS" and "123 Tape" systems were a contributing cause.

By the end of May, the Board received four proposals. It should be noted that over the years the Association has consulted with Dan Chekene of Richard Avelar and Associates with regards to these water intrusion issues. Mr. Chekene is a pre-eminent forensic architect. Based on his observations of the building exterior and destructive testing of sample windows, Mr. Chekene concluded that the water intrusion was being caused by leaking windows, and not the "EFIS" or "123 Tape" building exterior systems.

Richard Avelar and Associates was not chosen for this project management specifically to allay the suspicions of a few owners, and to get a second opinion on the issues from an independent expert. These proposals are available for review by the Owners upon request. The Board selected the firm of Ferrari· Moe to be the project manager.

In July, Ferrari· Mo representative Casey Walter conducted a comprehensive inspection of the building exteriors. The inspection could not be performed from the window cleaners' boswain chair due to OSHA requirements. Inspection required staging including davit arms with cables to a motorized platform. The Ferraro· Moe report was received by the Board on August 26, 2009. This report is available for review by the owners upon request.

The scope of work prepared by Ferrari· Moe calls for all "123 tapes" to be inspected, and for the repair and replacement of any tape found to be defective. The scope also includes a new waterproof coating over the entire exterior surface, even though the expert consultants concluded that the current coating has five (5) years of remaining useful life. Ferrari· Moe will thereafter re-inspect all repairs and will conduct controlled water tests. Once again, the Board's intent is to insure that the entire building exterior is eliminated as a source of potential water intrusion.

In conclusion, both the windows and the building exterior surfaces have been inspected by experts. The experts have concluded that leaking windows, and not the "EFIS" and "123 Tape" systems are the source of water intrusion. There are no contrary opinions from any other construction experts.

The Board has consulted with three law firms that specialize in Homeowners Association law, and all three law firms have concluded, without equivocation, that the maintenance, repair and replacement of leaking windows are the responsibility of the Owners. There are no contrary opinions from any other attorneys.

Sincerely,

KEVIN D. FREDERICK

KDF:mk/dg
cc&rs\BldgExt.WindowRep.Danielburnham.11.09.09

DANIEL
BURNHAM
COURT

October 8, 2009

TO: Homeowners of Daniel Burnham Court Homeowners Association

Re: Window Repair

Dear Homeowners:

This letter is sent to report on the results of the Board's investigation into the exterior water proofing components of the buildings, and to request that owners repair their windows.

The Board retained Ferrari · Moe, an architectural and engineering firm, to inspect the water proofing on the exterior of the buildings, and their report is in. It concludes that the coating over the building surface is in good condition, and that the condition of the water proofing tape between the building surface and the window is generally excellent. A copy of this report is available at our office.

This is the second architectural firm to arrive at the same conclusion. The Board previously had inspections performed by Avelar and Associates. Avelar also concluded that the surface coating and sealant tape were in good condition.

The results of this investigation are being shared with you in order to point out the necessity of window repair for those owners who have not already done so. Pursuant to our Declaration of Covenants, Conditions & Restrictions ("CC&Rs"), owners are responsible for the maintenance of their windows. If a window leaks, the water enters the unit below and stains the ceiling and walls. An owner with a leaking window pays for the cost of repair of all the damage done.

Some owners have delayed window repair waiting for the Association to resurface the exterior. There is no reason to resurface, and therefore no reason to wait.

The Association wants to facilitate the owners' windows repairs. To that end, the Board seeks volunteers to serve on a committee to interview and select preferred contracts for window repair. Once the contractors are selected, staff will assist in scheduling.

We look forward to your positive response!

Sincerely,
Daniel Burnham Court Homeowners' Association
Board of Directors

One Daniel Burnham Court, Suite 160-C • San Francisco, California 94109 • Telephone: 415 771-9910 Fax: 415 771-7452

HGC HUGHES GILL COCHRANE P.C.
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Michael J. Hughes
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Erica L. Brynes
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Jennifer R. Lucas

February 17, 2009

VIA FACSIMILE: 415-771-7452 AND E-MAIL

PRIVILEGED AND CONFIDENTIAL

Board of Directors
Daniel Burnham Court Homeowners' Association
c/o Helene M. Dellanini
1 Daniel Burnham Ct., #160-C
San Francisco, CA 94109

Re: Responsibility for Residential Unit Window Repairs

Dear Board Members:

I have been asked to provide my legal opinion regarding the division of responsibility (between the Association and the individual unit owners) with regard to the repair of residential condominium windows. I understand that Dan Chekene of Richard Avelar & Associates has performed forensic testing and determined that more than 60 of the residential windows need to be repaired due to water intrusion into the building through the window units themselves. That water intrusion can result (and, at times, has resulted) in leaks and resulting damage in the common area wall cavities, wall/ceiling assemblies separating the residential units, and the separate interests of other owners (below the units with window leaks).

Based on my review of the Association's CC&Rs (the "Declaration of Covenants, Conditions and Restrictions Establishing a Plan of Condominium Ownership of Daniel Burnham Court Residential Project" recorded November 10, 1986) and California law, it is my opinion that the maintenance and repair of the windows themselves is the responsibility of the individual owners, and is not the Association's responsibility. Furthermore, if the unit owners with known, leaking windows do not take steps to repair their windows to eliminate the leakage, the Association itself has the legal authority to perform the repairs and seek reimbursement from the responsible owners.

RESPONSIBILITY FOR WINDOW UNIT REPAIR

In a condominium building like yours, the Association typically is responsible (unless the governing documents say otherwise) for the maintenance, repair and replacement of all "common area," while individual unit owners are responsible for maintenance, repair and replacement of their separate interest property and whatever "exclusive use common area" is also

designated as their maintenance and repair obligation. Windows often represent a gray area in the division of maintenance and repair responsibilities at condominium developments, because while the window unit itself typically serves a single, separate interest residence, window leaks often are caused by failures in the exterior (common area) waterproofing surrounding the windows.

1. California Law

California Civil Code section 1351(i)(1) generally defines "exclusive use common area" to include windows that are "designed to serve a single separate interest." Civil Code section 1364 clearly states that a condominium unit owner "is responsible for maintaining that separate interest and any exclusive use common area appurtenant to the separate interest," which maintenance would include the windows themselves. Therefore, unless your governing documents provide for a different maintenance and repair division of responsibilities, the repair and replacement of the windows themselves would default to the individual unit owners.

2. The CC&Rs

Section 5.4 of your CC&Rs ("Maintenance by Owner") is consistent with the Civil Code with regard to the obligation of each residential unit owner to maintain and repair his/her own windows. Section 5.4.2 defines "items included in [Owner's] maintenance obligation" to include:

> . . . the duty to maintain the Unit and the Restricted Common Area in good, attractive, safe and sanitary condition; **and to promptly repair and replace all glasswork (including windows)**, interior surfaces of all floors, walls, ceilings, window frames, door frames and doors, and all fixtures, appliances and utility installations serving the Unit or the Restricted Common Area exclusively . . .

The language in this section specifically defines "windows" as a type of "glasswork" that each owner is obligated to repair and replace. Similarly, section 3.6.2 specifies that the Association's maintenance obligation does not include "interior glasswork . . . which service one (1) Unit only (whether or not located entirely within the Unit)."

Generally speaking, a "window" includes the glass itself and the components that frame the glass. Consequently, and consistent with the Civil Code, the only practical interpretation of the two sections quoted above would obligate the individual owners to repair and replace their own windows.

3. Scope of Repair is Consistent with Owner Responsibility

The scope of window repair recommended by Avelar & Associates also is consistent with each individual owner's obligation to make those repairs. I spoke last week to Dan Chekene, who was quite clear that the windows requiring repair will need to be removed from

the interior wall from inside the unit (without disrupting exterior common area components or flashing materials), at which time the windows will be disassembled, sealed and reassembled before reinstallation into the framed opening from inside the unit. In short, this is a window component repair, not an exterior waterproofing repair. The lack of any need to remove the windows from the exterior of building (where the window would integrate with exterior, common area waterproofing components) eliminates any obligation the Association might otherwise have to make this repair, as the repair is limited to the window itself.

ASSOCIATION'S ABILITY TO ENFORCE OWNER REPAIRS

The Association has the right and the obligation to ensure that those owners with window leaks take steps to repair or otherwise restore the watertight integrity of their windows. Pursuant to the CC&Rs and California law, the Association is obligated to maintain the residential development in a first-class, attractive, safe and sanitary condition and in compliance with the governing documents. The Association is also obligated to enforce the CC&Rs for the benefit of all members. For those reasons, the Association must take steps to ensure that each owner with a leaking window unit follows through with the repair of the window to prevent further water intrusion (which threatens to damage the adjacent common area wall cavities, the adjacent floor/ceiling assemblies, and adjacent separate interests in the development).

CC&R section 3.5.5 gives the Association the authority to enter into a unit to perform maintenance and repair work that is properly the individual owner's responsibility if the owner fails or refuses to do so and "if the work is reasonably necessary to protect the Common Area. If the Association were to exercise this option, the owner of the offending unit first must be given written notice and a hearing. Thereafter, if the owner fails to perform the work and the Association does so instead, the Association could levy a Remedial Charge against the owner for all costs incurred based on the owner's failure to comply with the CC&Rs.

CONCLUSION

Based on the above, the Association should advise the owners that the repair of window units is each owner's individual responsibility. Moreover, the Association has the legal authority to compel those owners (if necessary) to comply with their repair obligations, if the leaking windows are causing damage to the common area or other separate interests.

I am available to discuss these issues with you further at your convenience.

Very truly yours,

HUGHES GILL COCHRANE, P.C.

John P. Gill

JPG:ls

DANIEL
BURNHAM
COURT

January 14, 2009

Reference: Window Repair Update

Dear Homeowners:

Many of our homeowners have contacted me to discuss the window repairs needed in their units, and the lack of organization on the part of the companies qualified to perform the work.

At the initial meetings with three companies in May 2008, our maintenance supervisor, Chuck and I extensively reviewed the CAD drawings and repair specifications provided by Richard Avelar and Associates. The three companies were Progress Glass, United California Glass and Door and O'Reilly & Faina Glass Co. At that time, each company was given a set of drawings and repair specifications.

Each company had two additional on-site inspections with myself and Chuck. On August 8, 2008, United California Glass and Door forwarded preliminary numbers addressing the various types of windows to be repaired. O'Reilly & Faina Glass Co., Inc. could not work for the Association directly. Progress Glass Co., Inc. has not given us a per window breakdown.

As homeowners expressed the frustration experienced dealing with these companies, I contacted both David Kimel of United California Glass and Door, and Chuck Burkard of Progress Glass Co., Inc. to resolve the issues many of you have mentioned to me.

David Kimel of United California Glass and Door has assigned a project manager, Carol Miyahara, to oversee Daniel Burnham Court. Carol Miyahara has contacted our office to schedule both estimates and work, and our owners have given me positive feedback regarding their contact with her.

I re-contacted Desmond O'Reilly of O'Reilly & Faina Glass Co., Inc. to discuss the fact that they would be working directly with the homeowners, not the Association. Mr. O'Reilly was most helpful and anxious to be of service to our homeowners.

To date, Chuck Burkard of Progress Glass Co., Inc. has not responded.

I felt you needed this information when deciding which company to contact for your repairs. According to our experts, the work can be performed from inside your unit. They also advise that this is a difficult repair, and owners should only use contractors familiar with the repair methods and materials for our building.

One Daniel Burnham Court, Suite 160-C • San Francisco, California 94109 • Telephone: 415 771-9910 Fax: 415 771-7452

Following is the contact information for the three companies that have been provided with all the engineering reports necessary to make the repairs:

1. United California Glass and Door – 415 824-8500
   License No. 628422
   Carol Miyahara has been assigned this project

2. O'Reilly & Faina Glass Co., Inc. - 650 952-2500
   License No. 578752
   Desmond O'Reilly

3. Progress Glass Co., Inc. – 415 824-7040
   License No. 261170

If, however, you desire to use another contractor, please provide the necessary license and insurance documentation prior to starting the repair. I will be happy to provide them with the drawings and repair specifications.

Due to the size and scope of this project, it will most definitely be addressed at the Annual Member Meeting on January 21, 2009.

If you have any further questions or concerns, please feel free to contact me.

Sincerely,

Helene M. Dellanini
General Manager

DANIEL
BURNHAM
COURT

January 6, 2009

Dr. Vincent Messina
P.O. Box 1477
Healdsburg, CA 95448-1477

Reference: Unit 909

Dear Dr. Vincent Messina:

The above mentioned unit has been identified by Richard Avelar and Associates as having windows in need of repair. The types of windows are as follows:

1 large bay window
1 small bay window

As stated in the November 2008 letter: It is important for all owners to remember that pursuant to Section 5.4.2 of our Declaration of Covenants, Conditions & Restrictions, each owner is responsible for the maintenance, repair and replacement of his or her windows. Experience has shown and our experts advise that when there is a failure in a window, water leaks in to the unit below and causes damage. When this happens, the owner of the leaky window is financially responsible for the cost of repair of the unit below.

According to our experts, the work can be performed from inside your unit. They also advise that this is a difficult repair, and owners should only use contractors familiar with the repair methods and materials for our building. The following contractors have been provided with all the engineering reports necessary to make the repairs:

1. United California Glass and Door – 415 824-8500
   Carol Miyahara has been assigned this project

2. Progress Glass Co., Inc. – 415 824-7040

If, however, you desire to use another contractor, please provide the necessary license and insurance documentation prior to starting the repair.

Thank you for your prompt attention to this matter.

Sincerely,

Helene M. Dellanini
General Manager

Daniel Burnham Court Homeowners' Association

Owner Update: Windows

November 2007

Our condominium complex is more than twenty years old. Over time we have addressed a variety of window related problems on a piecemeal basis. It has become apparent that a more comprehensive overview and plan must be put in place to address window deterioration and leaks. While the initial investigation focused primarily on bay windows, it was later broadened to include some other configurations that have had problems over time. Working with lead expert Dan Chekene at Richard Avelar & Associates, the buildings have been extensively surveyed with historical information and site observations gathered to evaluate all windows.

At present our highest priority is to work on the windows in the parapet walls at the top of the buildings. Sometimes called portholes, these are actually windows set within the exterior railing walls. Both sides of the window are therefore exposed to the weather. An inordinate number of leak reports from units below are believed to be traceable back to this type of window. A few have been repaired in the past but forty-four are now scheduled to be worked on. This work plus some roofing maintenance and repairs should give us good "bang for the buck" in stopping many of the leaks that have been reported by owners in the upper floors.

Evaluation of the windows that are a part of individual units has been a more significant effort. The type of window, history for that window, reports of leaks below, the floor the unit is on and the direction of exposure to storms and sun are all variables that have been taken into account. Problems go beyond leaks because within many frame assemblies (not visible without disassembling the frame) there are corroded bolts whose function is to hold the window securely into the building. There are also cracks in a portion of the window called the thermal break. That portion of the assembly not only makes the window more energy efficient but also helps secure the glass to the frame. The windows are old enough that these are fracturing. Instead of a program requiring wholesale replacement of windows from the exterior, the Board has been focused on a repair program that involves repairs on a case by case basis with work to be performed at far less expense from the inside.

The windows in our buildings are of concern to all of us, and the Board is taking a leadership role in diagnosing the conditions, defining scopes of repair and developing a program for implementation. A high priority has been placed on developing a program that includes economies of scale, coordination of work and quality control. However, it is important to note that notwithstanding the Board putting together this program, the CC&Rs[1] assign responsibility for unit windows and exterior doors to the respective owner of the unit. In the coming months the Board will, therefore, present effected owners with the evaluation, repair plan and estimated cost on a unit by unit basis. It is apparent that some portions of the building (typically facing north) do not require any work now but should be periodically inspected in the future. For most other locations, however, the work that must be done now may range from a few thousand dollars to several thousand dollars per window. More information will be forthcoming in the next several months as the Association gears up for this work in the spring of 2008.

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[1] CC&R Section 5.4.2 Items Included in (Owner) Maintenance Obligation. The foregoing obligation shall include without limitation the duty to maintain the Unit and the Restricted Common Area in good, attractive, safe and sanitary condition; and to promptly repair and replace all glasswork (including windows), interior surfaces of all floors, walls, ceilings, window frames, door frames and doors .... *(Emphasis Added)*

DANIEL BURNHAM COURT HOMEOWNERS' ASSOCIATION
WINDOW PROBLEMS
Owner Update
November 2006

The purpose of this memo is to update you about the Board's efforts to fully evaluate the condition of the residential windows and to put in place a plan to address a growing number of leaks. As you may recall, the Board engaged the services of construction consultants Weiss, Janney, Elstner (WJE) to investigate and make recommendations. WJE observed and investigated a sampling of windows and recommended removal and replacement of the bay windows as well as some other work.

The Board decided that a "second opinion" was warranted. The Association engaged the firm of Richard Avelar & Associates. Architect Dan Chekene of that firm and Tex Texeira of Curtain Wall Analysis reviewed the WJE material, inspected and tested additional windows and issued a preliminary report dated September 19, 2006. While they conclude that certain windows need some work, the extent of work varies and the existing systems need not be removed and replaced with new. Also, by repairing the existing windows there would be substantial savings over the cost to scaffold the building and install new windows from the outside. Because no one knows the individual condition of all windows it is not possible to precisely determine the overall cost or to break that cost down on a per owner/condominium basis. Any cost will depend on the amount of work necessary (if any) at each unit.

The Board is working on getting refined projections so each owner can get a sense for what the range might be. Additionally the Board is moving forward with preliminary planning about how such a job might be organized and financed. On the one hand, CC&R Section 5.4 assigns financial responsibility for work on these window components to owners individually. On the other, it makes sense to organize the effort as one job so as to take advantage of economies of scale, quality control and common oversight. While the Board has ultimate control over all work that affects the exterior, they are working on refining the information so that more detail can be provided to owners about the work, costs and implementation plan. The Board has approved a contract with Avelar and Associates to determine which windows are affected. As soon as the Board has received the final report, all owners will be advised of their findings.

DANIEL
BURNHAM
COURT

DANIEL BURNHAM COURT HOMEOWNERS' ASSOCIATION

BAY WINDOW PROBLEMS

Owner Advisory

April 14, 2006

The Board has learned that there are potentially serious problems with bay windows. Presently there are more questions than answers, so we are investigating further. The purpose of this memo is to let you know what we know now as we work on getting more information.

After a number of elusive bay window leaks, the Board engaged the services of construction consultants Weiss, Janney, Elstner (WJE) to investigate. WJE observed, as the contractor worked on well over a dozen windows. Some work included disassembly of the bay windows. WJE found generally poor window installation, including resulting leakage in window sill pans. They made two more significant findings:

> **Separation of the Thermal Break.** The thermal break literally separates portions (sill, jamb and head) of each aluminum window, making it more energy efficient. The thermal break is also part of the frame system which resists and transfers wind loads, thereby keeping the glass panels secure. The thermal breaks have fractured. The concern is that under a combination of certain wind loads and pressures, loosened glass could be "sucked out" of the frame. The engineers could not quantify this risk.
>
> **Corrosion of Sill Pan Bolts.** The other problem that may be uniform is the corrosion of possibly undersized bolts that secure the bay windows to the concrete slab. Water seeping in from the thermal breaks gets to the steel bolts where they attach to the aluminum frames. Dissimilar metals corrode. While the extent of bolt corrosion varied, it will continue until the bolt shaft has failed. It was noted that some bolts have already corroded through. In high winds or an earthquake this could be a serious problem. There is no way to examine the extent of bolt deterioration without disassembling the window at significant cost. Once that is done, it only makes sense to perform the repair regardless of the extent of deterioration.

The nature of the problem and configuration seem to indicate that all bay windows have the problems to some degree. WJE says that the problems will get progressively worse. They recommend adoption of a program to replace all of the bay windows. There is a further complication in that CC&R Section 5.4 assigns responsibility for work on these window components to owners individually. Given the nature of the problems, the Association will continue to investigate and evaluate what course of action is appropriate. We will provide more information as it becomes available.

FEINGOLD and YOUNGLING
A Professional Law Corporation
810 Fifth Avenue
San Rafael, California 94901
Telephone: (415) 454-1090
Facsimile: (415) 454-5512

April 14, 2000

Helene Dellanini, Manager
Daniel Burnham Court Master Owners Association
One Daniel Burnham Court #114
San Francisco, California 94109

VIA FIRST CLASS MAIL
AND E-MAIL:
dbc-moa@pacbell.net

Re: Ed Allison

Dear Helene:

At the Board meeting of March 30, 2000, we talked about a letter to Mr. Allison "keeping the ball in the air." Enclosed is a draft of such a letter for your and/or the Board's consideration.

Very truly yours,

FEINGOLD and YOUNGLING
A Professional Law Corporation

GLENN H. YOUNGLING

GHY:ejr

Enclosure

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4/20/00

HELENE-

HOPEFULLY YOU RECEIVED THIS VIA E-MAIL. I INADVERTENTLY MAILED IT TO THE WRONG ADDRESS. I APOLOGIZE.

Elizabeth J. Rust

Daniel Burnham Court
Master Owners Association
c/o Helene Dellanini, Manager
One Daniel Burnham Court #114
San Francisco, California 94109

April 14, 2000

Edward Allison
c/o Duane J. Perry, Esq.
120 Montgomery Street, Suite 2300
San Francisco, California 94104-4326

DRAFT

Re: Incidents With Security Guard

Dear Mr. Allison:

As you know, problems between you and Association security guard Susan Gilbert have risen to a significant level. While the Association is separately addressing matters with respect to Ms. Gilbert, there are separate (albeit overlapping) issues regarding your conduct.

The Board requested that you attend an executive session meeting so that you could provide you side of the story in the series of events. You declined through your attorney. While we appreciate the fact that your attorney did explain the reasoning and did provide the Board with documents and other information, still it is unfortunate that you have not participated directly.

In the course of investigating incidents between you and Ms. Gilbert, it is evident that:

You had a guest staying with you for a long period of time and failed to properly register that guest. Further, you apparently loaned out your resident card key.

- On February 22, 2000, in communications with security guard Allison, you used foul and provoking language.
- On March 1, 2000, at approximately 7:30 p.m. you were (at the very least) speeding in the garage and drove dangerously close to Ms. Gilbert.
- You have declined to meet with the Board or Association representatives, knowing that facts were being gathered and disciplinary action was being considered.

DRAFT

We take these matters very seriously. As you know, Ms. Gilbert alleges that you threatened her with bodily harm and attempted to run her down with your car. She asserts that your presence at Daniel Burnham Court now constitutes an unsafe working environment. The full consequences of your actions identified above are not yet known. This letter is to advise you that the matter is still pending before the Board.

Very truly yours,

DANIEL BURNHAM COURT MASTER OWNERS ASSOCIATION
BOARD OF DIRECTORS

By: Helene D, General Manager

cc: Glenn H. Youngling, Esq.
Feingold and Youngling, PLC

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dlr:4-14-00

FEINGOLD and YOUNGLING
A Professional Law Corporation
810 Fifth Avenue
San Rafael, California 94901
Telephone: (415) 454-1090
Facsimile: (415) 454-5512

November 23, 1998

Daniel Burnham Court Master Owners Association
Board of Directors
% Helene Dellanini
Daniel Burnham Court
One Daniel Burnham Court #114
San Francisco, CA 94109

Re: Commercial Owner/Tenant Insurance

Dear Directors:

I have been asked to review the provisions of the CC&Rs which address insurance in the commercial space. The underlying facts as I understand them are:

- In the development of the project and drafting of the Governing Documents it was anticipated that the Commercial Units designated in the Plan would be sold off to individual commercial owners.
- The commercial space has remained a "block" with ownership by a single entity.
- The single entity owner of the commercial space leases out those areas to individual tenants.
- The Master Association CC&Rs require certain levels of insurance be maintained by different parties.
- If a Commercial Unit Owner/Tenant fails to furnish to the Master Association evidence of insurance, the Master Association can procure it at the expense of the Owner/Tenant.

There is a question whether or not a single policy by the commercial owner meets the CC&R requirements. Alternatively, are individual commercial tenants required to procure and show evidence of insurance to the Master Association?

The primary CC&R provision addressing the subject is:

> 6.8 Commercial Unit Owner/Tenant Insurance. In consideration of the increased exposures to loss created by the premises, operations, and products of Commercial Unit Owners and tenants (lessees) each commercial Unit Owner/tenant shall obtain and continuously maintain liability insurance with combined single limits of not less than $1,000,000 for all liability hazards and exposures for which liability insurance is customarily maintained by businesses having similar premises, operations, or products, and of similar size, product/service quality and geographical location. Such insurance at a minimum shall include and be subject to the terms and provisions of insurance outlined in this Section 6.8.

It is my understanding that the question is: Where there is a single insured owner of the commercial space in bulk, under the CC&Rs must the tenants also maintain and provide evidence of insurance to the Master Association?

When an issue of interpretation arises out of a written agreement there are certain tools provided by California statutes. Note that the courts routinely address CC&R provisions using tools of contract interpretation. The following are examples of those tools and my comments as to how they may be applied to your CC&Rs and the facts.

- A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates. Civil Code §1647.
- A contract must be interpreted to give effect to the intention of the parties at the time of contracting. Civil Code §1636.
- The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, with each clause helping to interpret the other. Civil Code §1641.
- Particular clauses of a contract are subordinate to the general intent. Civil Code §1650.
- When different constructions of a provision are otherwise equally proper, that is to be taken which is most favorable to the party in whose favor the provision was made." Code of Civil Procedure §1864.

With these provisions in mind, it is clear that in the original context, it was intended that individual commercial units would be sold off and they would be occupied by an owner or tenants. In this context, it is apparent that CC&R §6.8 was drafted to cause procurement of separate insurance for each commercial unit.

For the sake of argument, one might assume to the contrary. Under this scenario the emphasis is on insurance per owner, not per unit or per tenant. If that was the case, the $1,000,000 requirement would be met by the single bulk owner with such a policy. I do not believe that is a reasonable interpretation in light of the express "increased exposures to loss" created by the commercial tenancies.

A single serious accident could strip million dollar coverage and leave the owner or tenant or Association exposed to an excess claim or other claims in the same policy period. In an association context this is precisely what happened in the case of *Ruoff v. Harbor Creek Community Association* (1992) 10 Cal.App.4th 1642. In that action a person tripped, fell and suffered egregious injuries. There was no doubt that injuries and damages exceeded $1,000,000, the amount of the Association's insurance. The court permitted the lawsuit to go forward against all who had an undivided interest in the common area.

Going back to CC&R §6.8, the express intent is to protect the Master Association and perhaps the Residential Association and possibly in the future a Commercial Association from liability exposure. To construe the CC&Rs to reduce the protection by lower amounts of insurance would be enigmatic.

Thus under all of the circumstances, in my opinion, the owner or tenant of each separate commercial unit is required to maintain at least $1,000,000 in liability insurance on a per unit basis.

I hope this overview has been of assistance. If there are particular or more detailed facts you would like considered or you would like a more thorough legal analysis, please let me know.

Very truly yours,

FEINGOLD and YOUNGLING
A Professional Law Corporation

GLENN H. YOUNGLING

GHY:kim
genhoa/dbc/ins.ltr

FEINGOLD and YOUNGLING
A Professional Law Corporation
810 Fifth Avenue
San Rafael, California 94901
Telephone: (415) 454-1090
Facsimile: (415) 454-5512

June 7, 1999

Daniel Burnham Court Master Owners Assn.
Board of Directors
c/o Helene Dellanini, Manager
One Daniel Burnham Court #114
San Francisco, Ca 94109

BY FAX ONLY: 771-7452
PAGE 1 OF 2

Re: Responsibility for Commercial HVAC

Dear Directors:

Your request for assistance in addressing issues about the responsibility for commercial area HVAC was forwarded to us by Helene. We have reviewed the CC&Rs and have discussed with Helene the provisions in the original reserve study and budget. The question is whether the Master Association or the commercial owner is responsible for the maintenance, repair and replacement of HVAC systems servicing the commercial areas. It may come as no surprise that there are certain ambiguities that make the any answer arguable.

First, we address the "default mode." That is the general approach set up by the CC&Rs.

Section 5.1 of the Master CC&Rs provides:

> Each Party shall, without cost or expense to the other Party, provide for appropriate upkeep and maintenance of the interior of its Project (except for any area defined as General Common Area) to insure that the Residential Project and the Commercial Project and each part thereof are maintained in a first-class manner at all times. ...

The General Common Area is defined (in pertinent part) at Section 1.12 as follows:

> ... The General Common Area also includes ... the other utility installations ... as required to provide ... heat, ventilation and air conditioning services, excepting heat, ventilation and air conditioning services to the Residential Units.

The CC&Rs further provide for maintenance of the General Common Area at Section 2.4.1:

> The Master Association shall maintain, repair, replace, restore, operate and manage all of the General Common Area and all facilities, improvements, furnishings, and equipment located therein ... Maintenance shall include without limitation painting, maintaining, cleaning, repairing and replacing of all parts of the General Common Area as defined in Section 1.12 ...

Under this "default mode," the Master Association is responsible for the HVAC servicing the commercial areas. However, there are inconsistent provisions elsewhere in the CC&Rs.

Under Article V, Use Restrictions, Section 5.5.2 provides in part:

> Heating, Ventilation and Air Conditioning. Each Party shall manage, operate and maintain the heating, ventilation and air conditioning in its project so as not to cause any drain on the heating, ventilation and air conditioning provide in the other Project. ...

This seems to indicate the Parties are responsible for their respective HVAC equipment. This section is inconsistent with and seemingly incompatible with the general provisions cited above.

In attempting to understand the original intent of the developer we can also look to the original Reserve Study and Budget as approved by the Department of Real Estate. It is my understanding that those documents made the Master Association responsible for boilers, heat exchangers, etc. This appears to be inconsistent with both of the CC&R provisions.

If you decide to address the issue now and determine how you think responsibilities should be allocated, you may want to consider separating the responsibilities and working with each party to strike a viable balance. Consider the following possible variables separately: (1) (a) ownership, (b) control, (c) duty to pay; and (2) (a) maintenance, (b) repair, (c) replacement, and (d) amounts consumed. Associations often mix and match these variables to strike the right balance on a case-by-case basis.

Under the circumstances, we cannot give you a definitive answer as to where the lines of responsibility are drawn for the commercial HVAC equipment. If you would like, we can provide you with a more detailed analysis, including elaboration of the arguments that could be made on both sides of the issue. However, the bottom line is that our review leads us to the conclusion that there are colorable arguments on both sides of the issue of who has responsibility for the commercial HVAC.

Very truly yours,

FEINGOLD and YOUNGLING
A Professional Law Corporation

Glenn H. Youngling

GLENN H. YOUNGLING

GHY:n
gh/dbc/hvac.ltr

FEINGOLD and YOUNGLING
A Professional Law Corporation
810 Fifth Avenue
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Telephone: (415) 454-1090
Facsimile: (415) 454-5512

December 12, 1996

Levy & Company, CPAs
1611 Telegraph Avenue, #1450
Oakland, CA 94612

VIA FAX: (510) 465-7035

Re: Daniel Burnham Court **Homeowners** Association, Inc.

Dear Sir/Madam:

This is in response to the Daniel Burnham Court Homeowners Association's correspondence regarding information for the annual audit for the year ended September 30, 1996.

As you may know, Feingold and Youngling, PLC provides legal advice and services to the Association regarding the administration of this mixed use condominium complex, as well other general legal services.

We are aware that due to leaks through the common area, certain owners may have claims presently unasserted but which they may assert against the Master Association and/or Homeowners Association. It is not possible at this time to predict whether such claims will be brought, if brought the size of the claims and/or the likelihood of recovery. The **Master** Association, on behalf of (a) the **Homeowners** Association and (b) commercial interests, is actively pursuing a claim to recover the cost of repair from those responsible for the development and construction of Daniel Burnham Court (*Daniel Burnham Court Master Owners Assn. v. Van Ness Center Assocs., et al.*, San Francisco Superior Court Case No. 970410). Further, the **Master** Association is pursuing its legal rights in conjunction with seeking cooperation from developer representatives.

Other than as stated, we are unaware of any asserted or unasserted claims or litigation against the Homeowners Association existing on September 30, 1996 or to date.

As of September 30, 1996, the Association was current in payment for our legal services.

Whenever, in the course of performing our legal services, we have formed the opinion that the Association should disclose or consider disclosure of a matter before us, we will consult with the Association on that subject.

Very truly yours,

FEINGOLD and YOUNGLING
A Professional Law Corporation

GLENN H. YOUNGLING

GHY:kb
dbc/cor/cpa.5
cc: Dennis Herrick, General Manager

FEINGOLD and YOUNGLING
A Professional Law Corporation
810 Fifth Avenue
San Rafael, California 94901
Telephone: (415) 454-1090
Facsimile: (415) 454-5512

December 12, 1996

Levy & Company, CPAs
1611 Telegraph Avenue, #1450
Oakland, CA 94612

VIA FAX: (510) 465-7035

Re: Daniel Burnham Court Master Owners' Association

Dear Sir/Madam:

This is in response to the Daniel Burnham Court Master Owners' Association's correspondence regarding information for the annual audit for the year ended September 30, 1996.

As you may know, Feingold and Youngling, PLC provides legal advice and services to the Association regarding the administration of this mixed use condominium complex, as well other general legal services. In May of 1995, the Master Association entered into an Hourly Fee Agreement with our firm specifically related to legal services to coordinate further investigation and advise the Association of its legal rights and responsibilities regarding possible design and construction related deficiencies at the project.

In response to concerns about excessive water infiltration in the winter of 1994/1995, the Association retained construction consultants Richard Avelar & Associates to perform an investigation of the nature and cause of the problems, and to provide the Association with an estimated cost of repair. Avelar & Associates' inspection revealed systematic deficiencies in various components which make up the waterproofing elements of the building. We are aware that due to leaks through the common area, certain owners may have claims presently unasserted but which they may assert against the Master Association and/or Homeowners Association.

The developer and others have previously attempted diagnosis and extensive repairs which have not been successful. In order to assert the Association's legal rights against responsible parties, on June 16, 1995 the Association filed San Francisco Superior Court action number 970410 entitled *Daniel Burnham Court Master Owners Assn. v. Van Ness Center Assocs., et al.* The action does not include rights unique to individual owners or arising from problems within the unit areas.

One of the owners at Daniel Burnham contends that the Association may have liability for damages he has suffered as a result of water intrusion into his unit during several winters. The Association denies any such liability. The owner has agreed to defer any formal action against the Association while he prosecutes his claims against those responsible for the defective construction. In exchange for the owner deferring any claims that might otherwise be made against the Association, in November of 1996 the Association entered into a stipulation agreeing to a tolling of any statutes of limitations that might otherwise be applicable.

Other than as stated, we are unaware of any asserted or unasserted claims or litigation against the Association existing on September 30, 1996 or to date.

As of September 30, 1996, the Association had a balance due to us of $227.00 for costs and fees for legal services.

Whenever, in the course of performing our legal services, we have formed the opinion that the Association should disclose or consider disclosure of a matter before us, we will consult with the Association on that subject.

Very truly yours,

FEINGOLD and YOUNGLING
A Professional Law Corporation

GLENN H. YOUNGLING

GHY:kb
dbc/cor/cpa.4

cc: Dennis Herrick, General Manager

FEINGOLD and YOUNGLING
A Professional Law Corporation
810 Fifth Avenue
San Rafael, California 94901
Telephone: (415) 454-1090
Facsimile: (415) 454-5512

Legal
Correspondence
M.O.A.

November 15, 1995

Levy & Company, CPAs
1611 Telegraph Avenue, #1450
Oakland, CA 94612

VIA FAX: (510) 465-7035

Re: Daniel Burnham Court **Master** Owners' Association

Dear Sir/Madam:

This is in response to the Daniel Burnham Court Master Owners' Association's correspondence regarding information for the annual audit for the year ended September 30, 1995.

As you may know, Feingold and Youngling, PLC provides legal advice and services to the Association regarding the administration of this mixed use condominium complex, as well other general legal services. In May of 1995, the **Master** Association entered into an Hourly Fee Agreement with our firm specifically related to legal services to coordinate further investigation and advise the Association of its legal rights and responsibilities regarding possible design and construction related deficiencies at the project.

In response to concerns about excessive water infiltration in the winter of 1994/1995, the Association retained construction consultants Richard Avelar & Associates to perform an investigation of the nature and cause of the problems, and to provide the Association with an estimated cost of repair. Avelar & Associates' inspection revealed systematic deficiencies in various components which make up the waterproofing elements of the building. We are aware that due to leaks through the common area, certain owners may have claims presently unasserted but which they may assert against the Master Association and/or Homeowners Association.

The developer and others have previously attempted diagnosis and extensive repairs which have not been successful. In order to assert the Association's legal rights against responsible parties, on June 16, 1995 the Association filed San Francisco Superior Court action number 970410 entitled *Daniel Burnham Court Master Owners Assn. v. Van Ness Center Assocs., et al.* The action does not include rights unique to individual owners or arising from problems within the unit areas.

Other than as stated, we are unaware of any asserted or unasserted claims or litigation against the Association existing on September 30, 1995 or to date.

As of September 30, 1995, the Association had a balance due to us of $8,197.61 for costs and fees for legal services. The invoice for those services was mailed on October 27, 1995.

Whenever, in the course of performing our legal services, we have formed the opinion that the Association should disclose or consider disclosure of a matter before us, we will consult with the Association on that subject.

Very truly yours,

FEINGOLD and YOUNGLING
A Professional Law Corporation

GLENN H. YOUNGLING

GHY:kb
dbc/cor/cpa.4

cc: Dennis Herrick, General Manager

FEINGOLD and YOUNGLING
A Professional Law Corporation
810 Fifth Avenue
San Rafael, California 94901
Telephone: (415) 454-1090
Facsimile: (415) 454-5512

November 15, 1995

Levy & Company, CPAs
1611 Telegraph Avenue, #1450
Oakland, CA 94612

VIA FAX: (510) 465-7035

Re: Daniel Burnham Court **Homeowners** Association, Inc.

Dear Sir/Madam:

This is in response to the Daniel Burnham Court Homeowners Association's correspondence regarding information for the annual audit for the year ended September 30, 1995.

As you may know, Feingold and Youngling, PLC provides legal advice and services to the Association regarding the administration of this mixed use condominium complex, as well other general legal services.

We are aware that due to leaks through the common area, certain owners may have claims presently unasserted but which they may assert against the Master Association and/or Homeowners Association. It is not possible at this time to predict whether such claims will be brought, if brought the size of the claims and/or the likelihood of recovery. The **Master** Association, on behalf of (a) the **Homeowners** Association and (b) commercial interests, is actively pursuing a claim to recover the cost of repair from those responsible for the development and construction of Daniel Burnham Court (*Daniel Burnham Court Master Owners Assn. v. Van Ness Center Assocs., et al.*, San Francisco Superior Court Case No. 970410). Further, the **Master** Association is pursuing its legal rights in conjunction with seeking cooperation from developer representatives.

Other than as stated, we are unaware of any asserted or unasserted claims or litigation against the Homeowners Association existing on September 30, 1995 or to date.

As of September 30, 1995, the Association was current in payment for our legal services.

Whenever, in the course of performing our legal services, we have formed the opinion that the Association should disclose or consider disclosure of a matter before us, we will consult with the Association on that subject.

Very truly yours,

FEINGOLD and YOUNGLING
A Professional Law Corporation

GLENN H. YOUNGLING

GHY:kb
dbc/cor/cpa.5
cc: Dennis Herrick, General Manager

Legal
Correspondence
HOA

FEINGOLD and YOUNGLING
A Professional Law Corporation
810 Fifth Avenue
San Rafael, California 94901
Telephone: (415) 454-1090
Facsimile: (415) 454-5512

January 24, 1995

Levy & Company, CPAs
1611 Telegraph Avenue, #1450
Oakland, CA 94612

Re: Daniel Burnham Court Homeowners Association, Inc.

Dear Sir/Madam:

This is in response to the Daniel Burnham Court Homeowners Association's correspondence regarding information for the annual audit for the year ended September 30, 1994.

As you may know, Feingold and Youngling, PLC provides legal advice and services to the Association regarding the administration of this mixed use condominium complex, as well other general legal services.

We are aware that due to leaks through the common area, certain owners may have claims presently unasserted but which they may assert against the Association. It is not possible at this time to predict whether or not such claims will be brought, if brought the size of the claims and/or the likelihood of recovery. The Association is actively pursuing diagnosis of these leak problems and development of a repair plan. Further, the Association is evaluating its legal rights and options in conjunction with seeking the cooperation from developer representatives.

Other than as stated, we are unaware of any asserted or unasserted claims or litigation against the Homeowners Association existing on September 30, 1994 or to date.

As of September 30, 1994, the Association was current in payment for our legal services.

Whenever, in the course of performing our legal services, we have formed the opinion that the Association should disclose or consider disclosure of a matter before us, we will consult with the Association on that subject.

Very truly yours,

FEINGOLD and YOUNGLING
A Professional Law Corporation

GLENN H. YOUNGLING

GHY:kb
genhoa/dbc/cpa.1
cc: Dennis Herrick, General Manager

FEINGOLD and YOUNGLING
A Professional Law Corporation
810 Fifth Avenue
San Rafael, California 94901
Telephone: (415) 454-1090
Facsimile: (415) 454-5512

February 14, 1994

To: Clients with Delinquent Assessment Collection Accounts

From: Feingold & Youngling, PLC

Please be advised that effective 3/1/94, the flat fee charged for the opening of a new collection file will be increased from $210 to $250. This fee includes the following services:

> Open new file; review accounting; request legal description from title company; prepare lien with summary accounting; record lien; prepare demand letter, including detailed account history. Also, includes the preparation and recording of the Lien Release at the close of the matter.

This increase does not affect any existing files, only those new files opened from 3/1/94 on.

FEINGOLD and YOUNGLING
A Professional Law Corporation
810 Fifth Avenue
San Rafael, California 94901
Telephone: (415) 454-1090
Facsimile: (415) 454-5512

August 12, 1993

Mr. Shigeru Sato
President
Kabuto International Corp.
8-Chome, 7-Jou
Yamanote Nishi-Wara
Sapporo, JAPAN

Mr. Ken Kim
Kabuto International Corp.
Management Company
1 Daniel Burnham Court, Suite 205C
San Francisco, California 94109

Re: Daniel Burnham Court
Comprehensive General Liability Insurance

Gentlemen:

This firm represents the Daniel Burnham Court Master Association ("Association"). It is my understanding that Kabuto International Corp. ("Kabuto") is the owner of all of the commercial units at Daniel Burnham Court and these commercial units are currently leased.

Pursuant to Sections 6.8 and 6.8.4 of the Daniel Burnham Court Declaration Establishing Reciprocal Easements and Covenants Running with the Land ("CC&R's"), Kabuto, as owner of the commercial units, is required to obtain and maintain comprehensive general liability insurance with a combined single limit of not less than $1,000,000 and furnish the Association with evidence of that insurance.

Over the past several months, Mr. Dennis Herrick, Daniel Burnham's General Manager, has requested that Kabuto and/or its tenants

procure insurance and provide the Association with properly endorsed certificates of insurance. So far, these requests have been ignored and, as you know, the Association is concerned about its exposure to liability.

This is to notify you that Kabuto is in default under the terms of the CC&R's for failure to procure comprehensive general liability insurance as provided in Section 6.8 of the CC&R's. Kabuto has until September 10, 1993 to cure this default by delivering properly endorsed certificates of insurance for each commercial tenant to the General Manager, Dennis Herick, at 1 Daniel Burnham Court, Suite 245, San Francisco, California no later than 5:00 p.m. on September 10, 1993. The certificates of insurance must include the following:

a. The insurance must be Comprehensive General Liability Insurance with limits not less than $1,000,000, including any umbrella or excess liability insurance per occurrence, Combined Single Limit of Bodily Injury and Property Damage Liability and Personal Injury.

b. The insurance must include all of the following extensions of coverage: Blanket Contractual Liability, Broad Form Property Damage, Full Liquor Liability if the tenant engages in the business of manufacturing, distributing, selling or serving alcoholic beverages, Owned, Non-Owned and Hired Automobile Liability, and Personal Injury Liability (Libel, Slander, False Arrest and Wrongful Eviction) with the "Employee Exclusion" deleted.

c. The insurance must include coverage against any liability to the public (including Kabuto, its contract purchasers, tenants, or lessees and their family members, guests, invitees or licensees) incident to the ownership, maintenance, management, occupancy or use of the commercial units and any automobile, arising from claims for personal injury, death or property damage.

d. The insurance must name the Master, Residential and Commercial Association, Unit Owners, Association real estate managers, employees, board members, directors and officers as additional insureds.

e. The comprehensive general liability insurance must be endorsed to provide that it shall be primary to the comprehensive general liability insurance maintained by the Master Association.

f. The insurance must be endorsed to provide for 30 days notice of cancellation to the Master Association.

If the Association fails to procure and provide Mr. Herrick with evidence of the insurance as specified above by 5:00 p.m. on September 10, 1993, and the Association is required to procure insurance, the Association will pursue all of the remedies available to it under the provisions of the CC&R's to obtain reimbursement for costs incurred in curing Kabuto's default, including levying a special assessment against the commercial property.

Be advised that if Kabuto fails to meet the September 10 deadline, the Association will seek reimbursement of <u>all</u> of the expenses incurred by it in attempting to obtain Kabuto's compliance with the insurance provisions of the CC&R's, including any and all attorney's fees, and costs, plus interest.

The Association hopes it will not be necessary to prosecute its legal rights.

Very truly yours,

FEINGOLD and YOUNGLING
A Professional Law Corporation

PATRICIA L. CONNOLLY

PLC/mpm
genhoa/danburn.let

cc: The Hokkaido Takushoku Bank Ltd.
500 S. Hope Street, 17th Floor
Los Angeles, California 90072

cc: Mr. Dennis Herrick
Daniel Burnham Court Association
1 Daniel Burnham Court, #245
San Francisco, California 94109

cc: KSK Property Management
1 Daniel Burnham Court, Suite 205C
San Francisco, California 94109
Attn: Wayne Okubo

DANIEL BURNHAM COURT

Post-It™ brand fax transmittal memo 7671	# of pages ▸ 3
To Nancy	From Dennis
Co. Feingold & Youngling	Co. D.B.C.
Dept.	Phone #
Fax # 454-5512	Fax # 771-7452

September 20, 1993

Mr. Wayne Okubo
KSK Management Inc.
1 Daniel Burnham Court, Suite 205-C
Hand delivered

Dear Wayne:

I have received your response, via the Associations attorney, to our request for required insurance coverage for your commercial tenants. While I am pleased to note your effort on this issue, the naming of your tenants on Kabuto's policy falls short in several respects.

Firstly, Kabuto's policy only protects Kabuto. While the endorsement may give Kabuto some kind of implied coverage, our insurance expert doesn't think that the Association is sufficiently protected with respect to your tenants who remain essentially uninsured.

Secondly, the endorsement does not change the fact that the coverage required by the Master Association Declaration is not in place. The tenants at issue are currently uninsured, placing the Master Association, Homeowners Association, Directors, employees and homeowners at risk.

Thirdly, the deadline established and the requirements that were set forth by Ms. Connolly of Feingold and Youngling were not met.

This issue has been ongoing since January. You have had every opportunity to enforce your leases and comply with the Master Declaration. I have inclosed an insurance expiration report that I will submit to the Board at the meeting tomorrow when I ask for approval of the a Special Assessment on the Commercial Parcel for all costs necessary to bring this issue to a close.

If you want to further discuss this issue, I will certainly give a meeting with you my highest priority.

Sincerely

Dennis G. Herrick
General Manager

One Daniel Burnham Court, Suite #245-C San Francisco, California 94109 Telephone: 415 771-9910 Fax: 415 771-7452

CC:

Mr. Shigeru Sato, President
Kabuto International Corp.
8 - chome, 7-jou
Yamanote Nishi-Wara
Sapporo, Japan

The Hokkaido Takushoku Bank, Ltd.
500 South Hope St.
17th Floor
Los Angeles, Ca. 90071

Mr. Ken Kim
Kabuto International Corp.
1 Daniel Burnham Court, Ste. 205-C
San Francisco, Ca. 94109

Mr. Glenn Youngling, Esq
Feingold and Youngling
810 Fifth Ave.
San Rafael, Ca. 94901

Mr. Paul Zane
Paul Zane Insurance
14127 Capri Dr.
Los Gatos, Ca. 95030

Enclosures: Insurance Expiration Report

TICKLER REPORT FOR 01/01/93 - 09/30/93 09/20/93

DATE	EVENT	PPTY	CODE	NOTES
01/01/93	Insurance Expiration	c	100-C	ELAINE & GILBERT
01/01/93	Insurance Expiration	c	350-C	S.F. PROFESSIONAL CLINIC
01/01/93	Insurance Expiration	c	140-C	RYOWA CONSTRUCTION
04/30/93	Insurance Expiration	c	105-C	TRAVEL DIRECTIONS
08/05/93	Insurance Expiration	c	325-C	THE FREISINGER CO.
08/10/93	Insurance Expiration	c	400-C	BENT SEVERIN & ASSOCIATES
09/09/93	Insurance Expiration	c	335-C	ROBERT BURTON, M.D.
09/18/93	Insurance Expiration	c	260-C	PRUDENTIAL CALIF. REALTY
09/25/93	Insurance Expiration	c	300-C	MANAGED HEALTH NETWORK
09/30/93	Insurance Expiration	c	340-C	DAVID KAHN

TRANSMISSION REPORT

:DANIEL BURNHAM COURT (SEP 20 '93 13:56)

DATE	START TIME	REMOTE TERMINAL IDENTIFICATION	MODE	TIME	RESULTS	TOTAL PAGES	DEPT. CODE
SEP 20	13:54	4545512	G3ST	02'14"	OK	03	1234

TRANSMISSION REPORT

:DANIEL BURNHAM COURT (SEP 20 '93 15:25)

DATE	START TIME	REMOTE TERMINAL IDENTIFICATION	MODE	TIME	RESULTS	TOTAL PAGES	DEPT. CODE
SEP 20	15:22	4545512	G3ST	02'44"	OK	03	1234

FEINGOLD and YOUNGLING
A Professional Law Corporation
810 Fifth Avenue
San Rafael, California 94901
Telephone: (415) 454-1090
Facsimile: (415) 454-5512

July 22, 1993

Dennis Herrick, Legal Liaison
Daniel Burnham Court Association
One Daniel Burnham Court #245
San Francisco, California 94109

Re: Commercial Association
Owner/Tenant Insurance

Dear Dennis:

This letter is a follow-up to our telephone conversation of July 7, 1993. As we discussed, the Master Association has been unable to obtain the commercial owner's compliance with the provisions of the CC&R's requiring the owner to obtain and maintain comprehensive general liability insurance.

The commercial owner is apparently refusing to purchase insurance and is reluctant to pressure the tenants into purchasing insurance even though this is a condition of the lease. You have asked for our assistance in determining the most appropriate method to resolve this issue. I have reviewed the CC&R's and the following are my comments.

Background

1. Commercial Unit Owner/Tenant Comprehensive General Liability Insurance. Section 6.8 of the CC&R's requires each commercial unit "Owner/Tenant" to obtain and maintain comprehensive general liability insurance with a combined single limit of not less than $1,000,000. Section 6.8.4 requires each Commercial Unit Owner/Tenant to furnish to the Master Association evidence of insurance showing compliance with Section 6.8.

2. Failure to Procure Insurance - Association's Rights. If the commercial owner/tenant fails to procure insurance, the Master Association has the following rights:

(a) Association Procures Insurance. Under Section 6.8.4, if the Commercial Unit Owner/Tenant fails to procure, maintain, or provide evidence of the insurance required by Section 6.8, the Master Association shall have the right to procure such insurance at the Commercial Unit Owner's/Tenant's expense.

Further, under Section 11.1, if any owner, lessee or tenant defaults in the performance of any of the obligations of the CC&R's, the Master Association shall have the right, but not the obligation, upon ten days' written notice, to cure the default for the account of and at the expense of the defaulting owner, lessee or tenant. The Master Association shall have the further right to recover from the defaulting party all costs and other sums expended in connection with the cure of the default, plus interest.

(b) Special Assessment for Extraordinary Expenses. Article III, Section 3.4, gives the Master Association the right to charge and levy special assessments on commercial projects as a remedy to reimburse the Master Association for costs incurred in bringing a Party into compliance with the provisions of the CC&R's. A "Party", as applied to the commercial project, is defined in the CC&R's as the Commercial Association. Although the Commercial Association has no duty to procure insurance it "shall be responsible for the defaults of its Occupants and Tenants". (See CC&R's, Article XI, Section 11.1.) An "occupant" is "the owner, lessee or tenant of a condominium or interest therein." (CC&R's Article I, Section 1.18.)

(c) File Suit to Obtain Compliance. Section 11.2 gives the Master Association the right to prosecute any proceeding in law or equity against any other Party hereto in order to prevent any default in the provisions of the CC&R's and recover damages therefor. This includes an action for specific performance of the CC&R's.

Under Section 11.3, all costs and expenses reasonably incurred by the Master Association to cure a default of the owner, lessee or tenant, together with interest and costs and expenses of any proceeding at law or equity, including attorney's fees, shall be assessed against and paid by the defaulting party.

(d) Arbitration. Under Section 12.12 of the CC&R's, if any dispute arises over the determination or collection of assessments or the rights, duties, and obligations contained in the CC&R's, the matter shall be submitted to arbitration. Under no circumstances, however, shall that section be interpreted to interfere with the Master Association's power to collect assessments or enforce the collection of assessments in the manner set forth in Article III.

Master Association's Options

Under the provisions of the CC&R's, the Master Association has the following options:

1. Give the commercial owner or tenants ten days' notice to cure the default. If they fail to cure the default within that time, Master Association can procure insurance and

   (a) Invoice the commercial owner; or

   (b) Invoice the commercial tenants.

2. Master Association can procure insurance and specially assess:

   (a) Commercial Association as the party responsible for the default of its occupants, and

   (b) Lien the property and nonjudicially foreclose if the lien is not paid.

3. Submit the dispute to arbitration.

4. File suit to:

   (a) Compel the commercial association and commercial owner to procure insurance; and/or

(b) Recover costs and fees incurred under 1, 2, 3 or 4(a) above.

I recommend that you send a letter (or we can do so) to the commercial owner informing them that they are in default in the performance of the insurance obligations set forth in Section 6.8 of the CC&R's, that they have ten days to cure the default by procuring insurance and furnishing the Master Association with evidence of insurance, and if they fail to cure the default within ten days, the Master Association will pursue all of the remedies available to it under the provisions of the CC&R's and charge the owner for all costs and expenses incurred in curing the default, including attorney's fees.

As a general proposition, I believe that it would be better not to disclose which remedy the Association intends to pursue, leaving the owner to speculate as to which action the Association will take. I also believe, however, it would be appropriate to have the options carefully thought through so that if the owner does not comply and circumstances do not change, implementation can occur without delay.

The courts have a preference for handling dollar damage claims (#1 and #2 above) as opposed to declaratory or injunctive relief (#4(a)). The fastest approach involves advancing the money by procuring insurance. The greatest tactical leverage is #2 where foreclosure to reimburse the Master Association for costs incurred is an option. The fourth option (filing suit) is likely to be the longest and most costly but will get a definitive interpretation of the CC&R's.

I also suggest that you send a copy of the letter to the commercial owner's mortgagor. If they have notice of the owner's default, they may be inclined to put additional pressure on the owner to comply with the CC&R's.

If you need our assistance in drafting a letter to the owner or would like us to do so, please let me know. In the meantime, if you have any questions, please feel free to call.

Very truly yours,

FEINGOLD and YOUNGLING
A Professional Law Corporation

PATRICIA L. CONNOLLY

PLC:kb
genhoa/danburn.let1

FEINGOLD and YOUNGLING
A Professional Law Corporation
810 Fifth Avenue
San Rafael, California 94901
Telephone: (415) 454-1090
Facsimile: (415) 454-5512

July 22, 1993

Dennis Herrick, Legal Liaison
Daniel Burnham Court Association
One Daniel Burnham Court #245
San Francisco, California 94109

Re: Commercial Association
Owner/Tenant Insurance

Dear Dennis:

This letter is a follow-up to our telephone conversation of July 7, 1993. As we discussed, the Master Association has been unable to obtain the commercial owner's compliance with the provisions of the CC&R's requiring the owner to obtain and maintain comprehensive general liability insurance.

The commercial owner is apparently refusing to purchase insurance and is reluctant to pressure the tenants into purchasing insurance even though this is a condition of the lease. You have asked for our assistance in determining the most appropriate method to resolve this issue. I have reviewed the CC&R's and the following are my comments.

Background

1. Commercial Unit Owner/Tenant Comprehensive General Liability Insurance. Section 6.8 of the CC&R's requires each commercial unit "Owner/Tenant" to obtain and maintain comprehensive general liability insurance with a combined single limit of not less than $1,000,000. Section 6.8.4 requires each Commercial Unit Owner/Tenant to furnish to the Master Association evidence of insurance showing compliance with Section 6.8.

2. Failure to Procure Insurance - Association's Rights. If the commercial owner/tenant fails to procure insurance, the Master Association has the following rights:

(a) Association Procures Insurance. Under Section 6.8.4, if the Commercial Unit Owner/Tenant fails to procure, maintain, or provide evidence of the insurance required by Section 6.8, the Master Association shall have the right to procure such insurance at the Commercial Unit Owner's/Tenant's expense.

Further, under Section 11.1, if any owner, lessee or tenant defaults in the performance of any of the obligations of the CC&R's, the Master Association shall have the right, but not the obligation, upon ten days' written notice, to cure the default for the account of and at the expense of the defaulting owner, lessee or tenant. The Master Association shall have the further right to recover from the defaulting party all costs and other sums expended in connection with the cure of the default, plus interest.

(b) Special Assessment for Extraordinary Expenses. Article III, Section 3.4, gives the Master Association the right to charge and levy special assessments on commercial projects as a remedy to reimburse the Master Association for costs incurred in bringing a Party into compliance with the provisions of the CC&R's. A "Party", as applied to the commercial project, is defined in the CC&R's as the Commercial Association. Although the Commercial Association has no duty to procure insurance it "shall be responsible for the defaults of its Occupants and Tenants". (See CC&R's, Article XI, Section 11.1.) An "occupant" is "the owner, lessee or tenant of a condominium or interest therein." (CC&R's Article I, Section 1.18.)

(c) File Suit to Obtain Compliance. Section 11.2 gives the Master Association the right to prosecute any proceeding in law or equity against any other Party hereto in order to prevent any default in the provisions of the CC&R's and recover damages therefor. This includes an action for specific performance of the CC&R's.

Under Section 11.3, all costs and expenses reasonably incurred by the Master Association to cure a default of the owner, lessee or tenant, together with interest and costs and expenses of any proceeding at law or equity, including attorney's fees, shall be assessed against and paid by the defaulting party.

(d) Arbitration. Under Section 12.12 of the CC&R's, if any dispute arises over the determination or collection of assessments or the rights, duties, and obligations contained in the CC&R's, the matter shall be submitted to arbitration. Under no circumstances, however, shall that section be interpreted to interfere with the Master Association's power to collect assessments or enforce the collection of assessments in the manner set forth in Article III.

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Under the provisions of the CC&R's, the Master Association has the following options:

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   (a) Invoice the commercial owner; or

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3. Submit the dispute to arbitration.

4. File suit to:

   (a) Compel the commercial association and commercial owner to procure insurance; and/or

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I recommend that you send a letter (or we can do so) to the commercial owner informing them that they are in default in the performance of the insurance obligations set forth in Section 6.8 of the CC&R's, that they have ten days to cure the default by procuring insurance and furnishing the Master Association with evidence of insurance, and if they fail to cure the default within ten days, the Master Association will pursue all of the remedies available to it under the provisions of the CC&R's and charge the owner for all costs and expenses incurred in curing the default, including attorney's fees.

As a general proposition, I believe that it would be better not to disclose which remedy the Association intends to pursue, leaving the owner to speculate as to which action the Association will take. I also believe, however, it would be appropriate to have the options carefully thought through so that if the owner does not comply and circumstances do not change, implementation can occur without delay.

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If you need our assistance in drafting a letter to the owner or would like us to do so, please let me know. In the meantime, if you have any questions, please feel free to call.

Very truly yours,

FEINGOLD and YOUNGLING
A Professional Law Corporation

PATRICIA L. CONNOLLY

PLC:kb
genhoa/danburn.let1

FEINGOLD and YOUNGLING
A Professional Law Corporation
810 Fifth Avenue
San Rafael, California 94901
Telephone: (415) 454-1090
Facsimile: (415) 454-5512

July 22, 1993

Dennis Herrick, Legal Liaison
Daniel Burnham Court Association
One Daniel Burnham Court #245
San Francisco, California 94109

Re: Commercial Association
Owner/Tenant Insurance

Dear Dennis:

This letter is a follow-up to our telephone conversation of July 7, 1993. As we discussed, the Master Association has been unable to obtain the commercial owner's compliance with the provisions of the CC&R's requiring the owner to obtain and maintain comprehensive general liability insurance.

The commercial owner is apparently refusing to purchase insurance and is reluctant to pressure the tenants into purchasing insurance even though this is a condition of the lease. You have asked for our assistance in determining the most appropriate method to resolve this issue. I have reviewed the CC&R's and the following are my comments.

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Very truly yours,

FEINGOLD and YOUNGLING
A Professional Law Corporation

PATRICIA L. CONNOLLY

PLC:kb
genhoa/danburn.let1

FEINGOLD and YOUNGLING

A Professional Law Corporation
810 Fifth Avenue
San Rafael, California 94901
Telephone: (415) 454-1090
Facsimile: (415) 454-5512

August 31, 1993

San Francisco County Recorder
400 Van Ness Avenue, Room 167
San Francisco, CA 94102

Re: Daniel Burnham Court HOA
Lewell Brenneman
One Daniel Burnham Court, #824, San Francisco
NOTICE OF SALE

Dear Recorder:

Enclosed please find an original and one copy of a NOTICE OF SALE. Please record the original and return the conformed copy, with the recordation date to this office in the envelope provided.

Also enclosed is our check in the amount of $14.00.

If you have any questions, please give me a call before returning the enclosed documents. Thank you.

Sincerely,

FEINGOLD and YOUNGLING
A Professional Law Corporation

K.D. Gulko
Paralegal

enclosures
cc: Dennis Herrick

FEINGOLD and YOUNGLING
A Professional Law Corporation
810 Fifth Avenue
San Rafael, California 94901
Telephone: (415) 454-1090
Facsimile: (415) 454-5512

September 3, 1993

Wayne Okubo
Property Manager
KSK Property Management, Inc.
One Daniel Burnham Court, Suite 205C
San Francisco, California 94109-5455

Re: Comprehensive General Liability Insurance

Dear Mr. Okubo:

This is in response to your letter of August 30. Paul Vane, the Association's insurance agent, had a conversation with Julie M. Murakami of Marsh & McLennan and determined that, in fact, the current KIC coverage does not satisfy the Daniel Burnham Court Master Association general liability insurance requirements for each tenant as required under the provisions of the CC&Rs. If you have any questions regarding this, please contact Ms. Murakami.

Very truly yours,

FEINGOLD and YOUNGLING
A Professional Law Corporation

PATRICIA L. CONNOLLY

PLC/mpm
genhoa/danburn/okubo.93

cc: Mr. Dennis Herrick
The Hokkaido Takushoku Bank Ltd.
Mr. Shigeru Sato
Mr. Ken Kim

FEINGOLD and YOUNGLING
A Professional Law Corporation
810 Fifth Avenue
San Rafael, California 94901
Telephone: (415) 454-1090
Facsimile: (415) 454-5512

MAY 13 REC'D

May 11, 1993

Dennis Herrick, Legal Liaison
Daniel Burnham Court Association
One Daniel Burnham Court #245
San Francisco, CA 94109

VIA FAX: 771-7452

Re: Daniel Burnham Court
Quorum for Voting on Master Association Business

Dear Dennis:

As we discussed last week, the Board of Directors of the Master Association is having difficulty conducting business due to lack of a quorum of directors present at the meetings. You asked for our assistance in determining the most appropriate method to resolve this issue.

I understand that the Board of Directors of the Master Association is comprised of three directors from the residential association and two directors from the commercial association. Bylaw Article VII, Section 7.4 provides that directors holding 2/3 of the voting power of the Board shall constitute a quorum. Therefore, with five board members, four would be considered a quorum.

The Bylaws of many associations generally provide that a quorum is a majority of the Board, or 50% plus one. I recommend the Board consider lowering the quorum to a majority so that it can conduct business with just three board members present.

Lowering the quorum requirements requires an amendment to the Bylaws. Bylaw Article IX, Section 9.1 provides:

> ... these By-Laws may be amended by the vote ... or written consent of a majority of Directors representing the Residential Member and of a majority of all five (5) of the Directors.

Therefore, the Bylaws can be amended with approval of just three directors, as long as at least two of them are directors representing the Residential Association and one or both Commercial Association directors participate in the vote.

It is important that the Board follow the amendment procedures set forth in the Bylaws, and in particular, Article IX, Section 9.3 entitled *Notice of Proposed Amendment* which provides:

> At any meeting, whether regular or special, where an amendment of the Declaration or these By-Laws may be considered, the notice of the meeting (or a notice given to Directors) shall so state. If a specific amendment is proposed, the notice shall include the text of the proposal.

You also asked that we provide you with language whereby the Board can remove a director for failure to attend a certain number of consecutive meetings. The Board may want to consider amendment of the Bylaws to add the following under Article VI, Section 6.6 entitled *Vacancies*:

> (8) the Director fails (without good cause) to attend two (2) consecutive regular Board meetings that have been duly noticed.

I am enclosing a Ballot for Action Without Meeting which the Board may consider using to adopt the proposed amendments.

I hope the foregoing is of assistance to the Board in resolving its problem. If you have any questions or if I can be of further assistance, please do not hesitate to call.

Very truly yours,

FEINGOLD and YOUNGLING
A Professional Law Corporation

GLENN H. YOUNGLING

GHY:kb
genhoa/danbum/quorum

enc.

DANIEL BURNHAM COURT MASTER OWNERS' ASSOCIATION

OFFICIAL BALLOT

For Action Without a Meeting

TO: ALL DIRECTORS OF THE MASTER ASSOCIATION

PROPOSED ACTION:

Amend the Master Association's Bylaws as follows:

Article VII, Section 7.4 shall be amended to read as follows:

Quorum. Directors holding a majority of the voting power of the Board shall constitute a quorum for the transaction of business. Unless otherwise required by a provision of the Declaration, the Articles of Incorporation or these Bylaws, every act or decision done or made by a majority vote at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. Directors holding a majority of the votes present, whether or not a quorum is present, may adjourn any meeting. Notice of the time and place of holding an adjourned meeting need not be given unless the original meeting is adjourned for more than twenty-four (24) hours. If the original meeting is adjourned for more than twenty-four (24) hours, notice of the adjournment shall be given to the Directors who were not present at the time of adjournment.

Article VI, Section 6.6 entitled *Vacancies* shall be amended to add:

(8) the Director fails (without good cause) to attend two (2) consecutive regular Board meetings that have been duly noticed.

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Pursuant to Article IX, Section 9.1, the Board of Directors can amend the bylaws by written consent of a majority of Directors representing the Residential Member and a majority of all five of the Directors. In order for the vote to be valid, a quorum of Directors must vote. In our case, this means that at least four Directors must vote and approval of at least three Directors must be obtained, where at least two of the Directors represent the Residential Association.

Ballots must be returned to the Association office by _____, 1993 at _____ p.m. to be counted.

CIRCLE YOUR VOTE FOR EACH PROPOSED AMENDMENT:

Article VII, Section 7.4	**YES**	**NO**	**ABSTAIN**
Article VI, Section 6.6	**YES**	**NO**	**ABSTAIN**

Signature:_____ Date:_____

Print or Type:_____

FEINGOLD and YOUNGLING
A Professional Law Corporation
810 Fifth Avenue
San Rafael, California 94901
Telephone: (415) 454-1090
Fax: (415) 454-5512

Date: 5-11-93 **Time:** 12:45 pm.

To: Dennis Herrick

Attn:

From: Glenn Youngling

Re: Bylaw Amendments

Our Client: Daniel Burnham Master Assn.

Total number of pages (including this cover page): 4

SENDING FAX NUMBER : (415) 454-5512

RECEIVING FAX NUMBER: ( ) 771-7452

ORIGINAL TO FOLLOW BY MAIL: X **YES** ____ **NO**

Additional Comments:

If you have any problem receiving this transmission, or do not receive all pages, please call Karen **at (415) 454-1090 immediately.**

(devora/fax)

FEINGOLD and YOUNGLING
A Professional Law Corporation
810 Fifth Avenue
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Telephone: (415) 454-1090
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May 11, 1993

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VIA FAX: 771-7452

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A Professional Law Corporation

GLENN H. YOUNGLING

GHY:kb
genhoa/danhurn/quorum

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CIRCLE YOUR VOTE FOR EACH PROPOSED AMENDMENT:

Article VII, Section 7.4	**YES**	**NO**	**ABSTAIN**
Article VI, Section 6.6	**YES**	**NO**	**ABSTAIN**

Signature:_____ Date:_____

Print or Type:_____

genhoa/danburn/quorum

DANIEL BURNHAM COURT HOMEOWNERS ASSOCIATION

c/o Mr. Dennis Herrick, Community Manager
One Daniel Burnham Court
San Francisco, CA 94109

October 1, 1992

Mr. Glenn Youngling
Feingold and Youngling
A Professional Law Corporation
810 Fifth Avenue
San Rafael, CA 94901

Dear Mr. Youngling:

Our accountants, Levy & Company, CPAs, 1611 Telegraph Avenue, Suite 1212, Oakland, CA 94612 are performing the annual audit of our financial statements for the year ending September 30, 1992. Please furnish to them the information requested below involving matters to which you have devoted substantive attention on behalf of the Association in the form of legal consultation or representation.

Pending or Threatened Litigation
(excluding unasserted claims and assessments)

Please prepare a description of all material litigation, claims and assessments (excluding unasserted claims and assessments). Materiality for purposes of this letter includes items involving amounts exceeding $1,000 individually or in the aggregate. The description of each case should include:

a. The nature of the litigation,
b. The progress of the case to date,
c. How the Board of Directors is responding or intends to respond to the litigation, e.g. to contest the case vigorously or seek an out-of-court settlement, and
d. An evaluation of the likelihood of an unfavorable outcome and an estimate, if one can be made, of the amount or range of potential loss.

Unasserted Claims and Assessments

We have represented to our accountants that there are no unasserted possible claims or assessments that you have advised us are probable of assertion and must be disclosed in accordance with Statement of Financial Accounting Standards No. 5 (excerpts of which can be found in the ABA's Auditors Letter Handbook).

Daniel Burnham Court Homeowners Association
Attorney Representation Letter Request
October 1, 1992

We understand that whenever, in the course of performing legal services for us with respect to a matter recognized to involve an unasserted possible claim or assessment that may call for financial statement disclosure, you have formed a professional conclusion that we should disclose or consider disclosure concerning such possible claim or assessment, as a matter of professional responsibility to us, you will so advise us and will consult with us concerning the question of such disclosure and the applicable requirements of Statement of Financial Accounting Standards No. 5. Please specially confirm to our accountants that our understanding is correct.

Response

Your response should include matters that existed as of September 30, 1992, and during the period from that date to the effective date of your response.

Please specifically identify the nature of, and reasons for, any limitations on your response.

Our accountants expect to have the audit completed on or about October 30, 1992, and would appreciate receiving your reply by that date with a specified effective date no earlier than five days prior to said date.

Other Matters

Please also indicate the amount we were indebted to you for services and expenses on September 30, 1992.

Very truly yours,

COPY

Daniel Burnham Court Homeowners Association

cc: Levy & Company, CPAs (signed copy of this letter)

DANIEL BURNHAM COURT MASTER OWNERS' ASSOCIATION

c/o Mr. Dennis Herrick, Community Manager
One Daniel Burnham Court
San Francisco, CA 94109

October 1, 1992

Mr. Glenn Youngling
Feingold and Youngling
A Professional Law Corporation
810 Fifth Avenue
San Rafael, CA 94901

Dear Mr. Youngling:

Our accountants, Levy & Company, CPAs, 1611 Telegraph Avenue, Suite 1212, Oakland, CA 94612 are performing the annual audit of our financial statements for the year ending September 30, 1992. Please furnish to them the information requested below involving matters to which you have devoted substantive attention on behalf of the Association in the form of legal consultation or representation.

Pending or Threatened Litigation
(excluding unasserted claims and assessments)

Please prepare a description of all material litigation, claims and assessments (excluding unasserted claims and assessments). Materiality for purposes of this letter includes items involving amounts exceeding $1,000 individually or in the aggregate. The description of each case should include:

a. The nature of the litigation,
b. The progress of the case to date,
c. How the Board of Directors is responding or intends to respond to the litigation, e.g. to contest the case vigorously or seek an out-of-court settlement, and
d. An evaluation of the likelihood of an unfavorable outcome and an estimate, if one can be made, of the amount or range of potential loss.

Unasserted Claims and Assessments

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Daniel Burnham Court Master Owners' Association
Attorney Representation Letter Request
October 1, 1992

We understand that whenever, in the course of performing legal services for us with respect to a matter recognized to involve an unasserted possible claim or assessment that may call for financial statement disclosure, you have formed a professional conclusion that we should disclose or consider disclosure concerning such possible claim or assessment, as a matter of professional responsibility to us, you will so advise us and will consult with us concerning the question of such disclosure and the applicable requirements of Statement of Financial Accounting Standards No. 5. Please specially confirm to our accountants that our understanding is correct.

Response

Your response should include matters that existed as of September 30, 1992, and during the period from that date to the effective date of your response.

Please specifically identify the nature of, and reasons for, any limitations on your response.

Our accountants expect to have the audit completed on or about October 30, 1992, and would appreciate receiving your reply by that date with a specified effective date no earlier than five days prior to said date.

Other Matters

Please also indicate the amount we were indebted to you for services and expenses on September 30, 1992.

Very truly yours,

COPY

Daniel Burnham Court Master Owners' Association

cc: Levy & Company, CPAs (signed copy of this letter)

December 21, 1987

FannieMae

Ms. Kathryn Vatsula
Special Loans Officer
American Savings and Loan Association
2333 West March Lane, Suite B
Stockton, California 95207

Subject: Daniel Burnham Court
Phase I (85 Units)
Phase II (160 Units)
San Francisco, California
Project No. 94109-109A

Dear Ms. Vatsula:

The above referenced project is hereby approved. Individual unit mortgages are now eligible for purchase. Fannie Mae's approval is good for three (3) years from the date of this letter.

As you requested, we have reduced the presale requirement from 70% to 51%.

If the Declaration of Conditions, Covenants, and Restrictions, require lenders to request notice from the Homeowners' Association of certain actions affecting lenders, you must deliver such requests to the Homeowners' Association in the manner required by the Declaration.

Notwithstanding anything herein to the contrary, Fannie Mae shall have the option of terminating this Final Project Acceptance in the event of inadequate maintenance, market deterioration or other factors diminishing mortgage security and any change, modification, termination, or supersedure of any documents relating to the Project or individual units within the Project, including but not limited to the declaration, covenants, conditions and restrictions, bylaws, exhibits and other instruments and communications, if any, previously forwarded to Fannie Mae. Lender is required to notify Fannie Mae immediately of any significant change in the project or its market environment.

It will not be necessary to send a copy of this letter with each loan submission; however, the assigned project number should be indicated on the applicable submission documents.

Sincerely,

George Lopez
Project Representative

GL:eh

AMERICAN SAVINGS **Memorandum**

To: Pat Quinney Date: October 12, 1989

From: Ruth Carson RC

Subject: Daniel Burnham Court

Attached is the FNMA approval letter that we discussed today.

Attachment

RECEIVED
OCT 13 1989

SSL-0156 (Rev. 2/89)

Mike Kajita 1/2
Realty Investments

Fannie Mae 1028 Form 1987

(1) Ocw files — NO
(2) Steve Levy Storage Van Ness Assoc — ?
(3) Jim Burge Sales — Threw out
(4) Chicago Title Diana Lares 788-0871 | Cynthia — Don't Have
(one person handles DBC)
(5) Joe Donoghue Tri Realty is — Don't have
Jim Burge's Boss 956-4545 x222
Yvette Crespo Secretary
(6) Hamilton Meridien Insurance for ✓
Bank | lender of each unit
Name of owner | loan # | Lender

(7) American Savings Stockton
Desirie appleton 209-948-1116
Ruth Carson Spur of Condo Records 209-546-2332

# 419	Stafford	3-16-87	Am Savings
# 811	appleton	4-8-87	No Bank
# 305	Miner	3-10-87	
# 202	Matthews	4-30-87	golden Coin Sth SF
# 1420	Bromwell	4-5-88	Citicorp Oakland
# 1418	green	2-10-87	
# 816	Maggala	12-21-87	No Bank? Does teat mean cash?

(8) Ruth Carson sending the Project Acceptance letter
Fannie Mae Regional Office Pasadena
Mark Newman to call 818-568-5000 he deals with Bank forms
approval # 94109-109A Dec 31 1987

Mr. Lopez message

HGC HUGHES GILL COCHRANE P.C.
ATTORNEYS AT LAW

Michael J. Hughes
John P. Gill
Michael J. Cochrane
Stephanie J. Hayes
Amy K. Tinetti

Matthew P. Harrington
Robin L. Day
Jennifer R. Lucas
Paul J. Engel
Allyson C. Murphy
Brian J. Karr

May 10, 2012

VIA EMAIL AND U.S. MAIL

PRIVILEGED AND CONFIDENTIAL

Board of Directors
Daniel Burnham Court Master Owners' Association
c/o Helene M. Dellanini
1 Daniel Burnham Ct., #160-C
San Francisco, CA 94109

Re:

Dear Board Members:

In anticipation of your Board meeting on Wednesday, May 16, I enclose my proposed Resolution for adoption by the Board with respect to the use of CPMC settlement funds.

I will also prepare a proposed letter to members (for discussion at the meeting) that explains the scope and benefits of the CPMC Agreement and the anticipated use of the settlement funds.

I look forward to discussing these issues with you further at the May 16 meeting.

Very truly yours,

HUGHES GILL COCHRANE, P.C.

John P. Gill

JPG:ls
Enclosure

DANIEL BURNHAM COURT MASTER OWNERS' ASSOCIATION

RESOLUTION OF THE BOARD OF DIRECTORS

WHEREAS, the Daniel Burnham Court Master Owners' Association ("Master Association") was established to manage the General Common Area as defined in Section 1.12 of the Daniel Burnham Court Declaration Establishing Reciprocal Easements and Covenants Running with the Land ("CC&Rs"), recorded November 10, 1986; and

WHEREAS, Master Association has the power to do any lawful thing required or permitted to be done by the Master Association pursuant to the CC&Rs, and to do any act necessary, appropriate or incidental to the exercise or performance of any of its express powers or duties pursuant to the CC&Rs; and

WHEREAS, on or about April 10, 2012, Master Association entered into a written Agreement with Sutter West Bay Hospitals, a California nonprofit public benefit corporation doing business as California Pacific Medical Center ("CPMC"), whereby CPMC agreed to pay Master Association the total sum of $4.4 million ("Settlement Funds") and comply with other specified commitments in exchange for Master Association's agreement to support the CPMC "Project" and the "LRDP" (as defined in Recital A of the Agreement) and the issuance of the "Permits" related thereto (as defined in Section 1 of the Agreement), and further agreed to refrain from pursuing and from encouraging or assisting any third party from pursuing any oral or written objections to any Permits, the Project or the LRDP, and from taking or supporting any administrative or judicial action challenging the validity, regularity, sufficiency, accuracy or legality or otherwise to modify or oppose the Project, any Permits or the LRDP, other than an action to enforce the terms of the Permits or the Agreement itself; and

WHEREAS, in exchange for CPMC's payment of the Settlement Funds and additional commitments and agreements identified in the Agreement, Master Association agreed to a release and discharge of claims against CPMC, "known or unknown, to the date hereof" [related to the date of signing the Agreement], "arising out of, relating to, or in connection with any

manner or thing related to the Project, Permits or LRDP, except for physical damages claims caused by the Project to the property of the [Master] Association and its members, including the [Master] Association's building at 1 Daniel Burnham Court, to the extent specifically addressed in Exhibit A" to the Agreement; and

WHEREAS, the Agreement did not designate that any portion of the Settlement Funds was paid in consideration for any pending or potential claims by Master Association members, building occupants or third parties for which Master Association might be responsible; and

WHEREAS, Master Association did not agree to defend or indemnify CPMC against any such potential claims by Master Association members, building occupants or third parties; and

WHEREAS, the Board of Directors believes that it is in the best interests of Master Association and its members to use the Settlement Funds first to reimburse Master Association for its costs, expenses, and fees (including attorneys' fees and consultant expenses) related to the investigation, negotiation and preparation of the Agreement, and thereafter to preserve the remainder of the Settlement Funds to meet Master Association's increased burdens and obligations (including increased maintenance and repair expenses) and potential contingent obligations related to the Project throughout the life of the construction of the Project;

NOW, THEREFORE, BE IT RESOLVED that Master Association shall use the Settlement Funds first to reimburse Master Association for its costs, expenses and fees (including attorneys' fees and consultant expenses) related to the investigation, negotiation and preparation of the Agreement, and thereafter to preserve the remainder of the Settlement Funds to meet Master Association's increased burdens and obligations (including increased maintenance and repair expenses) and potential contingent obligations related to the Project throughout the life of the construction of the Project; and

BE IT FURTHER RESOLVED that no portion of the Settlement Funds shall be distributed to any Master Association member, building occupant or third party pursuant to any

claim of right by any Master Association member, building occupant or third party to a portion of the Settlement Funds based solely on the terms of the Agreement itself; and

BE IT FURTHER RESOLVED that the Settlement Funds shall be kept by Master Association in a segregated account and utilized by Master Association to meet its increased burdens and obligations (including increased maintenance and repair obligations) incurred throughout the construction and completion of the Project as a result of the Project itself, after which the Board of Directors may elect to use any remaining Settlement Funds in the manner in which the Board of Directors believes to be in the best interests of Master Association in the Board's sole discretion; and

BE IT FURTHER RESOLVED that any Master Association member, building occupant or third party making any claim of right to any portion of the Settlement Funds shall be required to state the basis of said claim, in writing, including the amount of the claim and any supporting evidence, to Master Association's Board of Directors for consideration by the Board; and

BE IT FURTHER RESOLVED that any such written claim of right to a portion of the Settlement Funds by any Master Association member, building occupant or third party shall be evaluated by the Board of Directors, with said claims being paid only to the extent that the Master Association Board of Directors concludes that payment of any or all of such a claim is necessary to meet a legal obligation of Master Association or otherwise is in the best interests of Master Association and its members; and

BE IT FURTHER RESOLVED that any such payment by Master Association to a Master Association member, building occupant or third party in response to such a claim shall first require written findings by Master Association's Board of Directors that specify the basis of the payment and the reasons why the Board of Directors has concluded that the payment is made pursuant to a legal obligation of Master Association or is otherwise deemed to be in the best interests of Master Association and its members.

Adopted by the Board of Directors of the Daniel Burnham Court Master Owners' Association on May _____, 2012, at a duly held meeting of the Board at which at least a quorum of directors was present.

Date:_____

DANIEL BURNHAM COURT MASTER OWNERS' ASSOCIATION

By:_____
Its: President

By:_____
Its: Secretary

HUGHES GILL COCHRANE P.C.
ATTORNEYS AT LAW

Michael J. Hughes
John P. Gill
Michael J. Cochrane
Stephanie J. Hayes
Amy K. Tinetti

Matthew P. Harrington
Robin L. Day
Jennifer R. Lucas
Paul J. Engel
Allyson C. Murphy
Brian J. Karr

May 10, 2012

VIA EMAIL AND U.S. MAIL

PRIVILEGED AND CONFIDENTIAL

Board of Directors
Daniel Burnham Court Master Owners' Association
c/o Helene M. Dellanini
1 Daniel Burnham Ct., #160-C
San Francisco, CA 94109

Re:

Dear Board Members:

In anticipation of your Board meeting on Wednesday, May 16, I enclose my proposed Resolution for adoption by the Board with respect to the use of CPMC settlement funds.

I will also prepare a proposed letter to members (for discussion at the meeting) that explains the scope and benefits of the CPMC Agreement and the anticipated use of the settlement funds.

I look forward to discussing these issues with you further at the May 16 meeting.

Very truly yours,

HUGHES GILL COCHRANE, P.C.

John P. Gill

JPG:ls
Enclosure

DANIEL BURNHAM COURT MASTER OWNERS' ASSOCIATION

RESOLUTION OF THE BOARD OF DIRECTORS

WHEREAS, the Daniel Burnham Court Master Owners' Association ("Master Association") was established to manage the General Common Area as defined in Section 1.12 of the Daniel Burnham Court Declaration Establishing Reciprocal Easements and Covenants Running with the Land ("CC&Rs"), recorded November 10, 1986; and

WHEREAS, Master Association has the power to do any lawful thing required or permitted to be done by the Master Association pursuant to the CC&Rs, and to do any act necessary, appropriate or incidental to the exercise or performance of any of its express powers or duties pursuant to the CC&Rs; and

WHEREAS, on or about April 10, 2012, Master Association entered into a written Agreement with Sutter West Bay Hospitals, a California nonprofit public benefit corporation doing business as California Pacific Medical Center ("CPMC"), whereby CPMC agreed to pay Master Association the total sum of $4.4 million ("Settlement Funds") and comply with other specified commitments in exchange for Master Association's agreement to support the CPMC "Project" and the "LRDP" (as defined in Recital A of the Agreement) and the issuance of the "Permits" related thereto (as defined in Section 1 of the Agreement), and further agreed to refrain from pursuing and from encouraging or assisting any third party from pursuing any oral or written objections to any Permits, the Project or the LRDP, and from taking or supporting any administrative or judicial action challenging the validity, regularity, sufficiency, accuracy or legality or otherwise to modify or oppose the Project, any Permits or the LRDP, other than an action to enforce the terms of the Permits or the Agreement itself; and

WHEREAS, in exchange for CPMC's payment of the Settlement Funds and additional commitments and agreements identified in the Agreement, Master Association agreed to a release and discharge of claims against CPMC, "known or unknown, to the date hereof" [related to the date of signing the Agreement], "arising out of, relating to, or in connection with any

manner or thing related to the Project, Permits or LRDP, except for physical damages claims caused by the Project to the property of the [Master] Association and its members, including the [Master] Association's building at 1 Daniel Burnham Court, to the extent specifically addressed in Exhibit A" to the Agreement; and

WHEREAS, the Agreement did not designate that any portion of the Settlement Funds was paid in consideration for any pending or potential claims by Master Association members, building occupants or third parties for which Master Association might be responsible; and

WHEREAS, Master Association did not agree to defend or indemnify CPMC against any such potential claims by Master Association members, building occupants or third parties; and

WHEREAS, the Board of Directors believes that it is in the best interests of Master Association and its members to use the Settlement Funds first to reimburse Master Association for its costs, expenses, and fees (including attorneys' fees and consultant expenses) related to the investigation, negotiation and preparation of the Agreement, and thereafter to preserve the remainder of the Settlement Funds to meet Master Association's increased burdens and obligations (including increased maintenance and repair expenses) and potential contingent obligations related to the Project throughout the life of the construction of the Project;

NOW, THEREFORE, BE IT RESOLVED that Master Association shall use the Settlement Funds first to reimburse Master Association for its costs, expenses and fees (including attorneys' fees and consultant expenses) related to the investigation, negotiation and preparation of the Agreement, and thereafter to preserve the remainder of the Settlement Funds to meet Master Association's increased burdens and obligations (including increased maintenance and repair expenses) and potential contingent obligations related to the Project throughout the life of the construction of the Project; and

BE IT FURTHER RESOLVED that no portion of the Settlement Funds shall be distributed to any Master Association member, building occupant or third party pursuant to any

claim of right by any Master Association member, building occupant or third party to a portion of the Settlement Funds based solely on the terms of the Agreement itself; and

BE IT FURTHER RESOLVED that the Settlement Funds shall be kept by Master Association in a segregated account and utilized by Master Association to meet its increased burdens and obligations (including increased maintenance and repair obligations) incurred throughout the construction and completion of the Project as a result of the Project itself, after which the Board of Directors may elect to use any remaining Settlement Funds in the manner in which the Board of Directors believes to be in the best interests of Master Association in the Board's sole discretion; and

BE IT FURTHER RESOLVED that any Master Association member, building occupant or third party making any claim of right to any portion of the Settlement Funds shall be required to state the basis of said claim, in writing, including the amount of the claim and any supporting evidence, to Master Association's Board of Directors for consideration by the Board; and

BE IT FURTHER RESOLVED that any such written claim of right to a portion of the Settlement Funds by any Master Association member, building occupant or third party shall be evaluated by the Board of Directors, with said claims being paid only to the extent that the Master Association Board of Directors concludes that payment of any or all of such a claim is necessary to meet a legal obligation of Master Association or otherwise is in the best interests of Master Association and its members; and

BE IT FURTHER RESOLVED that any such payment by Master Association to a Master Association member, building occupant or third party in response to such a claim shall first require written findings by Master Association's Board of Directors that specify the basis of the payment and the reasons why the Board of Directors has concluded that the payment is made pursuant to a legal obligation of Master Association or is otherwise deemed to be in the best interests of Master Association and its members.

Adopted by the Board of Directors of the Daniel Burnham Court Master Owners' Association on May _____, 2012, at a duly held meeting of the Board at which at least a quorum of directors was present.

Date:_____

DANIEL BURNHAM COURT MASTER OWNERS' ASSOCIATION

By:_____
Its: President

By:_____
Its: Secretary

Daniel Burnham Court Master Owners' Association

1 Daniel Burnham Ct., #160-C
San Francisco, CA 94109

June ____, 2012

To All Residential Association Members and the Commercial Project Owner

Re: **Master Association Agreement with California Pacific Medical Center**

As many of you are already aware, and has been discussed extensively at Board of Directors meetings for the past two years, the Master Association has been working with legal counsel and professional consultants to negotiate an agreement with Sutter West Bay Hospitals, dba California Pacific Medical Center ("CPMC") related to CPMC's proposed development, construction and operation of a new Cathedral Hill medical center. The proposed project includes a new hospital, medical office buildings and underground connecting pedestrian tunnel in or adjacent to Van Ness Avenue and a continuing office building conversion to a medical office building at 1375 Sutter Street (the "Project"). Working through its legal counsel and consultants, the Master Association has expressed comments and concerns to the San Francisco Planning Department and to CPMC directly in an effort to negotiate concessions and commitments from CPMC to protect the best interests of the Master Association and its members (as well as the Commercial Project Owner and the Residential Association members).

AGREEMENT WITH CPMC

On April 10, the Board of Directors, following the advice of legal counsel and consultants, entered into a written agreement with CPMC (the "Agreement") that will provide significant benefits to the Master Association, the Commercial Project owner and the Residential Association membership throughout the construction of the Project. In exchange for the Master Association's support of the Project, CPMC's Long Range Development Plan ("LRDP") and CPMC's efforts to obtain administrative approval, CPMC has agreed to the following commitments in favor of the Master Association, the Residential Association members, the Commercial Project owner and the building occupants:

1. Payment by CPMC of a significant lump sum of money, to reimburse the Master Association for its costs, expenses and fees related to the investigation, negotiation and preparation of the Agreement, and thereafter to help the Master Association to meet its increased burdens and obligations (including increased maintenance and repair expenses) related to the Project throughout the life of the construction of the Project;

2. CPMC will create a **Comprehensive Communication Plan** that will include the following:

a. **Weekly bulletins** submitted to the Master Association, providing information about construction activities for the coming week and a broader description of activities that may impact the community for the following six weeks;

b. **Quarterly electronic newsletters** to inform residents of upcoming activities, beginning 60 days prior to demolition activities;

c. A **website** to provide weekly construction updates, site logistics plans, and dates for upcoming community meetings, with interactive capabilities to enable users to post comments and feedback;

d. CPMC's contractor will create a **hosted website for communication with Master Association, the Commercial Project owner, the Residential Association members and building occupants** to communicate relevant and applicable concerns and to request responses;

e. **One-on-one meetings and outreach meetings** for communication with neighbors and business owners on a monthly basis;

f. A **24-hour Construction Coordination hotline** will be available every day for neighbors to ask questions and voice concerns, with emergency phone calls forwarded to the Construction Coordination Manager for immediate action;

g. **Large, brightly colored signage** will direct pedestrians toward covered walkways and detoured sidewalks for the safety of building occupants and business patrons;

3. CPMC or its contractor will appoint a **Construction Coordination Manager ("CCM")** to communicate all construction update information to members of the community who wish to be so notified;

4. CPMC and its contractor shall maintain significant **general liability insurance** for any potential damage claims caused by CPMC's construction activities;

5. During hospital construction, CPMC will offer Daniel Burnham Court residents/building occupants relevant **information sessions, health screenings, exercise and stress-relieving activities** that may or may not be otherwise publicly available;

6. CPMC will provide **mechanical assistance** to enable the Master Association to remove the existing cooling tower off of the Daniel Burnham Court roof and to install a new cooling tower on the roof;

7. CPMC will take several significant steps to **protect against structural and architectural damage** to Daniel Burnham Court during the Project construction activities, including the following:

a. CPMC will deliver a **shoring system** that will not jeopardize the structural integrity of surrounding structures, and will make relevant information

available to the Master Association that is generated by CPMC's geotechnical engineer and structural engineer;

b. The shoring engineer will **locate existing utilities** to prevent against breakage during the drilling of the shoring system;

c. The surrounding structures will be monitored on an ongoing basis with **scientific monitoring equipment** to determine whether any settlement of existing structures has occurred and to evaluate any such settlement for appropriate, comprehensive repairs;

d. CPMC will perform **comprehensive pre-construction and post-construction surveys** of adjacent buildings and streets, including the documentation of conditions at interior residential and commercial spaces, to evaluate any subsequent claims of damage due to construction activities to determine an appropriate scope of repair;

e. Any building damage caused by CPMC's construction activities will be **repaired to its pre-construction damage condition** as expeditiously as possible, utilizing funds from an account established by CPMC to pay for such repairs;

f. CPMC's contractor shall implement a **Construction Vibration Mitigation Plan ("CVMP")** and set up vibration monitors in the community to monitor and attempt to mitigate significant vibration concerns in designated commercial suites;

8. CPMC's contractor will work with local utilities to **minimize power, water and sewer disruptions to the community** during construction activities, and will endeavor to limit shutdowns to a maximum of 4 hours (to occur after midnight, Monday through Friday);

9. CPMC's contractor will be required to **implement Bay Area Air Quality Management District "Basic" and "Optional" Control Measures and additional construction mitigation measures during construction** as described in the Project's final Environmental Impact Report;

10. CPMC's contractor will **develop a comprehensive hazardous materials abatement plan** in accordance with Bay Area Air Quality Management District requirements related to work procedures and safety measures for the protection of Master Association members, the Commercial Project owner, Residential Association members and building occupants;

11. CPMC's contractor will **sweep the adjacent public streets daily**;

12. CPMC will comply with the construction execution plan and City requirements to **minimize noise and dust**, and will **limit work hours for construction of the Project** to run from 7:00 a.m. to 7:00 p.m. Monday through Friday, and 7:00 a.m. to 5:00 p.m. on Saturday (with limited exceptions for certain specified activities) – construction activity was originally

projected to run until 10:00 p.m. each night before the Board negotiated a more reasonable schedule of permissible work hours to better accommodate the needs of building occupants;

13. CPMC's contractor will **develop and execute a Traffic Management Plan** in coordination with local governing agencies to minimize, as much as possible, the interaction between public traffic and site-specific traffic, and will take steps to ensure that access to the Daniel Burnham Court garage will not be impeding or blocked;

14. CPMC's contractor will develop a **comprehensive Construction Crime Prevention program**; and

15. CPMC will develop a **Construction Coordination plan** jointly with the Master Association concerning construction activities **to help protect the privacy of building occupants**, to include privacy screening at the street level along Post Street and the installation of a safety barrier extending up 42" from the floor of the elevated slabs.

In addition to the specific commitments from CPMC identified in the Agreement, the Board's efforts resulted in other concessions that were resolved and implemented before the Agreement was finalized. For example, CPMC agreed to relocate a tower (proposed in the original Project design) from Post Street to Geary Street, to prevent the tower from blocking the sunlight that illuminates the Daniel Burnham Court pool. Extensive negotiations on other issues similarly resulted in beneficial concessions and modifications.

The concessions and commitments obtained from CPMC are significant, and will help to mitigate against the foreseeable inconvenience and disruption with regard to such heavy construction activity. The Master Association cannot protect against every conceivable disruption, inconvenience or annoyance. However, considering all of the circumstances, and following significant discussions and consideration of all appropriate advice obtained from the Master Association's legal counsel and consultants (that were retained for this specific purpose), the Board of Directors believes that the negotiated Agreement is in the best interests of the Master Association, the Commercial Project owner, Residential Association members and all building occupants. For that reason, **the Board of Directors urges all Residential Association members and the Commercial Project owner to support (or to refrain from opposing) the Project, so that the Master Association is not placed in any legal jeopardy (at a significant potential cost) for any alleged violation of the Agreement**.

USE OF FUNDS PAID BY CPMC TO MASTER ASSOCIATION

Some members have asked whether portions of the payment by CPMC to the Master Association pursuant to the Agreement ("Settlement Funds") will be distributed, on a pro rata basis or otherwise, to Residential Association members and/or the Commercial Project owner. After consulting with legal counsel, the Board of Directors has determined that no such distribution will occur, for legal and practical reasons. All funds obtained by the Master Association legally must be used to meet the Master Association's legal obligations. For that

reason, payment of Settlement Funds to Residential Association members and/or the Commercial Project owner pursuant to an individual's claim to a "right" to a portion of the funds might subject the Board of Directors to claims by other members that the Master Association used the funds improperly. As with any other Association funds, the Settlement Funds are not for the use or needs of individual members and/or owners. To the contrary, the Settlement Funds were negotiated to enable the Master Association to meet its increased burdens and obligations related to the building and to the community as a whole.

For the above reasons, the Board of Directors has adopted a formal Resolution that includes the following provisions:

1. The Master Association shall use the Settlement Funds first to reimburse the Master Association for its costs, expenses and fees (including attorneys' fees and consultant expenses) related to the investigation, negotiation and preparation of the Agreement, and thereafter to preserve the remainder of the Settlement Funds to meet the Master Association's increased burdens and obligations (including increased maintenance and repair expenses) and potential contingent obligations related to the Project throughout the life of the construction of the Project;

2. No portion of the Settlement Funds shall be distributed to any Residential Association member, Commercial Project owner, building occupant or third party pursuant to any claim of right by the claimant to a portion of the funds based solely on the terms of the Agreement itself;

3. The Settlement Funds shall be kept by the Master Association in a segregated account and utilized by the Master Association to meet its increased burdens and obligations (including increased maintenance and repair obligations) incurred throughout the construction and completion of the Project as a result of the Project itself. Thereafter, the Board of Directors may elect to use any remaining Settlement Funds (if any) in the manner in which the Board of Directors believes to be in best interests of the Master Association, in the Board's sole discretion;

4. Any Residential Association member, Commercial Project owner, building occupant or third party making a claim of right to any portion of the Settlement Funds shall be required to state the basis of said claim, in writing, including the amount of the claim and any supporting evidence, to the Board of Directors for consideration; and

5. Any such written claim of right to a portion of the Settlement Funds by any Residential Association member, Commercial Project owner, building occupant or third party will be evaluated by the Board of Directors, with said claims being paid only to the extent that the Master Association Board of Directors concludes that payment is necessary to meet a legal obligation of the Master Association or otherwise is in the best interests of the Master Association and all members.

CONCLUSION

The Board of Directors has spent a significant amount of time, energy and money (which money ultimately was reimbursed by CPMC) to work with qualified legal counsel and consultants to negotiate the best possible mitigation Agreement with CPMC. This letter is sent to you to provide all Residential Association members and the Commercial Project owner with as much information as possible to explain the Agreement between the Master Association and CPMC. However, if any Residential Association member and/or Commercial Project owner would like to review a copy of the CPMC Agreement, please make a written request to the Master Association's General Manager, Helene Dellanini, and a copy will be made available to you.

Sincerely,

Board of Directors
Daniel Burnham Court Master
Owners' Association