

PORTSIDE HOMEOWNERS' ASSOCIATION

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RULES AND REGULATIONS

Book G-67, Page 584

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OLD REPUBLIC TITLE COMPANY

By Howard L

DECLARATION
OF
CONDITIONS, COVENANTS AND RESTRICTIONS
OF
PORTSIDE,
A CONDOMINIUM PROJECT

**DECLARATION
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PORTSIDE,
A CONDOMINIUM PROJECT
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DECLARATION
OF
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OF
PORTSIDE,
A CONDOMINIUM PROJECT

THIS DECLARATION is made on the date hereinafter set forth by HUM BABY ASSOCIATES, a CALIFORNIA LIMITED PARTNERSHIP, referred to herein as "Declarant."

Declarant is the Owner of that certain real property located in the City and County of San Francisco, State of California, more particularly described in Attachment A hereto, incorporated herein by this reference.

Declarant intends to establish a condominium under the provisions of the Davis-Stirling Common Interest Development Act, providing for separate title to each Unit within the Project, each Unit to have an undivided interest in the Common Area, as set forth in this Declaration. Each Unit will have as appurtenant to it a membership in the Portside Homeowners' Association, a California nonprofit mutual benefit corporation.

The entire development shall be referred to herein as the Project. The Project will be developed in two (2) phases, as provided in Attachment B hereto, incorporated herein by this reference.

Declarant intends by this document to impose upon the Property mutually beneficial restrictions under a general plan of

improvement for the benefit of all the Condominiums in the Project and the Owners thereof. Phase I of the Project will be subject to this Declaration upon recordation hereof. Phase II may subsequently be subject to this Declaration upon recording a Declaration of Annexation, as provided in Section 2.6 hereof.

Notwithstanding the non-annexation of Phase II, the Units in Phase II shall be subject to special assessments as provided in Section 4.16 hereof.

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

ARTICLE I

DEFINITIONS

Section 1.1 "Airspace Map" Shall mean and refer to that certain parcel map entitled "Parcel Map of Portside Subdivision Showing the Subdivision of Airspace", dividing the Property into

four separate airspace parcels, said Airspace Map having been recorded on January 19, 1994, in Book 42 of Maps, at Page 15 and following, in the Office of the Recorder of the City and County of San Francisco, State of California, and shall additionally include any airspace maps subsequently recorded in connection with the subdivision of Lot 20 upon annexation thereof by recordation of a Declaration of Annexation, as provided in Section 2.6.

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

Section 1.3 "Assessment" Shall mean that portion of the cost of maintaining, improving, operating and managing the Property which is to be paid by each Owner as determined by the Association.

Section 1.4 "Association" Shall mean and refer to the Portside Homeowners' Association, a California nonprofit mutual benefit corporation, the Members of which shall be Owners of Condominiums in the Project.

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

Section 1.6 "Bylaws" Shall mean or refer to the Bylaws of the Association, as amended from time to time.

Section 1.7 "Common Area" Shall mean and refer to those portions of the Property to which title is held by all Owners in a particular phase in common, and excepting the individual Units. The Common Area includes, without limitation: land; stairs (except stairs connecting levels within a Unit); elevators and elevator shafts; basements and storage areas; bearing walls, columns, girders, subfloors, unfinished floors, roofs, and

foundations; central heating equipment, ducts, flues and chutes and fire escapes; conduits, pipes, plumbing, wires and other utility installments (except the outlets thereof located within a Unit), required to provide power, light, telephone, gas, water, sewerage, drainage, heat, and elevator services; sprinklers, sprinkler pipes and sprinkler heads which protrude into the air space of a Unit; central television antenna, if any.

Section 1.8 "Common Expenses" Means and includes the actual and estimated expenses of operating the Property and any reasonable reserve for such purposes, as found and determined by the Board, and all sums designated common expenses by or pursuant to the Condominium Documents.

Section 1.9 "Common Interest" Means the proportionate undivided interest in the Common Area which is appurtenant to each Unit, as set forth in this Declaration.

Section 1.10 "Condominium" Shall mean an estate in real property, as defined in California Civil Code Section 1351(f), consisting of title to a Unit and an undivided interest in the Common Area.

Section 1.11 "Condominium Building or Buildings" Shall mean the structure(s) containing units.

Section 1.12 "Condominium Documents" Means and includes this Declaration, as it may be amended from time to time, the attachments, if any, annexed hereto, the Articles, the Bylaws, the Declarations of Annexation, and the rules and regulations for the Members, as established from time to time.

Section 1.13 "Condominium Plan" Shall mean and refer to those certain portions of the Map, as defined in Article I, Section 1.21, pursuant to California Civil Code Section 1351(e).

Section 1.14 "Declarant" Shall mean and refer to HUM BABY ASSOCIATES, a CALIFORNIA LIMITED PARTNERSHIP, together with its successors and assigns, provided:

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

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

Section 1.15 "Declaration" Shall mean and refer to this enabling Declaration.

Section 1.16 "Eligible Mortgagee" Shall mean and refer to a first mortgagee who has requested notice of certain matters from the Association in accordance with Section 8.6(g).

Section 1.17 "Eligible Insurer or Guarantor" Shall mean and refer to an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters from the Association in accordance with Section 8.6(g).

Section 1.18 "Exclusive Use Common Area" Shall mean and refer to those portions of the Common Area, if any, set aside for the exclusive use of a Unit Owner or Owners, pursuant to Article II, Section 2.2(c), and shall constitute "exclusive use common area" within the meaning of California Civil Code Section 1351(i).

Section 1.19 "Institutional Lender" Shall mean any bank, savings and loan association, insurance company, trust, pension

trust fund, or other financial institution holding a recorded mortgage on any Condominium.

Section 1.20 "Lot 20" Shall mean and refer to Lot 20, as shown on that certain Map entitled "Parcel Map of a Portion of Vara Block No. 328, also being a Portion of Assessor's Block No. 3768, Lot 17, San Francisco, California", recorded January 29, 1992, in Book 41 of Parcel Maps, at Pages 7 and 8, Official Records of the County of San Francisco.

Section 1.21 "Map" Shall mean that subdivision map entitled "Map of Portside, a Condominium Project," recorded the 11th day of February, 1994, in Book 42 of Maps, pages 161 through 176, Official Records of the County of San Francisco, and shall additionally include any subdivision maps subsequently recorded in connection with the subdivision of Lot 20 upon annexation thereof by recordation of a Declaration of Annexation, as provided in Section 2.6.

Section 1.22 "Master Association" Shall mean and refer to the Portside Master Owners' Association, a California nonprofit mutual benefit corporation, the Members of which shall be Owners of the Airspace Parcels in the Project.

Section 1.23 "Master Association Documents" Means and includes the Master Declaration, as it may be amended from time to time, the Master Articles of Incorporation, and the Master Bylaws, and the rules and regulations for the Members of the Master Association, as established from time to time.

Section 1.24 "Master Board" Shall mean and refer to the governing body of the Master Association.

Section 1.25 "Master Declaration" Shall mean and refer to the "Declaration of Covenants, Conditions and Restrictions Establishing Reciprocal Easements and a Plan of Ownership for Portside, San Francisco, California," recorded on February 11, 1994, in the Office of the Recorder of the City and County of San Francisco, State of California, in Book G-67, Page 583, and following.

Section 1.26 "Member" Shall mean and refer to a person entitled to membership in the Association, as provided in this Declaration.

Section 1.27 "Mortgage" Shall include a deed of trust as well as a mortgage.

Section 1.28 "Mortgagee" Shall include a beneficiary or a holder of a deed of trust as well as a mortgagee.

Section 1.29 "Mortgagor" Shall include the trustor of a deed of trust as well as a mortgagor.

Section 1.30 "Owner" or "Owners" Shall mean or refer to the record holder or holders of title, if more than one, of a Condominium in the Project. This shall include any person having a fee simple title to any Condominium but shall not include contract sellers and those persons or entities having any interest merely as security for the performance of any obligation. If a Condominium is sold under a recorded installment land contract to a purchaser, such purchaser, rather than the fee Owner, shall be considered the "Owner".

Section 1.31 "Parcel" or "Parcels" Shall mean and refer to an airspace parcel or parcels referred to on the Airspace Map and as more particularly described in the Master Declaration,

consisting of (i) airspace Parcel 1, including all the improvements located therein, which shall be the air and earth parcel; (ii) airspace Parcel 2, including all the improvements located therein, which shall be used for parking purposes; (iii) airspace Parcel 3, including all the improvements located therein, which shall be used for commercial/retail purposes only; and (iv) airspace Parcel 4, including the improvements located therein, together with any real property annexed to Parcel 4 in accordance with this Declaration, which shall be used for residential purposes only.

Section 1.32 "Person" Means a natural person, a corporation, a partnership, a trust or other legal entity.

Section 1.33 "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 Property to be annexed.

Section 1.34 "Property" Means and includes the real property described herein and all improvements erected or to be erected thereon and such additions thereto as may hereafter be brought within the jurisdiction of the Association, and all Property, real, personal or mixed, intended for or used in connection with the Project.

Section 1.35 "Share" Means the percentage in and to the Common Area attributed to and appurtenant to each Unit, as set forth in Article II, Section 2.2(b).

Section 1.36 "Shared Expenses Assessment" Shall mean and refer to the assessments made by the Master Association for shared expenses, as set forth and defined in the Master Declaration.

Section 1.37 "Unit" Shall mean and refer to the elements of the Condominium, as defined in Article II, Section 2.2(a), which are not owned in common with the owners of other Condominiums in the Project.

Section 1.38 "Unit designation" Means the number, letter or combination thereof or other official designations shown on the Condominium Plan.

Section 1.39 "Number and gender" The singular and plural number and masculine, feminine and neuter gender shall each include the other where the context requires.

Section 1.40 "Mandatory and Permissive" "Shall", "will", and "agree" as used herein are mandatory and "may" as used herein is permissive.

ARTICLE II

DESCRIPTION OF PROJECT, DIVISION

OF PROPERTY AND CREATION

OF PROPERTY RIGHTS

Section 2.1 Description of Project.

(a) The Project. The Project consists of the underlying real property with Condominiums and all other improvements located thereon. Declarant intends to build upon the Property up to a maximum total of two hundred sixty (260) Units in two (2) separate buildings. The Project will be built in two (2) phases, as more particularly described in Attachment B hereto. Each Owner of a Unit in each phase will receive fee title to the Unit, plus an undivided interest (pursuant to Section 2.2(b)

hereof) in the Common Area in that phase. Reference is made to the Map and the Condominium Plan to supply further details concerning the Project.

(b) Existing Encumbrances. The Project is subject to the following existing encumbrances:

i. Agreement executed by and through The State of California, acting by and through the Department of Public Works, and The Atchison, Topeka and Santa Fe Railway Company, a Kansas company, dated June 21st, 1934, recorded September 4th, 1934, in Book 2688 of Official Records, Page 306; as amended by Supplemental Agreement, dated March 23, 1937, recorded June 29, 1937, in Book 3144, Page 323, Official Records; further amended by unrecorded Supplemental Agreement, dated June 10, 1939, as disclosed by Deed, from The Atchison, Topeka and Santa Fe Railway Company, to Bryant-Harrison Associates, recorded August 19, 1985, in Book D902, Page 768, Official Records; and further amended by Third Amendment to Agreement, dated April 7, 1992, recorded October 29, 1992, in Book F744 at Page 407, Official Records.

ii. Grant of Easement and License Agreement executed by and between 470 Spear Associates, a California limited partnership, and Hum Baby Associates, a California limited partnership, dated December 9th, 1988, and recorded December 15th, 1988 in Book E765 of Official Records, Page 440; as amended by First Amendment to Grant of Easement and License Agreement, dated October 29, 1992, recorded October 29, 1992, in Book F744 at Page 406, Official Records.

iii. San Francisco City Planning Commission Motion No. 11818 executed by San Francisco City Planning Commission,

dated December 7, 1989, recorded February 22nd, 1990, in Book F67 of Official Records, Page 1133.

iv. Notice of Special Restrictions Under the City Planning Code executed by Hum Baby Associates, dated December 20, 1991, recorded January 29, 1992, in Book F552 of Official Records, Page 597.

v. Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements executed by Hum Baby Associates, a California limited partnership, dated October 29th, 1992, recorded October 29th, 1992, in Book F744 of Official Records, Page 404.

vi. Agreement for Declaration of Encroachment Easement, executed by Hum Baby Associates, a California limited partnership, dated October 29th, 1992, and recorded October 29th, 1992, in Book F744 of Official Records, Page 405.

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

(a) Dwelling Units. Each of the Units, as separately shown, numbered and designated in the Condominium Plan, consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows and doors of each Unit, each of such spaces being defined and referred to herein as a "Unit". Each Unit includes both the portions of the Condominium Building(s) so described and the air space so encompassed. The Unit does not include those areas and those things which are defined as "Common Area" in Article I, Section 1.7. Each Unit is subject to such encroachments as are contained in the Condominium Building(s), whether the same now

exist or may be later caused or created in any manner referred to in Article IX, Section 9.5. In interpreting deeds and plans, the then existing physical boundaries of a Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries, rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the Condominium Building(s) and regardless of minor variance between the boundaries shown on the plan or deed, and those of the Condominium Building(s).

(b) Common Areas. The remaining portion of the Property referred to herein as "Common Area" or "Common Areas" shall include, without limitation, all of the elements set forth in Article I, Section 1.7. Each Owner of a Unit in a phase shall have appurtenant to his Unit an undivided interest in the Common Area in that phase (which is based upon the square footage of the Unit), as set forth in Attachment C hereto, incorporated herein by this reference. Each Owner in Phase II shall have appurtenant to his Unit the undivided interest in the Common Area of that phase, as set forth in the Declaration of Annexation for that phase.

The ownership of each Condominium shall include a Unit and such undivided interest in the Common Area in the particular phase. The common interest appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all Owners affected and the first mortgagees of such Owners, as expressed in an amended declaration. Such common interest cannot be separated from the Unit to which it is appurtenant, except that the assignment, transfer or exchange,

either reciprocal or unilateral, of the right to the exclusive use of an Exclusive Use Area designated storage area from one Owner to another or between two or more Owners, is authorized, provided that the approval of the Board is first obtained, and the assignment, transfer or exchange of such Exclusive Use Area is evidenced by a recorded document. Each Owner may use the Common Area in accordance with the purposes for which it is intended without hindering the exercise of or encroaching upon the rights of any other Owners.

The Common Area in each phase is subject to a nonexclusive easement for ingress and egress for the benefit of all Owners of the Project. The employees of the occupants of a portion of airspace Parcel 3, consisting of the two small, approximately 1500 square foot retail areas located adjacent to and immediately to the northeast and southwest of the portion of the Common Area designated "Lobby" on Level One as shown on the Plan, shall have the right of access to said Lobby for the purpose of using the bathroom located therein.

(c) Exclusive Use Common Areas. Portions of the Common Area shown and delineated on the Condominium Plan shall be "Exclusive Use Common Areas" and are hereby reserved by Declarant as exclusive use common areas, as defined in California Civil Code Section 1351(i), to be granted as exclusive easements appurtenant to a particular Unit. The Exclusive Use Common Areas shall be those portions of the Common Area designated as storage areas (S-101, S-301, S-302, etc.) and decks (D-301, D-302, D-303) on the Plan. Easements for the Exclusive Use Common Areas designated as decks shall be granted as set forth on Attachment D hereto.

incorporated herein by this reference. The easement granted to the Owner of Unit 308 to the Exclusive Use Common Area designated as deck D-308 shall be subject to an easement on, over and across that portion of said deck designated "Emergency Egress Easement" on Level Three as shown on the Plan, for the purpose of emergency egress from the Common Area located in the northeast portion of said Level. Easements for the Exclusive Use Areas designated as storage areas shall be granted by Declarant, with each Unit receiving an easement, appurtenant to such Unit, for the exclusive use of one storage area. Easements for the Exclusive Use Areas in Phase II shall be granted as set forth in the Declaration of Annexation for that phase.

(d) Parking Rights. The Owner of each Condominium shall have the right to park one (1) passenger vehicle in the parking garage located in Parcel 2, as designated on the Airspace Map, subject to the terms and conditions of that certain irrevocable License Agreement between the owner of Parcel 2 and the Association, which shall be recorded in the official records of the City and County of San Francisco. All such spaces shall be subject to a valet parking arrangement at the discretion of the Owner of Parcel 2. The Owners shall be bound by the terms and conditions of said Agreement, and any rules and regulations adopted by the owner of Parcel 2 in connection therewith. The Association shall assign to any Owner wishing to park in said parking garage the right to park one (1) passenger vehicle pursuant to the license granted to the Association. Upon such assignment, each Owner shall enter into an addendum to such Agreement, whereby such Owner shall agree to be bound by the terms

and conditions of such Agreement and this Declaration, and to pay the parking charge specified in Paragraph 3 thereof directly to the owner of Parcel 2. In the event an Owner does not require a parking space, such Owner shall so notify the Association in writing, and the Association shall assign the right to use such space only to another Owner. Any Owner who has so notified the Association and relinquished the use of a parking space may inform the Association in writing that it wishes to rescind such notification and exercise its right to park in accordance with this Section, in which case the Association shall terminate, within thirty (30) days of receipt of such notice of rescission, the right of any other Owner to whom such space has been assigned. Subject to said Agreement and any rules and regulations adopted by the owner of Parcel 2, the Association shall adopt rules and regulations concerning the use of the parking spaces licensed to the Association pursuant to said Agreement, including, without limitation, procedures for assignment of spaces.

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

though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

Section 2.3 Easements. Declarant hereby reserves to itself, its successors and assigns the right to, and agrees that it will, grant to the Owners of Condominiums in subsequent phases of the Project, as the dominant tenements, nonexclusive easements for ingress and egress and construction activities over the Common Area of Phase I of the Project, as the servient tenement. Declarant hereby covenants that when subsequent phases are annexed, as provided in Section 2.6, it will grant to the Owners of Condominiums in Phase I, as the dominant tenements, nonexclusive easements for ingress and egress over the Common Area of said subsequent phases, as the servient tenements, upon annexation thereof pursuant to Section 2.6.

All of the easements are subject to the following provisions:

(a) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3rds) of the Owners, agreeing to such dedication or transfer, has been recorded.

(b) To avoid the necessity of a separate television antenna system for each Unit, a cable television antenna system may be installed and may be hooked up to each Unit. Said system, if and when installed, shall be maintained by the Association or cable television franchisee; provided, however, that neither the Declarant nor the Association shall be responsible for payment of

any charges assessed by any cable television franchisee for connection of individual Condominiums to the cable wiring system or for program transmission, which shall be the sole responsibility of the Owner. To the extent necessary to effectuate the foregoing plan, there shall be an easement in favor of each Unit for the purpose of connecting the same with the central television service or line. Each Unit shall be subject to an easement in favor of all other Units and in favor of the entity holding the cable television franchise, to provide for the passage through the Condominium Building and/or Unit of television connections from any other Condominium Building and/or Unit to the cable system, and shall be subject to a further easement for the placement and maintenance of such connections.

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

(d) An easement granted to the owner of Parcel 3, as shown on the Airspace Map, for the purpose of placing signs on the outside of the Property, subject to compliance with all ordinances and regulations of the City and County of San Francisco and the terms of the Master Declaration.

(e) An easement granted to the owner of Parcel 3, over, under and through that portion of the Property located on Level 3 and designated "Vent Easement" on the Airspace Map and the Plan, for the purpose of construction, installation, repair and maintenance of a vent to exhaust air, together with an easement for access and ingress and egress over Level 3 of Parcel 4 as necessary in connection with such installation, repair and

maintenance, as set forth in Section 6.1 of the Master Declaration.

The foregoing easements are granted and reserved subject to the condition that their use and enjoyment shall not unreasonably interfere with the use, occupancy or enjoyment of all or any part of the Lot or Unit servient to them or to which they are appurtenant.

Section 2.4 Easements to Accompany Conveyance of Condominium. Easements that benefit or burden any Condominium shall be appurtenant to that Condominium and shall automatically accompany the conveyance of the Condominium, even though the description in the instrument of conveyance may refer only to the fee title to the Condominium.

Section 2.5 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers, who reside on the Property.

Section 2.6 Annexation of Additional Real Property. Additional real property may be annexed to the Project and become subject to this Declaration by, but only by, any of the following methods:

(a) Annexation by Declarant. Declarant may, but shall not be required to, annex the real property described in Attachment B, attached hereto and made a part hereof. A Declaration of Annexation shall be recorded by Declarant without the consent of the Association or its Members or without the consent of Owners or Mortgagees, on the condition that:

(i) The terms of said Declaration of Annexation shall not be inconsistent with this Declaration, nor shall it revoke, modify or add to the limitations, restrictions and covenants established by this Declaration; and

(ii) Any annexation pursuant to this Section must occur prior to the third anniversary of the original issuance of the most recently issued public report for the immediately preceding phase of the Project; and

(iii) A detailed plan for such annexation was approved by the Real Estate Commissioner of the State of California prior to issuance of the public report for the first phase of the Project; and

(iv) Declarant has made a written commitment to pay to the Association, upon the close of escrow for the sale of the first Unit in the annexed parcel, appropriate amounts for reserves for the replacement or deferred maintenance of Common Area improvements in the annexed parcel, necessitated by or arising out of the use and occupancy of Units in the annexed parcel under a rental program conducted by Declarant, if such program has been in effect for at least one year prior to the closing of escrow for the first sale of such a Unit.

(b) Other Annexation of Property. Additional property adjacent to the Project, which does not qualify for annexation pursuant to the terms of Section 2.6(a) above, may be annexed to the Project upon the written vote or consent of not less than two-thirds (2/3) of the total votes of the Association, excluding the votes of the Declarant, and written consent of the owner of such property and upon fulfillment of procedures by the owner of

such property substantially similar to those set forth in Section 2.6(a) above.

(c) Effect of Annexation. Upon annexation, the additional property shall become subject to this Declaration without the necessity of amending individual sections hereof. The Owners of Condominiums in Phase I will continue to have undivided percentage interests in the Common Area of Phase I, and will have nonexclusive easements for ingress and egress over the Common Areas of subsequently annexed phases. Owners of Condominiums in subsequently annexed phases will have undivided interests in the Common Areas of subsequently annexed phases, and will have nonexclusive easements for ingress and egress over the Common Areas of previously annexed phases and Phase I. Assessments collected from Owners may be expended by the Association without regard to the particular phase from which assessments came. All Owners shall have the right of ingress to and egress from all portions of the Common Area throughout the Project, subject to the provisions of the Condominium Documents and the Master Association Documents.

(d) Quality of Construction. Future improvements to the Project will be consistent with initial improvements in terms of quality of construction; provided, however, in the event that Declarant develops Lot 20 in a manner other than the construction of residential condominium units (in accordance with subsection (g) below) such construction shall be of a quality appropriate for the nature of such development.

(e) Failure to Annex. If any remaining phase is not annexed as provided above and the property in that phase requires

ingress and egress access over private streets located within the Project and access to and use of common utilities, easements shall exist for reasonable vehicular and pedestrian traffic and reasonable use of the common utilities for residential developments of comparable size and density; provided, however, that the properties (and the owner(s) thereof) shall be obligated to pay their equitable share of the cost of maintenance and repair of said private streets and utilities and shall be subject to a lien or liens for said maintenance and repair costs, as provided in Section 4.13 hereof.

(f) Right of Successor Declarant to Annex. The right of unilateral annexation provided for in Section 2.6(a) constitutes a covenant running with the land and is as such enforceable by any successor or assignee of Declarant who acquires the Property, or any part thereof, and who assumes the role of Declarant, as provided in Section 1.14.

(g) Rights of Declarant. Although the City and County of San Francisco has approved a maximum of 260 residential condominium units on the Property and Lot 20, Declarant hereby reserves the right, subject to obtaining all necessary approvals from the City and County of San Francisco and the California Department of Real Estate, to develop Lot 20 in a different manner. In such event, Declarant, in its sole discretion, shall have the right to annex Lot 20 (or any lots into which Lot 20 may have been subdivided in accordance with said approvals) to the Project, and Declarant may elect to create a separate condominium regime or regimes in connection with such subdivision, which regime or regimes may be annexed as part of the Master

Association. Any annexation to the Project shall be in accordance with Section 2.6(a).

Section 2.7 Reservation of Easements. Upon annexation of subsequently annexed phases pursuant to Section 2.6, subsequently annexed phases shall be made subject to the terms of this Declaration and thereby become subject to the jurisdiction of the Association. Declarant hereby reserves to itself, its successors and assigns, the right to, and agrees that it will, grant to the Owners of Units in subsequently annexed phases, nonexclusive easements for ingress and egress and construction activities over the Common Area of the previously annexed phases and Phase I. Declarant further agrees that it will reserve to itself, its successors and assigns, the right to grant, and covenants and agrees that it will grant, to the Owners of Units in previously annexed phases and Phase I, nonexclusive easements for ingress and egress over the Common Area of Phase II upon annexation of subsequently annexed phases, pursuant to Section 2.6.

Section 2.8 Other Easements. The Common Area and each Unit are subject to all easements, dedications and rights of way granted or reserved in, on, over and under the Property, as shown on the Map, and the easements granted pursuant to Section 2.3.

Section 2.9 Rights of Entry and Use. The Units and Common Area (including Exclusive Use Common Areas) shall be subject to the following rights of entry and use:

(a) The right of the Association or its agents to enter any Unit to cure any violation of this Declaration or the Bylaws, provided that the Owner has received notice and a hearing (except in the case of emergency), as required by the Bylaws, and the

Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association;

(b) The access rights of the Association to maintain, repair or replace improvements or Property located in the Common Area, as required by Section 5.1(a);

(c) The easements described in this Article II; and

(d) The rights of the Declarant during the construction period, as described in Section 9.12.

Section 2.10 Partition Prohibited. There shall be no subdivision or partition of the Common Area, nor shall any Owner seek any partition or subdivision thereof. Except as provided by California Civil Code Section 1359, as amended from time to time, no Owner shall bring any action for partition of the Project or any part thereof, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Unit owned by two or more persons and division of the sale proceeds is not prohibited hereby. However, partition of title to a single Unit is prohibited.

ARTICLE III

ASSOCIATION-ADMINISTRATION,

MEMBERSHIP AND VOTING RIGHTS

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

Project shall be in accordance with the provisions of this Declaration, the Articles and the Bylaws.

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

Section 3.3 Transferred Membership. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Condominium to which it is appurtenant, and then only to the purchaser of such Condominium. A mortgagee does not have membership rights until it becomes an Owner by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in his name to the purchaser of his Condominium, the Association shall have the right to record the transfer upon its books and thereupon any old membership outstanding in the name of the seller shall be null and void.

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

(a) Class A. Class A Members shall be all Owners with the exception of the Declarant. Each Condominium shall be allocated one vote in the Association. When more than one Owner holds an interest in any Condominium, all such co-Owners shall be Members of the Association; however, the vote for each Condominium

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

(b) Class B: The Class B Member shall be Declarant who shall be entitled to vote as follows: Voting shall be the same as for Class A memberships, except that the Class B Member may triple its vote for each Condominium owned. Class B membership shall

cease and be converted to Class A membership on the happening of either of the following events, whichever first occurs:

i. On the second anniversary of the first conveyance of a Condominium in the most recent phase of the Project; or

ii. On the fourth anniversary date of the first conveyance of a Condominium in the first phase of the Project.

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

written consent of Owners in the Project as whole, not Owners in each phase.

ARTICLE IV

MAINTENANCE AND ASSESSMENT

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

Each assessment or installment thereof, together with any late charge, interest, collection costs and reasonable attorneys' fees, shall be the personal obligation of the Owner at the time such assessment, or installment, became due and payable. If more than one person is the Owner of a Condominium, the personal obligation to pay such assessment, or installment, respecting such Condominium shall be both joint and several. The annual and special assessments provided for in this Article IV, together with interest, late charges, collection costs and reasonable attorneys' fees, shall be a continuing lien upon the Condominium against which the assessment is made, as provided in Section 4.13 hereof. No Owner of a Condominium may exempt himself from payment of assessments, or installments, by waiver of the use or enjoyment of

all or any portion of the Common Area or by waiver of the use or enjoyment of, or by abandonment of, his Condominium.

Voting rights attributable to a Unit shall not vest until assessments against that Unit have been levied by the Association.

Section 4.2 Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Members of the Association; the improvement, replacement, repair, operation and maintenance of the Common Area; and the performance of the duties of the Association, as set forth in this Declaration. The assessment shall also include the assessment of the Master Association, as provided in the Master Declaration. The Shared Expenses Assessment of the Master Association shall have first priority for payment by the Association.

Section 4.3 Regular Annual Assessment and Reserve Fund.

(a) The Board shall establish and levy annual assessments in an amount the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year, subject to the limitations contained in Section 4.5 hereof. Such annual assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those major components of the Common Area and facilities which the Association is obligated to maintain and that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments. However, annual increases in regular assessments of twenty percent (20%) or less for any fiscal year shall not be imposed unless the Board has complied with Section 9.1(a) of the Bylaws with respect to that fiscal year, or

has obtained, in accordance with Section 4.6 hereof, the approval of a majority of the Owners at a meeting or election at which a quorum was present. Annual increases of more than twenty percent (20%) shall be subject to Section 4.5 hereof.

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

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

(d) The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components of the Common Area and facilities which the Association is obligated to repair, restore, replace, or maintain, and for which such reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses. The transferred funds shall be restored to the reserve fund within three years of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a delay would be in the best interests of the Project, delay the restoration until the

time which the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this Section. Such special assessment is not subject to the limitation imposed by Section 4.5 of this Declaration.

Section 4.4 Special Assessments. If the Board determines that the estimated total amount of funds necessary to defray the common expenses of the Association for a given fiscal year is, or will become, inadequate to meet expenses for any reason (including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements on the Common Area) the Board shall determine the approximate amount necessary to defray such expenses, and if the amount is approved by a majority vote of the Board, it shall become a special assessment. The Board may, in its discretion, prorate such special assessment over the remaining months of the fiscal year or levy the assessment immediately against each Condominium. Unless exempt from Federal or State income taxation, all proceeds from any special assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which the special assessment was levied, or it otherwise shall be handled and used in a manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board in order to avoid, if possible, taxation as income to the Association.

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

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

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

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

A special assessment imposed pursuant to Section 4.3(d) is not subject to the five percent (5%) limitation imposed pursuant to this subsection.

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

i. An extraordinary expense required by court order;

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

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

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

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

Section 4.6 Notice and Quorum for Any Action Authorized Under Sections 4.3(a) and 4.5. Any action authorized under Sections 4.3(a) or 4.5, which requires a vote of the membership, shall be taken at a meeting called for that purpose at which a quorum equal to more than fifty percent (50%) of the total voting power of the Association is present. Written notice of said meeting shall be sent to all Members not less than ten (10) nor more than ninety (90) days in advance of the meeting, specifying the place, day and hour of the meeting and, notwithstanding any other provision of law, shall specify those matters the Board intends to present for action by the members; but, except as otherwise provided by law, any proper matter may be presented at such meeting for action. The action may also be taken without a meeting pursuant to the provisions of California Corporations Code Section 7513.

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

(a) Individual items comprising the regular or special assessment shall be prorated in accordance with the percentages shown on Attachment C hereto, incorporated herein by this reference, provided such items are prorated according to the

budget originally approved for the Project by the Department of Real Estate, State of California (File 032426 SA-FOO), and any subsequent budget thereafter approved by said Department in connection with any annexation pursuant to Section 2.6.

(b) Any special assessment for the rebuilding or major repair of the Common Area shall be assessed for each Owner in proportion to the ratio of the square footage of the floor area of the Unit to the total square footage of all of the Units.

Section 4.8 Assessment Period. The regular assessment period shall commence on January 1 of each year and shall terminate on December 31 of each year, and regular assessments shall be payable in equal monthly installments, unless the Board adopts some other basis for collection. However, the initial regular assessment period shall commence on the first day of the calendar month following the date on which the sale under authority of a public report of the first Condominium in Phase I to a purchaser is closed and shall terminate on December 31 of the year in which the initial sale is closed. In subsequent phases the assessments against all Condominiums in each phase shall commence on the first day of the month following the closing of the first sale in such phase. The first regular assessment and all special assessments shall be adjusted according to the number of months remaining in the fiscal year and shall be payable in equal monthly installments, unless the Board adopts some other basis for collection. The Association shall not change the obligation of any Condominium for purposes of levying assessments unless all Owners affected and the mortgagees of such Owners have given their prior written consent.

Section 4.9 Notice and Assessment Installment Due Dates:

Delinquent Assessment. A single ten (10) day prior written notice of each annual regular assessment and each special assessment, specifying the due dates for the payment of installments, shall be given to each Owner of every Condominium subject to assessment; provided, however, in the event of an increase in any regular or special assessment, such notice shall be given not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due. The due dates for the payment of installments normally shall be the first day of each month, unless some other due date is established by the Board. Each installment of regular assessments and special assessments shall become delinquent if not paid within fifteen (15) days after its due date. If an assessment is delinquent, upon formal adoption of the following delinquent assessment policy by the Board of Directors of the Association, the Association may recover the following:

(a) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorneys' fees;

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

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