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DECLARATION
OF
CONDITIONS, COVENANTS AND RESTRICTIONS
OF
PETRINI PLACE,
A CONDOMINIUM PROJECT

"Covenants and restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin are deleted unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons"

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OF
PETRINI PLACE,
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DECLARATION
OF
CONDITIONS, COVENANTS AND RESTRICTIONS
OF
PETRINI PLACE,
A CONDOMINIUM PROJECT

THIS DECLARATION is made on the date hereinafter set forth by FULTON MASONIC LLC, a California Limited Liability Company, referred to herein as "Declarant."

Declarant is the owner of that certain real property located in the City and County of San Francisco, State of California, more particularly described in Attachment A annexed hereto and incorporated by reference herein. Said real property (the "Property") is being improved with one hundred thirty-four (134) residential units and residential parking.

Declarant intends to establish a condominium development under the provisions of the Davis-Stirling Common Interest Development Act, providing for separate title to each Unit within the Property, each Unit to have an undivided interest in all the remaining property contained therein.

The entire development consists of three airspace parcels with all structures and improvements thereon, and shall be referred to herein as the "Project". The airspace parcels are described on that certain airspace subdivision map entitled Parcel Map of Fulton Masonic, being a Subdivision of Airspace for Residential/Commercial Purposes, which was recorded on August 14, 2002, in Book 45 of Parcel Maps at Pages 100 through 103, inclusive, in the Office of the Recorder of the City and County of San Francisco. One such parcel, Parcel A as shown on the Airspace Parcel Map, contains all of the residential units and residential parking and is the only parcel which is the subject of this Declaration. A second parcel, Parcel B, is a commercial parcel and is authorized for commercial uses only. A third parcel, Parcel C, is a business parking parcel.

The rights and duties of the owners of these three parcels is set forth in the Declaration of Reciprocal Easements, Covenants and Restrictions of Fulton Masonic (hereinafter, the "Project Declaration"), recorded on September 13, 2002, Instrument No. H233568, in the Office of the Recorder of the City and County of San Francisco.

Declarant intends by this document to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all the Condominiums of the Property and the Owners thereof.

Declarant hereby establishes by this Declaration a plan for the individual ownership of the real property estates, consisting of the area of space contained in each Unit, as well as the co-ownership by the individual owners, as tenants in common and as hereafter set forth, of all the remaining portions of the Property, which is hereinafter defined and referred to as the "Common Area".

NOW, THEREFORE, Declarant hereby establishes that the Property hereinafter described shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are imposed as equitable servitudes, pursuant to a general plan for the development of the Property, for the purposes of enhancing and protecting the value and attractiveness of the Property and the Project, and every part thereof, in accordance with the plan for the improvement of the Property and the division thereof into condominiums. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land and shall be binding upon Declarant and the successors and assigns of Declarant and all parties having or acquiring any right, title or interest in or to any part of the Property or the Project.

ARTICLE I

DEFINITIONS

Section 1.1 "Airspace Parcel Map" Shall mean and refer to the recorded final parcel map entitled "Parcel Map of Fulton

Masonic, being a Subdivision of Airspace for Residential/Commercial Purposes", which was recorded on August 14, 2002, in Book 45 of Parcel Maps at Pages 100 through 103, inclusive, in the Office of the Recorder of the City and County of San Francisco, State of California.

Section 1.2 "Articles" Shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time.

Section 1.3 "Assessments" Shall mean Regular Assessments and/or Special Assessments which are a portion of the cost of maintaining, repairing, improving, operating and managing the Property, or assessments which are imposed to bring an Owner and his Unit into compliance with the Condominium Documents, and which are to be paid by Owners as determined by the Association.

Section 1.4 "Association" Shall mean and refer to the Petrini Place Homeowners Association, a California nonprofit mutual benefit corporation, the Members of which shall be Owners of Condominiums on the Property.

Section 1.5 "Board" or "Board of Directors" Shall mean and refer to the governing body of the Association.

Section 1.6 "Below Market Rate Units" or "BMR Units" Shall mean and refer to those Units which have been designated Below Market Rate Units as required by the Notice of Special Restrictions referred to in Section 1.25 of this Declaration. Those Units designated as BMR Units are shown on Attachment C to this Declaration.

Section 1.7 "Bylaws" Shall mean or refer to the Bylaws of the Association as amended from time to time.

Section 1.8 "Common Area" Shall mean and refer to those portions of the Property to which title is held by all Owners in common, and excepting the individual Units. The Common Area includes, without limitation, land; stairs (except stairs connecting levels within a Unit); elevators and elevator shafts; basements and storage areas; bearing walls, columns, girders, subfloors, unfinished floors, roofs, and foundations; central heating equipment, ducts, flues and chutes and fire escapes; conduits, pipes, plumbing, wires and other utility installments (except the outlets thereof located within a Unit), required to provide power, light, telephone, gas, water, sewerage, drainage,

heat, and elevator services; sprinklers, sprinkler pipes and sprinkler heads which protrude into the air space of a Unit; central television antenna, if any.

Section 1.9 "Common Expenses" Means and includes the actual and estimated expenses of operating the Property and any reasonable reserve for such purposes, as found and determined by the Board, and all sums designated common expenses by or pursuant to the Condominium Documents.

Section 1.10 "Common Interest" Means the proportionate undivided interest in the Common Area which is appurtenant to each Unit, as set forth in this Declaration.

Section 1.11 "Condominium" Shall mean an estate in real property, as defined in California Civil Code Section 1351(f), consisting of title to a Unit and an undivided interest in the Common Area.

Section 1.12 "Condominium Building" Shall mean the structure containing Units.

Section 1.13 "Condominium Documents" Means and includes this Declaration, as it may be amended from time to time, the attachments, if any, annexed hereto, the Project Declaration, the Articles, the Bylaws, and the rules and regulations for the Members, as established from time to time.

Section 1.14 "Condominium Plan" Shall mean and refer to those certain portions of the Map, as defined in Article I, Section 1.21, prepared pursuant to California Civil Code Section 1351(e).

Section 1.15 "Declarant" Shall mean and refer to FULTON MASONIC LLC, a California Limited Liability Company, together with its successors and assigns, provided:

(a) Such successors and assigns acquire five (5) or more Condominiums for the purpose of resale to others, and

(b) Declarant has expressly assigned to such successor(s) its rights and duties to all or a portion of the Property.

Section 1.16 "Declaration" Shall mean and refer to this enabling Declaration.

Section 1.17 "Eligible Insurer or Guarantor" Shall mean and refer to an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters from the Association in accordance with Section 9.6(g).

Section 1.18 "Eligible Mortgagee" Shall mean and refer to a first mortgagee who has requested notice of certain matters from the Association in accordance with Section 9.6(g).

Section 1.19 "Exclusive Use Area" Shall mean and refer to those portions of the Common Area set aside for exclusive use of an Owner, or Owners, pursuant to Article II, Section 2.2(c), and shall constitute "exclusive use common area" within the meaning of California Civil Code Section 1351(i).

Section 1.20 "Institutional Lender" Shall mean any bank, savings and loan association, insurance company, or other financial institution holding a recorded mortgage on any Unit.

Section 1.21 "Map" Shall mean that subdivision map entitled "Map of Fulton Masonic, a Residential Condominium Project", recorded the 16th day of August, 2002 in Book 75 of Condominium Maps, Pages 151 through 162, inclusive, in the Official Records of the City and County of San Francisco.

Section 1.22 "Member" Shall mean and refer to a person entitled to membership in the Association, as provided in this Declaration.

Section 1.23 "Mortgage" Shall include a deed of trust as well as a mortgage.

Section 1.24 "Mortgagee" Shall include a beneficiary or a holder of a deed of trust as well as a mortgagee.

Section 1.25 "Mortgagor" Shall include the trustor of a deed of trust as well as a mortgagor.

Section 1.26 "NSR" Shall mean and refer to that certain Notice of Special Restrictions Under the Planning Code, recorded the 1st day of July, 1999, in Book H418, Page 413, in the Official Records of the City and County of San Francisco.

Section 1.27 "Owner" or "Owners" Shall mean or refer to the record holder or holders of title, if more than one, of a

Condominium on the Property. This shall include any person having a fee simple title to any Unit but shall not include contract sellers and those persons or entities having any interest merely as security for the performance of any obligation. If a Unit is sold under a recorded installment land contract to a purchaser, such purchaser, rather than the fee owner, shall be considered the Owner.

Section 1.28 "Person" Means a natural person, a corporation, a partnership, a trust or other legal entity.

Section 1.29 "Project" Shall mean and refer to all of the real property as described on the Airspace Parcel Map, including all structures and improvements erected thereon whether residential or commercial in use.

Section 1.30 "Project Declaration" Shall mean and refer to that certain document entitled "Declaration of Reciprocal Easements, Covenants and Restrictions of Fulton Masonic", recorded the 3rd day of September, 2002, as Instrument No. H233568, in the Official Records of the City and County of San Francisco.

Section 1.31 "Property" Means and includes the real property described in Attachment A hereto, and all improvements erected thereon and all property, real, personal or mixed, intended for or used in connection with the Property.

Section 1.32 "Regular Assessment" Shall mean an Assessment which is a portion of the cost of maintaining, improving, operating and managing the Property which is to be paid by each Owner, as determined by the Association.

Section 1.33 "Share" Means the percentage interest in and to the Common Area attributed to and appurtenant to each Unit, as set forth on the Condominium Plan.

Section 1.34 "Special Assessment" Shall mean a supplemental Assessment to meet expenses which is to be paid by each Owner when the total amount of funds necessary to defray common expenses is determined to be inadequate by the Association.

Section 1.35 "Unit" Shall mean and refer to the elements of the Condominium, as defined in Article II, Section 2.2(a), which are not owned in common with the Owners of other Condominiums in the Property.

Section 1.36 "Unit Designation" Means the number, letter or combination thereof or other official designations shown on the Condominium Plan.

Section 1.37 "Number and Gender" The singular and plural number and masculine, feminine and neuter gender shall each include the other where the context requires.

Section 1.38 "Mandatory and Permissive" "Shall", "will", and "agree" as used herein are mandatory and "may" as used herein is permissive.

ARTICLE II

DESCRIPTION OF PROJECT, DIVISION OF PROPERTY

AND CREATION OF PROPERTY RIGHTS

Section 2.1 Description of Project.

(a) The Project. The Project consists of the underlying real property as described on the Airspace Parcel Map, with residential Condominiums, commercial and parking areas, and all other improvements located thereon. The Project is comprised of three airspace parcels (and the structures thereon) as defined on the Airspace Parcel Map: Parcel A, the Residential Parcel; Parcel B, the Commercial Parcel; and Parcel C, the Parking Parcel.

Parcel A is defined herein as the Property. There is being built upon the Property residential structures containing one hundred thirty-four (134) Units and associated residential parking. Reference is made to the Condominium Plan to supply further details concerning the Property.

(b) Existing Encumbrances.

(i) The Project and the Property are subject to the terms and conditions of the NSR and shall be operated and managed in compliance with the terms thereof.

(ii) The Project and the Property are subject to the terms and conditions of the Project Declaration and shall be operated and managed in compliance with the terms thereof. The

Project Declaration governs the relationship between Parcels A, B and C and their respective owners. Reference is made to the Project Declaration to supply further details concerning the terms and conditions of said document.

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

(a) Units. Each of the Units, as separately shown, numbered and designated in the Condominium Plan, consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows and doors of each Unit, each of such spaces being defined and referred to herein as a "Unit". Each Unit includes both the portions of the Condominium Building so described and the air space so encompassed. The Unit does not include those areas and those things which are defined as "Common Area" in Article I, Section 1.7. Each Unit is subject to such encroachments as are contained in the Condominium Building, whether the same now exist or may be later caused or created in any manner referred to in Article IX, Section 9.5. In interpreting deeds and plans, the then existing physical boundaries of a Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries, rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the Condominium Building and regardless of minor variance between the boundaries shown on the plan or deed, and those of the Condominium Building.

(b) Common Areas. The remaining portion of the Property referred to herein as "Common Area" or "Common Areas" shall include, without limitation, all of the elements set forth in Article I, Section 1.7. Each Owner shall have appurtenant to his Unit the undivided interest in the Common Area set forth on the Condominium Plan (which is based upon the ratio of the square footage of the Unit to the square footage of all the Units).

The ownership of each Condominium shall include a Unit and such undivided interest in the Common Area. The common interest appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all Owners affected and the first mortgagees of such Owners, as expressed in an amended declaration. Such common interest cannot be separated from the Unit to which it is appurtenant. Each Owner may use the Common Area in accordance with the purposes for which it is intended without

hindering the exercise of or encroaching upon the rights of any other Owners.

(c) Exclusive Use Areas. Portions of the Common Area shown and delineated on the Condominium Plan shall be "Exclusive Use Areas" and are hereby reserved by Declarant as exclusive use common areas, as defined in California Civil Code Section 1351(i), to be granted as exclusive easements appurtenant to a particular Unit. The Exclusive Use Areas shall be those portions of the Common Area designated as parking areas (P-1, P-3, P-4, etc.), handicap parking areas (HCP-followed by numerals), and patios (PATIO-102, PATIO-104, PATIO-105, etc.) on the Condominium Plan. Easements for the exclusive use of the Exclusive Use Area patios shall be granted by Declarant as appurtenant to the correspondingly numbered Unit. Easements for the exclusive use of the Exclusive Use Area parking areas and/or handicap parking areas shall be granted by Declarant as appurtenant to particular Units.

The assignment, transfer or exchange, either reciprocal or unilateral, of the right to the exclusive use of an Exclusive Use Area designated parking area and/or handicap parking area from one Owner to another or between two or more Owners, is authorized, provided that the approval of the Board is first obtained, and the assignment, transfer or exchange of such Exclusive Use Area is evidenced by a recorded document.

(d) No Separate Conveyance of Undivided Interest. The foregoing undivided interests are hereby established and are to be conveyed with the respective Units, as set forth above. Such undivided interests cannot be changed, except as set forth in this Declaration. Declarant, and the successors, assigns and grantees of Declarant, covenant and agree that the undivided interests in the Common Area referred to in Section 2.2(b) and the fee title to the respective Units conveyed therewith, shall not be separated or separately conveyed, and each such undivided interest shall be deemed to be conveyed or encumbered with its respective Unit, even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

(e) Annexation. Any annexation of real property to the Property shall require the vote or written approval of at least sixty-seven percent (67%) of the total votes residing in Members other than Declarant.

(f) Easements. The Property is burdened, in some cases, and benefitted in others, by all of the easements among the parcels defined on the Airspace Parcel Map. Said easements are defined in the Project Declaration and on the Airspace Parcel Map.

Section 2.3 Partition Prohibited. The Common Area shall remain undivided, as set forth herein. Except as provided by California Civil Code Section 1359, no Owner shall bring any action for partition of the Property or any part thereof, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Unit owned by two or more persons and division of the sale proceeds is not prohibited hereby. However, partition of title to a single Unit is prohibited.

ARTICLE III

ASSOCIATION-ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

Section 3.1 Association to Manage Common Areas. The management of the Common Area shall be vested in the Association, in accordance with its Bylaws. The Owners of all of the Condominiums covenant and agree that the administration of the Property shall be in accordance with the provisions of this Declaration, the Project Declaration, the Articles and the Bylaws of the Association.

Section 3.2 Membership. The Owner of a Condominium automatically, upon becoming an Owner, shall be a Member of the Association, and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership shall be held in accordance with this Declaration, the Project Declaration, the Articles and the Bylaws of the Association.

Section 3.3 Transferred Membership. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Condominium to which it is appurtenant, and then only to the purchaser of such Condominium. A mortgagee does not have membership rights until he becomes an Owner by foreclosure or deed in lieu thereof. Any attempt to make

a prohibited transfer is void. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in his name to the purchaser of his Condominium, the Association shall have the right to record the transfer upon its books and thereupon any old membership outstanding in the name of the seller shall be null and void.

Section 3.4 Membership Classes and Voting Rights. The Association shall have two classes of voting membership:

(a) Class A. Class A Members shall be all Owners with the exception of Declarant. Each Condominium shall be allocated one vote in the Association. When more than one Owner holds an interest in any Condominium, all such co-Owners shall be Members of the Association; however, the vote for each Condominium must be cast as a whole. No fractional votes shall be allowed with respect to any Condominium, nor shall more than one vote be cast with respect to any Condominium. When more than one person owns a Condominium, there shall be one "Voting Owner" for such Condominium. The Voting Owner shall be designated by the record Owners of each Condominium by written notice to the Board. The designation shall be revocable at any time by actual notice to the Board given by any Owner of record of such Condominium or by the death or judicially declared incompetency of any record Owner. The power herein conferred to designate a Voting Owner, and to revoke said designation, may be exercised by the Owner's conservator or by the guardian of his estate, or in the case of a minor having no guardian, the parent or parents entitled to custody of said minor, or during the administration of his estate, the executor or the administrator of a deceased Owner, where the latter's interest in the Condominium is subject to administration in his estate. Where no Voting Owner of a Condominium has been designated, or the designation has been revoked as provided herein, the vote for such Condominium shall be exercised as the majority of the co-Owners of the Condominium mutually agree. No vote shall be cast for any Condominium where there is no designated Voting Owner or the majority of co-Owners present in representing the Condominium cannot agree in their vote as provided herein.

(b) Class B. The Class B Member shall be Declarant who shall be entitled to vote as follows: Voting shall be the same as for Class A memberships, except that the Class B Member may triple its vote for each Condominium owned. Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever first occurs:

i. When the total votes outstanding in the Class A membership equals the total vote (tripled as stated) outstanding in the Class B membership; or

ii. On the second anniversary date of the first conveyance of a Condominium in the Property.

Except as otherwise provided in the Condominium Documents, any action by the Association which must have the approval of the Members before being undertaken shall require the vote or written assent of fifty-one percent (51%) of each class of membership during the time that there are two outstanding classes of membership. Any provision in this Declaration which requires that the vote of Declarant be excluded during any such vote shall be applicable only if there has been a conversion of Class B to Class A shares, and shall be understood to require the vote or written assent of fifty-one percent (51%) of the total voting power of the Association and the vote or written assent of fifty-one percent (51%) of the total voting power of Members other than Declarant. The immediately foregoing sentence shall not apply to those situations governed by Title 10, California Code of Regulations, Section 2792.4, governing the enforcement of bonded obligations.

ARTICLE IV

MAINTENANCE AND ASSESSMENT

Section 4.1 Creation of the Lien and Personal Obligation of Assessment. Declarant, for each Condominium owned within the Project, hereby covenants, and each Owner of any Condominium by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association Regular Assessments and Special Assessments, such Assessments to be established, made and collected as provided in this Declaration.

Each Assessment or installment thereof, together with any late charge, interest, collection costs and reasonable attorneys' fees, shall be the personal obligation of the Owner at the time such Assessment, or installment, became due and payable. If more than one person is the Owner of a Condominium, the personal obligation to pay such Assessment, or installment, respecting such Condominium

shall be both joint and several. The annual Regular Assessments and the Special Assessments provided for in this Article IV, together with interest, late charges, collection costs and reasonable attorneys' fees, shall be a continuing lien upon the Condominium against which the Assessment is made, as provided in Section 4.14 hereof. No Owner of a Condominium may exempt himself from payment of Assessments, or installments, by waiver of the use or enjoyment of all or any portion of the Common Area or by waiver of the use or enjoyment of, or by abandonment of, his Condominium.

Section 4.2 Purpose of Assessment. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Members of the Association; the improvement, replacement, repair, operation and maintenance of the Common Area of the Property, as well as the contribution of the Residential Parcel to the maintenance of the Project as determined by the Project Declaration; and the performance of the duties of the Association, as set forth in this Declaration.

Section 4.3 Regular Assessment and Reserve Fund.

(a) The Board shall establish and levy annual Regular Assessments in an amount the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year, subject to the limitations contained in Section 4.5 hereof. Such annual Regular Assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those major components of the Common Area and facilities which the Association is obligated to maintain and that must be replaced on a periodic basis, and shall be payable in regular installments rather than by Special Assessments.

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

(c) Failure of the Board to set Regular Assessments shall not be deemed a waiver of Regular Assessments but, rather, the prior fiscal year's Regular Assessment shall remain in full force and effect.

(d) The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components of the Common Area and facilities which the Association is obligated to repair, restore, replace, or maintain, and for which such reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, setting forth the reasons that the transfer is needed, and describing when and how the money will be repaid. The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Project, temporarily delay the restoration. The Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required by this Section. Such Special Assessment is subject to the limitation imposed by Section 4.5 of this Declaration. The Board may, at its discretion, extend the date on which the payment of the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

(e) When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of that decision in the next available mailing of any nature to all Members (with the Association newsletter, magazine, etc., if there is one) and of the availability of an accounting of those expenses. The Association shall make an accounting of expenses related to such litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members at the Association's office.

Section 4.4 Special Assessments. If the Board determines that the estimated total amount of funds necessary to defray the common expenses of the Association for a given fiscal year is, or will become, inadequate to meet expenses for any reason (including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements on the Common Area), the Board shall determine the

approximate amount necessary to defray such expenses, and if the amount is approved by a majority vote of the Board, it shall become a Special Assessment. The Board may, in its discretion, prorate such Special Assessment over the remaining months of the fiscal year or levy the Special Assessment immediately against each Unit. Unless exempt from Federal or State income taxation, all proceeds from any Special Assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which they were levied, or they otherwise shall be handled and used in a manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board in order to avoid, if possible, their taxation as income to the Association.

Section 4.5 Limitation on Board's Authority to Increase and Decrease Assessments.

(a) Any increases in Regular Assessments shall not be imposed unless the Board has complied with Section 9.2(b) of the Bylaws with respect to that fiscal year, or has obtained, in accordance with Section 4.6 hereof, the approval of a majority of the Owners at a meeting or election at which a quorum was present.

(b) Notwithstanding subsection (a) above, the Board may not, without the approval of a majority of the Owners at a meeting or election at which a quorum was present:

i. Increase Regular Assessments more than twenty percent (20%) greater than the Regular Assessments for the Association's preceding fiscal year, or

ii. Impose Special Assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses for the current fiscal year.

(c) Assessment increases are not limited in the case of emergency situations, which are any of the following:

i. An extraordinary expense required by court order.

ii. An extraordinary expense necessary to repair or maintain the Property, or any part of it for which the Association is responsible, where a threat to safety of persons is discovered.

iii. Repairs to or maintenance of the Property that could not have been reasonably foreseen in preparing the budget. Prior to imposition of the Assessment, the Board shall make written findings, distributed to the Members, as to the necessity of the expense and why it could not have been foreseen.

(d) The Association may not charge or collect fees or Assessments in connection with a transfer of a Condominium in excess of the actual cost to change its records.

(e) The annual Regular Assessment may not be decreased by the Board or by the Members by more than ten percent (10%) in any one (1) year without the approval of a majority of the voting power of the Association residing in Members other than Declarant.

Section 4.6 Notice and Quorum for Any Action Authorized Under Section 4.5. Any action authorized under Section 4.5, which requires a vote of the membership, shall be taken at a meeting called for that purpose at which a quorum equal to more than fifty percent (50%) of the total voting power of the Association is present. Written notice of said meeting shall be sent to all Members not less than ten (10) nor more than ninety (90) days in advance of the meeting, specifying the place, day and hour of the meeting and, notwithstanding any other provision of law, shall specify those matters the Board intends to present for action by the Members; but, except as otherwise provided by law, any proper matter may be presented at such meeting for action. The action may also be taken without a meeting, pursuant to the provisions of California Corporations Code Section 7513.

Section 4.7 Levying of Regular and Special Assessments. Except as provided below, all Regular and Special Assessments shall be equally assessed to the Owners.

(a) Regular and Special Assessments for Common Expenses, as such term is defined on Attachment B hereto and incorporated by reference herein, shall be assessed to the Units according to the percentages set forth in such attachment. Notwithstanding the foregoing, the Board shall exempt an Owner of a Unit from payment of that portion of the Regular Assessment which is allocated for defraying operating expenses and reserves directly attributable to the existence and use of his Unit until the first to occur of the following events: (i) a notice of completion of construction has been recorded, or (ii) the Unit is occupied or otherwise used.

(b) Any Special Assessment for the rebuilding or major repair of the Common Area shall be assessed according to each Owner's Share (said Share is based on the ratio of the square footage of the floor area of the Unit to the total square footage of all of the Units).

Section 4.8 Assessment Period. The Regular Assessment period shall commence on January 1 of each year and shall terminate on December 31 of each year, or such other dates as may be approved by the Board, and Regular Assessments shall be payable in equal monthly installments, unless the Board adopts some other basis for collection. However, the initial Regular Assessment period shall commence on the first day of the calendar month following the date on which the sale of the first Condominium to a purchaser is closed and shall terminate on December 31 of the year in which the initial sale is closed. The first Regular Assessment and all Special Assessments shall be adjusted according to the number of months remaining in the fiscal year and shall be payable in equal monthly installments, unless the Board adopts some other basis for collection. The Association shall not change the pro rata interest in the Common Area or obligation of any Condominium for purposes of levying Assessments, unless all Owners affected and all the mortgagees of such Owners have given their prior written consent.

Section 4.9 Notice and Assessment Installment Due Dates; Delinquent Assessment.

(a) A single ten (10) day prior written notice of each annual Regular Assessment and Special Assessment, specifying the due dates for the payment of installments, shall be given to each Owner of every Condominium subject to Assessment; provided, however, in the event of an increase in any Regular or Special Assessment, such notice shall be given not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due. The due dates for the payment of installments normally shall be the first day of each month, unless some other due date is established by the Board. Each installment of Regular Assessments and Special Assessments shall become delinquent if not paid within fifteen (15) days after its due date.

(b) If an Assessment is delinquent, the Association may recover the following:

i. Reasonable costs incurred in collecting the delinquent Assessment, including reasonable attorneys' fees;

ii. A late charge of ten percent (10%) of the delinquent Assessment, or ten dollars (\$10.00), whichever is greater;

iii. Interest on all sums imposed in accordance with this Section, including the delinquent Assessment, reasonable costs of collection, and late charges, at an annual percentage rate of twelve percent (12%) interest, commencing thirty (30) days after the Assessment becomes due.

Section 4.10 Payment of Delinquent Assessments Under Protest. In accordance with California Civil Code Section 1366.3, an Owner may dispute a delinquent Assessment, as defined in Section 4.9 hereof, by paying to the Association in full the amount of Assessment in dispute, late charges, interest, and all fees and costs associated with the preparation and filing of a notice of the delinquent assessment and giving written notice to the Association that the amount is being paid under protest. Such notice shall be given by certified mail not more than thirty (30) days from the recording of a notice of delinquent assessment.

Following receipt of such notice, the Association shall inform the Owner that the dispute may be resolved by alternative dispute resolution as set forth in California Civil Code Section 1354, by civil action, or by other dispute resolution procedure available to the Association. The right of any Owner to utilize alternative dispute resolution under this Section shall be limited to not more than two (2) times in any single calendar year and not more than three (3) times in any five calendar years.

Section 4.11 Effect of Transfer of Condominium by Sale or Foreclosure. Sale or transfer of any Condominium shall not affect the Assessment lien. However, the sale of any Condominium pursuant to a power of sale in a first mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale. No sale or transfer shall relieve the Owner of such Condominium from liability for any Assessments thereafter becoming due or from the lien thereof.

Where the mortgagee of a first mortgage of record or other purchaser of a Condominium obtains title to the Condominium as a result of foreclosure of any such first mortgage, such purchaser, including said purchaser's successors and assigns, shall not be liable for the share of the common expenses or Assessment by the Association chargeable to such Condominium which became due prior

to the acquisition of title to such Condominium by such purchaser (except for Assessments liens recorded prior to the mortgage). Such unpaid share of common expenses or Assessments shall be deemed to be common expenses collectible from Owners of all of the Condominiums, including such purchaser or the purchaser's successors and assigns.

If a Condominium is transferred, the grantor shall remain liable to the Association for all unpaid Assessments against the Condominium through and including the date of transfer. The grantor shall be entitled to a statement from the Association dated as of the date of transfer, setting forth the amount of unpaid Assessments against the grantor due the Association and the Condominium so transferred shall not be subject to a lien for unpaid Assessments in excess of the amount set forth in the statement; provided, however, the grantee shall be liable for any such Assessment that becomes due after the date of the transfer.

Section 4.12 Estoppel Certificate. The Board, on not less than twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not, to the knowledge of the Association, a particular Owner is in default as to his Condominium under the provisions of this Declaration and further stating the dates to which installments of Assessments, Regular or Special, have been paid as to such Owner's Condominium. Any certificate delivered pursuant to this Section may be relied upon by any prospective purchaser or mortgagee of such Condominium, but reliance on such certificate may not extend to any default not involving the payment of Assessments of which the signer had not actual knowledge.

Section 4.13 Right to Enforce. The right to collect and enforce Assessments is vested in the Board, acting by and on behalf of the Association. The Board, or its authorized representative, can enforce the obligations of the Owners to pay Assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or through the exercise of the power of sale, pursuant to Section 4.15, to enforce the lien rights created. Suit to recover a money judgment for unpaid Assessments, together with all amounts described in Section 4.1 shall be maintainable without foreclosing or waiving the lien rights.

Section 4.14 Creation of Lien. If there is a delinquency in the payment of any Assessment or installment thereof on a Condominium, as described in Section 4.9 hereof, any amounts that are delinquent, together with any late charges, interest and all costs that are incurred by the Board or its authorized representative in the collection of the amounts, including reasonable attorneys' fees, shall be a lien against such Condominium upon the recordation in the Office of the County Recorder of the City and County of San Francisco of a notice of delinquent assessment, as provided in California Civil Code Section 1367. Before the Association may place a lien upon a Condominium to collect a debt which is delinquent under Section 4.9 hereof, the Association shall (1) notify the Owner in writing by certified mail of the Association's fee and penalty procedures, and (2) provide an itemized statement of the charges owed, including the principal, any late charges and the method of calculation, any attorney's fees, and the Association's collection practices, including the right of the Association to reasonable collection costs. Any payments towards such debt shall be first applied to principal owed, and only after the principal owed is paid in full shall such payments be applied to interest or collection expenses.

The notice of delinquent assessment shall state the amount of the Assessment, collection costs, attorneys' fees, late charges, and interest, a legal description of the Condominium against which the Assessment and other sums are levied, the name of the record Owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by the President of the Association or such other person designated by the Association for that purpose, and mailed in the manner set forth in California Civil Code Section 2924b, to all record Owners of the Condominium.

Monetary penalties levied by the Association (1) as a disciplinary measure for failure of an Owner to comply with the Condominium Documents, or (2) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area and facilities for which the Owner was allegedly responsible, or (3) in bringing the Owner and his subdivision interest into compliance with the Condominium Documents, shall not be Assessments which may become a lien against the Unit Owner's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Section 2924, 2924(b) and 2924(c) of the California Civil Code.

The Assessment lien created by this Section shall be prior to all other liens recorded subsequent to the notice of delinquent assessment, except for taxes, bonds, assessments and other levies, which by law would be superior thereto, and except for the lien of any first mortgage made in good faith and for value.

Section 4.15 Enforcement of Assessment Lien. After the expiration of thirty (30) days following recording of the lien created pursuant to Section 4.14 above, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to California Civil Code Section 2934(a). Any sale by a trustee shall be conducted in accordance with the provisions of California Civil Code Sections 2924, 2924(b), 2924(c), 2924(f), 2924(g) and 2924(h), applicable to the exercise of powers of sale in mortgages and deeds of trust.

Section 4.16 Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article IV, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment becomes delinquent or any lien is imposed.

Section 4.17 Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Condominiums, such taxes shall be included in the Assessments made under the provisions of Section 4.1, and, if necessary, a Special Assessment may be levied against the Condominiums in an amount equal to such taxes, to be paid in two (2) installments, not less than thirty (30) days prior to the due date of each installment.

ARTICLE V

DUTIES AND POWERS OF THE ASSOCIATION

Section 5.1 Duties. In addition to the duties enumerated in its bylaws, or elsewhere provided in this Declaration, and without limiting the generality thereof, the Association shall perform the following duties:

(a) Maintenance. The Association shall maintain, repair, replace, restore, operate and manage all of the Common Area (except that each Owner shall maintain and repair the Exclusive Use Area patio(s) appurtenant to his Unit, if any; provided, however, that the Association shall maintain and repair the structural components of said patio(s), as further described in Section 9.7 herein below) and all facilities, improvements, furnishings, equipment and landscaping thereon, all Common Building Elements and Common Systems of the Project as set forth in the Project Declaration, and all property that may be acquired by the Association. Maintenance shall include, without limitation, painting, maintaining, repairing and replacing all Common Areas (except that each Owner shall maintain and repair the Exclusive Use Area patio(s) appurtenant to his Unit, if any; provided, however, that the Association shall maintain and repair the structural components of said patio(s), as further described in Section 9.7 herein below), exterior glass surfaces, and landscaping; periodic sweeping or cleaning of fireplace chimneys and flues, if any; and periodic maintenance and testing of all mechanical, electrical, and security access and conveying systems, as well as built-in fire detection and protection devices and equipment, if any. The Association shall bear the costs for any portion of the Common Area damaged by the presence of wood-destroying pests or organisms.

The responsibility of the Association for maintenance, repair and replacement shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an Owner or his guests, tenants or invitees, the cost of which is not covered by insurance. Repairs or replacements resulting from such excluded items shall be the responsibility of each Owner; provided, however, that if an Owner shall fail to make the repairs or replacements which are his responsibility as provided herein, then, upon a vote of a majority of the Board of Directors, and after not less than thirty (30) days notice to the Owner, and hearing (except in an emergency situation), the Association shall have the right (but not the obligation) to make such repairs or replacements, and the cost thereof shall be added to the Assessments chargeable to such Condominium and shall be payable to the Association by the Owner of such Condominium.

(b) Insurance. The Association shall obtain and maintain the following policy or policies of insurance:

i. A policy or policies of fire and casualty insurance (Special Form), for the full replacement value, covering:

A. Common Area: All Common Area improvements, including building(s) and any additions or extensions thereto; all fixtures, machinery and equipment permanently affixed to the building(s) and not located within a Unit; fences; monuments; lighting fixtures; exterior signs; recreational facilities, if any; and personal property owned by the Association (but excluding land, foundations, excavations and other items typically excluded from property insurance coverage);

B. Units: Interior walls and doors; ceiling, floor and wall surface materials (e.g., paint, wallpaper, mirrors, carpets, and hardwood floors); utility fixtures (including gas, electrical, and plumbing); cabinets; built-in appliances; heating and air conditioning systems; water heaters (but excluding any improvements or upgrades to any of the foregoing to the extent of any such improvement or upgrade); and

C. Landscaping: Lawn, trees, shrubs and plants located in the Common Area.

The policy or policies shall be primary and noncontributing with any other insurance policy or policies covering the same loss.

Each policy shall provide that it shall not be canceled without at least thirty (30) days prior written notice to the Association and to each of the Owners and their mortgagees of record. The Board shall review the limits of such insurance at least every year and shall increase or adjust the same, if necessary, to provide the coverage and protection required by this Declaration. Such policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each Condominium, if any.

ii. A policy or policies of comprehensive public liability insurance, including, but not limited to, general public liability insurance, including coverage for bodily injury, emotional distress, wrongful death, and/or property damage. Such insurance shall insure the Association, the Declarant, the Board, the directors, the officers, the Owners and any appointed manager, against any liability to the public or to any Owner incident to the ownership and/or use of the Property or incident to the use of, or resulting from, any accident or intentional act occurring in or about any Unit or the Common Area. The general public liability insurance required by this Section shall each be in an amount of not less than five million dollars (\$5,000,000) per occurrence, or

such other minimum amount in excess of five million dollars as may be required by California Civil Code Section 1365.9. The Board shall review the limits and coverage of such insurance at least every year and shall increase or adjust the same, if necessary, to provide the coverage and protection required by this Declaration.

iii. Worker's Compensation Insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.

iv. Fidelity insurance, in a commercial blanket fidelity insurance form, naming such persons as may be designated by the Board as principals, and the Owners as obligees, in an amount to be determined by the Board in its absolute discretion.

v. Flood insurance if the Project is located in an area designated by an appropriate governmental agency as a special flood hazard area.

vi. Earthquake insurance only if a majority of the Members vote to purchase such insurance. If the Members elect to purchase such earthquake insurance, the insurance may be subsequently cancelled on a vote of the majority of the Members. If cancelled, the Association shall make reasonable efforts to notify the Members of the cancellation.

vii. Any insurance policy or policies which the Project Declaration requires the Association to carry.

Nothing in this subsection (b) [except as provided in subsection (b)(vi)] shall restrict or prohibit the Board from maintaining such additional policies of insurance or endorsements as it, in its absolute discretion, shall deem reasonable and necessary. Any insurance acquired by the Board may be taken in the name of the Board as trustee, for the use and benefit of the Board and all Owners.

The Board periodically (and not less than once each year) shall review the Association's insurance policies and make such adjustments to the policies terms and conditions as the Board considers to be in the best interests of the Association. The review shall include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Association's fire and casualty policy unless the Board is

satisfied that the current dollar limit of such policy, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs.

The amount, term, and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, and notices of changes or cancellations) shall satisfy the minimum requirements imposed for this type of development by the Federal National Mortgage Association ("FNMA") or any successor thereto. If FNMA does not impose requirements on any policy required hereunder, the term, amount, and coverage of such policy shall be no less than that which is customarily carried by prudent owners of similar property in the County in which the Project is located.

Each Owner appoints the Association or any insurance trustee (as defined in Section 9.9(b)(ii) below) designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including, without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors, and Members, the Owners and occupants of the Condominiums (including Declarant) and mortgagees, and, if obtainable, cross liability endorsements or severability of interest endorsements insuring each insured against the liability of each other insured.

Except in the case of earthquake insurance and subject to any restrictions imposed by any Mortgagees, the Board shall have the power and right to deviate from the insurance requirements contained in this Section 5.1(b) in any manner that the Board, in its discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this Section 5.1(b), the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least thirty (30) days before the effective date of the reduction.

The Association and its directors and officers shall have no liability to any Owner or Mortgagee if, after a good faith effort, (1) the Association is unable to obtain any insurance required

hereunder because the insurance is no longer available; (2) if available, the insurance (except for earthquake insurance) can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances; or (3) the Members fail to approve any assessment increase needed to fund the insurance premiums.

In addition to the policies of insurance required of the Association, each Owner shall be required to carry owners liability insurance on their Unit.

(c) Discharge of Liens. The Association shall discharge by payment, if necessary, any lien against the Common Area, and assess the cost thereof to the Member or Members responsible for the existence of such lien; provided that such Member(s) is given notice and the opportunity to be heard before the Board before discharge of the lien.

(d) Assessments. The Association shall fix, levy, collect and enforce Assessments, as provided in Article IV hereof.

(e) Payment of Expenses. The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the Property of the Association.

(f) Enforcement. The Association shall enforce this Declaration.

(g) Account Review. The Association shall review its operating and reserve accounts, their reconciliations and account statements, as set forth in the Bylaws. For purposes herein, "reserve accounts" shall mean monies that the Association has identified from its annual budget to defray the future repair or replacement of, or additions to, those major components of the Common Area and facilities which the Association is obligated to maintain.

(h) Notice of Civil Action. The Association shall notify the Members of filing of any civil action by the Association against the Declarant or other developer for alleged damage, as specified in Section 9.7 of the Bylaws.

(i) Condominium Documents and Statement of Unpaid Assessments. Within ten (10) days of receipt of a written request from a Member, the Association shall provide copies of the Condominium Documents, copies of the documents required by Article IX of the Bylaws and a statement of any unpaid Regular or Special Assessments, late charges, interest and collection costs which are or may become a lien against his Unit, for delivery to a prospective purchaser of the Unit, pursuant to Civil Code Section 1368. The Association may charge a reasonable fee for such service, which shall not exceed the reasonable cost to prepare and reproduce the requested items. In addition, for the period of ten years following the closing of the escrow for the first Unit in the Property, the Association shall provide to a Member, in the same manner as described above, a copy of Declarant's disclosures (which were delivered by Declarant to each of the initial purchasers), and for the same time period, each Member shall deliver a copy of such disclosures to any prospective purchaser of such Member's Unit.

(j) Inspection and Maintenance Guidelines; Periodic Inspections. The Board shall adopt inspection and maintenance guidelines for the periodic inspection and maintenance of the Common Area and landscaping, including, but not limited to, foundations, garages, building skin, gutters, down-spouts, siding, trim, roofs, balconies, windows and caulking, elevator, mechanical, plumbing and electrical systems, irrigation system, utility equipment and sanitary sewer and storm drainage facilities (the "Common Area Improvements"). The guidelines shall require at a minimum an annual inspection by a qualified person of each of the foregoing.

" No less than once every three (3) years, the Association shall, using third party property inspection experts, conduct a comprehensive inspection of the Common Area Improvements and for each inspection obtain from said inspectors a written report of the findings, conclusions and recommendations. The Association shall, immediately following receipt of each report, forward a copy of such report to Declarant for ten years beginning with the closing of the first Unit.

(k) Obligations Under Project Declaration. On behalf of the Property, defined as the "Residential Parcel" in the Project Declaration, the Association shall perform all of the duties and responsibilities of the Property which are set forth in the Project Declaration and which would become responsibilities of the Association upon delegation by the Joint Maintenance Committee,

including but not limited to maintenance of the Common Building Elements and Common Systems of the Project, preparation of a budget for such expenses, collection of the contributions for maintenance from the other parcel owners, obtaining Project insurance coverages, and enforcement of the provisions of the Project Declaration.

(1) NSR. The Association shall operate and manage the Property in compliance with the terms of the NSR.

Section 5.2 Powers. In addition to the powers enumerated in its Bylaws, or elsewhere provided herein, and without limiting the generality thereof, the Association shall have the following powers:

(a) Utility Service. The Association shall have the authority to obtain, for the benefit of all of the Condominiums, all water, gas and electric service, and refuse collection; janitorial or window cleaning service; and fireplace cleaning and chimney cleaning service.

(b) Easements. The Association shall have the authority to grant easements, where necessary, for utilities and sewer facilities over the Common Area to serve the Common Areas and the Condominiums.

(c) Manager. The Association shall have the authority to employ a manager or managing agent and to contract with independent contractors to perform all or any part of the day to day management duties and responsibilities of the Association, each of whom shall be subject to the direction and control of the Board, provided that any contract with a firm or person appointed as manager or managing agent shall not exceed a one (1) year term and shall provide for the right to terminate by either party without cause and without payment of a termination fee on thirty (30) days written notice. Any delegation of authority to a manager or managing agent shall be subject to Section 5.2(k) hereof.

Notwithstanding the above, no manager or officer may be delegated the power or authority to levy fines, hold hearings or impose discipline, make capital expenditures, file suit, record a claim of lien, or foreclose for failure to pay Assessments.

(d) Adoption of Rules. The Association may adopt reasonable rules not inconsistent with this Declaration relating to

the use of the Common Area, the Exclusive Use Areas, and all facilities thereon, and the conduct and use thereof and the conduct of Owners and their tenants and guests with respect to the Property and other Owners.

(e) Access. For the purpose of performing the maintenance authorized herein, or for any other purpose reasonably related to the performance by the Association or the Board of their respective responsibilities, the Association's agents or employees shall have the right, after reasonable notice to the Owner thereof, to enter any Unit or to enter any portion of the Common Area at reasonable hours. Except in the case of any emergency, forty-eight (48) hours advance notice shall be given to the Owner or occupant prior to any entry of a Unit.

(f) Assessments, Liens and Fines. The Association shall have the power to levy and collect Assessments, in accordance with the provisions of Article IV hereof. The Association may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation of any provision of the Condominium Documents. Penalties may include but are not limited to: fines, temporary suspension of voting rights or other appropriate discipline, provided that the accused Member is given at least fifteen (15) days notice and the opportunity to be heard orally or in writing before the Board of the Association with respect to the alleged violations at least five (5) days before a decision to impose discipline is made. All notices required under this Section shall be made pursuant to Section 9.12 of this Declaration.

(g) Enforcement. The Association shall have the authority to enforce this Declaration, as provided in Section 9.1 hereof.

(h) Acquisition of Property. The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of, real or personal property in connection with the affairs of the Association.

(i) Loans. The Association shall have the power to borrow money, and only with the consent (by vote or written consent) of three-fourths (3/4) of each class of Members, to mortgage, to pledge, to encumber or to hypothecate any or all of

its real or personal property as security for monies borrowed or debts incurred.

(j) Contract. The Association shall have the power to contract for goods and/or services for the Common Area facilities and interests or for the Association, subject to any limitations set forth in the Condominium Documents.

(k) Delegation. The Association shall have the power to delegate its authority and powers to committees, officers or employees of the Association. The Association may not, however, delegate the following powers:

i. To levy fines, hold hearings, or impose discipline;

ii. To make capital expenditures;

iii. To file suit, to cause a claim of lien to be recorded, or to foreclose for failure to pay Assessments; or

iv. To levy Regular Assessments or Special Assessments.

(l) Temporary Removal of Occupants. The Association may cause the temporary removal of any occupant for such periods and at such times as necessary for prompt, effective treatment of wood-destroying pests or organisms, or the repair of extensive dry rot or significant structural or building skin repairs. The cost of the temporary relocation is to be borne by the Owner of the Unit affected. Not less than fifteen (15) days nor more than thirty (30) days notice of the need to temporarily vacate shall be given to occupants and to the Owner of the Unit affected. The notice shall state:

i. The reason for the temporary relocation;

ii. The date and time of the beginning of the treatment and/or repairs;

iii. The anticipated date and time of termination of treatment and/or repairs; and

iv. That the occupants will be responsible for their own accommodations during the temporary relocation.

Notice is deemed complete if a copy is personally delivered or mailed first class to the occupants and a copy is sent to the non-occupying Owners via first class mail.

(m) Appointment of Trustee. The Association, or the Board on behalf of the Association, shall have the power to appoint a trustee to enforce Assessment liens as provided in Section 4.15 hereof, and as provided in California Civil Code Section 1367(b).

(n) Litigation, Arbitration, Mediation or Administrative Proceedings. The Board may institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to (1) enforcement of the Condominium Documents, (2) damage to the Common Areas, (3) damage to the separate interests which the Association is obligated to maintain or repair, or (4) damage to the separate interests which arises out of, or is integrally related to, damage to the Common Areas or separate interests that the Association is obligated to maintain or repair, subject to compliance with California Civil Code Section 1354.

(o) Other Powers. In addition to the powers enumerated in this Declaration and in the Bylaws, the Association may exercise the powers granted to a nonprofit mutual benefit corporation, as such exist from time to time, under the California Corporations Code.

ARTICLE VI

UTILITIES

Section 6.1 Owners' Rights and Duties. The rights and duties of the Owners of Condominiums within the Project with respect to electric, telephone, water, gas and sanitary sewer lines, facilities and connections; cable, fibre optic, data/communication or master television antenna lines, facilities and connections; and security system lines, facilities and connections (collectively referred to as "utility facilities") shall be as follows:

(a) Whenever utility facilities are installed within the Property, which utility facilities, or any portion thereof, lie within or upon Condominiums owned by other than the Owner of a

Condominium served thereby, the Board or its authorized representative shall have the right to enter (or to have the utility company enter) upon the Condominiums within or upon which such utility facilities, or any portion thereof, lie, in connection with construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common.

(b) Whenever utility facilities are installed within the Property, which utility facilities serve more than one Condominium, the Owner of each Condominium served thereby shall be entitled to the full use and enjoyment of the portions of such utility facilities as service his Condominium.

(c) In the event of a dispute between Owners with respect to the maintenance, repair or rebuilding of such utility facilities, or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties.

Section 6.2 Easements for Utilities and Maintenance. Easements over and under the Property for the installation, repair and maintenance of utility facilities, drainage facilities, walkways, and landscaping, as shown on the Map, and as may be hereafter required or needed to service the Property are hereby reserved by Declarant and the successors and assigns of Declarant, including the Association, together with the right to grant and transfer the same. Declarant further reserves an easement over and under the Property for the installation, maintenance, repair and replacement of cable in accordance with the MDU Broadband agreement with AT&T for a term of five (5) years as per the agreement.

Section 6.3 Association's Duties. The Association shall maintain all utility installations located in the Common Area except those installations maintained by utility companies, public, private or municipal. The Association shall pay all charges for utilities supplied to the Property, except those metered and charged separately to the Condominiums.

ARTICLE VII

USE RESTRICTIONS

Section 7.1 Condominium Use.

(a) Residential Use. No Condominium shall be occupied and used except for residential purposes by the Owners, their tenants, and guests, except that an Owner may maintain an office to conduct a trade or business provided such office complies with the requirements of local laws and regulations governing the maintenance of offices in residential dwelling units.

(b) Model Homes. Declarant, and the successors or assigns of Declarant, may use any Condominium or Condominiums in the owned by Declarant for a model home site or sites and display and sales office until the last Condominium is sold by Declarant.

(c) Below Market Rate ("BMR") Units. Pursuant to the NSR, certain Units have been designated as Below Market Rate (BMR) Units. Those Units designated as BMR Units are shown on Attachment C to this Declaration. The BMR Units shall be owned, leased, rented, sold or otherwise transferred in accordance with the terms and conditions set forth in the NSR.

Section 7.2 Nuisances. No illegal or seriously offensive activity shall be transacted or conducted in any Unit or in any part of the Property, nor shall anything be done thereon which is a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners of his respective Unit, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be canceled or to cause a refusal to renew the same, or which will impair the structural integrity of the Condominium Building.

Section 7.3 Signs. No signs shall be displayed to the public view on any Unit or any portion of the Property except signs as are approved by the Board. In accordance with California Civil Code Section 712, one (1) "For Sale" or "For Rent" sign for each Condominium shall be allowed without such approval, provided that it is reasonable in size and posted at appropriate locations on the Property. The Board may adopt rules and regulations concerning the size and location of "For Sale" or For Rent" signs.

Section 7.4 Pets. An Owner shall be allowed to keep no more than two (2) domesticated birds, cats, dogs, aquatic animals kept within an aquarium, or other pets as agreed upon between the Association and the Owner; provided that no animal is kept, bred or maintained for any commercial purposes, and is kept under reasonable control at all times. Notwithstanding the above, no dog weighing greater than forty (40) pounds may be kept on the property, except as agreed to between the Owner and the Association.

No pet may be kept on the Property which is a serious annoyance or obnoxious to the Owners. No pet shall be allowed in the Common Area except as may be permitted by the rules of the Association; however, no pet shall be permitted at any time in the pool and garden area. Declarant or any Owner may cause any unauthorized pet found in the Common Area to be removed to a pound or animal shelter under the jurisdiction of the City and County of San Francisco, by calling the appropriate authorities, whereupon the Owner (upon payment of all expenses connected therewith) may repossess the pet. No dog whose barking seriously disturbs other Owners shall be permitted to remain on the Property. Any decision regarding the conduct of a pet shall be made only after notice to the Owner and the opportunity to be heard before the Board. Owners shall prevent their pet from soiling any portion of the Common Area and shall promptly clean up any fouling by their pet.

Section 7.5 Garbage and Refuse Disposal. All rubbish, trash, recycling materials and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon. Trash, garbage, recycling materials and other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, garbage cans, wood piles or storage piles shall be kept screened and sealed from view of other Units, streets and Common Areas. No toxic or hazardous materials shall be disposed of within the Project by dumping in the garbage containers or down the drains, or otherwise, other than those required, in limited quantities, for the normal cleaning of a Condominium.

Section 7.6 Radio and Television Antennas; Data Communication. No Owner shall alter or modify a central radio antenna, television antenna system, cable television system, data communication system or satellite dish, if any, as developed by Declarant and as maintained by the Association, without the permission of the Board. No Owner shall construct and/or use and

operate his own external radio, television antenna or satellite dish without the approval of the Board, except that the Board may not prohibit or restrict the construction and/or use of a satellite dish having a diameter or diagonal measurement of one (1) meter or less which is located inside a Unit or a balcony area appurtenant to such Unit. Notwithstanding the foregoing, the Board may impose reasonable restrictions for the installation and use of a video or television antenna, including a satellite dish, that do not significantly increase the cost of the system or significantly decrease its efficiency or performance, as set forth in Civil Code Section 1376. If the Board requires approval for the installation of such antenna or satellite dish, the application for approval shall be processed in the same manner as an application for architectural modification and the issuance of a decision on the application shall not be willfully delayed. No Owner shall alter or modify a central radio antenna, television antenna system, cable television system, data communication system or satellite dish, if any, as developed by Declarant and as maintained by the Association, without the permission of the Board.

Section 7.7 Right to Lease. Owners shall be entitled to rent or lease their Unit provided that:

(a) Not less than the entire Unit is rented or leased. Nothing contained in this Section 7.7(a) shall be construed to prohibit roommates.

(b) The lease term is for a period of not less than thirty (30) days.

(c) Any lease or occupancy agreement for a Unit shall be in writing and shall specifically provide that it is subject to the Condominium Documents, and that violation or infraction of the Condominium Documents shall constitute a default thereunder. The Owner shall remain liable for any violation or infraction of the Condominium Documents by the tenant.

(d) If the Unit to be rented or leased is a designated BMR Unit, the Owner has complied with the terms of the NSR.

Section 7.8 Floor Covering. Each bedroom shall be fully carpeted, and all hardwood or hard surface flooring installed in Units must be installed over an acoustical underlayment in accordance with guidelines established by the Association in order to reduce noise and maximize quiet enjoyment of all Owners.

Section 7.9 Reduction of Noise. Although the entire development has been constructed according to applicable laws and regulations governing sound transfer, noise transmission between adjacent Units is to be expected. Such noise transmission may include, but not be limited to, sounds generated by plumbing systems, opening and closing cabinet drawers, the impact of closing doors, use of stereos, radios, telephones and televisions and by voices. In order to maintain the highest level of acoustical privacy possible, the Board shall, from time to time, adopt rules and regulations to reduce levels of noise emission from Units. Additionally, no loudspeakers shall be affixed to any wall, ceiling, shelving or cabinets so as to cause vibrations discernible between Units. The use of stereo equipment, televisions and musical instruments shall be subject to the Board's rules and regulations. All Owners covenant and agree to take all reasonable precautions to lower noise transference between Units and to abide by the rules and regulations of the Association and any noise reduction ordinance of the City and County of San Francisco.

Section 7.10 Clothes Lines. No exterior clothes lines shall be erected or maintained and there shall be no outside laundering or drying of clothes. No draping of towels, carpets or laundry over railings shall be allowed.

Section 7.11 Patios. The Exclusive Use Area patios with open railings are to be used only for patio furniture and plants not exceeding seventy-two inches (72") in height, and are not to be used for the storage of any items. No leaking plants, pointed objects, high-heeled shoes, or any other item or use which might cause damage to the patios (or their floorings), to a Unit or to the Common Area shall be allowed on the patios. On those patios with open railings, bicycles, unattended pets, umbrellas, trash, recyclables and garbage, dead plants, storage boxes and unattended objects less than four (4) inches in diameter are specifically prohibited. Neither planter boxes nor screen material of any kind shall be attached to or suspended from railings. There shall be no charcoal barbecuing permitted on the patios or at any location within the Property. Patio cleaning shall be limited to damp mopping only.

Section 7.12 Window Covering. Window coverings on windows visible from the street shall be restricted to drapes, curtains, shutters or blinds of a neutral or white color, unless expressly approved by the Association. No windows, wherever located, shall be covered by aluminum foil.

Section 7.13 Liability of Owners for Damage to Common Area.

The Owner of each Condominium shall be liable to the Association for all damages to the Common Area, or improvements thereon, caused by such Owner or Owner's agent, any occupant, invitee, guest or pet, except for that portion, if any, fully covered by insurance. Liability of an Owner shall be established only after notice to the Owner and hearing before the Board.

Section 7.14 Hazardous Materials. An Owner shall not use or keep in a Unit or the Common Area any kerosene, gasoline or inflammable or combustible fluid or material or other hazardous materials, other than those required, in limited quantities, for normal cleaning or landscaping work.

Section 7.15 Combining Units. Subject to prior written approval of the Board, which approval shall not unreasonably be withheld, the Owner of two or more adjacent Units may combine the Units by creating internal access from one Unit to another through the walls or other portions of the Common Area which separate and divide the individual Units, or separate and divide two or more Units previously joined hereunder, so long as any such work does not impair the structural integrity of the Condominium Building. All of such work shall be done at the expense of the Owner and shall be performed in accordance with any permits which may be required. All plans must be approved by the Board prior to commencement of work, or by the Architectural Control Committee, in accordance with Article VIII of this Declaration.

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

Section 7.16 Handicap Parking. The Project contains handicap parking areas designated on the Plan as HCP- followed by numerals, easements for the exclusive use of which shall be granted by Declarant to particular Units. It is the intention of Declarant to grant easement to all of the handicap and regular parking areas

at the time title to the Units is conveyed to the original purchasers.

Notwithstanding the requirements of Article II, Section 2.2(c) regarding the assignment of Exclusive Use Areas, the Owner of a Unit who has been conveyed an exclusive easement for a handicap parking area and who is not, himself, handicapped shall assign to the owner or occupant of another Unit in the Project who becomes handicapped for an extended and continuous period, or new owner or occupant who is handicapped, the exclusive right to use such handicap parking area; provided such person makes available to such the Owner the exclusive use of the parking area such person would otherwise be entitled to use, as set forth in the deed for such other condominium unit. Such rights to use the handicap parking area shall terminate when such person ceases to be handicapped. Evidence of handicap status shall be by distinguishing license plate or placard issued by the California Department of Motor Vehicles. The Association shall have the authority and be responsible for coordinating the exchange of parking areas pursuant to this section and shall adopt rules and regulations with respect thereto, including the procedure to be followed should an owner or occupant be handicapped and wish to use a handicap parking area, notice to be given to the Association and Owner, and review of the required evidence of handicap. The Association shall maintain appropriate records of such exchanges, including a copy of the evidence provided.

Section 7.17 Common Area Attic. Owners shall be prohibited from using the common area attic space for storage or any other purpose whatsoever. Owners shall not open any ceiling access panels located within their Units.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 8.1 Approval of Plans. No building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, deck, screen, patio, patio cover, tent awning, carport, carport cover, trellis, improvement or structure of any kind shall be commenced, installed, erected, painted or maintained upon the Property, nor shall any alteration or improvement of any kind be made thereto, or

to the exterior of any residence, until the same has been approved in writing by the Architectural Control Committee appointed by the Board, pursuant to Section 8.2 hereof. Notwithstanding the foregoing, an Owner may improve or alter any improvements located within the interior boundaries of the Owner's Unit, provided the improvement or alteration does not impair the structural or acoustical integrity of any Common Area, the utilities, or other systems servicing the Common Area or other Condominiums, and does not involve altering any Common Area (including roofs and bearing walls). Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Architectural Control Committee for approval as to quality of workmanship and design and harmony with all improvements located in the Project, and as to location in relation to surrounding structures, topography and finish grade elevation. No permission or approval shall be required to repaint in accordance with Declarant's original color scheme previously approved by the Committee, or to rebuild in accordance with plans and specifications previously approved by the Committee. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his residence, or to paint the interior of his residence any color desired.

Section 8.2 Architectural Control Committee Action. The Architectural Control Committee shall consist of three (3) members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original final public report for the Property. The Declarant reserves to itself the power to appoint a majority of the members to the Committee until ninety percent (90%) of all the Condominiums have been sold, or until the fifth anniversary of the issuance of the final public report, whichever first occurs. After one (1) year from the date of issuance of the final public report, the Board shall have the power to appoint at least one (1) member to the Committee until ninety percent (90%) of all the Condominiums have been sold, or until the fifth anniversary date of the issuance of the final public report, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Control Committee. In the event of death or resignation of any Committee member, said member's replacement shall be appointed by whomever (the Board or Declarant) appointed that member. A majority of the members of the Committee may appoint a single member to act for it. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant thereto. In the

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

Section 8.3 Governmental Approval. Before commencement of any alteration or improvements approved by the Architectural Control Committee, the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

ARTICLE IX

GENERAL PROVISIONS

Section 9.1 Enforcement.

(a) Right to Enforce. The Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or decisions made by the Association pursuant to the provisions of this Declaration, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court. Failure by the Association or by any Owner to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the rights to so do thereafter. "

(b) Mandatory Alternative Dispute Resolution. Prior to the filing by either the Association or an Owner of a civil action related to the enforcement of the Condominium Documents (i) solely for declaratory relief, or (ii) solely for injunctive relief, or (iii) for declaratory relief or injunctive relief in conjunction with a claim for monetary damages not in excess of five thousand dollars (\$5,000), the parties shall endeavor to submit their dispute to a form of alternative dispute resolution such as mediation or arbitration (collectively, "alternative dispute resolution proceedings"), as required by Section 1354(b) of the California Civil Code. As provided therein:

i. The form of alternative dispute resolution chosen may be binding or nonbinding at the option of the parties.

ii. Any party to such a dispute may initiate the process by serving on another party to the dispute a Request for Resolution. The Request for Resolution shall include (1) a brief description of the dispute, (2) a request for alternative dispute resolution, and (3) a notice that the party receiving the Request for Resolution is required to respond within thirty (30) days of receipt or it will be deemed rejected. Service of the Request for Resolution shall be as required by Section 1354(b).

iii. Parties receiving a Request for Resolution shall have thirty (30) days following service of the Request for Resolution to accept or reject alternative dispute resolution and, if the Request is not accepted within said thirty (30) day period by a party, it shall be deemed rejected by that party.

iv. If alternative dispute resolution is accepted by a party, it shall be completed within ninety (90) days of receipt of the acceptance by the party initiating the Request, unless extended by written stipulation signed by both parties.

v. The costs of the alternative dispute resolution shall be borne by the parties.

Any such action filed by the Association or an Owner shall be subject to the provisions of Section 1354(b), and failure by any Member or the Association to comply with the prefiling requirements of Section 1354(b) may result in the loss of the right to sue the Association or another Member to enforce the Condominium Documents.

(c) Mandatory Arbitration of Claims Against Declarant. Notwithstanding California Code of Civil Procedure Section 1298.7, any controversy or claim between or among Declarant as builder, on the one hand, and either the Association or any Owner, on the other hand, relating to the design or construction of the improvements on the Property, shall be submitted to binding arbitration before the American Arbitration Association ("AAA") or Judicial Arbitration and Mediation Service/Endispute ("JAMS"), as provided in this subsection (c). The entity selected by the parties is hereinafter referred to as the "Arbitrating Entity", and if the parties are unable to agree on the Arbitrating Entity, the dispute shall be arbitrated before AAA.

i. The parties shall comply with the requirements of California Civil Code Section 1375 prior to initiating arbitration proceedings under this Section.

ii. The arbitration shall be conducted in accordance with the commercial arbitration rules of AAA or the Streamlined or Comprehensive Rules and Regulations of JAMS, as the case may be, modified, in the case of AAA by a written agreement to vary procedures and in the case of JAMS by party-agreed procedures, as follows:

A. Declarant shall advance the fees necessary to initiate the arbitration, with ongoing costs and fees to be paid as agreed by the parties and, if they can not agree, as determined by the arbitrator; provided, however, that the costs and fees of the arbitration shall be ultimately borne as determined by the arbitrator.

B. There shall be only one arbitrator who shall be selected by mutual agreement of the parties within thirty (30) days of the administrator of the Arbitrating Entity receiving a written request from a party to arbitrate the controversy or claim. The arbitrator shall be a neutral and impartial individual, and the provisions of California Code of Civil Procedure Section 1297.121 shall apply to the selection of the arbitrator. An arbitrator may be challenged on any of the grounds listed in California Code of Civil Procedure Sections 1297.121 or 1297.124. If the parties are unable to agree on an arbitrator, the Arbitrating Entity shall select the arbitrator.

C. The venue of the arbitration shall be the county in which the Property is located unless the parties agree to some other location.

D. The arbitrator shall apply California substantive law in rendering a final decision. The arbitrator shall have the power to grant all legal and equitable remedies and award compensatory damages, but shall not have the power to award punitive damages.

E. Discovery shall be allowed pursuant to California Code of Civil Procedure Section 1283.05, and arbitration of any matter pursuant to this Section shall not be deemed a waiver of the attorney-client or attorney-work product privilege in any way.

iii. The parties agree to be bound by the decision of the arbitrator, which shall be final and non-appealable. Judgment upon the decision rendered by the arbitrator may be

entered in any court having proper jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement. If a party refuses to arbitrate, the other party may seek a court order compelling arbitration.

(d) Optional Alternative Dispute Resolution. In addition to the requirements of Sections 9.1(b) and (c) above, the Association may perform any act reasonably necessary to resolve any civil claim or action through alternative dispute resolution proceedings, including, without limitation, the following:

i. Provide advance notice of the Association's intent to initiate the prosecution of any civil action.

ii. After initiating the prosecution or defense of any civil action, meet and confer with every person who is a party.

iii. Consider diversion of the prosecution or defense of any civil action to alternative dispute resolution proceedings.

iv. Agree to both participate in alternative dispute resolution proceedings and pay costs therefor incurred by the Association.

(e) Judicial Reference of Claims Against Declarant. In the event that the mandatory arbitration provision of subsection (c) hereinabove is unenforceable for whatever reason, then any controversy or claim referenced therein shall be adjudicated by using voluntary judicial reference in accordance with the provisions of Code of Civil Procedure sections 638-645 or any successor statutes. The parties shall use a general referee acceptable to both parties, or, if the parties cannot agree, any party may petition the Superior Court of the City and County of San Francisco for appointment of a general referee by the presiding judge. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Declarant shall not be required to participate in the judicial reference proceeding unless Declarant is satisfied that all necessary and appropriate parties will participate.

The judicial reference shall be a general reference. The general referee shall have the authority to try any all of the issues in the proceeding whether of fact or of law, and to report

a statement of decision thereon. Neither the referee nor any party shall have the right to impanel a jury. Each party retains the same appeal rights of the referee's decision as if the decision were rendered by a trial court judge.

Section 9.2 Invalidity of any Provision. Should any provision or portion of any Condominium Document be declared invalid or in conflict with any law of the jurisdiction in which this Property is situated, the validity of all the remaining provisions and portions thereof shall remain unaffected and in full force and effect.

Section 9.3 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date that this Declaration is recorded, after which time, these covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by seventy-five percent (75%) of the then Owners of the Condominiums (and approved by first mortgagees in accordance with Section 9.6) has been recorded within the year preceding the year of each successive period of ten (10) years, agreeing to change such covenants and restrictions, in whole or in part, or to terminate them.

Section 9.4 Amendments. This Declaration may be amended only by the affirmative vote of seventy-five percent (75%) of each class of the Association Members, if the two class voting structure is still in effect. Under the single class voting structure, amendment of this Declaration shall require both the affirmative vote of seventy-five percent (75%) of the total voting power of the Association Members and a bare majority (51%) of the votes of Members other than Declarant, each Unit having one (1) vote. In no event, however, may any clause, provision or Section of this Declaration be amended by a percentage of voting power of the Association which is lower than the percentage of affirmative votes prescribed for action to be taken under that clause, provision or Section. All such amendments must be recorded and shall become effective upon being recorded in the Recorder's Office of the City and County of San Francisco.

Section 9.5 Encroachment Easements. Each Condominium within the Property is hereby declared to have an easement over all adjoining Condominiums and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settling or shifting of the Condominium Building, or any other cause. There shall be valid easements for the maintenance of such encroachments as long as they shall exist, and the rights and obligations of the Owners shall not be altered in any way by such encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if such encroachment occurred due to willful misconduct of such Owner or Owners. In the event that a structure is partially or totally destroyed, and subsequently repaired or rebuilt, the Owners of each Condominium agree that minor encroachments over adjoining Condominiums or Common Area shall be permitted and that there shall be valid easements for the maintenance of such encroachments, so long as they shall exist.

Section 9.6 Mortgage Protection Provision.

(a) Mortgage Permitted. Any Owner may encumber his Condominium with a mortgage. The Exclusive Use Areas are a part of the Property and are covered by the mortgage at least to the same extent as are the Common Areas. All such areas are fully installed, completed, and in operation for use by the Owners.

(b) Subordination. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any first mortgage that encumbers any Condominium, made in good faith and for value, and no such lien shall in any way defeat, invalidate or impair the obligation or priority of such mortgage, unless the mortgagee expressly subordinates his interest in writing to such lien. The transfer of ownership of a Unit and its appurtenant percentage interest in the Common Area, as the result of the exercise of a power of sale or a judicial foreclosure involving a default under the first mortgage, shall extinguish the lien of Assessments which were due and payable prior to the transfer of the ownership interest. No transfer of an ownership interest, as the result of a foreclosure or exercise of a power of sale, shall relieve the new Owner, whether it be the former mortgagee or beneficiary of the first mortgage or another person, from liability for any Assessments thereafter becoming due or from the lien thereof. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall

relate only to the individual Condominiums and not to the Project as a whole.

(c) Amendment. No amendment to the Condominium Documents shall affect the rights of any mortgagee under any mortgage made in good faith and for value and recorded before the recordation of any such amendment, unless a mortgagee either joins in the execution of the amendment or approves it in writing as a part of such amendment.

(d) Restrictions on Certain Changes.

i. Unless sixty-seven percent (67%) of all first mortgagees of Condominiums (based on one vote for each first Mortgage owned) and sixty-seven percent (67%) of Owners (other than Declarant or sponsors, developers, or builders) have given their prior written approval (unless a higher percentage is required by a specific provision of this Declaration), neither the Association nor the Owners shall be entitled:

A. By act or omission to seek to abandon or terminate the Project, except for abandonment provided by statute in case of substantial loss to the Units and the Common Area.

B. To change the pro rata interest or obligations of any Condominium for purposes of levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of ownership of each Condominium in the Common Area.

C. To partition or subdivide any Condominium."

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

E. To use hazard insurance proceeds for losses to Units or Common Area for other than the repair, replacement or reconstruction of improvements, except as provided by statute in case of substantial loss to the Units or Common Area of the Property.

ii. A. Unless a higher percentage is required by a specific provision of this Declaration, the consent of sixty-seven percent (67%) of Owners and the approval of Eligible Mortgagees holding mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to mortgages held by Eligible Mortgagees shall be required to add or amend any material provisions of the Condominium Documents which establish, provide for, govern, or regulate any of the following: (1) voting; (2) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens or the priority of such liens; (3) reductions in reserves for maintenance, repair and replacement of the Common Area; (4) insurance requirements; (5) reallocation of the interests in the Common Area or the Exclusive Use Areas or rights to their use; (6) responsibility for maintenance and repair; (7) expansion or contraction of the Property or the addition, annexation, or withdrawal of property to or from the Project; (8) the redefinition of boundaries of any Condominium; (9) restoration or repair of the Property (after damage or partial condemnation) in a manner other than that specified herein; (10) convertibility of Units into Common Area or of Common Area into Units; (11) imposition of any restriction on the leasing of Condominiums; (12) imposition of any right of first refusal or similar restriction on the right of a Condominium Owner to sell, transfer, or otherwise convey his Condominium; and (13) any provisions which are for the express benefit of Eligible Mortgagees or Eligible Insurers or Guarantors).

B. An addition or amendment to such document shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. Any Eligible Mortgagee who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

iii. Unless the prior consent of sixty-seven percent (67%) of Owners and approval of Eligible Mortgagees holding mortgages on Condominiums which have at least sixty-seven percent (67%) of the votes of Condominiums subject to mortgages held by Eligible Mortgagees has been obtained, neither the Association nor the Owners shall be entitled to terminate the legal status of the Property as a condominium development; except that the approval of only fifty-one percent (51%) of Eligible Mortgagees shall be required to terminate the legal status of the Property after substantial destruction or a substantial taking in condemnation.

(e) Right to Examine Books and Records. The Association shall make available to Owners and first mortgagees (and insurers or guarantors of any first mortgage), current copies of the Condominium Documents, Declarant's disclosures (as required under Section 5.1(i) hereof) and the books, records, and financial statements of the Association. "Available" means available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances. The Association may impose a fee for providing the foregoing which may not exceed the reasonable cost to prepare and reproduce the requested documents. Any first mortgagee shall be entitled, on written request, to have an audited financial statement for the immediately preceding fiscal year. Such statement shall be furnished within a reasonable time following such request.

(f) Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of first mortgagees of Condominiums pursuant to their mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Units or Common Area. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the Property or the Project is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected mortgagees, naming the mortgagees, as their interests may appear.

(g) Notice to Mortgagees of Record. On receipt of written request to the Association from any Eligible Mortgagee or Eligible Insurer or Guarantor, identifying both its name and address and the Unit number or address of the Unit on which it has the mortgage, the Association shall give written notice to each Eligible Mortgagee or Eligible Insurer or Guarantor of the following:

i. Any loss to any Unit covered by such mortgage, if such loss exceeds one thousand dollars (\$1,000), or any taking of such Unit;

ii. Any loss to the Common Area, if such loss exceeds five thousand dollars (\$5,000), or any taking of the Common Area;

iii. Any default by the Owner of any Unit covered by such mortgage under any provision of this Declaration or any other

provision of the Bylaws or rules and regulations adopted by the Association, which default is not cured within sixty (60) days after written notice to such Owner (such notice to include the fact that said sixty (60) day period has expired);

iv. Any lapse, cancellation, or material modification of any insurance policy or fidelity insurance maintained by the Association; and

v. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 9.6(d)(ii).

(h) Effect of Breach. No breach of any provision of this Declaration shall invalidate the lien of any mortgage made in good faith and for value, but all covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

(i) Foreclosure. If any Condominium is encumbered by a first mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for Assessments, or installments of Assessments, shall not operate to affect or impair the lien of the first mortgage. On foreclosure of the first mortgage, the lien of Assessments, or installments, that have accrued up to the time of foreclosure shall be subordinate to the lien of the first mortgage, with the foreclosure-purchaser taking title to the Condominium free of the lien for Assessments, or installments, that have accrued up to the time of the foreclosure sale. On taking title to the Condominium, the foreclosure-purchaser shall only be obligated to pay Assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Condominium. The subsequently levied Assessments or other charges may include previously unpaid Assessments, provided all Owners, including the foreclosure-purchaser, and his successors and assigns, are required to pay their proportionate share, as provided in this Section.

(j) Appearance at Meetings. Because of its financial interest in the Project, any mortgagee may appear at meetings of the Members and the Board to draw attention to violations of this Declaration that have not been corrected or made subject to remedial proceedings or Assessments.

(k) Right to Furnish Any Information. Any mortgagee may furnish information to the Board concerning the status of any mortgage.

(l) Inapplicability of Right of First Refusal to Mortgagee. The Condominium Documents contain no right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium. No such right of first refusal or similar right shall be granted to the Association in the future without the consent of any mortgagee of the Condominium. Any right of first refusal or similar right that may be granted to the Association (or other person or entity) shall not apply to any conveyance or transfer of title to such Condominium, whether voluntary or involuntary, to a mortgagee who acquires title to or ownership of the Condominium, pursuant to the remedies provided in its mortgage or by reason of foreclosure of the mortgage or deed (or assignment) in lieu of foreclosure. In addition, said right of first refusal or similar right shall not impair the rights of a mortgagee to sell or lease a Condominium acquired by the Mortgagee.

(m) Payment of Taxes or Insurance by Mortgagees. First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area; provided such first mortgagees making such payment have given notice to the Association prior to the making of such payment(s) and the Association has failed to pay the same.

Section 9.7 Owner's Right and Obligations to Maintain and Repair. Except for those portions of the Project that the Association is required to maintain and repair, each Owner shall, at his sole cost and expense, maintain and repair his Unit, keeping the same in good condition. Each Owner shall maintain and repair the Exclusive Use Area patio(s) appurtenant to his Unit, if any; provided, however, that the Association shall maintain and repair the structural components of said patio(s). Each Owner shall keep those portions of Exclusive Use Areas to which he has an exclusive easement or license, clean and neat. Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish or decorate the inner surfaces of the walls, ceilings, floors, windows, and doors bounding his Unit. In the event that an Owner fails to maintain and repair the interior of

his Unit, or fails to maintain and repair the Exclusive Use Area patio appurtenant to his Unit, in a manner which the Board deems necessary to preserve the appearance and value of the Property, or necessary to keep said patio in good repair and condition, the Board may notify the Owner of the work required and request that it be done within sixty (60) days from the giving of such notice. In the event the Owner fails to carry out such maintenance or repair within such sixty (60) day period, the Board may give notice and hold a hearing and cause such work to be done and may specially assess the cost thereof to such Owner and, if necessary, place a lien on his Condominium for the amount thereof.

Section 9.8 Entry for Repairs. The Board or its appointed agents may enter any Unit when necessary in connection with any maintenance, repair or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owner as is practicable, and any damage caused thereby shall be repaired by the Board at the expense of the Association. Except in the case of any emergency, forty-eight (48) hour advance notice shall be given to the Owner or occupant prior to any such entry.

Section 9.9 Damage or Destruction.

(a) If the Property improvements are damaged by fire or other casualty, the improvements shall be rebuilt or repaired substantially the same as the improvements existed prior to the fire or other casualty, subject to local building codes and other applicable government regulations, unless either of the following occurs:

i. The cost of repair or reconstruction is more than fifty percent (50%) of the current replacement of all the improvements located in the Property, the available insurance proceeds are not sufficient to pay eighty-five percent (85%) of the cost of such repairs or reconstruction, and seventy-five percent (75%) of the total voting power of the Association residing in Members and their first mortgagees vote against the repair and reconstruction; or

ii. Available insurance proceeds are not sufficient to repair or reconstruct the improvements substantially to their condition prior to the casualty, a Special Assessment fails to receive the requisite vote, if required, pursuant to Article IV, Section 4.4 hereof, and the Board is unable to supplement the

insurance by borrowing in the name of the Association sufficient funds to reconstruct the improvements within a reasonable time.

(b) The following procedures shall be employed for disposition of insurance proceeds and guidance in reconstruction:

i. Minor Casualty. If the cost to repair or reconstruct does not exceed the sum of thirty thousand dollars (\$30,000), the Board shall thereupon contract to repair and rebuild the damaged portions of all Units and the Common Area, in accordance with the conditions existing immediately prior to damage (modified at the discretion of the Board to comply with building codes and construction standards in effect at the time of the rebuilding) and the funds held in the insurance trust fund shall be used for that purpose. If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Owners of the Units affected shall pay for the portion of the insufficiency attributed to their Unit by the Board and the Board shall levy a Special Assessment on all Condominiums to make up any deficiency attributed to the Common Area. The Special Assessment shall be subject to the provisions of this Declaration governing membership approval of Special Assessments and shall be levied according to the Owner's Share, as set forth on the Condominium Plan.

ii. Major Casualty. If subparagraph (b)(i) is inapplicable, then,

A. All insurance proceeds and funds borrowed by the Association, if any, shall be paid to a bank, trust company or other entity designated by the Board ("the insurance trustee") to be held for the benefit of the Owners and their mortgagees, as their respective interests may appear. Said funds shall be disbursed according to standard construction loan procedures. The Board, on behalf of the Association and of the Owners, hereby is authorized to enter into an insurance trust agreement, consistent with this Declaration, with such insurance trustee, relating to its powers, duties and compensation.

B. The Board shall obtain firm bids from two (2) or more responsible contractors to rebuild in accordance with the conditions existing immediately prior to damage and destruction (modified at the direction of the Board to comply with building codes and construction standards in effect at the time of the rebuilding). The Board may also obtain an estimate from the insurance carrier of the scope of work included within the amount

of the insurance coverage. To be considered, any contractors' bid shall include the premium payable for performance, labor and material payment bonds from a reputable bonding company.

C. The Board shall, as soon as reasonably possible after receipt of such contractors' bids or insurance estimate, call a special meeting of the Owners to consider such bids or insurance estimate. If the Board fails to do so within thirty (30) days after the casualty occurs, any Owner may obtain such contractors' bids or insurance estimate and call and conduct such meeting, as provided herein.

D. At such meeting, the Owners may elect to reject all such bids or estimates and thus not to rebuild. A vote in excess of seventy-five percent (75%) of each class of Association Members shall be required to reject all bids or estimates; provided, however, that a vote in excess of fifty percent (50%) shall be sufficient to reject any bid or estimate requiring more than fifteen thousand dollars (\$15,000) over and above insurance proceeds for such reconstruction, repair or rebuilding. Failure of the Owners to reject all bids and estimates shall authorize the Board to accept the unrejected bid it considers most favorable; provided, however, that if acceptance of any such bid would require the levy of a Special Assessment, such acceptance shall only be granted following membership approval of such Special Assessment, as required by this Declaration. If such membership approval is not obtained, the bid shall be deemed to have been rejected. In any event, within the ninety (90) day period following the date of any reasonable estimate of the cost to repair and rebuild, the failure by the Owners to decide whether to repair and rebuild, or the failure by the Association to notify the owners of the Commercial and Parking Parcels of an election not to repair and rebuild, shall be conclusively deemed an election by the Owners to repair and rebuild.

E. In the event the Owners elect not to rebuild, insurance proceeds received by the Association shall be distributed by the Association among Owners and their respective mortgagees, according to the respective fair market values of the Condominiums at the time of destruction, as determined by the following procedure: The Board shall appoint two (2) independent appraisers to determine the relative value of the Condominiums affected. The two appraisers shall appoint a third independent appraiser. If the two appraisers are unable to agree on a third, then the third shall be appointed by the presiding Judge of the

Superior Court of the State of California for the City and County of San Francisco. The market value of the respective Condominiums shall then be the average of the three values submitted by each of the appraisers.

F. If a bid or estimate is accepted, the Board shall levy a Special Assessment to make up any deficiency between the total insurance proceeds or insurance work and the cost for such repairs or rebuilding, and such Assessment and all insurance proceeds, whether or not subject to liens of mortgages, shall be paid to the insurance trustee to be used for such rebuilding. The Special Assessment shall be levied according to the Owner's Share, as set forth on the Condominium Plan.

(c) Notwithstanding any provision in this Section to the contrary, if the insurance carrier offers the full amount required to repair and restore all of the damage, then the Board shall contract to repair and rebuild the damaged portions of all Units and the Common Area in the manner provided in subparagraph (b)(i) for a minor casualty.

(d) Without waiting to obtain insurance settlements or bids, the Board may undertake such emergency repair work after a casualty as it may deem necessary or desirable under the circumstances.

Section 9.10 Condemnation. In the event of an award for the taking of any Condominium in the Property by eminent domain, the Owner of such Condominium shall be entitled to receive the award for such taking and, after acceptance thereof, he and his mortgagee shall be divested of all interest in the Property, if such Owner shall vacate his Unit as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair or take other action. The remaining portion of the Property shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to adjust proportionately the percentages of the undivided interests of the remaining Owners in the Property. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for the acquisition of the Common Area or any part thereof, and the award or proceeds of settlement shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the Condominium Owners and their mortgagees, as their interests may appear. If Condominiums are not valued separately by Court

judgment or by agreement between the condemning authority and each of the affected Owners in the Property, the condemnation award shall be distributed as follows: The Board shall appoint two (2) independent appraisers to determine the relative values of the Condominiums affected by the condemnation. The two appraisers shall appoint a third independent appraiser. If the two appraisers are unable to agree on a third, then the third shall be appointed by the presiding Judge of the Superior Court of the State of California for the City and County of San Francisco. The value of the respective interests shall be the average of the three values submitted by each of the appraisers. In the event any Owner disagrees with the proposed allocation, he may have the matter submitted to arbitration under rules of the American Arbitration Association. In the event of eminent domain proceedings against the Project or any portion thereof, institutional lenders shall be given timely written notice thereof.

Section 9.11 Owners' Compliance. Each Owner, tenant or occupant of a Condominium shall comply with the provisions of this Declaration, the Bylaws, and the decisions and resolutions of the Association or its duly authorized representative, as lawfully amended from time to time, and failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due for damages or for injunctive relief.

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

Section 9.12 Notices. Any notice permitted or required by this Declaration or the Bylaws may be delivered either personally, by fax, or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each person at the current address given by such person to the Secretary of the Board or addressed to the Unit of such person if no such address has been given to the Secretary.

Section 9.13 Required Documentation. Declarant hereby agrees to furnish the Association with copies of all documentation required by California Department of Real Estate Regulations Section 2792.23(a) within ninety (90) days after the close of escrow of the first interest in the subdivision.

Section 9.14 Special Provisions for Enforcement of Bonded Obligations.

(a) Special Procedures. Because certain Common Area improvements may not have been completed prior to the date of execution of this Declaration and by the date of the issuance of a final public report covering the Property, and because the Association is or may become obligee under a bond or other arrangement (hereafter "Bond") to secure the completion of such Common Area improvements, there are hereby created special procedures for the initiation of action to enforce the obligations of Declarant and the surety under any such Bond.

(b) Action by Board. The Board is hereby directed to consider and vote on the question of action by the Association to enforce the obligations under the Bond, with respect to any improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that improvement in the planned construction statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

(c) Meeting of Members to Override Decision by Board. A special meeting of Members of the Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond, or on the failure of the Board to consider the question, shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association.

(d) Vote by Members at Special Meeting. At any meeting held under the provisions of section (c) above, a vote shall be taken by Members of the Association other than Declarant. A vote of a majority of the voting power of the Association residing in Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

(e) Release of Bond. On satisfaction of the Declarant's obligation to complete the Common Area improvements, the

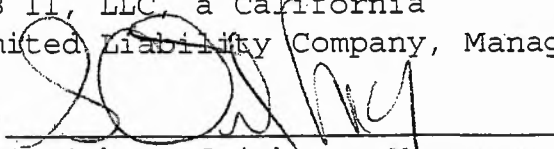
Association shall acknowledge in writing that it approves the release of the Bond and execute any other documents as may be necessary to effect such release. The Association shall not condition its approval of the release of the Bond on the satisfaction of any condition, other than the completion of the Common Area improvements, as described on the planned construction statement appended to the Bond. Any dispute between the Declarant and the Association regarding the completion of the Common Area shall be submitted to binding arbitration under the commercial rules of the American Arbitration Association and the prevailing party shall be entitled to recover costs, including reasonable attorneys' fees.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this Declaration this 4th day of September, 2002.

Declarant:

FULTON MASONIC LLC, a California
Limited Liability Company

By: EGB II, LLC, a California
Limited Liability Company, Manager

By: 
S. Osborn Erickson, Manager

EMEF29\C-CCRS.final.9D2

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO) ss.

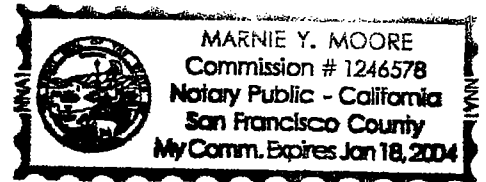
On Sept. 4, 2002 before me, the undersigned, a Notary Public in and for said State, personally appeared S. OSBORN ERICKSON

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

WITNESS my hand and official seal.

Signature Marnie Y. Moore

Name MARNIE Y. MOORE
(typed or printed)



(This area for official notarial seal)

ATTACHMENT A
TO
DECLARATION OF
CONDITIONS, COVENANTS AND RESTRICTIONS
OF
PETRINI PLACE,
A CONDOMINIUM PROJECT

Description:

All that certain real property situated in the City and County of San Francisco and more particularly described as follows:

All that certain real property described on that certain map entitled, "Map of Fulton Masonic, a Residential Condominium Project", recorded the 16th day of August, 2002, in Book 75 of Condominium Maps, at Pages 151 through 162, inclusive, Official Records of the City and County of San Francisco, State of California.

ATTACHMENT B
TO
DECLARATION OF
CONDITIONS, COVENANTS AND RESTRICTIONS
OF
FULTON MASONIC
A CONDOMINIUM PROJECT

Unit Common Expenses
Number Proration Percentages

11	0.56
12	0.56
13	0.56
101	0.86
102	0.96
103	0.91
104	0.85
105	0.90
106	0.85
107	0.87
108	0.85
109	0.54
110	0.87
111	0.93
112	0.89
113	0.56
114	0.61
115	0.89
116	0.52
117	1.04
118	0.87
119	0.55
120	0.58
121	0.87

123	0.87
124	0.87
126	0.87
127	0.87
129	0.55
130	0.57
131	0.56
132	0.81
133	0.56
134	0.56
135	0.52
136	0.52
137	0.58
138	0.58
139	0.80
140	0.58
141	1.15
142	1.18
143	0.59
144	0.59
145	0.85
146	0.58
147	1.13
148	0.85
149	1.16
150	0.85
151	0.85
152	0.85
153	0.84
154	0.55
155	0.55
201	0.86
202	0.96
203	0.91
204	0.85
205	0.90
206	0.85
207	0.87
208	0.85
209	0.54
210	0.87
211	0.93

212	0.89
213	0.56
214	0.61
215	0.89
216	0.52
218	0.91
219	0.55
220	0.58
221	0.89
222	0.58
223	0.87
224	0.87
225	0.88
226	0.87
227	0.87
228	0.54
229	0.57
230	0.59
231	0.58
232	0.81
233	0.58
234	0.58
235	0.52
236	0.52
237	0.58
238	0.58
239	0.80
240	0.58
241	0.57
242	0.61
243	0.59
244	0.59
245	0.85
246	0.58
248	0.85
250	0.85
251	0.85
252	0.85
253	0.84
254	1.20
255	1.20
308	0.85

309	0.54
310	0.87
311	0.93
312	0.89
313	0.56
314	0.61
315	0.89
316	0.52
318	0.91
319	0.55
320	0.58
321	0.89
322	0.60
323	0.87
324	0.87
325	0.88
326	0.87
327	0.87
328	0.54
329	0.57
330	0.59
331	0.58
332	0.81
333	0.58
334	0.58
335	0.52

Common Expenses are Regular and Special Assessments for the Following:

- 1 Operating Expenses
 - A Administrative
 - Insurance
 - Miscellaneous (3% of category)
 - B Utilities
 - PG&E - Natural Gas
 - Water and Sewer
 - Refuse Collection
 - Miscellaneous (3% of category)

2 Reserves

A Building Exteriors

- Caulking Siding
- Caulking Windows
- Metal Railing Paint
- Metal Railing Repair
- Stucco Paint
- Stucco Power Wash
- Stucco Repair
- Wood Siding Paint
- Wood Siding Repair

B Mechanical Systems - Water

- Circulation Pumps
- Holding Tank
- Water Heaters

C Mechanical Systems - Trash

- Trash Chute

D Roofing System

- BUR
- Gutter and Downspouts
- Metal
- Roof Inspection and Repairs

ATTACHMENT C

TO

DECLARATION OF

CONDITIONS, COVENANTS AND RESTRICTIONS

OF

PETRINI PLACE,

A CONDOMINIUM PROJECT

BELOW MARKET RATE ("BMR") UNITS

The following Units have been designated Below Market Rate (BMR)
Units:

012, 102, 103, 116, 121, 124, 129, 136, 146, 147, 149, 203, 216

RECORDING REQUESTED BY:

And When Recorded Mail To:

Name: Steven L. Vettel
Gladstone & Vettel

Address: PH 177 Post Street

City: San Francisco, CA 94108

California

San Francisco Assessor-Recorder
Doris M. Ward, Assessor-Recorder
DOC- 99-G614852-00

Check Number 5721

Thursday, JUL 01, 1999 13:48:56

REG \$13.00 PAG \$13.00 MIC \$1.00

STP \$14.00

Ttl Pd \$40.00

Nbr-0001212300

REEL H418 IMAGE 0413

ofa/CP/1-15

Space Above This Line For Recorder's Use

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

Fulton-Masonic LLC, a California limited

(We) liability company

the owner(s) of that certain real property situated in the City and County of San Francisco, State of California, more particularly described as follows (or see attached sheet marked Exhibit A on which property is more fully described):

See attached Exhibit "A"

Being Assessor's Block 1175, Lot 10, commonly known as 1750-1770 FULTON STREET, hereby give notice that there are special restrictions on the use of said property under Part II, Chapter II of the San Francisco Municipal Code (Planning Code).

Said restrictions consist of conditions attached to Conditional Use Application No. 98.318C authorized by the Planning Commission of the City and County of San Francisco on March 25, 1999 as set forth in Planning Commission Motion No. 14807 permitting to demolish an existing 52,500 square-foot strip shopping center with 174 surface parking spaces to be replaced by the construction of approximately 381 underground or otherwise enclosed parking spaces, approximately 56,300 square feet of retail shopping (including a supermarket and several smaller retail spaces), and 135 housing units (13 of which will be affordable) at 1750-1770 Fulton Street, Assessor's Block 1175, Lot 10 in an NC-S (Neighborhood Commercial Shopping Center) District and a 40-X Height and Bulk District, per Planning Code Sections 121.2, 304(d)(4) and 713.21.

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

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

Environmental Mitigation Measures

1. The following mitigation measures in the final negative declaration issued March 25, 1999 for the proposed project shall be implemented.

A. Air Quality

Mitigation Measure 1

The project sponsor shall require the construction contractor(s) to spray the project site with water during excavation, grading, and site preparation activities; spray unpaved construction areas with water at least twice per day; cover stockpiles of soil, sand, and other material; cover trucks hauling debris, soil, sand, or other such material; and sweep surrounding streets during these periods at least once per day to reduce emissions of particulates.

Ordinance 175-91, passed by the San Francisco Board of Supervisors on May 6, 1991, requires that non-potable water be used for dust control activities. Therefore, the project sponsor shall require the construction contractor(s) to obtain reclaimed water from the Clean Water Program for this purpose.

The project sponsor shall require the construction contractor(s) to maintain and operate construction equipment so as to minimize exhaust emissions of particulates and other pollutants, by such means as prohibiting idling motors when equipment is not in use or when trucks are waiting in queues, and implementing specific maintenance programs to reduce emissions for equipment that would be in frequent use for much of the construction period.

B. Hazards

Mitigation Measure 1

The project sponsor shall submit the following Phase I Environmental Site Assessment by Treadwell & Rollo and Phase II Environmental Site Assessments by Erler & Kalinowski to the San Francisco Department of Public Health, Environmental Health Management Section - Hazardous Waste Unit (EHS-HWU) for review and approval prior to approval of the building permit application for the proposed project by the San Francisco Planning Department.

Erler & Kalinowski. June 18, 1996. Results of Soil and Grab Groundwater Sampling at the 1750/1770 Fulton Street Property in San Francisco, California.

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

Erler & Kalinowski. December 24, 1996. *Results of Groundwater Monitoring Well Installation and Sampling at the 1750/1770 Fulton Street Property in San Francisco, California.*

Treadwell & Rollo. November 18, 1997. *Phase I Environmental Site Assessment, Falletti Fine Foods Site, 1750 and 1770 Fulton Street, San Francisco, California.*

If, based on the results of the soil tests conducted by Erler & Kalinowski, EHS-HWU determines that the soils on the project site are contaminated with petroleum hydrocarbons or heavy metals at or above potentially hazardous levels, the project sponsor shall submit a detailed Project Construction/Evacuation Plan and a Site Mitigation Plan (SMP) to EHS-HWU for review and approval prior to approval of the building permit application for the proposed project by the San Francisco Planning Department. The Project Construction/Excavation Plan shall include the proposed locations of any foundations, utility trenches, or elevator pits on the project site. The SMP shall include a discussion of the level of petroleum hydrocarbon and heavy metal contamination of soils on the project site and mitigation measures for managing contaminated soils on the site, including, but not limited to: 1) the alternatives for managing contaminated soils on the site (e.g., encapsulation [placement of a cap], partial or complete removal, treatment, recycling for reuse, or a combination); 2) the preferred alternative for managing contaminated soils on the site and a brief justification; 3) if contaminated soil will remain on the site and encapsulated, a description of procedures to be followed to maintain the cap; and 4) the specific practices to be used to handle, haul, and dispose of contaminated soils on the site, including, but not limited to, the measures listed below.

If, based on the results of the soil tests conducted by Erler & Kalinowski, EHS-HWU determines that the soils on the project site are contaminated with petroleum hydrocarbons or heavy metals at or above potentially hazardous levels, the construction contractor shall be alert for the presence of such soils during excavation and other construction activities on the site (detected through soil odor, color, and texture and results of on-site soil testing), and shall be prepared to handle, profile (i.e., characterize), and dispose of such soils appropriately (i.e., as dictated by local, state, and federal regulations, including Cal-OSHA safe work practices) when such soils are encountered on the site.

The construction contractor shall keep exposed soils, during excavation for site preparation and project construction activities, moist throughout the time they are exposed, both during and after work hours.

Where soils are stockpiled, the construction contractor shall use visqueen to create an impermeable liner, both beneath and on top of the soils, with a berm to contain any potential surface water runoff from the soil stockpiles during inclement weather.

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

If necessary, the construction contractor shall use clean fill or other suitable material(s) to bring portions of the project site, where contaminated soils have been excavated and removed, up to construction grade.

The construction contractor shall haul contaminated soils off the project site in waste hauling trucks appropriately certified with the State of California and adequately covered to prevent dispersion of the soils during transit; and shall dispose of contaminated soils at a permitted hazardous waste disposal facility registered with the State of California or appropriate agency.

The project sponsor shall submit a Health and Safety Plan (HSP) prepared in accordance with State of California Occupational Safety and Health Administration Guidelines to EHS-HWU for review and approval at least two weeks prior to the start of work on the project site. The HSP shall be prepared by a Health and Safety Officer certified by the State of California. The HSP shall contain an analysis of potential hazards on the site, including exposure to petroleum hydrocarbons or heavy metals, that may be encountered by workers on the project site; and precautions to mitigate the potential hazards.

After excavation and foundation construction activities are completed on the site, the project sponsor shall prepare and submit a closure/certification report to EHS-HWU for review and approval. The closure/certification report shall include the mitigation measures in the SMP for handling and removing contaminated soils from the project site, whether the construction contractor modified any of these mitigation measures, and how and why the construction contractor modified those mitigation measures.

If potentially hazardous levels of petroleum hydrocarbons, heavy metals, or other hazardous materials remain in soils on the project site after project construction, the project sponsor shall file a recordation on the deed for the subject property that indicates the need to take special precautions during future disturbance of the soils on the property due to certain on-site soil conditions.

C. Cultural Resources

Mitigation Measure 1

Should evidence of archaeological resources of potential significance be found during ground disturbance, the project sponsor shall immediately notify the Environmental Review Officer (ERO) and shall suspend any excavation which the ERO determined could damage such archaeological resources. Excavation or construction activities which might damage discovered archaeological resources shall be suspended for a total maximum of four weeks over the course of construction.

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

After notifying the ERO, the project sponsor shall select an archaeologist to assist the ERO in determining the significance of the archaeological find. The archaeologist shall prepare a draft report containing an assessment of the potential significance of the archaeological find and a recommendation for what measures should be implemented to minimize potential effects on archaeological resources. Based on this report, the ERO shall recommend specific additional mitigation measures to be implemented by the project sponsor.

Mitigation measures might include a site security program; additional on-site investigations by the archaeologist; and/or documentation, preservation, and recovery of cultural materials. Finally, the archaeologist shall prepare a draft report documenting the archaeological resources that were discovered and an evaluation as to their significance, and a description as to how any archaeological testing, exploration, and/or recovery program was conducted.

Copies of all draft reports prepared according to this mitigation measure shall be sent first and directly to the ERO for review. Following approval by the ERO, the archaeologist shall send copies of the final report(s) directly to the President of the Landmarks Preservation Advisory Board and the California Archaeological Site Survey, Northwest Information Center. Three copies of the final report(s) shall be submitted to the ERO, accompanied by copies of the transmittals documenting its distribution to the President of the Landmarks Preservation Advisory Board and the California Archaeological Site Survey, Northwest Information Center.

Land Use/Density

2. This approval is for the demolition of an existing 52,500 square-foot strip shopping center with 174 parking spaces to be replaced by the construction of approximately 381 underground or otherwise enclosed parking spaces, approximately 56,300 square feet of retail shopping including a supermarket and several smaller retail spaces, and 135 housing units (13 of which will be affordable) at 1750-1770 Fulton Street, Assessor's Block 1175, Lot 10.
3. The Development shall provide 211 spaces for the retail portion of the project and 170 parking spaces for the residential portion of the project as shown in Exhibit B.
4. The hours of operation for the supermarket at the project site will be limited to the hours of 7:00 a.m. to 10:00 p.m. with the exception of a pharmacy which may operate 24 hours daily. The project sponsor may seek extension of the hours if it is determined that there is sufficient demand, need and desire in the neighborhood for additional hours of operation, and such an extension would not create a significant nuisance to the surrounding neighborhood. Such an extension would require review by the Planning Commission.

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5. After regular business hours as established in Condition of Approval No. 4 above, the pharmacy must be accessed by the general public separately from the rest of the supermarket operations. Neither shall other portions of the commercial operations of the project be accessed by the general public from inside the pharmacy beyond the hours established under the provisions of Condition of Approval No. 4 above. No alcohol shall be sold from the pharmacy on the subject site beyond these hours.
6. Delivery trucks associated with the supermarket operator shall be limited to the hours of 9:00 a.m. to 3:00 p.m. daily. Delivery hours for smaller trucks not associated with the supermarket operator (such as bread trucks and other independent vendors) shall be limited to the period of 7:00 a.m. to 4:00 p.m. Exceptions may be made for extreme and unusual emergency situations, but deliveries shall be scheduled to anticipate traffic delays, inclement weather or other typical occurrences in order to avoid delivery activity outside of the permitted delivery hours.

Design

7. With the exception of the housing unit density exception granted by this conditional use authorization, final plans shall meet the standards of the Planning Code; the design of the proposed project shall be in general conformity with the plans approved by the Commission attached hereto as Exhibit B;
8. The Project architects shall continue to work with the Planning Department ("Department") with input from the neighborhood to develop further and to refine the design of the proposed project in terms of facade design and landscaping as determined necessary by Department staff to meet the following design goals:
 - A) The housing component of the project will be designed to integrate well into the surrounding neighborhoods. Features will include multiple entrances from the perimeter sidewalks to individual dwelling units as well as multiple general entrances into the courtyard of the housing component.
 - B) The design of the buildings will be aesthetically integrated with the surrounding neighborhood, reflecting important basic design characteristics of the best examples of predominate styles of architecture and urban design in the neighborhood, including Edwardian, Victorian, and Craftsman as well as a few more modern examples in this particular area of the city. The facade of the building shall be broken down into segments of 25'-0" to 50'-0" to reflect the modulation of the *immediately* surrounding block faces. Quality residential materials such as solid wood siding, stucco, and shingles shall be used. Quality detailing shall be employed such as appropriate window reveals, window frame materials, trim and cornices.
 - C) The southwestern corner of the project building shall be redesigned to more appropriately emphasize its prominent corner location in an architectural style more compatible with the neighborhood.

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

- D) The project design will include a plaza area that is conducive to social interaction, integrated and suitably located, and protected by either distance or barriers from wind and noise from Masonic Avenue traffic.
- E) The overall design of the project shall be contextual and complimentary to the neighborhood.
- 9. Project architect shall submit a signage plan for review and approval by Department staff. Signage shall be in compliance with Article 6 of the Planning Code and shall be in character with the surrounding neighborhood as determined by Department staff. No free-standing signs shall be permitted on the project site.
- 10. The project architect shall submit a detailed landscaping plan for review and approval by Department staff. In particular, landscaping shall be added along the Masonic, McAllister, and Central Avenue frontages to soften the appearance of the building where there is a lack of window or door openings. Sidewalk encroachment permits, if approved by the Department of Public Works, shall be obtained where deemed necessary by Department staff.

Affordability

- 11. The Project Sponsor shall designate a total of 13 units as affordable [Below Market Rate (BMR)] first time home buyer condominium units to be constructed on the site of the principal project. This total represents 10% of all units of the project.
- 12. The subject BMR units shall reflect the unit size mix of the market rate units and shall be distributed in the range of unit sizes:
 - Six two bedroom units.
 - Seven one bedroom units.
- 13. The BMR units shall be (i) interspersed evenly throughout the project, (ii) constructed and marketed concurrently with the construction and sale of the market-rate units in the project and (iii) of the same quality and materials as the market-rate units in the project.
 - A. Prior to the filing of any subdivision map (including tentative maps) for the project (including any subdivision map filed for any partial phase of the project),
 - (1) the Project Sponsor shall have cumulatively designated at least one (1) BMR unit for every nine (9) market-rate units shown on such map and any previously filed subdivision maps, and
 - (2) All BMR units designated by the Project Sponsor on all filed subdivision maps shall be explicitly subject to these Conditions of Approval in a manner satisfactory to the Zoning Administrator and in accordance with the Procedures Manual, as defined below.

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

- B. Prior to issuance of any building permit for the project (including any building permit issued for any partial phase of the project), the Project Sponsor shall
- (1) have cumulatively designated at least one (1) BMR unit for every nine (9) market-rate units covered by the building permit to be issued and any previously issued building permits for the project; and
 - (2) Promptly provide a copy of any subdivision map described in Paragraph A(1) of these Conditions of Approval and any notice of special restrictions recorded pursuant to this Motion and the Procedures Manual, to the Mayor's Office of Housing or its successor ("MOH"), the monitoring agency for the BMR units, at 25 Van Ness Avenue, Suite 600, San Francisco, California 94102.
- C. Prior to issuance of any certificate of occupancy for a unit in the project, the Project Sponsor shall have cumulatively designated at least one (1) BMR unit for every nine (9) market-rate units covered by the certificate of occupancy to be issued and any previously issued certificate of occupancy for the project.
14. All BMR units shall be sold to first time home buyer households, as defined in the Affordable Housing Monitoring Procedures Manual (hereinafter "Procedures Manual") published and adopted by Resolution No. 13405 on September 10, 1992 by the City Planning Commission, whose gross annual income, adjusted for household size, does not exceed 100 percent of the median income for the San Francisco Principal Metropolitan Statistical Area (PMSA). The initial sales price of such units shall be calculated according to the Procedures Manual based on such percentage of median income. This restriction shall apply for a fifty (50) year period from the date of the initial sale of the BMR unit.
 15. All qualifying households shall maintain residence in the BMR unit according to the procedures established in the Procedures Manual.
 16. Sale and resale of BMR units shall satisfy the marketing, sales, reporting and monitoring procedures, including the payment of administrative fees to the monitoring agency if such a fee is authorized by ordinance, according to the procedures established in the Procedures Manual.
 17. The definitions, procedures and requirements for BMR units set forth in the Procedures Manual are incorporated herein as Conditions of Approval. Terms used in these Conditions of Approval and not otherwise defined shall have the meanings set forth in the Procedures Manual.
 18. In the event that the project sponsor determines that it is infeasible to sell the proposed affordable dwelling units, and instead chooses to operate the housing project as rental units, rental of the thirteen affordable housing units shall comply with all provisions of the Procedures Manual relating to affordable rental units and any other related City laws.

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE**Transportation and Circulation**

19. The design of the transportation patterns for accessing the retail stores and the dwelling units shall encourage pedestrians and bicyclists as specified by the City's "Transit First" policy. Specific features will include:
- A) An improved design for the pedestrian island between the ingress and egress of vehicles on Fulton Street;
 - B) A right-turn-only exit from the commercial parking garage onto Fulton Street;
 - C) Decorative paving for sidewalks, cross walks and car lanes to visually emphasize the pedestrian nature of the plaza and drop-off areas along the Fulton Street frontage;
 - D) Provision of bicycle parking, showers and lockers for supermarket employees;
 - E) 24 covered bicycle parking spaces provided in the retail plaza area;
 - F) Bicycle parking at the main entrance to the residential component of the project;
 - G) Provision of safe and separate indoor bicycle racks for residents of the project to be located in the residential garages.
20. The project sponsor shall develop an on-site traffic management plan to be submitted to DPT and Planning Department Staff. The project sponsor shall submit to DPT, Muni, and Planning Department staff a report on traffic conditions related to the project site after six months, one year, and two years of operation. If it is determined by the Planning Department that the proposed front driveway is causing traffic problems and should be closed, the project sponsor shall develop a plan for approval by the Planning Department to redevelop the driveway area as an appropriately designed pedestrian plaza area.
21. Pedestrian warning devices such as blinking lights and/or buzzers shall be installed at garage entrances where appropriate to warn pedestrians of cars exiting the garages. Pedestrian crossing signs shall be posted for automobiles exiting garages.
22. The commercial garage entrance and the commercial drop-off area shall be operated in such a manner to avoid traffic conflicts along Fulton Street and to ensure smooth traffic flow on the project site. Only right turns shall be allowed on to Fulton Street from the commercial garage. Proper striping, signage and barriers shall be installed to ensure that no left turns can be made. A supermarket employee shall monitor traffic conditions and enforce loading zone area rules to ensure proper operation of on-site traffic as well as ingress and egress from the commercial portion of the site if deemed necessary by the Zoning Administrator.

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

23. The commercial drop-off area shall be for the use of handicapped individuals, taxis and shuttle vans and small delivery vans for the smaller retail units. This pull off area shall not be used for non-handicap customer parking or for delivery trucks associated with the supermarket.
24. Ingress and egress from the loading docks shall be coordinated to avoid conflicts with MUNI, and other vehicular traffic. A supermarket employee shall monitor loading dock operations and shall direct loading dock traffic if deemed necessary by the Zoning Administrator.
25. No delivery trucks shall be allowed to park or idle outside of the loading dock, or along the street. Deliveries by large trucks associated with the supermarket operator shall be scheduled so that no queuing outside of the loading dock is necessary.
26. The Applicant shall coordinate with the Department of Public Works and The Inter-departmental Staff Committee On Traffic and Transportation ("ISCOTT") related to any necessary closure of parking lanes and creation of turning lanes on Fulton Street, McAllister Street, Central and Masonic Avenues.
27. The applicant shall coordinate with MUNI regarding relocation on any bus stops.
28. The supermarket operator shall implement a program to encourage employees and patrons to utilize means of transportation other than driving automobiles. Such a program may include sales and/or subsidizing of MUNI passes; notification of MUNI accessibility, bicycle parking and easy pedestrian access in advertisements; signs and placards in appropriate locations within the store encouraging use of other means of transportation other than driving automobiles; and/or any other reasonable method of discouraging private automobile use.
29. The supermarket operator shall operate a free convenient frequent daily jitney service for customers who walk to the supermarket and want or need assistance transporting groceries back to their homes.

General Performance

30. The project sponsor shall provide at least five independent retail spaces with a combined minimum of 3,600 square feet accessed from the Fulton Street frontage. Some of the smaller storefronts, with the approval of Planning Department staff, may be combined in order to accommodate the spatial needs of local independent merchants. Such mergers shall be minimized and, as a guideline, no more than two of these store fronts in a row should be merged, so that a variety of smaller storefronts are maintained along the Fulton Street frontage, and are potentially available to a variety of local merchants. The project sponsor shall make good faith efforts to continually lease to local businesses, including some of the existing businesses at the project site. The supermarket operator shall also make good faith efforts to lease a limited amount of space within the proposed supermarket to local merchants from the Bay Area.

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

31. The supermarket operator shall make the supermarket employee lounge available during store hours for a public meeting room for use by the neighborhood organizations, when scheduled in advance.
32. Within six months of opening of commercial operations, a system will be developed to make surplus commercial parking spaces at the project site available for use on a fee basis by patrons of off-site businesses prior to and after the supermarket general operating hours specified in Condition #4 (pharmacy excluded), and for overnight parking by neighborhood residents.
33. The principal tenant will provide twice-daily maintenance of the Fulton Street and Central Avenue street frontages to keep them clean and free of trash and graffiti. Maintenance shall include sweeping, litter removal, and scrubbing of sidewalks whenever conditions warrant. The project grounds including all building facades, landscaping, and sidewalks, shall be continually maintained in a clean, orderly and attractive manner.
34. Commercial signage and lighting will be reduced to security levels during non-operating hours.
35. The commercial loading docks will be designed, and equipment will be used, to ensure minimum operating noise. The doors of the loading docks will be closed at all times except during actual ingress and egress of delivery trucks.

Construction Performance

36. Exterior construction or other construction that generates significant noise shall be limited to the hours of 7:00 a.m. to 4:00 p.m., Monday through Friday.
37. The project sponsor shall ensure that, excluding natural disasters, walk-out strikes, or unusually severe and lengthy inclement weather, demolition and construction will not extend beyond 24 months duration. Prior to commencement of said demolition and construction, the project sponsor shall provide the Planning Department with a copy of the agreement with the selected builder(s) of the project that specifies that, under customary monetary penalties, demolition and construction activity cannot exceed 24 months duration (with the exceptions listed above).
38. Prior to commencement of construction, the project sponsor shall present to the Planning Department a plan and agreement for off-site parking for construction workers. If such off-site parking is not located in a reasonable walking distance from the construction site, shuttle service shall be provided. The parking agreement and plan shall specify that construction workers shall not park on neighborhood streets.

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

39. During demolition and construction, a free transportation service program to nearby supermarkets shall be made available by the project sponsor for the elderly (55 and older) and individuals with disabilities who live in a one-quarter-mile walking distance of the existing shopping center, and who would normally walk (or use a wheel chair or other similar device) to get to the existing shopping center. The program shall be operated in such a way to ensure that these individuals have a reasonably convenient way to get to a nearby supermarket. A plan for this program to be submitted by the project sponsor, shall be reviewed and approved by the Planning Department before demolition or construction permits are issued.

General

40. The applicant shall designate a staff person to be a community liaison for both the construction phase of the development and after the development is completed. This person will serve as a first contact to handle any issues or problems that may arise with the construction and operation of the development. This person's name and telephone number will be on file with the Planning Department and appropriate neighborhood organizations. The applicant will keep the above parties apprised should a different staff liaison be designated.
41. The project is subject to the requirements of the First Source Hiring Program (Chapter 83 of the Administrative Code) and the Project Sponsor shall comply with the requirements of this Program.
42. This authorization and rights vested by virtue of this action shall be deemed void and canceled, if within thirty-six (36) months of this motion, construction has not begun by the Applicant.
43. This authorization may be extended at the direction of the Zoning Administrator only where the failure to issue a building permit to construct the project is delayed by the Department or a state agency or legal challenges.
44. Should the operation of the herein-authorized uses on the subject property result in complaints from area property owners or residents, which are not resolved by the project sponsor, and are subsequently reported to the Zoning Administrator and found to be in violation of the Planning Code and /or the specific Conditions of Approval for the project, the Zoning Administrator shall report such complaints to the Planning Commission, after which the Commission may hold public hearing on the matter in accordance with the hearing notification and conduct procedures as set forth in Sections 174, 306.3, and 306.4 of the Code, to consider revocation of this conditional use authorization.
45. Should the monitoring of the Conditions of Approval be required, the Applicant or successors shall pay fees as established in Planning Code Section 351(e)(1).
46. Failure to comply with these conditions of approval shall constitute a violation of the Planning Code, enforceable by the Zoning Administrator.

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

Recordation

47. After the conditional use authorization for the proposed project becomes final and before the issuance of any building permit, the Zoning Administrator shall approve and order the recordation of a Notice of Special Restrictions in the Official Records of the Recorder of the City and County of San Francisco against the land record of the subject lot. Said notice shall state that the construction and operation of the subject mixed-use building has been authorized by and is subject to the conditions of this Motion applicable to the proposed project. From time to time, after the recordation of such notice, at the request of the Applicant or the successor-in-interest thereto, the Zoning Administrator shall affirm in writing the extent to which the conditions of this motion have been satisfied.

The use of said property contrary to these special restrictions shall constitute a violation of the Planning Code, and no release, modification or elimination of these restrictions shall be valid unless notice thereof is recorded on the Land Records by the Zoning Administrator of the City and County of San Francisco; except that in the event that the zoning standards above are modified so as to be less restrictive and the uses herein restricted are thereby permitted and in conformity with the provisions of the Planning Code, this document would no longer be in effect and would be null and void.

Dated: 6/22/19 at San Francisco, California

Fulton Masonic, LLC, A California Limited
Liability Company

By: EGB II, LLC

Manager

By  Its Manager

This signature(s) must be acknowledged by a notary public before recordation; add Notary Public Certification and Official Notarial Seal.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

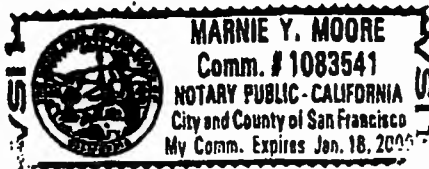
G614852

County of San Francisco

On JUNE 22, 1999 before me, MARNIE Y. MOORE, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared S. Osborn Erickson
Name(s) of Signer(s)

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



WITNESS my hand and official seal.

Marnie Y. Moore
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Notice of Special Restrictions

Document Date: 6/22/99 Number of Pages:

Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name: S. Osborn Erickson

- ☐ Individual
- ☒ Corporate Officer
Title(s): MANAGER
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other:

RIGHT THUMBPRINT
 OF SIGNER
 Top of thumb here

Signer Is Representing:

EGBT, LLC

Signer's Name:

- ☐ Individual
- ☐ Corporate Officer
Title(s):
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other:

RIGHT THUMBPRINT
 OF SIGNER
 Top of thumb here

Signer Is Representing:

Exhibit "A"

G614852

The land referred to in this Report is situated in the State of California, City and County of San Francisco, and is described as follows:

PARCEL ONE:

BEGINNING at the point of intersection of the northerly line of Fulton Street with the easterly line of Masonic Avenue, thence northerly along said line of Masonic Avenue 175 feet; thence at a right angle easterly parallel with said line of Fulton Street 100 feet; thence at a right angle northerly parallel with said line of Masonic Avenue 100 feet to the southerly line of McAllister Street; thence easterly along said line of McAllister 312 feet and 6 inches to the westerly line of Central Avenue; thence at a right angle southerly along said line of Central Avenue 137 feet and 6 inches; thence at a right angle westerly parallel with aid line of McAllister Street 68 feet and 9 inches; thence at a right angle southerly parallel with said line of Central Avenue 137 feet and 6 inches to the northerly line of Fulton Street; thence westerly along said line of Fulton Street 343 feet and 9 inches to the point of beginning.

BEING a Portion of Western Addition Block No. 650.

PARCEL TWO:

BEGINNING at a point on the southerly line of McAllister Street, distant thereon 75 feet easterly from the easterly line of Masonic Avenue; running thence easterly and along said line of McAllister Street 25 feet; thence at a right angle southerly 100 feet; thence at a right angle westerly 25 feet; thence at a right angle northerly 100 feet to the point of beginning.

BEING Part of Western Addition Block No. 650.

PARCEL THREE:

BEGINNING at a point on the westerly line of Central Avenue,, distant thereon 110 feet and 6 inches northerly from the northerly line of Fulton Street; running thence northerly along said line of Central Avenue 27 feet; thence at a right angle westerly 68 feet and 9 inches; thence at a right angle southerly 27 feet; thence at a right angle easterly 68 feet and 9 inches to the point of beginning.

BEING a Portion of Western Addition Block No. 650.