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RECORDS & PERMITS DIVISION

MASTER  
DECLARATION  
OF  
CONDITIONS, COVENANTS AND RESTRICTIONS  
ESTABLISHING RECIPROCAL EASEMENTS AND A PLAN OF OWNERSHIP  
FOR  
PORTSIDE,  
SAN FRANCISCO, CALIFORNIA

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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, described on that certain parcel map entitled "Parcel Map of Portside Subdivision Showing the Subdivision of Airspace", said Map having been recorded in the Office of the Recorder of the City and County of San Francisco, State of California, on January 19, 1994, in Book 42 of Parcel Maps, Pages 15 through 19, inclusive. Said real property is improved with a mixed-use retail/commercial/residential project consisting of four (4) separate airspace parcels: Parcel 1 (air, earth and certain other areas to be used in common by Parcels 2, 3 and 4); Parcel 2 (commercial parking uses); Parcel 3 (retail/commercial uses); and Parcel 4 (residential use). Parcel 4 is further defined and described on that certain subdivision map and condominium plan entitled "Map of Portside, a Condominium Project," recorded the 11<sup>th</sup> day of February, 1994, in Book 42 of

Condominium Maps, pages 161 through 170, Official Records of the City and County of San Francisco. Declarant intends to establish a development providing for the separate ownership of the individual airspace parcels, with reciprocal easements and restrictions upon the parcels for the use and enjoyment of the Property.

The condominium project shall be referred to herein as the "Property" as defined in Article I, Section 1.24.

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 interests in the Property and the Owners thereof.

NOW, THEREFORE, Declarant hereby establishes that the Property hereinafter described shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are imposed as equitable servitudes, pursuant to a general plan for the development of the Property, for the purposes of enhancing and protecting the value and attractiveness of the Property, and every part thereof, in accordance with the plan for the improvement of the Property and the division thereof into separate parcels. 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.



## ARTICLE I

### DEFINITIONS

Section 1.1 "Articles" Shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time.

Section 1.2 "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 1.3 "Association" or "Master Association" Shall mean and refer to Portside Master Owners' Association, a California nonprofit mutual benefit corporation, the Members of which shall be Owners of Parcels, or portions thereof, in the Property.

Section 1.4 "Association 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, and the rules and regulations for the Members, as established from time to time.

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

Section 1.6 "Building" Shall mean the structures on the Property containing the condominium units, parking spaces and commercial/retail spaces.

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

Section 1.8 "Condominium Plan or Plan" Shall mean and refer to any diagrammatical floor plan, pursuant to California Civil Code Section 1351(e), subdividing the separate airspace parcels into condominium regimes, whether now or hereafter recorded. The Plan for Parcel 4 is entitled "Map of Portside, a Condominium Project,"

recorded the 11<sup>th</sup> day of February, 1994, in Book 42 of Condominium Maps, pages 161 through 170, Official Records of the City and County of San Francisco.

Section 1.9 "Declarant" Shall mean and refer to HUM BABY ASSOCIATES, a California limited partnership, together with its successors and assigns.

Section 1.10 "Declaration" Shall mean and refer to this enabling Master Declaration.

Section 1.11 "Institutional Lender" Shall mean any bank, savings and loan association, insurance company, or other financial institution holding a recorded mortgage on any parcel.

Section 1.12 "Map" Shall mean that certain parcel map entitled "Parcel Map of Portside Subdivision Showing the Subdivision of Airspace", recorded on January 19, 1994, in Book 42 of Parcel Maps, pages 15 through 19, inclusive, Official Records of the City and County of San Francisco, State of California.

Section 1.13 "Member" or "Members" Shall mean and refer to the Owner or Owners of Parcel 2 (who together constitute the Parking Membership); the Owner or Owners of Parcel 3 (who together constitute the Commercial/Retail Membership); and the Owner or Owners of Parcel 4 (who together constitute the Residential Membership).

Section 1.14 "Membership" Shall mean and refer to one (1) of the three (3) memberships in the Association (the Parking Membership, the Retail/Commercial Membership and the Residential Membership), as set forth in Article III hereof.

Section 1.15 "Mortgage" Shall include a deed of trust as well as a mortgage.

Section 1.16 "Mortgagee" Shall include a beneficiary or a holder of a deed of trust as well as a mortgagee.

Section 1.17 "Mortgagor" Shall include the trustor of a deed of trust as well as a mortgagor.

Section 1.18 "Owner" or "Owners" Shall mean or refer to the record holder or holders of title, if more than one, of a Parcel or a portion thereof. This shall include any person having a fee simple title to any Parcel 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 Parcel or any portion thereof is sold under a recorded installment land contract to a purchaser, such purchaser, rather than the fee owner, shall be considered the "Owner".

Section 1.19 "Parcel" Means an airspace parcel as defined and delineated on the Map.

Section 1.20 "Parcel 1" Shall mean and refer to airspace Parcel 1 as delineated on the Map, including all the improvements located therein. Parcel 1 shall be the air and earth parcel containing the upper and lower elevations of the Property and certain other areas to be used in common by Parcels 2, 3 and 4.

Section 1.21 "Parcel 2" Shall mean and refer to airspace Parcel 2 as delineated on the Map, including all the improvements located therein. Parcel 2 shall be used for parking purposes only as set forth herein.

Section 1.22 "Parcel 3" Shall mean and refer to airspace Parcel 3 as delineated on the Map, including all the improvements

located therein. Parcel 3 shall be used for commercial/retail purposes only.

Section 1.23 "Parcel 4" Shall mean and refer to airspace Parcel 4 as delineated on the Map, including the improvements located therein together with any real property annexed to Parcel 4 in accordance with the Residential Declaration. Parcel 4 shall be used for residential purposes only.

Section 1.24 "Person" Means a natural person, a corporation, a partnership, a trustee or other legal entity.

Section 1.25 "Property" Shall mean and refer to the entire real property described herein, including all structures and improvements erected thereon.

Section 1.26 "Number and Gender" The singular and plural number and masculine, feminine and neuter gender shall each include the other where the context requires.

Section 1.27 "Mandatory and Permissive" "Shall", "will", and "agree" as used herein are mandatory and "may" as used herein is permissive.

Section 1.28 "Residential Declaration" Shall mean and refer to the Declaration of Conditions, Covenants and Restrictions of Portside, A Condominium Project, recorded on the 11th day of February, 1994, in Book G-67, Pages 584 in the Official Records of the City and County of San Francisco.

Section 1.29 "Shared Expenses" Means and includes the actual and estimated expenses of operating those portions of the Property for which the Master Association has a duty to maintain and any reasonable reserve for such purposes as found and determined by the

Board and all sums designated shared expenses by or pursuant to this Declaration.

Section 1.30 "Shared Expenses Assessment" Shall mean that portion of the Shared Expenses which is to be paid by each Member as determined by the Association, pursuant to the terms of this Declaration and shall include both regular and special assessments.

Section 1.31 "Shared Expenses Budget" or "Budget" Shall mean the pro forma operating budget and reserve statement prepared by the Association as required by this Declaration.

## ARTICLE II

### DESCRIPTION OF PROPERTY,

#### DIVISION OF PROPERTY AND CREATION OF PROPERTY RIGHTS

##### Section 2.1 Description of Property.

(a) The Property. The Property as described on the Map consists of the underlying real property with four (4) separately delineated airspace parcels, and all improvements located thereon. There is being built upon the Property structures occupying the airspace parcels, said structures containing the uses defined below. Reference is made to the Map to supply further details concerning the Property.

(b) Existing Encumbrances. The Property 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, and 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. License Agreement executed by and between Bryant-Harrison Associates, a California limited partnership, and Two Bryant Associates, a California general partnership, dated December 24th, 1985, recorded December 31st, 1985, in Book D994 of Official Records, Page 1083; as amended by Amendment No. 1, dated January 27, 1987, recorded January 30, 1987, in Book E269, Page 1125, Official Records.

iii. Grant of Easement to Two Bryant Associates, a California general partnership, dated January 28th, 1987, recorded February 3rd, 1987, in Book E271 of Official Records, Page 1086.

iv. 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, 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.

v. 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.

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

vii. Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements 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 404.

viii. Agreement for Declaration of Encroachment Easement executed by Hum Baby Associates, a California limited partnership, dated October 29th, 1992, 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) Parcel 1. Parcel 1 shall consist of the air and earth parcels delineating the upper and lower elevations of the Property and certain other areas to be used in common by Parcels 2, 3 and 4. Prior to conveyance of a Parcel or any Unit in a Parcel to an Owner, Parcel 1 shall be conveyed by the Declarant to the Association. Parcel 1 shall have appurtenant easements for ingress and egress and support over the other Parcels.

(b) Parcel 2. Parcel 2 shall consist of one hundred seventy-five (175) commercial parking spaces to be used for parking

purposes only (all of which spaces may be subject to a valet parking arrangement at the discretion of the Owner of Parcel 2), of which sixty-two (62) parking spaces have been licensed to the Portside Homeowners' Association, pursuant to that certain irrevocable License Agreement between the Owner of Parcel 2 and said Association, which shall be recorded in the Official Records of the City and County of San Francisco, State of California. The use of said sixty-two (62) parking spaces shall be in accordance with the terms and conditions of said Agreement, which provides that such spaces shall be subject to a valet parking arrangement every day from 7:00 a.m. to 7:00 p.m. Should Parcel 2 be subdivided into condominiums, then upon conveyance of a unit to an Owner, Parcel 2 shall be a separate condominium regime. Parcel 2, whether subdivided or not, shall have appurtenant easements for ingress and egress and support over the other Parcels.

(c) Parcel 3. Parcel 3 shall consist of commercial/retail space to be used for commercial/retail purposes only. The Owner of Parcel 3 shall be permitted to install a mezzanine level within Parcel 3, without obtaining approval of any Architectural Control Committee or the Owners of Parcels 2 or 3. Should Parcel 3 be subdivided into condominiums, then upon conveyance of a Unit to an Owner, Parcel 3 shall be a separate condominium regime. Parcel 3, whether subdivided or not, shall have appurtenant easements for ingress and egress and support over the other Parcels.

(d) Parcel 4. Parcel 4 shall consist of sixty-two (62) residential units and any additional units annexed to Parcel 4 in accordance with the Residential Declaration. Upon conveyance of



a unit to an Owner, Parcel 4 shall be a condominium regime with appurtenant easements for ingress and egress and support over the other Parcels.

(e) No Separate Conveyance of Easements. Declarant, the successors, assigns and grantees of Declarant covenant and agree that the easements over and across Parcels 1, 2, 3 and 4, and the fee title to the respective Parcels (or portions thereof) conveyed therewith, shall not be separated or separately conveyed, and each such interest shall be deemed to be conveyed or encumbered with its respective Parcel (or portion thereof), even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Parcel or a portion thereof.

Section 2.3 Partition Prohibited. The Parcels shall remain undivided as set forth herein, except for permitted subdivisions as set forth in Section 2.4, and no Owner shall bring any action for partition of the Property or any part thereof, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Property. Judicial partition by sale of a single Parcel owned by two or more persons and division of the sale proceeds is not prohibited hereby.

Section 2.4 Subdivision Permitted.

(a) The Parcels may be subdivided; provided, however, under no circumstances shall said subdivision violate this Declaration. The subdivision of any Parcel shall require the approval of a Final Map by the City and County of San Francisco, but shall not require the approval of the Owners of all or part of the other Parcels, or of the Master Association. Upon any such

subdivision, the rights, duties and obligations of a Parcel Owner enumerated in this Declaration shall be transferred to the Owners of the subdivided interests. By way of example and not meant to be inclusive, this includes the obligation to pay assessments, the right to membership in the Association, and the right to cast a vote as a Member of the Association.

(b) In accordance with the approval of the City and County of San Francisco, Declarant intends to subdivide Parcel 4, together with that certain real property more particularly described as:

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,

into a maximum of 260 residential condominium units, and to annex the residential condominium units constructed on said Lot 20 into Parcel 4 in accordance with the Residential Declaration. Notwithstanding the foregoing, 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 Property or to any of the Parcels. Any such annexation shall occur prior to the third anniversary of the original issuance of the public report for the

immediately preceding phase of the Project. In addition, Declarant may elect to create separate condominium regime or regimes in connection with such subdivision, which regime or regimes may be annexed as part of the Master Association, or any condominium association established with respect to any of the Parcels.

### ARTICLE III

#### ASSOCIATION-ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

Section 3.1 Association to Manage and Maintain Property Improvements. The management of the Property and the improvements thereon shall be vested in the Association to the extent provided for in the Bylaws. Except as set forth herein or in the Bylaws, each Parcel shall be separately maintained by the Owners thereof. Improvements shall include, but are not limited to, the Building roofs, the Building fascia, Building supports, trellis located at the roof level of Parcel 2, walls and columns, slab floors which divide the Parcels, earthquake expansion joints, inter-parcel stairwells, internal fire exiting corridors, life safety systems, sidewalks and landscaping located on perimeter sidewalks surrounding the Property, below ground walls, those portions of reservoirs, tanks, pumps, motors, ducts, flues, chutes, conduits, pipes, plumbing, wires, and other utility or Building systems installations lying within any Parcel or contained within and immediately surrounded by or attached to any structure or space which is part of the Building, and any other Building element which is not located solely within one Parcel or which the Board determines to be an improvement subject to this Declaration, except

that (a) any utility equipment which is part of a complete system servicing only one Parcel, or a part thereof, and (b) any equipment used solely in connection with the operation of Parcel 2, including, without limitation, the ventilation system and security gates, shall not be included. The Owners of the Parcels covenant and agree that the administration of the Property shall be in accordance with the provisions of this Declaration, the Articles of Incorporation, and the Bylaws of the Association.

Section 3.2 Membership. There shall be three (3) Memberships in the Master Association: one (1) consisting of the Owners of Parcel 2 (the Parking Membership); one (1) consisting of the Owners of Parcel 3 (the Commercial/Retail Membership); and one (1) consisting of the Owners of Parcel 4 (the Residential Membership). The three Memberships together include all of the Owners of Parcels 2, 3 and 4. The affairs of the Master Association shall be managed by five (5) directors, three (3) representing Parcel 4; one (1) representing Parcel 3; and one (1) representing Parcel 2. Membership shall be held in accordance with the Articles of Incorporation and the Bylaws of the Association.

Section 3.3 Voting Rights. The Master Association shall have one class of voting. Each Member of the Residential Membership, each Member of the Commercial/Retail Membership and each Member of the Parking Membership shall be entitled to one vote for each condominium unit owned within the respective Parcels, except that until such time as Parcel 2 and Parcel 3 are subdivided into condominium units as permitted by this Declaration, the Owners of each unsubdivided Parcel shall be the Members. If a condominium unit into which a Parcel is subdivided is owned by more than one

person, each person shall be a Member of the Membership, but there shall be no more than one vote for each such unit.

Any action by the Association (except as otherwise provided in the Association Documents), which must have the approval of the Memberships before being undertaken shall require the majority vote or written assent of the total voting power of the Residential Membership, and the majority vote of the total voting power of the Master Association. Any provision in this Declaration which requires that the vote of Declarant shall be excluded during any such vote shall require the majority vote or written assent of the total voting power in the Residential Membership, the majority vote or written assent of the total voting power of the Residential Membership excluding Declarant, and the majority vote or written assent of the total voting power of the Master Association.

#### ARTICLE IV

#### MAINTENANCE AND ASSESSMENT

Section 4.1 Creation of the Lien and Personal Obligation of Assessment. The Declarant hereby covenants, and each Owner of any Parcel or portion thereof, by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association regular shared expenses assessments and special assessments, such assessments to be established, made and collected as provided in this Declaration.

Each assessment or installment thereof, together with any late charge, interest, collection costs and reasonable attorneys' fees, shall be a charge on each Parcel at the time such assessment, or

installment, became due and payable. 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 debt of the Owners of the Parcel against which the assessment is made, as provided in Section 4.12 hereof. No Owner may exempt himself from payment of his portion of assessments, or installments, by waiver of the use or enjoyment of all or any portion of the Property or by waiver of the use or enjoyment, or by abandonment of, his Parcel. Notwithstanding anything to the contrary contained in this Declaration, if an Owner of a condominium unit established in any Parcel has fully paid that Owner's portion of the Shared Expenses Assessment, the Master Association covenants that it shall not in any manner disturb or impair the quiet enjoyment of the non-defaulting condominium Owner's separate ownership interest.

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 Owners of interests in the Property, the improvement, replacement, repair, operation and maintenance of the Property and the performance of the duties of the Association as set forth in this Declaration.

Section 4.3 Regular Annual Shared 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 components of the Project 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 the regular Shared Expenses Assessment 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 eighty percent (80%) of the Board of Directors, and the vote or written assent of fifty-one percent (51%) of each Membership at a Membership meeting in which quorum was present. Annual increases of more than twenty percent (20%) shall be made 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, components of the Property 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 Shared 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 to the Property) the Board shall determine the approximate amount necessary to defray such expenses, and if the



amount is approved by a sixty-six and two-thirds percent (66 2/3%) vote of the Board, it shall become a special assessment. Every special assessment shall be levied upon the same basis as that prescribed for the levying of regular assessments.

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 Parcel. 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 it 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, its taxation as income to the Association.

Any special assessment against the Owners to raise funds for the rebuilding or major repair of Parcel 1 shall be levied on the basis of the ratio of the square footage of the floor area of each Parcel to be assessed to the total square footage of floor area of all Parcels to be assessed.

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

(a) The Association may not, without an eighty percent (80%) approval of the Board of Directors, and the vote or written assent of fifty-one percent (51%) of each Membership at a Membership meeting in which a quorum was present:

i. Increase the regular Shared Expenses Assessment more than twenty percent (20%) over the regular Shared Expenses Assessment for the Association's preceding fiscal year; or

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

iii. Decrease the regular annual Shared Expenses Assessment by more than ten percent (10%) in any one (1) 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) The Board alone may increase assessments necessary for emergency situations. For purposes of this section, an emergency situation is any of the following:

i. An extraordinary expense required by court order.

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

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

(c) The Association may not charge or collect fees or assessments in connection with a transfer of a Parcel or a portion thereof more than the actual cost to change its records.

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) and 4.5, which requires a vote of the Membership, shall be

taken at a meeting of the Association called for that purpose at which a quorum equal to fifty-one percent (51%) of each Membership is present. Written notice of said meeting shall be sent to all Owners 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, in the case of a special meeting, the nature of the business to be undertaken. 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. All regular and special assessments shall be assessed to the Owners according to the following respective proportionate shares:

<u>Parcel 2:</u>	31.48%
<u>Parcel 3:</u>	4.37%
<u>Parcel 4:</u>	64.15%

The foregoing proportionate shares may be revised in the event of any annexation pursuant to Section 2.4(a). As provided in Section 5.1(a) of the Residential Declaration, the Portside Homeowners' Association shall be responsible for contracting for security services for the entire Property, and the Owners shall pay the following proportionate shares of such services, which shares are based on the relative degree of use by the Owners:

<u>Parcel 2</u>	20%
<u>Parcel 3</u>	12%
<u>Parcel 4</u>	68%.

The foregoing proportionate shares may be revised based on actual usage of security services by the three Parcels. Promptly after receipt of a statement for such security services from the provider

thereof, the Portside Homeowners' Association shall submit to the Owners of Parcel 2 and Parcel 3 bills for their respective proportionate shares of such statement, and the Owners of Parcel 2 and Parcel 3 shall remit payment-in-full to the Portside Homeowners' Association within thirty (30) days after receipt of said bills.

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, unless a different fiscal year is adopted by the Board, and the regular Shared Expenses Assessment shall be payable in equal monthly installments, unless the Board adopts some other basis for collection. However, the initial regular assessment period shall commence on the first day of the calendar month following the date on which the sale of the first condominium unit in the Phase I of Parcel 4 to a purchaser is closed and shall terminate on December 31 of the year in which the initial sale is closed. In the event subsequent phases are annexed to the Project as provided in Section 2.4(b), the assessments against all parcels or condominium units 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 prorata interest or obligation of any Parcel for purposes of levying assessments, unless all Owners and all 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 Shared Expenses Assessment and each Special Assessment, specifying the due dates for the payment of installments, shall be given to each Owner of every Parcel or portion thereof 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 Shared Expenses 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 ten percent (10%) interest, commencing thirty (30) days after the assessment becomes due.

Section 4.10 Estoppel Certificate. The Board, or its managing agent, on not less than twenty (20) days prior written