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DECLARATION OF RECIPROCAL
EASEMENTS, COVENANTS AND RESTRICTIONS
OF
FULTON MASONIC

"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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EASEMENTS, COVENANTS AND RESTRICTIONS

OF

FULTON MASONIC

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EXHIBIT A

EXHIBIT B

DECLARATION OF RECIPROCAL

EASEMENTS, COVENANTS AND RESTRICTIONS

OF

FULTON MASONIC

THIS DECLARATION (hereinafter "Declaration") is made as of this 27 day of August, 2002, by FULTON MASONIC LLC, A CALIFORNIA LIMITED LIABILITY COMPANY (hereinafter "Declarant").

R E C I T A L S

A. Declarant is the fee owner of, and this Declaration applies to, that certain real property located in the City and County of San Francisco, commonly known as 1776 Fulton Street, more particularly described on that certain airspace parcel map (hereinafter, "Airspace Parcel Map") referred to in Exhibit A attached hereto and incorporated by reference herein.

B. The real property described as Parcel A on the Airspace Parcel Map (hereinafter, "Residential Parcel") contains various structures which contain a total of one hundred thirty four (134) residential units and a two-story garage containing approximately one hundred seventy (170) parking spaces.

C. The real property described as Parcel B on the Airspace Parcel Map (hereinafter, "Commercial Parcel") contains approximately seventy-four thousand five hundred square feet (74,500 sq. ft.) of retail space and related areas.

D. The real property described as Parcel C on the Parcel Map (hereinafter "Parking Parcel") contains a parking garage for approximately two hundred and one (201) parking spaces and related areas.

E. Parcels A, B and C comprise a single architectural entity, each being an integral part of a mixed-use development known as Fulton Masonic (hereinafter, "Project"). The utility and

enjoyment of each such Parcel is dependent upon the shared use and/or maintenance of certain elements of the Project. Declarant intends to establish and create easements, assessments, covenants, and restrictions to provide for the joint use, management, governance and operation of the Project as integral parts of a single architectural entity, as set forth below. The covenants herein created shall be enforceable as covenants running with the land, and shall constitute equitable servitudes under this Declaration.

NOW, THEREFORE, Declarant declares that said real property (Parcels A, B and C) shall be held, transferred, encumbered, used, conveyed, and occupied subject to the covenants and restrictions hereinafter set forth expressly and exclusively for the use and benefit of said property by each and every person or entity who now or in the future owns any portion or portions of said real property.

ARTICLE I
DEFINITIONS

Terms as used in this Declaration shall have the following meanings:

Section 1.1 **"Airspace Map"** or **"Airspace Parcel Map"** shall mean and refer to the recorded final parcel map as more particularly described in **Exhibit A** attached hereto.

Section 1.2 **"Building"** shall mean and refer to all structures and improvements erected or to be erected on the entire real property described herein.

Section 1.3 **"Commercial Parcel"** shall mean and refer to Parcel B as described on the Map.

Section 1.4 **"Commercial Parcel Owner"** shall mean and refer to the owner of the Commercial Parcel; provided, however, in the event the Commercial Parcel is subdivided, then the Owner(s) of more than fifty percent (50%) of the total square footage of the subdivided Commercial Parcel shall appoint a single representative, which representative shall be deemed the Commercial Parcel Owner for the purposes of this Declaration.

Section 1.5 "Common Building Elements" shall mean and refer to those structural portions of the Building described in Exhibit B, the costs of operation, maintenance, repair and replacement of which shall be shared by the Parcel Owners, as provided herein.

Section 1.6 "Common Systems" shall mean and refer to the life safety system and utility systems which service all Parcels. The Common Systems are more particularly described in Exhibit B attached hereto and incorporated herein.

Section 1.7 "Conditions of Approval" shall mean and refer to those requirements imposed by the City and County of San Francisco on the construction and operation of the Project as set forth in the recorded document entitled 'Notice of Special Restrictions Under the Planning Code' and attached hereto as Exhibit C.

Section 1.8 "Declarant" shall mean and refer to FULTON MASONIC, LLC., A CALIFORNIA LIMITED LIABILITY COMPANY, together with its successors and assigns.

Section 1.9 "Easement" or "Easements" shall mean and refer to the easements, licenses, and rights granted under Article II of this Declaration.

Section 1.10 "Emergency" shall mean and refer to a condition requiring repair, replacement or other action immediately necessary to prevent damage to the Project or the Common Systems or for the safety of the Occupants of the Project, or other persons (including, without limitation, the safety of the customers or invitees of the Parking Parcel or the Commercial Parcel), or immediately required to avoid the suspension of any necessary services in the Project.

Section 1.11 "Fiscal Year" shall mean and refer to a calendar year.

Section 1.12 "Indexed" shall mean that a number is adjusted every five (5) years (unless otherwise specified herein), on such date as may be specified herein, by multiplying the number to be Indexed by a fraction, whose numerator is the Consumer Price Index for all Urban Consumers, San Francisco-Oakland-San Jose (1982-1984=100) ("Index") published for the month in which the adjustment

is being made, and whose denominator is the Index published for such month five years (or other specified period) earlier. If the Index is discontinued or revised during the term of this Declaration, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. If there is no replacement index or computation, then the closest available index or computation shall be used from time to time as the Parties shall agree upon and if they cannot agree, then such index or computation shall be established by arbitration pursuant to Article VII hereof.

Section 1.13 "**Interest Rate**" shall mean the lesser of (i) two percent (2%) over the "prime" or "reference" rate announced from time to time by Bank of America National Trust and Savings Association, or, in the event such bank no longer exists or no longer publishes or announces such rate, the similar rate announced from time to time by the commercial bank headquartered in California with the greatest assets, or (ii) the maximum rate the Person charging such interest is permitted by California law to charge on such obligation, if any.

Section 1.14 "**Joint Assessments**" shall mean and refer to any or all Regular Joint Assessments and Special Joint Assessments.

Section 1.15 "**Joint Expenses**" shall mean and refer to the cost of operation, maintenance, repair and replacement of the Common Building Elements and the Common Systems, and the performance of such other obligations as are set forth in Section 4.1 of this Declaration.

Section 1.16 **Joint Building Committee or Committee** shall mean and refer to a committee comprised of one representative appointed by each of the Parcel Owners and designated pursuant to this Declaration as responsible for the operation, maintenance, repair and/or replacement of the Common Building Elements and Common Systems, for obtaining all insurance policies referenced in Article V, Section 5.1 hereof, and for such other matters as may be specified in this Declaration. For so long as the Commercial Parcel and the Parking Parcel are under common ownership, the Commercial Parcel Owner and the Parking Parcel Owner may appoint a single representative to the Committee to perform the duties

required hereunder as to both the Commercial Parcel Owner and the Parking Parcel Owner.

Section 1.17 "**Joint Reserves**" shall mean and refer to reasonable reserves for reasonably anticipated contingencies for repair, maintenance and replacement of the Common Building Elements and Common Systems; provided, however, such Joint Reserves shall be kept in an interest-bearing account created solely for this purpose, and which requires for withdrawal therefrom execution by the Joint Building Committee or a designated representative or representatives thereof.

Section 1.18 "**Occupant**" shall mean and refer to any Parcel Owner, any Tenant of the Commercial Parcel, any Tenant of the Parking Parcel, any Unit Owner, or any Tenant of a residential unit, whichever occupies, or has the right to control the occupancy of, such Parcel or Unit.

Section 1.19 "**Parcel**" shall mean and refer to those areas designated Parcel A, Parcel B and Parcel C on the Airspace Parcel Map.

Section 1.20 "**Parcel Owner**" or **Owner** shall mean and refer to the Residential Parcel Owner, Commercial Parcel Owner and/or the Parking Parcel Owner.

Section 1.21 "**Parking Parcel**" shall mean and refer to Parcel C as described on the Map.

Section 1.22 "**Parking Parcel Owner**" shall mean and refer to the owner of the Parking Parcel.

Section 1.23 "**Person**" shall mean and refer to a natural person, a corporation, a partnership, a trustee, or any other legal entity.

Section 1.24 "**Project**" shall mean and refer to the entire real property described herein, including all structures and improvements erected or to be erected thereon, and including real property that is annexed or has been annexed.

Section 1.25 "**Proportionate Share**" shall mean and refer to the percentage of the Joint Assessments each Parcel Owner shall be

obligated to pay, which shall be based upon the percentage of square footage of the Project owned by that Parcel Owner.

Section 1.26 **"Regular Joint Assessments"** shall mean and refer to those assessments levied to pay for the anticipated costs of operation, maintenance, repair and replacement of the Common Building Elements and the Common Systems, including Joint Reserves, as provided herein.

Section 1.27 **"Residential Parcel"** shall mean and refer to Parcel A as described on the Map.

Section 1.28 **"Residential Parcel Owner"** shall mean and refer to the Owner of the Residential Parcel; provided, however, in the event the Residential Parcel is subdivided and an association or other membership entity which consists of the owners of subdivision interests of the Residential Parcel is created, the homeowners association or membership entity shall be deemed to be the Residential Parcel Owner for the purposes of this Declaration.

Section 1.29 **"Separate Utility Facilities"** shall mean and refer to those facilities specified as Separate Utility Facilities in Article II, Section 2.2(c) and Exhibit B hereto hereof.

Section 1.30 **"Special Joint Assessments"** shall mean and refer to those assessments levied to pay for unanticipated costs of operation, maintenance, repair and/or replacement of the Common Building Elements and the Common Systems, as provided herein.

Section 1.31 **"Tenant"** shall mean and refer to any tenant, subtenant or other Person entitled to the exclusive possession of a Parcel or any portion thereof pursuant to any lease, sublease, rental or other agreement.

Section 1.32 **"Unit Owner"** shall mean an owner of a subdivision interest of the Residential Parcel.

Section 1.33 **"Users"** shall mean and refer to all Tenants and all licensees, contractors, invitees, customers, employees and/or agents of any Tenant or Owner.

ARTICLE II

EASEMENTS

Section 2.1 Definitions and Documentation. For the purposes of this Article II, the following will apply:

(a) Grantor/Grantee. The party granting an Easement is called the "Grantor". The party to whom the Easement is granted is called the "Grantee."

(b) Servient/Dominant Tenement. The grant of an Easement by a Grantor shall bind and burden its Parcel which shall be the servient tenement for the purpose of this Declaration (where only a portion of the Parcel is bound and burdened by the Easement, only that portion shall be the servient tenement). The grant of an Easement to a Grantee shall benefit its Parcel which shall be the dominant tenement for the purpose of this Declaration (where only a portion of the parcel is so benefitted, only that portion shall be the dominant tenement).

(c) Successors/Assigns. All covenants and agreements contained in this Article made by Grantor shall bind the Grantor and its successors and assigns and shall benefit the Grantee and its successors and assigns. The benefits and burdens of all Easements, covenants and agreements contained in this Article shall run with and bind the respective dominant and servient tenements.

(d) Separate Utility Facilities. The term "Separate Utility Facilities" means the following: sewers (including, without limitation, storm drainage and sanitary sewer systems), natural gas systems, domestic water systems, fire protection water systems, electrical systems, safety systems, telephone systems, cable television systems, satellite systems and all other utility systems and facilities serving a single Parcel and located thereon or in Easements appurtenant thereto, including, without limitation, those items listed as "Separate Utility Facilities" on Exhibit B attached hereto. Separate Utility Facilities shall not include such systems as may be designated Common Systems on Exhibit B attached hereto.

(e) Words of Grant. The word "in" with respect to an Easement granted "in" a particular Parcel means, as the context may

require, "in," "to," "on," "over," "through," "upon," and "across," or any one or more of the foregoing.

(f) Non Exclusive. Unless provided otherwise, all Easements granted hereunder are non-exclusive and irrevocable.

Section 2.2 Easements for Separate Utility Facilities.

(a) Grant of Easements. Each Owner hereby grants to each of the other Owners Easements in such portions of its Parcel as may be reasonably necessary from time to time, for the installation, use, operation, maintenance, repair, replacement, relocation, restoration and removal of Separate Utility Facilities.

(b) Location of Easements. All Easements for Separate Utility Facilities shall be located as provided in Section 2.5 (a).

(c) Use of Separate Utility Facilities. Except as otherwise provided herein, as may otherwise be agreed by the Grantor and Grantee, or as otherwise set forth in Exhibit B attached hereto, the Grantee of any Easement for Separate Utility Facilities under this Section 2.2 shall be responsible, as between such Grantee and the Grantor, for the installation, maintenance, repair, replacement, relocation, restoration and removal of all Separate Utility Facilities installed by or on behalf of the Grantee within such Easements. Any installation, maintenance, repair, replacement, relocation, restoration and removal of Separate Utility Facilities that is required to be performed by the Grantee shall be performed only after two (2) weeks' advance notice to the Grantor of the Grantee's intention to do such work. However, in the case of an Emergency, any such work may be performed immediately after such advance notice to Grantor as is practicable under the circumstances. Grantor shall also have the right, in the case of an Emergency, to repair or replace any Separate Utility Facilities within its own parcel and charge the Grantee (or Grantees, as the case may be) for the reasonable costs of such repair or replacement. Grantee further agrees to use due care in the exercise of the rights granted in this Section and to comply with all conditions of any approval, permit or license by any public body having jurisdiction. In addition, the Owners agree that all such installation, maintenance, repair, replacement, relocation, restoration and removal shall be performed in a manner that causes as little disturbance to the Owners and Occupants of a

Grantor's Parcel as may be practicable under the circumstances and any and all portions of the Grantor's Parcel which may have been excavated, damaged or otherwise disturbed as a result of such work shall be restored at the sole cost and expense of the Grantee to essentially the same condition as the same were in prior to the commencement of any such work.

(d) Relocation of Separate Utility Facilities. The Grantor of any Easement under this Section may relocate on its Parcel any Separate Utility Facilities installed thereon under any Easement granted by it (a "Relocation"), provided such Relocation is reasonably required and:

(i) Such Relocation may be performed only after the Grantor has given the Grantee thirty (30) days' notice (or in the event of an Emergency, such shorter notice as may be reasonable under the circumstances) of its intention to relocate such facilities and has set forth in such notice the reasons why such Relocation is reasonably required.

(ii) Such Relocation shall not interfere with or diminish the utility services to the Grantee; however temporary interferences or diminutions in utility services shall be permitted if: (i) they occur during the hours that least interfere with the business of the Grantee, and (ii) the Grantor promptly reimburses the Grantee for the cost, expense and loss (excluding any estimated lost operating profits) incurred by the Grantee as a result of such interferences or diminutions, or both.

(iii) Such Relocation shall not reduce or unreasonably interfere with the usefulness or function of the Separate Utility Facilities in question.

(iv) Such Relocation shall be performed at the sole cost of the Grantor.

Section 2.3 Other Easements for the Benefit of All Parcels.
Each Parcel Owner, as Grantor, hereby grants to each other Owner, as Grantee, the following Easements:

(a) Common Building Elements. A non-exclusive Easement for support of the Grantee's Parcel, and every part thereof, through the portion of the Common Building Elements located within

the Grantor's Parcel. The use of the Common Building Elements pursuant to the Easements granted herein shall be in a manner consistent with the preservation of the full operating capability of the Common Building Elements for the benefit of the Commercial Parcel, Parking Parcel, Residential Parcel and the Occupants and Users thereof.

(b) Common System. A non-exclusive Easement to utilize and obtain the benefits of the portions of the Common Systems located within the Grantor's Parcel. The use of the Common Systems pursuant to the Easements shall be in a manner consistent with the preservation of the full operating capability of the Common Systems for the benefit of the Commercial Parcel, Parking Parcel, Residential Parcel and the Occupants and Users thereof.

(c) Encroachment. A non-exclusive Easement to maintain encroachments of the Grantee's Parcel onto the Grantor's Parcel which (i) do not materially interfere with the use and enjoyment of the Grantor's Parcel, and (ii) may exist as of the date hereof due to existing physical boundaries, engineering errors, errors in original construction, or any such other similar cause or (iii) may subsequently occur due to settlement, shifting or movement of the Building or due to reconstruction and repair undertaken in accordance with the provisions of this Declaration.

(d) Completion of Project. Easements for work necessary to complete development and construction of the Project, including all phases annexed or to be annexed.

Section 2.4 Access Easements.

(a) Easements for the Benefit of the Residential Parcel. Subject to the terms and conditions of this Declaration, the Occupants and Users of the Residential Parcel shall have the following access Easements appurtenant to the Residential Parcel and upon and within the Commercial Parcel and Parking Parcel:

(i) A non-exclusive Easement for vehicular ingress and egress to and from the Residential Parcel across certain specified portions of the Parking Parcel for the purpose of access to the Residential Parcel basement level parking area from Fulton Street.

(ii) A non-exclusive Easement for pedestrian ingress and egress to and from the Residential Parcel across the Parking Parcel for the purpose of access to the retail areas of the Commercial Parcel.

(iii) A non-exclusive pedestrian Easement to utilize for emergency ingress and egress such corridors, stairways and fire escapes in the Commercial Parcel and Parking Parcel as may now or hereinafter be designated for such purposes.

(b) Easements for the Benefit of the Commercial Parcel. Subject to the terms and conditions of this Declaration, the Occupants and Users of the Commercial Parcel shall have the following access Easements appurtenant to the Commercial Parcel and upon and within the Residential Parcel and Parking Parcel:

(i) A non-exclusive pedestrian Easement for ingress and egress to and from the mechanical/equipment room located on Level 3 of the Residential Parcel as well as any roof on the Residential Parcel for the purpose of operation, maintenance, repair and replacement of the equipment and systems located therein.

(ii) A non-exclusive pedestrian and vehicular Easement across the Parking Parcel as is reasonably necessary for access to the retail areas of the Commercial Parcel.

(iii) A non-exclusive pedestrian Easement to utilize for emergency ingress and egress such corridors, stairways and fire escapes in the Residential Parcel and Parking Parcel as may now or hereinafter be designated for such purpose.

(c) Easements for the Benefit of the Parking Parcel. Subject to the terms and conditions of this Declaration, the Occupants and Users of the Parking Parcel shall have the following access Easements appurtenant to the Parking Parcel and upon and within the Residential Parcel and Commercial Parcel:

(i) A non-exclusive pedestrian Easement to utilize for emergency ingress and egress such corridors, stairways and fire escapes in the Residential Parcel and Commercial Parcel as may now or hereinafter be designated for such purpose.

(d) Grantor's Obligations Regarding Emergency Exits.

Grantor agrees, with respect to Easements for emergency egress into portions of the Grantor's Parcel, to install and maintain alarms or other reasonable security devices to secure such exits and to discourage non-emergency use of emergency exits.

Section 2.5 Encroachment Easement to Maintain Signage. The

Owner of the Commercial Parcel shall have an appurtenant easement for encroachment purposes over a portion of the Residential Parcel to maintain a commercial sign for the benefit of the Commercial Parcel which is attached to the structure on southwesterly corner of the Commercial Parcel but which extends above into the airspace of the Residential Parcel.

Section 2.6 Maintenance, Use, Duration and Termination of Easements.

(a) Location of Easements. In the case of any variance between the Airspace Map and the final "as-built" plans for the Project with respect to the locations of all Easements, including, without limitation, the Easements for Separate Utility Facilities, granted herein, the "as-built" plans for the Project shall be determinative of the location of the facilities which are the subject of any Easements granted pursuant to this Article II, and, therefore, of the location of the Easements. The exact location (including, where applicable, width, height and depth) of an Easement granted pursuant to this Article II, if not specified herein, and subject to any other provisions for locating the same set forth herein, shall be determined with the approval of the Grantor, which approval shall not be unreasonably withheld or delayed. At the request of either the Grantor or the Grantee, the locations of all Easements determined pursuant to this Section 2.5 (a) or otherwise, shall be specifically described (subject to relocation in accordance with this Declaration) in a recorded instrument between the Grantor and the Grantee, as soon as reasonably practicable based upon "as-built" surveys. Any changes in location may also be evidenced by such a recorded instrument. The cost of making any survey to determine such location shall be borne by the Grantee of the Easement or the Party requesting a change in such Easement, as the case may be. Any dispute regarding such surveys shall be arbitrated in accordance with Article VIII hereof.

(b) Use Subject to Reasonable Rules and Regulations.

(i) The use and exercise of the Easements upon each Parcel may be subject to rules and regulations promulgated by the Owner of that Parcel; provided, however such rules and regulations shall not be in conflict with terms and conditions of this Declaration. These rules and regulations may reasonably limit or otherwise restrict the location of access and the time, manner and scope of use thereof.

(ii) Notwithstanding, and in addition to the foregoing, access by Owners, Tenants and Occupants of other Parcels onto the Commercial Parcel may be restricted by the Commercial Parcel Owner to hours when uses located on the Commercial Parcel are open for business, and for a reasonable time before and after; provided, however, that the Commercial Parcel Owner's right to so restrict access shall be subject to Easements for Emergency egress from the Residential Parcel and the Parking Parcel granted hereunder.

(c) Maintenance. Except as otherwise provided herein, each Parcel Owner shall be responsible for the maintenance, repair and replacement, without cost or expense to the other Parcel Owners, of all improvements within such Owner's Parcel as shall be necessary in order that no unreasonable interference with the use and benefit of any Easement described herein shall result.

(d) No Unreasonable Interference. No Parcel Owner or Occupant of any Parcel, or part thereof, shall enter into any agreement, make any conveyance or transfer of any interest in any part of a Parcel or do or suffer any other act or permit any condition which would unreasonably interfere with the use and enjoyment of any of the Easements for the benefit of the other Parcels. Further, if it is determined that an electrical or other utility line benefits one Parcel exclusively but is subject to other Parcels' metering, the benefitted Parcel may continue using that line; provided, however, the Parcel Owners shall immediately undertake to rectify this situation, past and future, by submetering, allocating the cost of estimated usage of the utility, or any other appropriate means subject to mutual agreement. Failure by the Parcel Owners to resolve such situation shall, upon the request of any Parcel Owner, result in arbitration according to the provisions of Article VIII.

(e) Responsibility for Occupants. Each Parcel Owner shall be responsible for the performance by the Occupants of such Parcel of all obligations with respect to the Easements and other rights granted pursuant to this Declaration.

(f) Indemnity for Separate Utility Facilities Easements. The Residential Parcel Owner shall hold the Commercial Parcel Owner harmless from all liability, damage, cost or expense, including, without limitation, reasonable attorneys' fees and costs, incurred by the Commercial Parcel Owner (other than that proximately caused by the act or omission of such Owner) arising out of the negligent acts or omissions of the Residential Parcel Owner in the course of its use of any of the Easements in the Commercial Parcel which are created or reserved for the benefit of the Residential Parcel Owner.

ARTICLE III

USE RESTRICTIONS

Section 3.1 Commercial Parcel. Subject to the terms and conditions contained herein, the Commercial Parcel shall be used for the purpose of operating one (1) or more retail businesses or services.

Section 3.2 Residential Parcel. The Residential Parcel shall be used for residential purposes, and for no other purposes, except that Declarant may use residential units as models for the sale or lease of such units, and except further, the Occupants may conduct office uses incidental to and not inconsistent with such residential use, such as an "office-in-the-home."

Section 3.3 Parking Parcel. The Parking Parcel shall be used for the purpose of providing parking.

Section 3.4 Exterior Appearances.

(a) Uniformity of Appearance. Nothing shall be done or permitted within any Parcel which shall interfere with or disrupt the uniformity of the exterior appearance of the Building without the prior written consent of all Parcel Owners; provided, however, the Commercial Parcel Owner, may erect or exhibit signs and

advertisements to make its name and products known to the public, and provided further that occupants of the Residential Parcel may exhibit For Sale and/or For Rent signs for each Condominium on the Residential Parcel as provided for in Section 712 of the California Civil Code, provided that such signage is reasonable in size and posted at an appropriate location on the Property, and provided further that all such signage shall be subject to reasonable rules and regulations of the residential homeowners association concerning size and location.

(b) Conditions of Approval. Each Owner shall have the authority to enforce against any other Owner the building standards set forth in the Conditions of Approval attached hereto as Exhibit C.

Section 3.5 Subsequent Construction. Any construction on an Owner's Parcel, other than the initial construction of the Project ("Initial Improvements"), shall be subject to the provisions of this Section 3.5. Such construction is referred to herein as "Subsequent Construction".

(a) Requires Approval. Subsequent Construction, other than demolition or razing permitted or required under Article VI, on a Parcel or changing the exterior configuration, bulk or height of any Building improvements or physically changing the exterior design, exterior materials, exterior color or the roof of any Building improvements shall require the approval of all of the other Parcel Owners; provided, however, that no such consent shall be required hereunder in any of the following circumstances:

(i) where a party's Subsequent Construction is in accordance with construction documents for the Initial Improvements, or

(ii) where a party's Subsequent Construction involves replacement utilizing the same exterior design, exterior materials, exterior color or roof as approved for the Initial Improvements or, if the previously approved materials are not reasonably available or do not meet current code requirements, the materials involved are equal in quality, durability and appearance to the previously approved materials.

(b) Notice. Any Party shall notify the other Parcel Owners at least ninety (90) days prior to the commencement of (i) any Subsequent Construction requiring consent, or (ii) any material Subsequent Construction (excluding tenant improvements) which does not require consent.

(c) No Approval Required for Storefronts. Notwithstanding the provisions of subsection (a) of this Section 3.5, no approval need be obtained under this Declaration for Subsequent Construction for individual storefronts on the Commercial Parcel.

(d) Construction Documents in Connection With Subsequent Construction. The party desiring to initiate Subsequent Construction requiring approval ("Requesting Party") shall prepare and submit to the other Parcel Owners, for such review and approval as may be contemplated such plans, specifications, schematic drawings or other construction documents (collectively, "Construction Documents") as may be reasonably required by the reviewing party ("Reviewing Party"). If the Reviewing Party notifies the Requesting Party that such submission is incomplete, such notification shall constitute disapproval thereof. Any disapproval shall be made in writing within thirty (30) days after receipt of the written submission. If no action is taken by the Reviewing Party on the submission within thirty (30) days after receipt, the Requesting Party may then deliver a second notice stating that if no action is taken within an additional three (3) business days following receipt of the second notice, then the submission shall be deemed approved; if no such action is then taken pursuant to such notice, the submission shall be deemed approved.

(e) Construction to Proceed in Reasonable Manner. Each party shall perform any Subsequent Construction so as not to unreasonably interfere with other Parcel Owners' operations, Easements and other rights set forth in this Declaration. Subject to the foregoing, each party hereby grants to each of the other parties a license to use to such party's Parcel as reasonably necessary in connection with Subsequent Construction. The party carrying on any Subsequent Construction shall erect adequate, painted construction barricades substantially enclosing the area of its Subsequent Construction. Such party shall maintain these barricades until the Subsequent Construction has been

substantially completed (to the extent reasonably necessary to remove the hazardous construction conditions). The requirements of this Section are in addition to any other requirements imposed by this Declaration or by any applicable laws, ordinances, rules or regulations for the protection of the public or others during any construction activity.

(f) Liens. Each Owner agrees that in the event that any mechanics' lien or other statutory lien arising out of labor, services, or materials supplied to or at the request of such Owner (or an Occupant of its Parcel) shall be filed against the Parcel of any other Owner, it shall pay and discharge the same of record within thirty (30) days after the notice of the filing thereof, subject however to the provisions of the following sentence. Each such party shall have the right to contest the validity, amount or applicability of any such lien by appropriate legal proceedings, provided it furnishes a bond or indemnity as hereinafter provided and prosecutes such contest in good faith, in which event the requirement that it pay and discharge such lien within said thirty (30) day period shall not be applicable. If any such lien is not discharged of record within thirty (30) days after notice of the filing thereof, such party shall, within such thirty (30) day period, either (1) record a bond releasing such lien, as provided in California Civil Code Section 3143 (or its successor); or (2) provide an indemnity against such lien in amount and form satisfactory to induce the title insurance company which insured title to the Parcel affected by such lien to insure over such lien or to reissue or update its existing policy, binder or commitment without showing any title exception by reason of such lien. In the event any such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to the Party contesting such lien, such party shall within five (5) days thereafter cause the lien to be discharged of record.

ARTICLE IV

MANAGEMENT OF COMMON BUILDING ELEMENTS AND COMMON SYSTEMS;

PAYMENT OF COSTS

Section 4.1 Management of Common Building Elements and Common Systems. The Joint Maintenance Committee is hereby authorized, and shall have the obligation, to take all actions

necessary to assure that all Common Building Elements and Common Services are operated, maintained, repaired, and replaced pursuant to and in accordance with this Declaration and otherwise in a first-class condition. The Committee and its authorized agents shall have an irrevocable license over, under and across each Parcel in order: (i) to operate, maintain, repair or replace any Common Building Element or Common Systems to the extent authorized by, and in accordance with, all of the terms and conditions of this Declaration, or (ii) to carry out any of its responsibilities pursuant to this Declaration.

The Committee shall meet annually, no later than sixty(60) days prior to the beginning of each calendar year, and at such other times as any two members of the Committee may determine. A majority of the members of the Committee shall constitute a quorum, provided that an absent member is provided reasonable notice of the meeting. The Residential Parcel Owner shall have two votes, and each of the other Parcel Owners shall have one vote each. In the event that the Commercial Parcel Owner and the Parking Parcel Owner appoint a single Committee representative pursuant to Section 1.16 of this Declaration, then such representative shall be entitled to vote on behalf of both the Commercial Parcel Owner and the Parking Parcel Owner (i.e., to exercise two votes. A majority vote of the members shall be sufficient to approve any action of the Committee at a properly conducted meeting. The Committee shall have the authority to delegate its duties hereunder to the Residential Parcel Owner or, following condominium subdivision of such Parcel, to the residential homeowners association. Following such delegation, the Committee's delegate shall have all of the authority held by the Committee under this Declaration to act pursuant to this Declaration. However, such delegation shall not relieve the Committee of its responsibilities hereunder. Each Parcel Owner shall be given written notice by the Committee of the matters contained in this paragraph, including prior notice of meetings and notice of the actions of the Committee.

The obligations of the Committee pursuant to this Section 4.1 shall include, but are not limited to, the following:

(a) Common Building Elements. Maintaining, repairing, and replacing, if necessary, the Common Building Elements, and providing such personnel as may be required for the operation of the same. All Common Building Elements repaired or replaced by the

Committee shall be repaired or replaced with materials, apparatus and facilities of quality equal or superior to the quality of the materials, apparatus and facilities repaired or replaced, in a manner which maintains the architectural and aesthetic harmony of the Parcels as a whole and the structural integrity of the Building.

(b) Common Systems. Maintaining, cleaning, repairing, replacing (if necessary) and keeping in good operating order the Common Systems, and providing such personnel as may be required for the operation of the same. All Common Systems repaired or replaced pursuant to this section shall be repaired or replaced with materials, apparatus and facilities of quality equal or superior to the quality of the materials, apparatus and facilities repaired or replaced, in a manner which maintains the architectural and aesthetic harmony of the Parcels as a whole and the structural integrity of the Building.

(c) Obstructions. Keeping the Common Building Elements free from obstructions not required or permitted hereunder.

(d) Governmental Requirements. Performing any installations, repairs or alterations to the Common Building Elements, including providing such personnel as may be required for operation of the same, under any legal or governmental requirement now or hereafter applicable to the Common Building Elements.

(e) Joint Insurance. Providing and maintaining the insurance required by Section 5.1 and any other insurance permitted under Section 5.1 for the common benefit of the Project.

(f) Assessments. Establishing, levying and collecting Joint Assessments and Special Assessments, as provided in Section 4.2.

(g) Joint Reserves. Establishing and maintaining reasonable reserves for reasonably anticipated contingencies and repairs or replacements of Common Building Elements and Common Systems.

Section 4.2 Assessment for Joint Expenses. Subject to the limitations set forth in this Declaration, each Parcel Owner shall

pay its Proportionate Share of the Joint Expenses which shall be determined and assessed in the following manner:

(a) Estimated Expenses. At least sixty (60) days prior to the beginning of each Fiscal Year, the Committee shall prepare and distribute to each Parcel Owner and Parcel Owner a statement of estimated Joint Expenses and Joint Reserves for the upcoming Fiscal Year (hereinafter "Budget"); provided, however, that the initial Budget shall cover the period commencing with the close of the first escrow of any Parcel or of the first subdivision interest to be transferred, and ending with the commencement of the first full Fiscal Year. The Budget shall consist of the Committee's itemized estimate of the Joint Expenses and Joint Reserves for the Fiscal Year, which shall include any amount necessary to make up any prior deficit arising out of the Joint Expenses exceeding Joint Assessments. The Budget shall also include an explanation as to the necessity of any line item Joint Expense which either (i) was not included in the prior Fiscal Year's Budget, or (ii) which exceeds by five percent (5%) or more the allocation for such line item in the prior Fiscal Year's Budget. In the case of the first Budget, Declarant shall estimate the Joint Expenses, which estimate shall be made in accordance with the budget submitted to the California Department of Real Estate

(b) Payment of Regular Joint Assessment. Each Parcel Owner shall pay each Regular Joint Assessment in equal monthly installments on or before the first day of each calendar month during the fiscal year.

(c) Special Joint Assessment. If the Committee determines that the Budget is or will become inadequate for any reason (including, but not limited to, misinformation or miscalculation, unexpected repair or replacement of any Common Building Elements or Common Systems, or increase in estimates of Joint Expenses), and that such deficit cannot be covered by existing Joint Reserves, the Committee may, at any time, levy a Special Joint Assessment to make up such inadequacy, which shall be allocated to each Parcel in accordance with the Proportionate Shares. Payment of a Special Joint Assessment shall be due and payable within twenty (20) days after written notice thereof has been given to each Parcel Owner.

(d) Reserve Accounts. The Committee shall account for any and all Joint Reserves as trust funds segregated from other assessment income received by it, and shall do so in such manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board as will prevent such funds from being taxed as income of the Parcel Owners.

(e) Books and Records. The Committee shall prepare and maintain complete and proper books, records and accounts pertaining to this Declaration, including the Joint Expenses and Joint Assessments, for each Fiscal Year. (The reasonable cost of this obligation shall be a Joint Expense which shall be included as part of the Budget). The Committee shall maintain such books and records on a current basis, using accepted accounting principles, and in sufficient detail to facilitate adequate audit and review thereof. Such books, records, and accounts shall be maintained in the office of the Committee which shall be located within the City and County of San Francisco. Any Parcel Owner, or a mortgagee of any Parcel may, at any reasonable time, upon reasonable prior notice, and at its own expense, cause an audit or inspection to be made of the books and accounts. The right of inspection includes the right to make extracts and copies of documents, provided that the reasonable cost thereof is prepaid, and the documents copied shall be used only for purposes consistent with this Declaration. If the audit discloses that any Parcel Owner overpaid the Joint Assessment or Budget by three percent (3%) or more, such Parcel Owner shall be entitled to reimbursement for the full cost and expense of the audit from whatever party or entity was responsible for preparing and maintaining the books and records, be it the Committee or the Committee's delegate.

(f) Disputes Regarding Budget or Assessments. If any Parcel Owner should dispute any Joint Assessment or the Budget for any Fiscal Year, and if the dispute is not resolved within a reasonable time, the matter may be submitted by any party to the dispute to arbitration as provided in Article VIII, and pending agreement by the parties or determination by arbitration, all Parcel Owners agree to pay the sums required in accordance with the Joint Assessment or Budget, as the case may be. If by agreement between the parties, or by arbitration, it is determined that a Parcel Owner has overpaid or underpaid any sums, the amount of such overpayment or underpayment shall be refunded or paid, as the case may be, within ten (10) days following such determination.

Section 4.3 Separate Maintenance.

(a) In General. Except as otherwise provided in this Article IV and in Article VI of this Declaration, each Parcel Owner shall be responsible for the maintenance, repair and replacement, without cost or expense to the other Parcel Owners, of all improvements within such Owner's Parcel, including, without limitation, those "Separate Building Elements" described in Exhibit B attached hereto.

(b) Sidewalks. Each Parcel Owner shall be responsible for the maintenance, repair and replacement, at such Owner's sole cost and expense, of those portions of the sidewalks, including sidewalk trees and other sidewalk landscape, which abuts the Owner's Parcel. Notwithstanding the foregoing, to the extent provided in the Conditions of Approval, the Owner of the Commercial Parcel shall be responsible, at such Owner's sole costs and expense for daily sweeping and litter pick up on all of the sidewalks around the exterior of the Project.

Section 4.4 Limitation of Liability Neither the Committee nor its members shall be liable to any Owner, Tenant, Occupant, User, or other person for any injury, death, loss or damage due to theft, other breaches of security, failures, or interruption of services, or other circumstances pertaining to Joint Building Elements within the Committee's control hereunder, or for the failure to enforce the provisions hereof unless the same is due to the willful misconduct, gross negligence, or recurring failure by the Committee, after receipt of written notice from any Owner with respect to such failure, to exercise reasonable care and diligence in the performance of its obligations hereunder.

ARTICLE V

INSURANCE

Section 5.1 Insurance Maintained by Joint Maintenance Committee as Joint Expense.

(a) All Risk Insurance. The Committee shall obtain and maintain, as a Joint Expense, an "all risk" policy of property

insurance on the Project including all buildings, improvements, equipment and fixtures not the property of an individual Parcel Owner or Occupant ("**Property Policy**"). The Property Policy shall be in an amount equal to one hundred percent (100%) of full replacement cost of the Project (excluding the cost of excavation, foundations and footings). The replacement cost of the Project covered by the Property Policy shall be redetermined and the amount of coverage adjusted accordingly from time to time as may be prudent or desirable, as may be evidenced by the practice of similarly situated projects, but, in any event, no less frequently than annually. The Property Policy may be extended to include the following coverages; provided (i) such coverages are available at commercially reasonable rates, and (ii) all Parcel Owners have given their prior written consent, which consent shall not be unreasonably withheld or delayed: (a) a building ordinance endorsement, and (b) coverage for damage or loss to the Building resulting from the perils of rain or other water intrusion, floods, and/or earthquakes. The Property Policy shall include an agreed amount provision in lieu of a coinsurance clause and shall be written on a replacement cost basis. The Property Policy shall also provide that all insurance proceeds shall be paid to an Insurance Trustee appointed under Section 6.5(c), and are to be used and applied in accordance with the provisions of this Declaration.

(b) Boiler and Machinery Insurance. The Committee shall obtain and maintain, as a Joint Expense, a policy of Boiler and Machinery Insurance insuring against loss or damage to or because of Common System boilers and other machinery, including, but not limited to, loss or damage by fire, vandalism, malicious mischief, sprinkler leakage, lightning, windstorm, water, and other special extended coverage risks, and the costs of demolition and debris removal, equal to full replacement value without deduction for depreciation, with an "agreed amount" endorsement or its equivalent, if available, or an "inflation guard" endorsement.

(c) Public Liability and Property Damage. The Committee shall obtain and maintain liability insurance insuring its interest (as the party required to manage and maintain the Common Building Elements and Common Systems under Article IV of this Declaration) against claims for personal injury, bodily injury, death and property damage occurring on, in or about the Project and the ways

immediately adjoining the Project, with a Combined Single Limit (covering personal injury liability, bodily injury liability and property damage liability) of not less than Five Million Dollars (\$5,000,000.00) for total claims for any one occurrence ("**Manager's Liability Policy**"). The insurance limits in this Section shall be subject to increase from time to time by such amounts as the Owners may reasonably agree is necessary or desirable, as may be evidenced by the practice of similarly situated properties.

(d) **Workers' Compensation Insurance.** The Committee shall obtain and maintain, as a Joint Expense, a policy of Workers' Compensation Insurance (including Employer Liability Insurance) for an amount not less than Five Hundred Thousand Dollars (\$500,000.00), covering all employees employed in, on, or about the Project to perform work or other services for the Common Building Elements and Common Systems, as required by the laws of the State of California.

(e) **Required Provisions.** The insurance which is required pursuant to subsections (a) - (d) of this Section 5.1 are sometimes collectively referred to as "**Required Common Insurance Policies**". The Required Common Insurance Policies shall be subject to the following requirements:

(i) All Parcel Owners, either primarily or additionally, shall be named as insureds under each of the Required Common Insurance Policies.

(ii) Each of the Required Common Insurance Policies shall provide that the insurance shall not be canceled, materially changed or non-renewed without the giving of thirty (30) days' prior written notice to the holders of such insurance and the holders of such certificates.

(iii) The Property Policy shall contain a waiver of subrogation as required by Section 5.2 (c), below.

(f) **Notice of Insurance/Failure to Maintain Insurance.** Within five (5) business days of obtaining or renewing insurance required by the Declaration, or within five (5) business days of the written request of any Parcel Owner, the Committee shall deliver by first class mail to the requesting Owner certificates evidencing that each of the Required Common Insurance Policies has

been obtained or renewed. If the requesting Owner shall reasonably believe that any of the Required Common Insurance Policies has or may soon lapse, the requesting Owner shall have the option (but not the duty) of immediately acquiring such insurance. After acquiring such insurance, such Owner shall promptly notify the other Owners of such action. The requesting Owner shall be reimbursed by the Committee for the costs thereof within ten (10) days of receipt of an invoice for such costs. In the event that an Owner obtains such insurance and reimbursement, the Committee may include such amounts as a Joint Expense pursuant to Article IV hereof.

Section 5.2 Insurance for Owner or Occupant of a Parcel.

(a) Owners' Required Liability Insurance. Each Owner agrees to maintain, and/or cause to be maintained, at no cost to the other Owners, liability insurance insuring its interests against claims for personal injury, bodily injury, death and property damage occurring on, in or about the Project and the ways immediately adjoining the Project, with a Combined Single Limit (covering personal injury liability, bodily injury liability and property damage liability) of not less than Five Million Dollars (\$5,000,000.00) for total claims for any one occurrence. The insurance limits in this Section shall be subject to increase from time to time by such amounts as the Owners may reasonably agree is necessary or desirable, as may be evidenced by the practice of similarly situated properties. All policies of liability insurance shall insure the performance by Landlord or Tenant, as the case may be, of the indemnity agreements contained herein. Each Owner shall promptly notify the other Owners of any asserted claim with respect to which other Owners are or may be indemnified against hereunder and shall deliver to such other Owners copies of process and pleadings.

(b) Owners and Occupants Responsible for Own Insurance.

Each Owner and each Occupant thereof shall be responsible for obtaining and maintaining insurance which insures against loss of personal property, fixtures, and equipment and against liability for bodily injury, property damage, and other insurable risk to others that may be imposed upon them to the extent not covered by the insurance required by this Declaration. In no event shall insurance covering interruption of business in any Parcel be deemed insurance required by this Declaration.

(c) Waiver of Subrogation. With respect to any loss or damage that may occur to the Project (or any improvements thereon) or the respective property of the Owners therein, arising from any peril customarily insured under a fire and extended coverage or all risk insurance policy, regardless of the cause or origin, excluding willful acts but including negligence of the Owners, their agents, servants or employees, each Owner suffering such loss, as to its individual insurance, and the Committee, as to the Property Policy, hereby releases the other Party from all claims with respect to such loss; and the Owners agree that their respective insurance companies (or the insurance company issuing the Property Policy [as the case may be]) shall have no right of subrogation against any Owner on account of any such loss, and each Owner shall procure from its respective insurers under all policies of fire and extended coverage or all risk insurance a waiver of all rights of subrogation against the other Owners.

Section 5.3 Contractor's Insurance. During the period of any construction in the Project by or at the request of any Owner, such Owner agrees to obtain or require its contractor(s) to obtain, and thereafter maintain so long as such construction activity is occurring, at least the following minimum insurance coverage:

- (a) Workers' compensation - statutory limits;
- (b) Employer's liability - One Hundred Thousand Dollars (\$100,000.00); and
- (c) Comprehensive General Liability and Commercial Automobile Liability as follows: (i) Combined Single Limit (covering personal injury liability, bodily injury liability, and property damage liability) of not less than Five Million Dollars (\$5,000,000.00) in the case of Comprehensive General Liability and One Million Dollars (\$1,000,000.00) for Commercial Automobile Liability for total claims for any one occurrence; (ii) Independent Contractor's Liability or Owner's Protective Liability with the same coverage as in (i) above; (iii) Products/Completed Operations Coverage which shall be kept in effect for two (2) years after completion of work; (iv) XCU hazard coverage, if applicable; (v) Broad Form Property Damage Endorsements; (vi) Personal Injury Endorsements; and (vii) Blanket Contractual Liability Endorsement.

ARTICLE VI

CONDEMNATION; DAMAGE OR DESTRUCTION

Section 6.1 Definitions.

(a) Appropriation and Award. For purposes of this Article VI, "Appropriation" shall mean and refer to any taking by exercise of a right of condemnation (direct or inverse) or eminent domain, or the sale under threat of condemnation. The term "Award" as used herein shall mean and refer to the net amounts received by reason of an Appropriation hereunder, after deduction of reasonable expenses incurred in obtaining such Award.

(b) Casualty. For purposes of this Article VI "Casualty" shall mean and refer to any damage or destruction to the Common Building Elements and the Common Building Systems from any cause whatsoever.

(c) Material Damage. For purposes of this Article VI "Material Damage" shall mean and refer to the cost of restoration of a Parcel resulting from: (i) a Casualty not covered by the Required Common Insurance Policies which exceeds the sum of One Million Dollars (\$1,000,000.00), as Indexed, or (ii) an Appropriation of more than five percent (5%) of the total square footage of the Building portion located within a Parcel.

(d) Proceeds. The proceeds of the Required Common Insurance Policies and/or the proceeds of any Award are sometimes collectively referred to herein as "Proceeds".

Section 6.2 Estimate. In the event of a Casualty to, or an Appropriation of, all or any portion of the Building, the Committee shall promptly, but in any event within ninety (90) days of the date of the Casualty or the Appropriation, undertake, through the use of licensed and qualified real estate and construction professionals as well as a third-party adjuster, to determine the extent of the same and the estimated cost and time to repair and restore the Project in accordance with the provisions of this Declaration ("Estimate") and otherwise advise and assist the Committee to properly carry out its obligations in this Article VI. The Committee shall provide all Owners with written notice of the Estimate, which notice shall include reasonable supporting

documentation of the Estimate. The cost of the Estimate shall be shared pro-rata among the Owners according their Proportionate Shares.

Section 6.3 Material Damage. If there is Material Damage to any Parcel, the Parcel Owner in whose Parcel the Material Damage occurs, shall elect and notify, within ninety(90) days of the date of the Estimate, whether or not to repair and restore the Parcel in which the Material Damage has occurred. **A FAILURE TO ELECT OR TO NOTIFY THE OTHER PARCEL OWNERS WITHIN THE PERIOD SPECIFIED HEREIN SHALL BE DEEMED TO BE AN ELECTION TO REPAIR AND RESTORE.**

(a) **Material Damage to Commercial Parcel and/or Parking Parcel Only.** If there is Material Damage to the Commercial Parcel and/or Parking Parcel, but there is no Material Damage to the Residential Parcel, then:

(i) If the Commercial Parcel Owner and/or Parking Parcel Owner elects to repair and restore, the Committee shall repair and restore the Project in accordance with the provisions of Section 6.5, and subject to the Joint Assessments described in Section 6.3(d).

(ii) Subject to the right of first refusal in favor of the Residential Parcel Owner, as described in Section 6.7, if the Commercial Parcel Owner and/or Parking Parcel Owner elects not to repair and restore the Material Damage, the Commercial Parcel Owner and/or Parking Parcel Owner may sell their respective Parcels, and each Parcel Owner and its mortgagees shall be entitled to receive the proceeds of that Parcel's sale, together with that portion of the Proceeds attributable to the Commercial Parcel or the Parking Parcel. Upon receipt of such proceeds, if any, the Commercial Parcel Owner and/or Parking Parcel Owner shall transfer all of its respective right, title, and interest in and to the purchaser or public entity, as appropriate, free and clear of all leases and deeds of trust, and if transferred to a single Owner, this Declaration shall terminate and be of no further force and effect; provided, if only one of the Commercial Parcel Owner or Parking Parcel Owner elects to sell pursuant to this subsection (ii), the Owner which elects not to sell, along with the Residential Parcel Owner shall agree to such modifications and revisions of this Declaration as are reasonably necessary to reflect the current ownership and state of the Project.

(b) Material Damage to Residential Parcel Only. If there is Material Damage to the Residential Parcel, but no Material Damage to the Commercial Parcel or Parking Parcel, then:

(i) If the Residential Parcel Owner elects to repair and restore, the Committee shall repair and restore the Project in accordance with the provisions of Section 6.5.

(ii) Subject to the right of first refusal in favor of the other Parcel Owners as described in Section 6.7, if the Residential Owner elects not to repair and restore, the Residential Parcel Owner may sell the Residential Parcel, and the Residential Parcel Owner and its mortgagees shall be entitled to receive the proceeds of sale, together with that portion of the Proceeds attributable to the Residential Parcel. Upon receipt of such proceeds, if any, the Residential Parcel Owner shall transfer all of its right, title and interest in and to the Residential Parcel to the purchasers or public entity, as appropriate, free and clear of all leases and deeds of trust, and if transferred to a single Owner. In the event of such sale, this Declaration shall be amended by the Commercial Parcel Owner or Parking Parcel Owner to make such modifications and revisions of this Declaration as are reasonably necessary to reflect the current ownership and state of the Project. All accrued reserves, interest, and other funds held by the Committee pursuant to Article IV shall be transferred by the Committee to the Commercial Parcel Owner and Parking Parcel Owner; provided, however, in the event the accrued reserves, interest and other funds held by the Committee pursuant to Article IV are inadequate to provide sufficient funds to permit the demolition of the improvements located on the Residential Parcel and/or all other construction necessary to rebuild and make a complete architectural unit of the balance of the Building, including the replacement of Common Building Elements and Common Systems, as provided in Section 6.3(e), the Commercial Parcel Owner and Parking Parcel Owner shall receive funds from the insurance proceeds, Award, or any other funds to be received by the Residential Parcel Owner for the sale of the Residential Parcel to the extent necessary to fund any such deficit.

(c) Material Damage to All Parcels. If there is Material Damage to all Parcels, then:

(i) If all Parcel Owners elect to repair and restore, the Committee shall repair and restore the Project in accordance with the provisions of Section 6.5.

(ii) If all Parcel Owners elect not to repair and restore, the Committee shall sell the Project on behalf of the Parcel Owners in accordance with Section 6.6.

(iii) If either the Commercial Parcel Owner or Parking Parcel Owner elect to repair and restore, but the Residential Parcel Owner elects not to repair and restore, the provisions of Section 6.3(b)(ii) above and the provisions of Section 6.3 (e) below shall apply.

(iv) If either the Commercial Parcel Owner or Parking Parcel Owner elect not to repair and restore and the Residential Parcel Owner elects to repair and restore, the provisions of Section 6.3 (a)(ii) above shall apply.

(d) Election to Restore - Joint Assessments. An election by the Commercial Parcel Owner and/or Parking Parcel Owner to repair and restore shall be deemed to constitute approval by the Commercial Parcel Owner and/or Parking Parcel Owner of any and all Joint Assessments and any other charges necessary to pay in full the cost of any repair or restoration of the Building in excess of the proceeds of the Required Common Insurance Policies or the Award available for such repair or restoration.

(e) Repair of Common Building Elements and Common Systems Within the Residential Parcel. If (i) there is Material Damage to all Parcels or to the Residential Parcel only, (ii) the Residential Parcel Owner elects not to repair and restore the Material Damage to the Residential Parcel, and (iii) the Commercial Parcel Owner and/or Parking Parcel Owner elect to repair and restore the Building, then so much of the Proceeds payable by reason of or in connection with the Casualty to, or Appropriation of, the Residential Parcel shall be made available to an Insurance Trustee, as described in Section 6.5(c) and applied to the repair or restoration by the Commercial Parcel Owner and/or Parking Parcel Owner of the portions of Common Building Elements and Common Systems located within the Residential Parcel to such extent that, in the reasonable judgment of the Commercial Parcel Owner and/or Parking Parcel Owner, the appearance of the exterior of the

Building and the structure and operation of the Commercial Parcel and/or Parking Parcel's portion of the Common Building Elements and Common Systems shall not be materially adversely affected by any such damage to or Appropriation of the Residential Parcel. The right of the Commercial Parcel Owner and/or Parking Parcel Owner under this Section 6.3(e) to restore shall include the right to demolish the Residential Parcel and construct a new roof, including equipment thereon, on the Building, and the Residential Parcel Owner hereby grants to the Commercial Parcel Owner and Parking Parcel Owner easements to enter upon the Residential Parcel in order to perform such work, together with all easements necessary to permit such roof to remain in place and to be utilized by the remaining Parcel Owners. The remainder of any such proceeds of insurance or other damages, Awards or proceeds attributable to the Residential Parcel shall then be paid to the Residential Parcel Owner.

Section 6.4 Obligation to Restore Non-Material Damage. In the event of a Casualty or Appropriation which is not Material Damage with respect to any Parcel, or which is to be repaired by the Residential Parcel Owner pursuant to Section 6.5 below, the Committee shall cause the repair and restoration of the Project (excluding the personal property, fixtures and equipment for which Occupants are responsible to insure pursuant to Section 4.3(g)), or the portion thereof not Appropriated, to a condition at least equal to that existing immediately prior to the Casualty or Appropriation, and shall replace any Appropriated Common Building Elements or Common Systems in accordance with this Declaration.

Section 6.5 Repair and Restoration Procedures.

(a) **Performance of Work.** Plans and specifications for any work of repair, restoration or replacement affecting the Commercial Parcel, Parking Parcel or any Common Building Element or Common System shall be subject to the prior written approval of the affected Parcel Owner(s), which approval shall be timely and not unreasonably withheld, delayed or conditioned. Upon obtaining approval of said affected Parcel Owner(s), the Committee shall undertake such work in an expeditious manner which causes as little interference with the use of the remainder of the Project as is practicable under the circumstances. In connection with the performance of the repair and restoration of the Building, the Committee shall have the right to solicit bids, let contracts and

take all other steps reasonably necessary or appropriate to accomplish such repair and restoration; provided, however, before soliciting any bids or letting any contracts, the affected Parcel Owner shall first consent in writing to the bidders or the contract, as the case may be, with such consent not to be unreasonably withheld, delayed or conditioned.

(b) Awards and Proceeds; Payment of Costs.

(i) Subject to the provisions of Section 6.5(a), if any Proceeds paid or payable to the Committee on account of or in connection with Casualty to, or Appropriation of, the Building are inadequate to pay for the cost of such repair or rebuilding or replacement ("**Unfunded Cost**"), the Unfunded Cost of the repairing and restoring portions of the Building, other than the Common Building Elements and Common Systems, shall be allocated between the Parcel Owners based upon the relative cost and expense of repairing and restoring the damage to the improvements located within each of the Parcels and shall be assessed to the Parcel Owners as a Special Building Assessment.

(ii) The Unfunded Cost of repairing and restoring or replacing Common Building Elements and Common Systems shall be allocated between the Parcel Owners in accordance with their respective Proportionate Shares and shall be assessed to the Parcel Owners as a Special Joint Assessment.

(iii) The obligation of the Committee to perform any work of reconstruction and repair, the cost of which exceeds the amount of insurance proceeds, damages or Awards, shall be conditioned upon payment by the Owners of their respective shares, if any, of such Unfunded Cost.

(c) Insurance Trustee. All Proceeds required to be paid in connection with any work of repair or restoration to be undertaken hereunder shall be paid to an Insurance Trustee to be held for the benefit of the Parcel Owners and their mortgagees, as their respective interests may appear. An **Insurance Trustee** means a commercial or savings bank, trust company, savings and loan association or insurance company authorized to do business in the State of California and approved by the Owners. Said funds shall be disbursed according to standard construction loan procedures. The Committee, subject to reasonable approval by all Parcel 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.

(d) Emergency Repairs. Notwithstanding any provisions of this Article VI to the contrary, the Committee may undertake such emergency repair work as it deems reasonably necessary or appropriate under the circumstances in order to eliminate dangerous conditions and to comply with applicable laws, ordinances and regulations pending settlement of insurance claims and prior to procuring bids for performance of restoration work.

(e) Excess Proceeds. In the event that Proceeds available for the repair and restoration of Casualty to, or Appropriation of, the Project exceed the costs of such repair and restoration under Section 6.5, then upon completion of such work, the balance of such Proceeds shall be allocated between the Owners according to each Parcels' Proportionate Share.

Section 6.6 Sale of Development.

(a) Authority to Sell. In the event that the Committee is authorized pursuant to Section 6.3 (c)(ii) to sell the entire Project as agent for the Owners of all portions thereof and interests therein, the Committee shall have the exclusive authority to sell the entire Project for the benefit of the Parcel Owners. Each Parcel Owner hereby irrevocably appoints the Committee as its exclusive agent and attorney-in-fact, which appointment is coupled with an interest, to so sell the entire Project for the benefit of the Parcel Owners.

(b) Approval by Commercial Parcel Owner and Parking Parcel Owner. Notwithstanding anything stated in Section 6.6(a), prior to entering into any agreement to sell the Project, the Committee shall first obtain the written consent of all Owners as to the acceptability of the offer to purchase as well as the form of the agreement to sell the Project, which consent shall not be unreasonably withheld.

(c) Allocation and Distribution of Sale Proceeds. If the entire Project is sold, the net proceeds of the sale, together with any Proceeds payable by reason of the Casualty to, or Appropriation of, the Project shall be allocated and distributed between the

Parcel Owners according to the ratio of the fair market values of each Parcel to the sum of all Parcels' fair market values, as determined by an appraiser selected by mutual agreement of all Parcel Owners. If the Parcel Owners are unable to agree upon an appraiser within thirty (30) days of the sale of the Project, then an appraiser shall be selected by the Presiding Judge of the Superior Court of the City and County of San Francisco, his fee shall be paid by all Parcel Owners according to their Proportionate Shares, and the appraised value determined by the appraiser shall be final. Any accrued reserves, interest or other funds held by the Committee hereunder for the common benefit of the Parcel Owners shall be distributed to the Parcel Owners according to each Parcels' Proportionate Share.

Section 6.7 Right of First Refusal.

(a) **Parcel Owner's Right of First Refusal.** In the event that, pursuant to Section 6.3, a Parcel Owner elects to sell its Parcel ("Selling Parcel Owner"), the other Parcel Owner(s) ("Remaining Parcel Owner(s)") shall have a continuing right of first refusal with respect to any sale of the Selling Parcel Owner's Parcel, whether by judicial partition proceedings, private sale or otherwise, in accordance with the provisions set forth herein.

(b) **Offering Notices.** Upon receipt by the Selling Parcel Owner of a bona fide offer that is acceptable to such offeree, including without limitation, any bid or other offer received in connection with judicial partition proceedings, for the Selling Parcel Owner's Parcel, and before such offer may be accepted, notices ("Offering Notices") shall be given to the Remaining Parcel Owner(s), together with a true copy of such offer, pursuant to which the Selling Parcel Owner shall offer ("Sale Offer") to the Remaining Parcel Owner(s) the right to purchase the Selling Parcel Owner's Parcel at the same price and subject to the same terms and conditions as set forth in the Sale Offer. Within forty-five (45) days after receipt of the Offering Notice, the Remaining Parcel Owner(s) shall notify the Selling Parcel Owner if it elects to accept the Sale Offer. Failure to give written notice within the required period of time shall be deemed an election not to accept the Sale Offer.

(c) Acceptance of Sale Offer. If the Sale Offer is accepted by the Remaining Parcel Owner(s) within the time period specified in Section 6.7(b), the Sale Parcel Owner shall be obligated to sell to the Remaining Parcel Owner(s), who shall be obligated to purchase the Selling Parcel Owner's Parcel in accordance with the terms and conditions of the Sale Offer.

(d) Right to Sell to Third Party. If the Sale Offer has not been accepted as provided in Section 6.7(b) within the time limits referred to therein, the Sale Offer shall be deemed to have been declined and the Selling Parcel Owner shall be free, within the time period set forth below, to sell its Parcel at a price and upon terms and conditions not materially less favorable to the Selling Parcel Owner than those set forth in the Offering Notice, and all rights of the Parcel Owners under this Section 6.7 with respect to such sale only shall be deemed void and of no further force or effect, but the Parcel Owners shall continue to enjoy the rights granted in Section 6.3 and Section 6.7 with respect to any and all subsequent sales. If the Selling Parcel Owner's Parcel is not so sold and the transfer not consummated within one hundred eighty (180) days from the expiration of the time limit referred to in Section 6.7(b), the Selling Parcel Owner's Parcel shall again become subject to all the provisions of this Section 6.7.

Section 6.8 Partial Appropriation Not Resulting in Sale of Project. If less than all of the Project is subject to an Appropriation which, under the provisions of this Article VI, does not result in an election by the Parties to sell the entire Project as a whole, the Parcel Owner of each Parcel affected by such Appropriation shall be entitled to any separate Award made solely with respect to such Owner's Parcel, which shall be negotiated by and distributed directly to that Parcel Owner.

ARTICLE VII

RIGHTS UPON DEFAULT

Section 7.1 Right of Parcel Owners to Cure. If any Parcel Owner defaults in the performance of any of its obligations under this Declaration ("Defaulting Owner"), the non-defaulting Parcel Owner(s) ("Non-Defaulting Owner(s)") shall have the right, but not the obligation, upon five(5) days written notice, in the case of a

monetary default, or fifteen (15) days written notice, in the case of any other default, to cure such default for the account and the expense of the defaulting Parcel Owner; provided, however, that if, in the good faith determination of the Non-Defaulting Owner(s), any such default results in an Emergency, the Non-Defaulting Owner(s) shall have the right to cure such default upon such advance notice as is reasonable under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as practicable thereafter. Any notice hereunder shall specify with particularity the nature of the default claimed and shall set forth in reasonable detail the action which the Non-Defaulting Owner giving such notice proposes to take or has taken in order to cure the claimed default. To effectuate any such cure, the Non-Defaulting Owner shall have the right to enter upon the Parcel of the Defaulting Owner to perform any necessary work or furnish any necessary materials or services to cure said default.

Section 7.2 No Termination. A default under this Declaration on the part of any Defaulting Owner shall not entitle the Non-Defaulting Owners to cancel, rescind or otherwise terminate this Declaration; provided, however, such limitation shall not affect any other rights or remedies that the Parcel Owners may have by reason of such default.

Section 7.3 Cost of Cure. All costs and expenses reasonably incurred by any Non-Defaulting Owner to cure a default under the provision of Section 7.1, together with interest thereon at the Interest Rate (collectively, "Cure Costs"), shall be paid by the Defaulting Owner to the Non-defaulting Owner within fifteen (15) days of written notice of such Cure Costs (with supporting documentation) being given to the Defaulting Parcel Owner.

Section 7.4 Delinquency of Joint Assessments or Special Joint Assessments. All Joint Assessments and Special Joint Assessments, or monthly installments thereof, levied pursuant to this Declaration are delinquent fifteen (15) days after they become due. For each delinquent assessment, or monthly installment thereof, the Committee may recover: (i) reasonable costs incurred in collecting the delinquent assessment, or part thereof, including reasonable attorneys fees, (ii) a late charge not to exceed the lesser of five percent (5%) of the delinquent assessment or one hundred dollars (\$100.00), and (iii) interest at the Interest Rate on all sums imposed herein, including the delinquent Joint

Assessments or Special Joint Assessments, reasonable costs of collection, and late charges, commencing thirty (30) days after the Joint Assessments or Special Joint Assessments become due.

Section 7.5 Liens for Non-Payment and Enforcement Thereof.

(a) **Creation of Lien Against A Parcel.** Any Parcel Owner shall be subject to a lien ("Payment Lien") as follows:

(i) Any Defaulting Owner shall be subject to a Payment Lien in favor of a Non-Defaulting Owner to secure payment of any Cure Costs owed by a Defaulting Owner to a Non-Defaulting Owner pursuant to Section 7.3 plus, in the event of default in the payment thereof, interest at the Interest Rate, and costs of collection, including reasonable attorneys fees.

(ii) All Owners shall be subject to a Payment Lien in favor of the Committee to secure the payment of any Joint Assessment or Special Joint Assessment plus, in the event of default in the payment thereof, interest as provided elsewhere herein, and costs of collection, including reasonable attorneys fees.

(iii) Payment Liens shall be prior to (a) all encumbrances made by the Owners subject to such Payment Liens or (b) any encumbrance imposed by legal process subsequent to the date the non-payment giving rise to the lien becomes due and payable, except as expressly provided in Section 7.5(b) below, and except further for any lien or levy which by law has priority.

(b) **Transfer of Parcel by Sale or Foreclosure.**

(i) Sale or transfer of any Parcel shall not affect the Payment Lien, except as hereinafter provided, and shall not relieve such Parcel from liability for any Joint Assessments or Special Building Assessments thereafter becoming due or from a Payment Lien therefor.

(ii) A Payment Lien shall be subordinate to the lien of a beneficiary of a first deed of trust against any Parcel.

(iii) Where the mortgagee of a first mortgage of record or other purchaser of any Parcel obtains title to the same

by virtue of foreclosure of the mortgage, or by purchase at a foreclosure sale, such acquirer of title(a "**Mortgage Successor**"), his successors and assigns, shall take the Parcel free of any claims for unpaid Joint Assessments or Special Joint Assessments or for Cure Costs against that Parcel which accrued after the date of the mortgage but prior to the time the Mortgage Successor comes into title; provided, however, that the foregoing shall not relieve a Mortgage Successor for claims for any reallocation of Proportionate Shares of Joint Assessments or Special Joint Assessments or from liability for any Joint Assessments or Special Joint Assessments or Cure Costs thereafter due or from the Payment Lien therefor.

(c) **Procedure for Perfection of Payment Lien.** In the event (i) any Cure Costs are not paid within fifteen (15) days after notice thereof, or (ii) any Joint Assessment or Special Joint Assessment, or monthly installment thereof, is not paid within fifteen (15) days after the day upon which it becomes due, the Parcel Owner who is owed such sum (**Filing Owner**) may deliver the Parcel Owner owing such sum (**Liened Owner**) a Notice of Delinquent Payment (**Notice**), and may cause a copy of the Notice to be recorded in the Official Records of the City and County of San Francisco. The Notice shall state the amount of any Cure Costs, Joint Assessments or Special Joint Assessments unpaid, which shall include interest, costs and reasonable attorneys fees, a description of the Parcel, the name of the record Parcel Owner and the name and address of the trustee authorized by the Filing Owner to enforce the lien by nonjudicial foreclosure (if the Filing Owner so elects), and shall be signed by a representative designated by the Filing Owner. When such a Notice has been recorded, the unpaid Cure Costs, Joint Assessment or Special Joint Assessment described therein shall constitute a lien upon the Parcel of the Liened Owner, which lien shall be prior in right to all other liens thereafter arising, except for all taxes, assessments or other levies which by law would be prior thereto, and except for the lien of any deed of trust recorded prior to the date any such Notice was recorded. Such Payment Lien shall be in favor of the Filing Owner. If the delinquent assessment or installment and related charges are paid or otherwise satisfied, the Filing Owner shall promptly send to the Liened Owner a Notice of Satisfaction and Release of Lien and shall promptly record same in the Official Records of the City and County of San Francisco.

(d) Enforcement of Lien of Assessment.

(i) The Filing Owner may enforce any Payment Lien established under Section 7.4(d), by filing an action for judicial foreclosure or, if the Notice of Delinquent Assessment contains the name and address of the trustee authorized by the Filing Owner to enforce the lien by nonjudicial foreclosure, by recording a Notice of Default in the form described in California Civil Code, Section 2924(b) (1) to commence nonjudicial foreclosure. Such nonjudicial foreclosure is to be conducted in accordance with the requirements of Sections 2924-2924h of the California Civil Code, applicable to the exercise of nonjudicial foreclosures of mortgages or deeds of trust. The sale shall be conducted by the trustee named in the Notice of Delinquent Assessment or by a trustee substituted in accordance with the provisions of California Civil Code, Section 2934a.

(ii) The Filing Owner shall have the power to bid for the Parcel of the Liened Owner at a foreclosure or trustee's sale, and to acquire and hold, mortgage and convey the same.

(iii) Notwithstanding anything contained herein, any foreclosure hereunder shall not terminate a lease or the right of a Tenant under any lease covering all or part of the Liened Owner's Parcel, provided that such Tenant is not in default under the applicable lease.

(iv) If the default is cured before the sale, or before completing a judicial foreclosure, including payment of all costs and expenses incurred by the Filing Owner, the Filing Owner shall promptly record a Notice of Satisfaction and Release of Lien, and upon receipt of a written request by the Liened Owner, a Notice of Rescission of the Declaration of Default and Demand for Sale.

(e) Enforcement of Assessment by Suit. The Filing Owner may, in its own name, commence and maintain a suit at law against the Liened Owner. Any judgment rendered in any such action shall include the amount of the delinquency, together with processing fees, interest thereon, costs of collection, court costs and reasonable attorneys fees in such amount as the Court may judge against the Liened Owner. Suit to recover judgment for unpaid assessments shall be maintained without foreclosing or waiving any

Payment Lien created pursuant to this Declaration. In any action instituted by the Filing Owner to collect delinquent assessments, accompanying late charges, and/or interest, the prevailing party shall be entitled to recover costs and reasonable attorneys fees.

Section 7.6 Waiver and Remedies Cumulative. No waiver by any Parcel Owner of any default under this Declaration shall be effective or binding on such Parcel Owner unless and to the extent expressly made in writing by such Parcel Owner, and no such waiver shall be implied from any failure by a Parcel Owner to take action in respect to such default. No express written waiver of any default shall constitute a waiver of any subsequent default in the performance of the same or any other provision of this Declaration. All rights and remedies available to the Parcel Owners under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy.

ARTICLE VIII

ARBITRATION

Section 8.1 Arbitration Notice and Answer. In the event of any dispute, claim or cause of action ("Dispute") between Declarant, on the one hand, and one or more Parcel Owners, on the other hand, or between one or more Parcel Owners, or between the Committee, on the one hand, and one or more Parcel Owners or Declarant on the other hand, with respect to this Declaration or the project, any of the foregoing parties may invoke the arbitration process set forth in this Article VIII by written notice ("Arbitration Notice") to the party with whom the Dispute exists, which Arbitration Notice shall set forth in reasonable detail the nature of the Dispute, including, without limitation, the monetary sums, if any, which are in dispute. Within thirty(30) days from the date of the Arbitration Notice, the other Party shall set forth a summary of its version of the Dispute ("Answer") in a notice to the Party sending the Arbitration Notice.

Section 8.2 Appointment of Arbitrator. Within thirty (30) days after the Answer (Arbitration Commencement Date), the parties to the Dispute shall apply to the Judicial Arbitration & Mediation

Services, Inc. (JAMS) for the appointment of an arbitrator (Arbitrator) to hear the Dispute in accordance with this Article VIII.

Section 8.3 Dispute Regarding Appointment/New Arbitrator.

In the event that agreement cannot be reached on the appointment of an Arbitrator, or in the event the JAMS is unable to appoint a qualified Arbitrator, such appointment and notification shall be made as quickly as possible by any court of competent jurisdiction, by any licensing authority, agency or organization having jurisdiction over such lawyers, by any professional association of lawyers in existence for not less than ten (10) years at the time of such dispute or disagreement and the geographical membership boundaries of which extend to the San Francisco metropolitan area, or by any arbitration association or organization in existence for not less than ten (10) years at the time of such dispute or disagreement and the geographical boundaries of which extend to the San Francisco area, as determined by the party giving such Notice of Dispute and simultaneously confirmed in writing delivered by such party to the other party. Any such court, authority, agency, association or organization shall be entitled either to directly select the Arbitrator or to designate in writing, delivered to each of the parties to the Dispute, an individual who shall do so. In the event of any subsequent vacancy or inability to perform by the Arbitrator, the Arbitrator shall be replaced in accordance with the provisions of this Article VIII as if such replacement was an initial appointment to be made under this Article VIII within the time constraints set forth in this Article VIII, measured from the date of notice of such vacancy or inability to the person or persons required to make such appointment, with all the attendant consequences of failure to act timely if such appointed person is a party hereto.

Section 8.4 Arbitration Proceeding.

(a) **Time/Limitation of Liability.** Consistent with the provisions of this Article VIII, the Arbitrator shall utilize the utmost skill and diligence in hearing and deciding the outcome and resolution of any Dispute submitted as promptly as possible, but in any event on or before the expiration of one year after appointment. The Arbitrator shall have no liability whatsoever for any acts or omissions performed or omitted in good faith pursuant to the provisions of this Article VIII.

(b) Authority of Arbitrator. The Arbitrator shall, in light of the one year time limitation set forth above for resolving disputes, (i) enforce and interpret the rights and obligations set forth in this Declaration with respect to the Dispute to the extent not prohibited by law, (ii) fix and establish any and all rules as are appropriate, in the Arbitrator's sole discretion, to govern the proceedings, including any and all rules of procedure and/or evidence, and (iii) make and issue any and all orders, final or otherwise, and any and all awards, as a court of competent jurisdiction sitting at law or in equity could make and issue, as are appropriate, including the awarding of monetary damages (but shall not award punitive damages except in situations involving fraud), the awarding of reasonable attorneys' fees and costs to the prevailing party as determined by the Arbitrator, and the issuance of injunctive relief.

(c) Discovery. The parties shall allow and participate in discovery in accordance with the California Code of Civil Procedure for a period of one hundred eighty(180) days after the Arbitration Commencement Date. Unresolved discovery disputes may be brought to the attention of the Arbitrator.

(d) Decision Final/Appeal. The decision of the Arbitrator shall be final and binding, subject to the rights of the parties to appeal, and may be confirmed and entered by any court of competent jurisdiction at the request of any Party. The Arbitrator shall retain jurisdiction over any Dispute until its award has been implemented, and judgment on any such award may be entered in any court having appropriate jurisdiction.

(e) Compensation of Arbitrator. The Arbitrator shall be compensated for any and all services rendered under this Article VIII at a rate of compensation equal to the then-prevailing rate for arbitrators of similar experience and qualifications, plus reimbursement for any and all expenses incurred in connection with the rendering of such services, payable in full promptly upon conclusion of the proceedings before the Arbitrator Panel. Such compensation and reimbursement shall be borne by the non-prevailing party as determined by the Arbitrator.

Section 8.5 Injunctive Relief. Notwithstanding anything to the contrary contained herein, any party may seek and obtain

injunctive relief in any court of competent jurisdiction to restrain the other party from any conduct in breach of this Declaration which causes or threatens to cause immediate irreparable harm, to the extent such equitable relief is otherwise available.

ARTICLE IX

GENERAL PROVISIONS

Section 9.1 Enforcement. Each Parcel Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, easements, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, together with any amendments hereto, and in such action shall be entitled to recover damages and/or injunctive relief, as well as reasonable attorneys fees as ordered by the Court or other trier of fact.

Section 9.2 Severability. Should any provision or portion hereof be declared invalid or in conflict with any law of this jurisdiction where the Project is situated, the validity of all remaining provisions and portions thereof shall remain unaffected and in full force and effect.

Section 9.3 Term. The easements, covenants, and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of the Residential Parcel Owner, Commercial Parcel Owner and Parking Parcel Owner, their respective legal representatives, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

Section 9.4 Amendments. This Declaration may only be amended by a document signed by each of the Commercial Parcel Owner, Parking Parcel Owner and Residential Parcel Owner. Any such amendment shall be evidenced by an instrument executed and acknowledged by a duly authorized representative of each Parcel Owner, shall make appropriate reference to this Declaration and its amendments, and shall become effective upon being recorded in the

Official Records of the Recorder of the City and County of San Francisco.

Section 9.5 Limitations of Restrictions on Declarant.

Declarant is undertaking the work of construction of improvements and/or repairs to the existing Building and appurtenances within the Project. The completion of that work and the sale, rental, or other disposal of the Parcels is essential to the establishment and welfare of the Project as a mixed-use residential and commercial community. In order that said work may be accomplished and the Development be established as a fully occupied mixed-use residential and commercial community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors or subcontractors from doing on the Project or in any Parcel whatever is reasonably necessary or advisable in connection with the completion of said work;

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

(c) Prevent Declarant from conducting on any part of the Project its business of completing said work and of disposing of said Project by sale, lease, or otherwise; or

(d) Prevent Declarant from maintaining such sign or signs on any of the Project as may be necessary for the sale, lease or other disposition thereof.

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

Section 9.6 Termination of any Responsibility of Declarant.

In the event Declarant conveys its rights, title and interest in and to the Project to any individual, partnership or corporation and causes a Notice of Substitution of Declarant, setting forth the

name and business address of such individual, partnership or corporation and a reference to this Declaration to be recorded in the Official Records of the City and County of San Francisco, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such individual, partnership or corporation shall be obligated to perform all such duties and obligations of Declarant and shall be entitled to exercise the rights available to Declarant hereunder.

Section 9.7 Improvements and Repairs on Parcels. Subject to the provisions of this Declaration, each Parcel Owner shall be permitted to install, repair, and replace the components within the Building located within its Parcel. All components shall be installed, repaired, and replaced in compliance with all applicable ordinances and codes of the City and County of San Francisco.

Section 9.8 Use of Words. Unless the context otherwise requires, singular nouns and pronouns used in this Declaration should be construed as including the plural thereof. For convenience and brevity, masculine pronouns may have been used herein in their generic sense as a reference to all persons, without regard to sex.

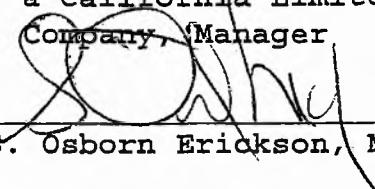
Section 9.9 Statutory References. All references in this Declaration to particular statutes of the State of California should be deemed to include the same statute as hereafter amended or, if repealed, to such other statutes as may thereafter govern the same subject as the statute to which specific reference was made.

Section 9.10 Notices. Any notice permitted or required by this Declaration may be delivered either personally or by mail. If delivered 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 Parcel Owner or Declarant at the current address given by such Parcel Owner or Declarant to the others from time to time.

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

FULTON MASONIC LLC, a California
Limited Liability Company

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

By: 
S. Osborn Erickson, Manager

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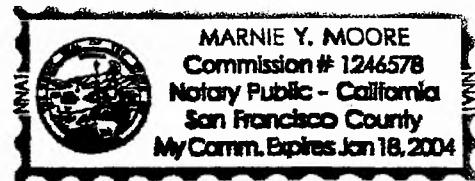
STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO)

On August 27, 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 Maurie J. Moore
Name Maurie J. Moore
(typed or printed)



(This area for official notarial seal)

EXHIBIT A

TO

DECLARATION OF RECIPROCAL

EASEMENTS, COVENANTS AND RESTRICTIONS

OF

FULTON MASONIC

Description:

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

All of the real property shown on that certain map entitled "Parcel Map of Fulton Masonic, Being a Subdivision of Airspace for Residential/Commercial Purposes, Being a Merger and Subdivision of Parcels One, Two and Three as shown in that Certain Grant Deed Recorded September 18, 1997, on Reel G970, Image 0320, O.R., Also Being a Subdivision of Lot 10, Assessor's Block No. 1175, Also Being a Portion of Western Addition Block No. 650", recorded the 14th day of August, 2002, in Book 45 of Parcel Maps, pages 100 through 103, Official Records of the County of San Francisco, State of California.

EXHIBIT B

TO

DECLARATION OF RECIPROCAL

EASEMENTS, COVENANTS AND RESTRICTIONS

OF

1776 FULTON STREET

JOINT BUILDING ELEMENTS

Fulton Masonic
Utilities, Systems, Maintenance, Easements

Building System or Component	Residential: Parcel A		Commercial: Parcel B		Parking: Parcel C		Remarks
	Residential Units	Residential Common Areas, Garages & Podium	Albertsons	Five Small Retail Premises	Retail Plaza Common Area	Commercial Garage	
Utilities							
Electrical meters	Sep. meters	HOA sep. meter HOA share HOA	Sep. meter X share/CAM	Sep. meter X share in CAM	Sep. meter X share in CAM	Sep. meter?	garage may be with retail house meter CAM = common area maintenance charge
Fire alarm monitoring 2 phone lines and service							
Elevators 1,2,3 monitoring; phone line & service							
Elevators 4&5 monitoring 1 phone line & service							
Gas meters	HOA sep. meter	n/a	Sep. meter	n/a	n/a		
Domestic Water meters	HOA meter #1	HOA meter #1	Sep. & sub-meters				
Irrigation Water Meters	HOA Meter #2		Sep. Meter				
Fire Sprinkler water meter		Common service. No sub meters. Prorata share expense.					
Telephone wiring to MPOE by Pac Bell							
Teleph. wiring MPOE to sub-MPOE panels	HOA	by homeowner	by Alb.	by tenant			
Teleph. wiring MPOE to subscriber		by homeowner	by Alb.	by tenant			
Teleph. wiring inside units/premises		by homeowner	by Alb.	by tenant			
Telephone service		by homeowner	by Alb.	by tenant			
Cable TV wiring MPOE to sub-MPOE closets		maintained by CTV vendor					
Cable TV wiring in units		by homeowner					
Cable TV service		by homeowner					
PGE Transformer next to Albertsons.		maintained by PGE					
PGE Transformer in sidewalk		maintained by PGE					
Trash & Recycling Services							
Refuse & recycling removal	HOA	by Alb...	by tenant	X	X		
Daily trash removal all 4 walks & streets			by Alb per C.U.				
Building MERS Systems							
Fire sprinklers, alarms, smoke detectors							
Fire alarm panel		Common system for entire project.					
Fire sprinkler tamper & flow switches		Prorata shared maintenance.					
Fire alarm sub-systems							
Maintain devices smoke, det. & horn	Res. HOA share	Res. HOA share	X share	X share	X share	X share	
Fire alarm UL cert. Monitoring service		Prorata shared expense. Any retail corporate monitoring is retail expense.					
Electrical Switchgear & Distribution							
Residential switchgear	HOA						
Feeder runs from meters to units	HOA/owner?						
Main panel in units, wiring, devices in units	homeowner						
Residential common area switchgear	HOA						
Residential common area wiring & devices	HOA						
Retail switchgear							
Main feeds from meters to premises							
Distribution panel in premises							
Commercial house switchgear							
Garage & retail common area wiring & devices							

Building System or Component	Residential; Parcel A		Commercial; Parcel B		Parking; Parcel C		Remarks
	Residential Units	Residential Common Areas, Garages & Podium	Albertsons	Five Small Retail Premises	Retail Plaza Common Area	Commercial Garage	
Lighting							
Garage lighting Parcel A	HOA						
Garage Lighting Parcel C	20% HOA share						
Masonic exterior lighting beginning 40 ft north of Fulton P/L, north to P/L @ 500 Masonic	HOA						
Masonic exterior lighting from Fulton P/L and north 40 ft; McAllister exterior lighting	HOA						
Central exterior lighting north of D.3	HOA						
Central exterior lighting south of D.3							
Fulton plaza arcade & exterior lighting							
Elevators							
Res. Elevator 1	HOA maintains						
Res. Elevator 2	HOA maintains						
Res. Elevator 3	HOA maintains						
Com'l. Elevator 4	X share?						
Com'l. Elevator 5	X share?						
Garage gates and access controls							
Fulton parking controls & pay-on-foot vendor							
Fulton garage door 1B-23 & operator	20% HOA share						
Residential access scanner system 1B-23	HOA maintains						
McAllister garage door 1M-21 & operator	HOA maintains						
Central garage door 1G-21B & operator	HOA maintains						
Res. garage doors - 1B-21A in basement; gar.	HOA maintains						
Mechanical Systems							
Basement garage exhaust fans @ E.6/3 lines	20% share						
Basement garage exhaust fans @ D/8 lines	20% share						
Basement garage exhaust fans @ D/14 lines	20% share						
Residential Central garage exhaust fans	HOA 100%						
Residential McAllister garage exhaust fans	HOA 100%						
Various residential common area ventilation	HOA 100%						
Retail mechanical ventilation	X						
Retail common area ventilation		X					
Mechanical / Ventilation Shafts							
Garage exhaust shaft @ E.6 and 3 lines							X 100%
Garage exhaust shaft near D and 8 lines							1/3 share
Garage exhaust shaft @ C.6, D and 14 lines							1/3 share
Residential common area ventilation shafts							HOA
Residential units ventilation shafts							HOA

Fulton Masonic
Utilities, Systems, Maintenance, Easements

Building System or Component	Residential: Parcel A		Commercial: Parcel B		Parking: Parcel C		Remarks
	Residential Units	Residential Common Areas, Garages & Podium	Albertsons	Five Small Retail Premises	Retail Plaza Common Area	Commercial Garage	
Mechanical / Ventilation Shafts							
Shaft @ E. 387 lines							
Shaft near 182 lines							
Wall bouver and duct near J&1 lines							
Shaft @ E. 38.13 lines							
Shaft @ G.28.14.6 lines							
Shaft near J&12 lines							
Plumbing systems							
Residential domestic water distribution	HOA	HOA					
Residential waste and vent	HOA	HOA					
Retail domestic water distribution			X				
Retail waste and vent				X			
Waste connections to city sewer				X share			
Misc. Bldg. Mech. Systems							
Albertsons Emergency generator							
Albertsons Cooling tower structure and roof							
Domestic hot water all separate systems							
Garage sump pump							
Albertsons mech room sump pump							
Building Architectural Systems							
Roofing & waterproofing							
Basement & foundation waterproofing							
Waterproofing system on podium							
Waterproofing on retail plaza							
Residential roofing							
Exterior / Maintenance							
Retail plaza							
Residential podium finishes & landscaping							
McAllister plaza finishes & landscaping							
Central sidewalk & L/S beginning 69 ft south of McAllister P/L 95.5 ft to P/L @ 717 Central.							
Central sidewalk & L/S from McAllister P/L south 69 ft.							
Fulton sidewalk and landscaping							
Masonic sidewalk & landscaping from Fulton P/L 40 ft to north							
				L/S = landscaping		P/L = property line	
				34 ft @ Fulton egress			
				309.75 ft from Masonic P/L to east			
				X			

Building System or Component	Residential: Parcel A		Commercial: Parcel B		Parking: Parcel C		Remarks
	Residential Units	Residential Common Areas, Garages & Podium	Albertsons	Five Small Retail Premises	Retail Plaza Common Area	Commercial Garage	
Masonic sidewalk & landscaping starting 40 ft north of Fulton P/L to north P/L at 500 Masonic	HOA						
McAllister sidewalk and landscaping	HOA						
Fulton facade ground floor	HOA			X share	X share		
Fulton facade podium & up	HOA						
Central facade gr. fl. Beginning 69 ft south of McAllister P/L 95.5 ft to P/L @ 717 Central.	HOA			X			
Central facade podium level to roof, except ground floor	HOA						
Central facade all flrs. from McAllister P/L south 69 ft.	HOA						
McAllister facade - all	HOA						
Masonic facade north of retail plaza to P/L at 500 Masonic	HOA						
Garages, Maintenance							
Basement garage maintenance		20% share					Based on parking allocation
Res. Central & McAllister garages maintenance		by HOA					
Elevators 4&5 lobbies			X share?				
Building Structure							
Concrete Structure		HOA share					
Lumber frame residential	HOA						
Stairs, rooms and associated doors							
Stair 1		X share					X share
Stair 2		X					
Stair 3		X					
Stair 4							X share
Exit corridor 4							X share
Stair 5							X share
Stair 6 & 6a					X		
Stair 7					X		
Other stairs, rooms and doors							X share (minor maintenance expense)
Gas meter room 1B-1B in garage		X share					
Loading dock inner doors 1G-9E, F & G							Alb. maintains
Loading dock exterior door 1G-95A, B & C							Alb. maintains
Storefront doors 1G-23C & D							Alb. maintains
Store doors to garage elevators 1G-58A							Alb. maintains
Storage drs. 1G-17A&B, 1G-27, 1G-37, 1G-75, 1G-76							by tenants
Lobby doors 1G-58B, 1B-56, 1B-78							X
Residential corridors							HOA
Residential exposed and enclosed stairs							HOA
Residential entry doors							exclusive use common area
Residential balconies							exclusive use common area
Residential decks							exclusive use common area