

request, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not, to the knowledge of the Association, a particular Parcel is in default under the provisions of this Declaration and further stating the dates to which installments of assessments, regular or special, have been paid as to such Parcel. Any certificate delivered pursuant to this Section may be relied on by any prospective purchaser or mortgagee of any Parcel or portion thereof, but reliance on such certificate may not extend to any default not involving the payment of assessments of which the signer had not actual knowledge.

Section 4.11 Right to Enforce. The right to collect and enforce assessments is vested in the Board acting by and on behalf of the Association. The Board, or its authorized representative, can enforce the obligations of the Owners to pay Shared Expenses Assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to Section 4.13 to enforce the lien rights created. Suit to recover a money judgment for unpaid assessments, together with all amounts described in Section 4.1, shall be maintainable without foreclosing or waiving the lien rights.

Section 4.12 Creation of Lien. If there is a delinquency in the payment of any Shared Expenses Assessment or installment thereof on a Parcel, as described in Section 4.9, any amounts that are delinquent together with any late charges, interest and all costs that are incurred by the Board or its authorized representative in the collection of the amounts, including

reasonable attorneys' fees, shall be a lien against such Parcel upon the recordation in the Office of the Recorder of the City and County of San Francisco of a notice of delinquent assessment as provided in California Civil Code Section 1367. The assessment lien created by this Section shall be prior to all other liens recorded subsequent to the notice of delinquent assessment, except for taxes, bonds, assessments and other levies which by law would be superior thereto, and the lien of any first mortgage made in good faith and for value. The notice of delinquent assessment shall state the amount of the assessment, collection costs, attorneys' fees, late charges, and interest, a description of the Parcel against which the assessment and other sums are levied, the name of the record owners, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by the President of the Association or such other person designated by the Association for that purpose.

The transfer of a Parcel as the result of a power of sale or a judicial foreclosure involving a default under a first mortgage shall extinguish the lien of assessments affecting that Parcel which were due and payable prior to the transfer of the Parcel. No such transfer shall relieve the new owner, whether the former beneficiary of the first mortgage or another person, from liability for any assessments thereafter becoming due or from the lien thereof.

Fines and penalties levied by the Association to reimburse the Association for costs incurred in the repair of damage to the Property for which an Owner was allegedly responsible, or in bringing the Owner and his Parcel or portion thereof into

compliance with the Association Documents, are not assessments which may become a lien against an Owner's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the California Civil Code.

The above statement does not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

Section 4.13 Enforcement of Assessment Lien. The lien created pursuant to Section 4.12 above may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to California Civil Code Section 2934(a). Any sale by a trustee shall be conducted in accordance with the provisions of California Civil Code Sections 2924, 2924(b), 2924(c), 2924(f), 2924(g) and 2924(h) applicable to the exercise of powers of sale in mortgages and deeds of trust.

Section 4.14 Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article IV, the benefit of any homestead or exemption laws of the State of California in effect at the time any assessment or installment becomes delinquent or any lien is imposed.

ARTICLE V

DUTIES AND POWERS OF THE ASSOCIATION

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

(a) Maintenance. The Association shall maintain, repair, replace, restore, operate and manage all of the structural improvements located on the Property, the Building roof and exterior, the Building life safety systems, garage fans, doors and gates, and all other personal and real property that may be acquired by the Association, including, without limitation the improvements specified in Section 3.1. Maintenance shall include, without limitation, painting, maintaining, repairing and replacing all structural improvements as well as landscaping the exterior ground-level portions of the Property but shall not include maintenance or replacement of glass surfaces. The responsibility of the Association for maintenance, repair and replacement shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an Owner or his guests, tenants or invitees, the cost of which is not covered by insurance. Repairs or replacements resulting from such excluded items shall be the responsibility of the Associations governing the individual Parcels and/or of each Owner; provided, however, that if an Association or an Owner shall fail to make the repairs or replacements which are his responsibility as provided herein, then, upon a vote of sixty-six and two thirds percent (66 2/3%) of the

Board of Directors, and after not less than thirty (30) days notice to the Owner, and hearing (except in emergency situations), the Association shall have the right (but not the obligation) to make such repairs or replacements, and the cost thereof shall be added to the assessments chargeable to such Parcel and shall be payable to the Association by the Parcel's Association or Owner.

(b) Insurance. The Association shall maintain the following policies of insurance:

i. A policy or policies of fire, boiler and casualty insurance, with extended coverage endorsement and coverage against loss or damage by fire, vandalism, malicious mischief, sprinkler leakage, lighting, windstorm, water and any peril standardly included, from time to time, under an all risk policy for the full insurable value of the Parcels, payable as provided in Section 8.8 hereof, or such other fire and casualty insurance as the Board shall determine gives substantially equal or greater protection to the Owners and their mortgagees of record, as their respective interests appear. Each policy shall provide that it shall not be canceled without at least thirty (30) days prior written notice to the Association and to each of the Owners and their mortgagees of record. The Board shall review the limits of such insurance at least every year and shall adjust same, if necessary, to provide the coverage and protection required by this Declaration. Such policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each Parcel, if any.

ii. A policy or policies of general comprehensive public liability insurance, including both bodily injury and

property damage in the amount of at least One Million Dollars (\$1,000,000.00) insuring the Association, Declarant, the Board, Owners and any appointed manager, against liability to the public or to any Owner incident to the ownership, management and/or use of the Property and to protect against liability to the public or to any Owner incident to the use of, or resulting from accident or intentional act occurring in or about, any Parcel. The Board shall review the limits of coverage for such insurance at least every year and shall increase or adjust the same if necessary, to provide the coverage and protection required by this Declaration.

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

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

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

Nothing in this subsection (b) shall restrict or prohibit the Board from maintaining such additional policies of insurance as it, in its absolute discretion, shall deem reasonable and necessary. Any insurance acquired by the Board may be taken in the name of the Board, as trustee, for the use and benefit of the Board and all Owners. No Owner may insure all or any portion of the Owner's separate interest in a Parcel or a portion thereof against loss

covered by insurance maintained by the Association. Any Owner who violates this restriction shall be liable to the named insureds for any diminution in insurance proceeds otherwise payable. Any Owner, however, may insure his or her personal property or any permitted improvements to the Owner's separate interest against loss. Any insurance separately carried by an Owner must contain a waiver of subrogation by the insurer as to claims against the Declarant, the Association, the Board, any Association established to maintain and manage condominiums within a Parcel, the directors, officers and employees thereof and the Owners of such condominiums.

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

Each Owner appoints the Association or any insurance trustee (as defined in Section 9.9 below) designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the

Association, including, without limitation, representing the Owners in any proceeding, negotiation, settlement, or agreement.

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

(c) Discharge of Liens. The Association shall discharge by payment, if necessary, any lien against a Parcel and assess the cost thereof to the Member or Members responsible for the existence of such lien. Such Member or Members shall be given notice and the opportunity to be heard by the Board prior to discharge of the lien.

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

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

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

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

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

(b) Manager. The Association shall have the authority to employ a manager or managing agent and to contract with independent contractors to perform all or any part of the day to day management duties and responsibilities of the Association, each of whom shall be subject to the direction and control of the Board, provided that any contract with a firm or person appointed as manager or managing agent shall not exceed a one (1) year term and shall provide for the right to terminate by either party without cause and without payment of a termination fee on thirty (30) days written notice, and further provided that said managing agent shall comply with the provisions of Civil Code Section 1363.1(a), prior to entering into a management contract with the Association. Any delegation of authority to a manager or managing agent shall be subject to Section 5.2(j) hereof.

(c) Adoption of Rules. The Association may adopt reasonable rules not inconsistent with this Declaration relating to the use of the Parcels and the conduct and use of Owners and their tenants and guests with respect to the Property and other Owners.

(d) Access. For the purpose of performing the maintenance authorized herein, the Association's agents or employees shall have the right, after reasonable notice to the Owner thereof, to enter any portion of a Parcel at reasonable hours. Except in the case of any emergency, twenty-four (24) hours

advance notice shall be given to the Owner or occupant prior to any entry.

(e) Assessments, Liens and Fines. The Association shall have the power to levy and collect Shared Expenses Assessments in accordance with the provisions of Article IV hereof. The Association may impose fines or take disciplinary action against any Owner for failure to pay Shared Expenses Assessments or for violation of any provision of the Association Documents. Penalties may include but are not limited to: fines, temporary suspension of voting rights or other appropriate discipline, provided that the accused Member is given at least fifteen (15) days notice and the opportunity to be heard orally or in writing before the Board of the Association with respect to the alleged violations at least five (5) days before a decision to impose discipline is made. In no event shall the Association have the right to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of its Parcel on account of the failure by the Owner to comply with provisions of the Association Documents except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments duly levied by the Association. All notices required under this Section shall be made pursuant to Section 8.15 of this Declaration.

(f) Enforcement. The Association shall have the authority to enforce this Declaration as provided in Section 8.1 hereof.

(g) Acquisition of Property. The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold,

improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of, real or personal property in connection with the affairs of the Association.

(h) Loans. The Association shall have the power to borrow money, and only with the consent (by vote or written consent) of eighty percent (80%) of the Board.

(i) Contract. The Association shall have the power to contract for goods and/or services for the facilities and interests or for the Association, subject to any limitations set forth in the this Declaration.

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

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

ii. To make capital expenditures;

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

iv. To levy regular or special Shared Expenses Assessments.

(k) Temporary Removal of Occupants. The Association may cause the temporary removal of any occupant of the Property for such periods and at such times as necessary for prompt, effective treatment of the wood-destroying pests or organisms. The cost of the temporary relocation is to be borne by the Owners of the Parcel or portion thereof affected. Not less than fifteen

(15) days nor more than thirty (30) days notice of the need to temporarily vacate shall be given to occupants and to the Owners of the Parcel or portion thereof affected. The notice shall state:

- i. The reason for the temporary relocation;
- ii. The date and time of the beginning of the treatment;
- iii. The anticipated date and time of termination of treatment; and
- iv. That the occupants will be responsible for their own accommodations during the temporary relocation.

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

(l) Appointment of Trustee. The Association, or the Board on behalf of the Association, shall have the power to appoint a trustee to enforce assessment liens as provided in Section 4.13 hereof, and as provided in California Civil Code Section 1367(b).

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

ARTICLE VI

EASEMENTS AND UTILITIES

Section 6.1 Easements for Support and Access. Reciprocal easements among the Owners of the Parcels, or any portion thereof,

over and under the Property and all areas thereof for support, repair, access and ingress and egress and for the installation, repair, and maintenance of electric, telephone, fire protection, water, life safety systems, security systems, gas, sanitary and storm sewer lines and facilities, exhaust, heating and air-conditioning facilities, plumbing vent pipes, cable or master television antenna lines (collectively referred to as "utility facilities"), drainage facilities, garbage chutes, stairs, elevator shafts and walkways, and as may be hereafter required or needed to service the Property, are hereby declared to exist. Declarant and its successors and assigns, including the Association, shall have the right to grant and transfer additional easements for such purposes, as necessary.

In addition, an easement, for the benefit of Parcel 3, over, under and through that portion of Parcel 4 located on Level 3 and designated "Vent Easement" on the Map and the Plan for Parcel 4, for construction, installation, repair and maintenance of a vent to exhaust air is hereby declared to exist, together with an easement for access and ingress and egress over Level 3 of Parcel 4 as necessary in connection with such construction, installation, repair and maintenance.

Section 6.2 Owners' Rights and Duties. The rights and duties of the Owners of the Parcels, or portions thereof, with respect to the utility facilities shall be as follows:

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

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

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

Section 6.3 Easements for Utilities and Maintenance. Easements over and under the Property for the installation, repair and maintenance of utility facilities and drainage facilities, walkways, and landscaping as shown on the recorded Map of the Property, and as may be hereafter required or needed to service the Property are hereby reserved by Declarant and the successors and assigns of Declarant, including the Association, together with the right to grant and transfer the same.

Section 6.4 Association's Duties. The Association shall maintain all utility installations located on the Property, except those installations maintained by utility companies, public, private or municipal or those installations servicing one Parcel only.

Section 6.5 Structural and Support Easements. Easements exist in favor of each Parcel through those portions of each Parcel necessary for the structural support of the Building.

ARTICLE VII

USE RESTRICTIONS

Section 7.1 Maintenance of Separate Parcels. The Owners of Parcels 2 and 3, shall be responsible for the maintenance of all improvements located within Parcels 2 and 3 and those systems which exclusively serve Parcels 2 and 3, except for those maintenance duties specifically reserved to the Master Association in Section 5.1 hereof. The Owners of Parcel 4, through the Portside Homeowners' Association pursuant to the Residential Declaration, shall be responsible for the maintenance of all improvements located entirely within Parcel 4, and those systems which exclusively serve Parcel 4, except as specified in Section 5.1 hereof. The agents and employees of the Portside Homeowners' Association shall have the right, after reasonable notice to the Owner of Parcel 3, to enter Parcel 3 at reasonable hours for performing the maintenance authorized by this Section 7.1 and the Residential Declaration. Except in the case of any emergency, twenty-four (24) hours advance notice shall be given to the Owner or occupant prior to any entry.

Section 7.2 Parking Use. Parcel 2 shall be used for commercial or residential parking purposes only. Any lease of all or a portion of the Parking Parcel shall be made subject to this Declaration. No amendment of this Section shall be allowed.

Section 7.3 Commercial/Retail Use. In Parcel 3, the commercial/retail space shall be occupied and used for commercial/retail purposes only, including retail sales, food service, businesses, live-work and offices, provided such uses are

permitted by law. The Owner or Owners of Parcel 3 shall have the right at all times of ingress and egress over and across Parcel 1 for the purpose of delivery of goods and services to the commercial/retail businesses, provided such use does not interfere with the use of Parcel 1 by the other Owners. The employees of the occupants of a portion of Parcel 3 shall have the right to use the bathroom located in a portion of Parcel 4 on Level One as shown on the Map, all as more particularly described in Section 2.2(b) of the Residential Declaration. Any lease of all or a portion of Parcel 3 shall be made subject to the Declaration. No amendment of this Section shall be allowed without the express consent of the Commercial/Retail Members.

Section 7.4 Residential Use. In Parcel 4, the residential units shall be occupied and used for residential purposes by the Owners, tenants, and social guests thereof, and no trade or business shall be conducted therein, except that an Owner or tenant of a residential unit may use a portion of the Unit for a "home office," as such is allowed under the zoning ordinances of the City and County of San Francisco existing from time to time. Declarant and the successors or assigns of Declarant, however, may use a portion of Parcel 4 for model home sites and sales office until the last residential unit is sold by Declarant, or, if Declarant elects to retain one (1) or more condominiums, three (3) years after the close of the sale of the first condominium in the final phase of the Project. Residential use shall include the leasing of individual units by Owners thereof. Any amendment of this Section shall be in accordance with Section 8.4 and shall require the vote

or written assent of fifty-one percent (51%) of the voting power of the Residential Membership.

Section 7.5 Nuisances. No illegal or seriously offensive activity shall be transacted or conducted in any Parcel or in any part of the Property, nor shall anything be done thereon which is a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of the Owners of interests in the Property, which shall violate any law or ordinance, or which shall in any way increase the rate of insurance for the Property, or cause any insurance policy to be canceled or to cause a refusal to renew the same or which will impair the structural integrity of any Building.

Section 7.6 Commercial/Retail Signs. The Owner of Parcel 3 shall have the right to place signs, awnings and signs above awnings on the outside walls of the Property, or any portion thereof, which shall conform to the ordinances of the City and County of San Francisco and any regulations established solely by the Commercial/Retail Owners.

Section 7.7 Residential Signs. No signs shall be displayed to the public view on any Residential Unit or any portion of the Property except signs as are approved by the Board, and signs in accordance with Section 7.6. In accordance with California Civil Code Section 712, one "For Sale" or "For Rent" sign for each Condominium shall be allowed without such approval, provided that it is reasonable in size and posted at an appropriate location on the Property. The Board may adopt rules and regulations concerning the size and location of "For Sale" or "For Rent" signs.

Nothing contained in this Section shall prohibit Declarant from placing promotional signs anywhere on the Property, provided such signs do not prohibit the use of Parcel 1 by Owners. This right in the Declarant shall terminate within four (4) years of the issuance of the Final Public Report for the last phase of the Project.

Section 7.8 Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept, except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, garbage cans, wood piles or storage piles shall be kept screened and sealed from view of other Parcels and the streets. No toxic or hazardous materials shall be disposed of within the Property by dumping in the garbage containers or down the drains, or otherwise.

Section 7.9 Radio and Television Antennas. No alteration to or modification of a central radio antenna or television antenna system or cable television system, if any, as developed by Declarant and as maintained by the Association, shall be permitted, and no Owner may be permitted to construct and/or use and operate his own external radio and/or television antenna without the consent of the Board.

In the event a cable television wiring system is installed in the Property by the Declarant and cable wiring provided to individual Units, neither the Declarant nor the Association shall be responsible of payment of any charges assessed by any cable

television franchisee for individual connection to the cable wiring system or program transmission.

Section 7.10 Architectural Control. The Board shall maintain an architectural control committee of three (3) members to review structural, landscaping and exterior design alterations or improvements on the Property (excluding, however, construction of a mezzanine in Parcel 3 in accordance with Section 2.2(c)). Any construction, alteration or improvement of any kind on the Property which is subject to approval by an architectural control committee, may be reviewed by the Board if the Board sends a written notice of such review to that committee within the fifteen (15) day period following the date of approval. If the construction, alteration or improvement is being proposed in Parcel 2 or Parcel 3 by the respective Owners thereof prior to subdivision, the plans and specifications shall be submitted to the Board for approval, and are deemed approved if no written notice of review is sent by the Board to the Owner within fifteen (15) days after submittal.

Plans and specifications must be approved by sixty-six and two thirds percent (66 2/3%) of the Board, and are deemed approved if the Board fails to act within thirty (30) days of the date of the notice.

The Board may require the applicant to provide insurance and/or indemnification for the benefit of the other Owners and the Association.

Notwithstanding the foregoing, the Owner of Parcel 3 shall have the right, in its sole discretion and at its sole expense, to construct and install a vent to exhaust air in that portion of Parcel 4 located on Level 3 and designated "Vent Easement" on the

Map and the Plan for Parcel 4 without compliance with this Section 7.10. Such construction and installation shall be accomplished with the minimum disruption possible of the use and quiet enjoyment of Level 3 of Parcel 4 by the Owners thereof.

Section 7.11 Hazardous Materials. An Owner shall not use or keep in a Parcel, or portion thereof, any kerosene, gasoline or inflammable or combustible fluid or materials, other than those required, in limited quantities, for the normal cleaning of a parcel or portion thereof.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.1 Enforcement.

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

(b) Alternative Dispute Resolution. Pursuant to the provisions of California Civil Code Section 1354, prior to the filing by either the Association or an Owner of a civil action related to the enforcement of the Association Documents for

declaratory or injunctive relief only, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages (other than Association assessments) not in excess of five thousand dollars (\$5,000); the parties shall endeavor to resolve the dispute through some form of alternative dispute resolution such as mediation or arbitration, in compliance with the procedure and time limits specified in said Section 1354. The form chosen may be binding or nonbinding at the option of the parties. The costs of the alternative dispute resolution shall be borne by the parties.

The failure by any Owner or the Association to comply with the requirements of said Section 1354 may result in the loss of the right to obtain a court judgment.

Section 8.2 Invalidity of any Provision. Should any provision or portion of any of this document be declared invalid or in conflict with any law of the jurisdiction in which this Property is situated, the validity of all the remaining provisions and portions thereof shall remain unaffected and in full force and effect.

Section 8.3 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date that this Declaration is recorded, after which time, these covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by

for the maintenance of such encroachments, so long as they shall exist.

Section 8.6 Effect of Breach. No breach of any provision of this Declaration shall invalidate the lien of any mortgage made in good faith and for value, but all covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

Section 8.7 Owner's Right and Obligations to Maintain and Repair. Except for those portions of the Property that the Association is required to maintain and repair, each Owner shall at his sole cost and expense, maintain and repair his separate interest in the Property, keeping the same in good condition.

Section 8.8 Damage or Destruction.

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

i. The cost of repair or reconstruction is more than fifty percent (50%) of the current replacement cost of all the improvements located in the Property, the available insurance proceeds are not sufficient to pay eighty-five percent (85%) of the cost of such repairs or reconstruction, and eighty percent (80%) of the owners in each Membership vote against the repair and reconstruction; or

ii. Available insurance proceeds are not sufficient to repair or reconstruct the improvement substantially to their

seventy-five percent (75%) of the then Owners of the Parcels (and approved by all first mortgagees) has been recorded within the year preceding the year of each successive period of ten (10) years, agreeing to change such covenants and restrictions, in whole or in part, or to terminate them.

Section 8.4 Amendments. This Declaration may be amended only by the vote or written assent of fifty-one percent (51%) of the total voting power of each Membership, and fifty-one percent (51%) of the voting power of each Membership excluding Declarant's votes. All such amendments must be recorded and shall become effective upon being recorded in the Recorder's Office of the City and County of San Francisco.

Section 8.5 Encroachment Easements. Each Parcel within the Property is hereby declared to have an easement over the other Parcels for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settling or shifting of the Buildings, or any other cause. There shall be valid easements for the maintenance of such encroachments as long as they shall exist, and the rights and obligations of the Owners shall not be altered in any way by such encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if such encroachment occurred due to willful misconduct of such Owner or Owners. In the event that a structure is partially or totally destroyed, and subsequently repaired or rebuilt, the Owners of each Parcel agree that minor encroachments over adjoining Parcels shall be permitted and that there shall be valid easements

condition prior to the casualty, a special assessment fails to receive the requisite vote, if required, pursuant to Article IV, Section 4.4 hereof, and the Board is unable to supplement the insurance by borrowing, in the name of the Association, sufficient funds to reconstruct the improvements within a reasonable time.

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

i. Minor Casualty. If the cost to repair or reconstruct does not exceed the sum of seventy-five thousand dollars (\$75,000), the Board shall thereupon contract to repair and rebuild the damaged portions of all Parcels, in accordance with the conditions existing immediately prior to damage (modified at the discretion of the Board to comply with building codes and construction standards in effect at the time of the rebuilding), and the funds held in the insurance trust fund shall be used for that purpose. If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the various Owners of interests in the Parcels affected shall pay for the portion of the insufficiency attributed to their interest owned. The special assessment shall be subject to the provisions of this Declaration governing Membership approval of special assessments and shall be levied in the same manner as Shared Expenses Assessments, as set forth in Section 4.7 hereof.

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

1. All insurance proceeds and funds borrowed by the Association, if any, shall be paid to a bank, trust company or other entity designated by the Board ("the insurance trustee")

to be held for the benefit of the Owners and their mortgagees, as their respective interests may appear. Said funds shall be disbursed according to standard construction loan procedures. The Board, on behalf of the Association and of the Owners, hereby is authorized to enter into an insurance trust agreement, consistent with this Declaration, with such insurance trustee, relating to its powers, duties and compensation.

2. The Board shall obtain firm bids from two (2) or more responsible contractors to rebuild the Property in accordance with the conditions existing immediately prior to damage and destruction (modified at the direction of the Board to comply with building codes and construction standards in effect at the time of the rebuilding). The Board may also obtain an estimate from the insurance carrier of the scope of work included within the amount of the insurance coverage. To be considered, any contractor's bid shall include the premium payable for performance, labor and material payment bonds from a reputable bonding company. The Board shall, as soon as reasonably possible after receipt of such contractor's bids or insurance estimate, call a special meeting of the Owners to consider such bids or insurance estimate. If the Board fails to do so within sixty (60) days after the casualty occurs, any Owner may obtain such contractors' bids or insurance estimate and call and conduct such meeting, as provided herein. Failure to call such a meeting, or to repair such casualty damage within twelve (12) months from the date such damage occurred, shall be deemed, for all purposes, a decision not to rebuild the damaged or destroyed improvements.

4. At such meeting, the Owners may elect to reject all such bids or estimates and thus not to rebuild. A vote of eighty percent (80%) of the Owners in each Parcel shall be required to reject all bids or estimates. Failure to reject all bids and estimates shall authorize the Board to accept the unrejected bid it considers most favorable; provided, however, that if acceptance of any such bid would require the levy of a special assessment, such acceptance shall only be granted following Membership approval of such special assessment, as required by this Declaration. If such Membership approval is not obtained, the bid shall be deemed to have been rejected.

5. In the event the Board elects not to rebuild, insurance proceeds received by the Association shall be distributed by the Association among Owners and their respective mortgagees, according to the respective fair market values of the Parcels at the time of destruction, as determined by the following procedure: The Board shall appoint two (2) independent appraisers to determine the relative value of the Parcels affected. The two appraisers shall appoint a third independent appraiser. If the two appraisers are unable to agree on a third, then the third shall be appointed by the presiding Judge of the Superior Court of the State of California for the City and County of San Francisco. The market value of the respective Parcels or any portions thereof shall then be the average of the three values submitted by each of the appraisers.

6. If a bid or estimate is accepted, the Board shall levy a special assessment to make up any deficiency between the total insurance proceeds for insurance work and the cost for

such repairs or rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of mortgagees, shall be paid to the insurance trustee to be used for such rebuilding. The special assessment shall be levied as provided in Section 4.7 hereof.

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

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

Section 8.9 Condemnation. In the event of an award for the taking of any interest in a Parcel by eminent domain, the Owners of such interest shall be entitled to receive the award for such taking and after acceptance thereof, they and their mortgagee shall be divested of all interest in the Property if such Owner shall vacate his interest as a result of such taking. The Membership shall decide by eighty percent (80%) vote of the Owners whether to rebuild or repair the Property, or take other action. The remaining portion of the Property shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to adjust proportionately the interests of the remaining Owners in the Property.