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COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs)

OF

MINT COLLECTION - 410 & 418 JESSIE STREET

Received and Read 1 - 80 pages

A MIXED USE CONDOMINIUM PROJECT

AMENDED AND RESTATED

Buyer DATE

Buyer DATE

If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

This Declaration contains alternative dispute resolution procedures. These procedures bind subsequent purchasers as well as the initial purchasers. See the Claims Procedure in Exhibit C. You are advised to read these procedures carefully and consult with legal counsel if you have any questions.

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**COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs)
OF
MINT COLLECTION - 410 & 418 JESSIE STREET
A MIXED USE CONDOMINIUM PROJECT
AMENDED AND RESTATED**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs) AMENDED AND RESTATED is executed by Fifth Historic Properties, LLC, a California limited liability company and 418 Jessie Historic Properties, LLC, a California limited liability company (collectively, the "Declarant") with reference to the following facts:

A. Declarant has constructed a residential, live/work and commercial condominium development located on certain real property in San Francisco, California, more particularly described on the subdivision map entitled "Final Map No. 3970, 410 Jessie Street, a Mixed-Use Condominium Project" filed in the records of the City and County of San Francisco, California, on February 7, 2007, in Book 99 of Condominium Maps at pages 10 through 12 (the "410 Jessie Street Map"). The original condominium plan for the development was recorded with the Map (the "Original 410 Jessie Street Condominium Plan").

Declarant is in the process of rehabilitating the existing building at 410 Jessie Street so that upon completion, the development will contain a total of 56 condominiums, consisting of one parking condominium, one storage condominium, two retail/restaurant condominiums, 28 live/work condominiums and 24 residential condominiums.

Declarant previously recorded the "Declaration of Covenants, Conditions and Restrictions establishing a Plan for Condominium Ownership of 410 Jessie Street" recorded on or about July 22, 2003 in the official records of the County of San Francisco as Document No. 2003H492561 (the "Original 410 Jessie Street Declaration").

Declarant owns all of the Condominiums described in the Original Declaration and Original Condominium Plan. Declarant desires to amend and restate the Original Declaration and the Original Condominium Plan in order to reflect the changes resulting from the rehabilitation, to update the Original Declaration to include legislative and regulatory changes that have occurred since the recording of the Original Declaration and Original Condominium Plan and to make certain other changes desired by Declarant. Effective on the date this Declaration and the Condominium Plan attached as Exhibit A hereto are recorded in the records of the City and County of San Francisco, California, the Original Declaration and Original Condominium Plan shall be replaced in their entirety and thereafter shall be of no force and effect.

B. Declarant has also constructed a residential and commercial condominium development located on certain real property in San Francisco, California, more particularly described on the subdivision map entitled "Final Map No. 3987, 418-420 Jessie Street, a Mixed-Use Condominium Project" filed in the records of the City and County of San Francisco, California, on March 12, 2007, in Book 99 of Condominium Maps at pages 95 through 97 (the "418 Jessie Street Map").

Declarant is in the process of rehabilitating the existing building at 418 Jessie Street so that upon completion, the development will contain a total of 27 condominiums, consisting of one retail/restaurant condominium, one parking condominium, and 25 residential condominiums.

C. Declarant has combined the properties described in recitals A and B and shared facilities into a single development referred to as "Mint Collection - 410 & 418 Jessie Street." Mint Collection - 410 & 418 Jessie Street will contain a total of 83 condominiums, consisting of two parking condominiums, one storage condominium, three retail/restaurant condominiums, 28 live/work condominiums and 49 residential condominiums. The Condominium Plan for Mint Collection 410 Jessie Street and 418 Jessie Street is attached as Exhibit A.

E. The covenants, easements, restrictions, rights, duties, benefits and burdens set forth in this Declaration constitute covenants running with the land and equitable servitudes that benefit and bind each condominium owner and each successive owner thereto.

DECLARANT DECLARES AS FOLLOWS:

ARTICLE 1 - Definitions

Unless the context indicates otherwise, the following terms shall have the following definitions:

1.1 Architectural Committee or Committee. The Architectural Committee described in **Section 7.1**.

1.2 Articles. The Articles of Incorporation of the Association and any amendments thereto.

1.3 Association. Mint Collection - 410-418 Jessie Street Condominium Association, a California nonprofit mutual benefit corporation.

1.4 Board. The Board of Directors of the Association.

1.5 Bylaws. The Bylaws of the Association and any amendments thereto.

1.6 Common Area. The element of a Condominium that is owned in undivided interests in common, consisting of the airspace, land and Improvements within the Condominium Parcel described in **Section 1.9** but excluding the Units located therein. The Common Area for each Condominium Parcel is separate and distinct so that the Owner of an undivided interest in the Common Area owns an undivided interest only in the Common Area of the Condominium Parcel in which the Owner's Unit is located and in no other Condominium Parcel. The Common Area of each Condominium Parcel includes the land; airspace outside the Unit; foundations; unfinished floors; subfloors; beams; girders; columns; exterior walls and trim; windows; roof; exterior doors; lobbies; bearing walls; elevators; elevator shafts; sprinklers; sprinkler pipes and vents (including portions that protrude into the Unit); staircases (except staircases connecting levels within a Unit); life safety systems; reservoirs; tanks; pumps; meters; ducts; flues; chutes; conduits; pipes; plumbing; wires; and other utilities (except the fixtures located within the boundaries of a Unit); electrical rooms; fire pump room; maintenance rooms; corridors providing access to Units; recreational facilities; and all other Improvements in the Condominium Parcel except the Improvements located within the boundaries of a Unit as described in **Section 1.33**.

1.7 Condominium. A fee (perpetual) estate in real property as defined in Civil Code section 1351(f) consisting of two elements: (i) a separate interest in space, called a "Unit" as described in **Section 1.33**, and (ii) an undivided interest in common in the Common Area.

1.8 Condominium Building. The building located on each Condominium Parcel, including the building on the 410 Jessie Street Condominium Parcel (individually referred to as the 410 Jessie Street Condominium Building) and the building on the 418 Jessie Street Condominium Parcel (individually referred to as the 418 Jessie Street Condominium Building).

1.9 Condominium Parcel. The parcel or lot shown on the 410 Jessie Street Map (individually referred to as the 410 Jessie Street Condominium Parcel) and/or the parcel or lot shown on 418 Jessie Street Map (individually referred to as the 418 Jessie Street Condominium Parcel).

1.10 Condominium Plans. The condominium plans for the Development that was prepared in accordance with the requirements of Civil Code section 1351(e) and that was recorded. The Condominium Plan for Mint Collection 410 Jessie Street and 418 Jessie Street is attached as Exhibit A. Each Condominium Plan is a separate and distinct condominium plan.

1.11 Declarant. Fifth Historic Properties, LLC, a California limited liability company, and 418 Jessie Historic Properties, LLC a California limited liability company, or any successor or assign that assumes in writing all or a portion of the rights and duties of the Declarant hereunder. .

1.12 Declaration. The Covenants, Conditions and Restrictions (CC&Rs) of Mint Collection - 410 & 418 Jessie Street, a Mixed Use Condominium Project Amended and Restated and any amendments or corrections thereto.

1.13 Development. The residential development that is constructed on the Property and made subject to this Declaration, including the Condominiums and all other Improvements thereon.

1.14 Exclusive Use Common Area. The portion or portions of the Common Area described in **Section 2.15** subject to rights for the exclusive use of one or more, but fewer than all, of the Owners.

1.15 Governing Documents. This Declaration, the Articles of Incorporation, the Bylaws and the Rules, provided that the Claims Procedure Exhibit attached as Exhibit C is not part of the Governing Documents.

1.16 Improvements. Any fixtures affixed to any Property in the Development within the meaning of Civil Code section 660.

1.17 Live/Work Condominiums. Condominium Units 501 through 1005 in the 410 Jessie Street Condominium Building, as shown on the Condominium Plan.

1.18 Map or Maps. The 410 Jessie Street Map (individually referred to as the 410 Jessie Street Map) and the Map of 418 Jessie Street (individually referred to as the 418 Jessie Street Map).

1.19 Member. A member of the Association.

1.20 Mortgage. A recorded mortgage or deed of trust against one or more Condominiums in the Development.

1.21 Mortgagee. A mortgagee under a Mortgage or a beneficiary under a deed of trust recorded against a Condominium in the Development.

1.22 Owner. The owner or owners of the fee (perpetual) estate of a Condominium in the Development.

1.23 Parking Condominiums. Condominiums indicated as Unit 103 in the 410 Jessie Street Condominium Building and as Unit 102A in the 418 Jessie Street Condominium Building on the Condominium Plan.

1.24 Person. Any natural person, partnership, trust, corporation, limited liability company, or other legal entity.

1.25 Property. The real property shown on the 410 Jessie Street Map and the 418 Jessie Street Map, together with all Improvements thereon.

1.26 Recreational Facility/Roof Deck. The Recreational Facility/Roof Deck and Spa shown on the Condominium Plan in the 418 Condominium Building at roof level (10th floor).

1.27 Residential Area. "Residential Areas" shall mean and refer to the portions of the Condominium Buildings that contain and are accessible only from Residential Condominiums or Live/Work Condominiums. This includes, but is not limited to, the elevators, stairs, and lobbies situated above the first floor in the 410 Jessie Street Condominium Building, the residential stairways and Residential Condominiums located on the second floor of the 418 Jessie Street Condominium Building, and such areas situated above the second floor of the 418 Jessie Street Condominium Building. As provided elsewhere herein, including at **Section 2.13**, access to Residential Area and Common Areas are restricted.

1.28 Residential Condominiums. Condominiums indicated as Units 201 through 408 in the 410 Jessie Street Condominium Building and Condominium Units 201A through 900A in the 418 Jessie Street Condominium Building, as shown on the Condominium Plan.

1.29 Retail/Restaurant Condominiums. Condominiums indicated as Units 101 and 102 in the 410 Jessie Street Condominium Building and Unit 101A in the 418 Jessie Street Condominium Building, as shown on the Condominium Plan.

1.30 Rules. Rules or regulations adopted by the Board from time to time pursuant to the authority of **Section 5.6.2**.

1.31 SFPC. SFPC refers to the San Francisco Planning Code as adopted as of August, 2006, or as may be hereinafter amended.

1.32 Storage Condominium. The Condominium indicated as Unit 001 in the 410 Jessie Street Condominium Building, as shown on the Condominium Plan.

1.33 Unit. The element of a Condominium that is owned separately, consisting of a separate interest in space, the boundaries of which are described as the area designated "Unit" in the Condominium Plan within the Condominium Parcel that the Condominium is located. The dimensions of the Unit are measured from the interior unfinished perimeter walls and ceilings, floor, windows, window frames, and perimeter doors and door frames, provided that the Unit includes the wall boards, sheet rock, paint on the interior surfaces, wallpaper, paneling, outlets, stain, tile, hardwood floors, carpet and other ceiling, floor or wall finishes. The Unit does not include the structural component of any bearing wall or other structure member necessary to the support or structural rigidity of any portion of the Common Area. The Unit includes all Improvements and personal property situated within its boundaries, including, but not limited to, interior walls (except the structural components and interior load-bearing walls), appliances, cabinets, interior doors, and all electrical, heating, plumbing and other utility fixtures. Any utility fixtures that are located partially within the Unit and partially in the Common Area, such as electrical outlets, and that exclusively serve the Unit are part of the Unit. Areas within a dropped ceiling, duct or utility chase that traverses a Unit and that contain utilities that serve another Condominium or two or more Condominiums are Common Area and not part of the Unit. In interpreting deeds and plans, the existing physical boundaries of the Unit or Unit reconstructed in substantial accordance with the original plan shall be conclusively presumed to be its boundaries, rather than the description expressed in the Condominium Plans or any other recorded document, regardless of minor variances between boundaries shown on the Condominium Plans or in any other recorded document and those of the building and regardless of settling or lateral movement of the building.

ARTICLE 2 - Property Rights and Easements

2.1 Type of Development. This Development is a condominium project within the meaning of Civil Code section 1351(f) and consists of a total of 83 condominiums, consisting of two Parking Condominiums, one Storage Condominium, three Retail/Restaurant Condominiums, 28 Live/Work Condominiums and 49 Residential Condominiums.

2.2 Condominium. Each Owner owns a fee title interest in a Condominium consisting of a separate interest in a Unit as defined in **Section 1.33** and an undivided equal interest in common in the Common Area of the Condominium Parcel where the Unit is located. No Owner has any interest in any Common Area other than the Common Area of the Condominium Parcel within which Owner's Unit is located. In addition, each Owner shall be a Member of the Association.

The Unit and the Common Area that the Owner has an undivided interest in is appurtenant thereto may not be separated. Any transfer of a Unit automatically shall transfer such Common Area regardless of whether the instrument of transfer describes the Common Area. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an interest in the such Common Area shall be void unless the Unit appurtenant thereto is also transferred.

2.3 Common Area. Each Owner or tenant and their family members and guests have nonexclusive rights to use, enjoy, ingress and egress in, to and throughout the Common Area for the Condominium Building their Unit is located in, and any Improvements thereon, subject to the provisions of **Section 2.4 - 2.14** and the Exclusive Use Common Area rights as described in **Section 2.15**.

Notwithstanding the foregoing, the Common Area within the Residential Area described in **Section 1.27** is restricted to the exclusive use of Owners or residents of the Residential and Live/Work Condominiums and their employees, invitees and agents, as described in **Section 1.27**.

2.4 Encroachment Easement. Each Unit, or portion thereof, as the dominant tenement has an easement over any other Unit, or portion thereof, as the servient tenement for the purpose of accommodating any encroachment of roof overhangs, porches, decks, staircases, windows, chimneys or other Condominium Building improvements resulting from the original construction of the Improvements, settlement or shifting of structures, or minor construction changes during the course of construction, and any encroachment authorized under **Section 2.12**. The extent of the encroachment easement shall be the location of the encroaching structure as originally constructed by Declarant. If a structure is partially or totally destroyed, the structure may be repaired or rebuilt in accordance with the original plans, including the replacement of any encroaching Improvement.

The 410 Jessie Street Condominium Parcel, or any portion thereof, as the dominant tenement has an easement over the 418 Jessie Street Condominium Parcel, or portion thereof, as the servient tenement for the purpose of accommodating any encroachment of roof overhangs, porches, decks, staircases, windows, chimneys or other building Improvements resulting from the original construction of the Improvements, settlement or shifting of structures, or minor construction changes during the course of construction, and any encroachment authorized under **Section 2.12**. The extent of the encroachment easement shall be the location of the encroaching structure as originally constructed by Declarant. If a structure is partially or totally destroyed, the structure may be repaired or rebuilt in accordance with the original plans, including the replacement of any encroaching Improvement. The 418 Jessie Street Condominium Parcel, or any portion thereof, as the dominant tenement has an easement over the 410 Jessie Street Condominium Parcel, or portion thereof, as the servient tenement for the purpose of accommodating any encroachment of roof overhangs, porches, decks, staircases, windows, chimneys or other building Improvements resulting from the original construction of the Improvements, settlement or shifting of structures, or minor construction changes during the course of construction, and any encroachment authorized under **Section 2.12**. The extent of the encroachment easement shall be the location of the encroaching structure as originally constructed by Declarant. If a structure is partially or totally destroyed, the structure may be repaired or rebuilt in accordance with the original plans, including the replacement of any encroaching Improvement.

2.5 Recreational Facility/Roof Deck Easement (also known as the 410 & 418 Jessie Street Shared Common Useable Open Space Agreement). As part of the Development, the Recreational Facility/Roof Deck has been constructed at the 10th floor/penthouse level of the 418 Jessie Street Condominium Building, including at the time of sale, an enclosed penthouse structure with gym equipment, an exposed roof deck and outdoor barbeque area, and a hot tub. Access to the Recreational

Facility/Roof Deck from the 410 Jessie Street Condominium Building will be provided at the time of sale through a fireproof doorway connecting the 410 Jessie Street Condominium Building with a stair and hallway leading from the 410 Jessie Street Condominium Parcel property line to the entryway/lobby of the Recreational Facility/Roof Deck at the 418 Jessie Street Condominium Building (the "410-418 Propertyline Doorway"). The 410-418 Propertyline Doorway is located on a landing between the 9th and 10th floors of the 410 Jessie Street Condominium Building's Western stairwell. This stairwell can be accessed from all floors of the 410 Jessie Street Condominium Parcel.

All Owners of Residential Condominiums in the 418 Jessie Street Condominium Parcel and Residential and Live/Work Condominiums located in the 410 Jessie Street Condominium Building shall be entitled to use the Recreational Facility/Roof Deck, subject to reasonable Rules and restrictions approved by the Board, as amended from time to time. This easement shall comply with Section 4 of the "open space" requirements set forth in the Notice of Special Restrictions under the Planning Code recorded on January 31, 2006 under Recorder's Serial Number 2006-1121039-00.

Declarant grants the Owners of the 410 Jessie Street Condominium Parcel a non-exclusive easement in favor of the 410 Jessie Street Condominium Parcel, as the dominant tenement, over the 418 Jessie Street Condominium Parcel, as the servient tenement, to allow access, use and enjoyment by Owners of the Residential Condominiums and Live/Work Condominiums in the 410 Jessie Street Condominium Parcel that are entitled to use Residential Area, as provided under this Declaration, and subject to such Rules as the Board may adopt to regulate access and use rights.

Declarant and/or the Board has the authority to enter into an agreement with the owners of the properties at 54 Mint Street and/or 424 Jessie Street to allow the owners, family members who occupy a condominium, or employees who work in an office space, and any guests of such persons to use the Recreational Facility/Roof Deck at the 418 Jessie Street Condominium Building. Such agreement shall contain provisions requiring appropriate compensation for such use, including, with limitation, for additional use of the facilities, potential liability, etc., that the Declarant/Board shall determine, in its sole discretion.

2.6 Trash and Recycling Facilities Easements. As part of the Development, certain trash and recycling collection, compaction, and related facilities have been constructed within the Development.

2.6.1 Residential Trash and Recycling Room. As part of the Development, certain trash and recycling collection, compaction, and related facilities have been constructed within the ground level in the 418 Jessie Street Condominium Building, which are to be used exclusively by the Residential Condominiums in the 418 Jessie Street Condominium Building and the Residential and Live/Work Condominiums in the 410 Jessie Street Condominium Building.

The Declarant grants Owners of the 410 Jessie Street Condominium Parcel, as the dominant tenement, a non-exclusive easement over the 418 Jessie Street Condominium Parcel, as the servient tenement, to allow access, use and enjoyment by all Residential and Live/Work Condominiums within the 410 Jessie Street Condominium Parcel of such trash and recycling collection, compaction, and related facilities in the 418 Jessie Street Condominium Parcel, subject to the other terms and conditions established in this Declaration, and subject to such Rules as the Board may adopt to regulate access and use rights.

2.6.2 Commercial Trash and Recycling Room. As part of the Development, certain trash and recycling collection, compaction, and related facilities have been constructed within the ground level in the 410 Jessie Street Condominium Building, which are to be used exclusively by the Retail/Restaurant Condominium in the 418 Jessie Street Condominium Building and the Retail/Restaurant Condominiums in the 410 Jessie Street Condominium Building.

The Declarant grants the Owners of the 418 Jessie Street Condominium Parcel, as the dominant tenement, a non-exclusive easement over the 410 Jessie Street Condominium Parcel, as the

servient tenement, to allow access, use and enjoyment by all Retail/Restaurant Condominiums within the 418 Jessie Street Condominium Parcel of such trash and recycling collection, compaction, and related facilities in the 410 Jessie Street Condominium Building, subject to the other terms and conditions established in this Declaration, and subject to such Rules as the Board may adopt to regulate access and use rights.

2.7 Lobby Facilities Easement. As part of the Development, certain services such as security staff and/or concierge may be provided at a central lobby location within the ground floor entryway corridor of the 410 Jessie Street Condominium Building. Such services, if provided, shall be made available to Owners of Condominiums in the 410 Jessie Street Condominium Parcel and the 418 Jessie Street Condominium Parcel. (There is no warranty of any kind that the Declarant or Association will provide any such services.)

The Declarant grants the Owners of the 418 Jessie Street Condominium Parcel, as the dominant tenement, an easement over the 410 Jessie Street Condominium Parcel, as the servient tenement, to allow access, use and enjoyment of the ground floor lobby in the 410 Jessie Street Condominium Parcel and related areas to Residential Condominiums located within the 418 Jessie Street Condominium Parcel as may be necessary or appropriate to facilitate shared lobby services for the Development.

2.8 Utility Easement. Each Unit as the servient tenement is subject to an easement in favor of each other Unit as the dominant tenement for the installation, retention, maintenance, repair and replacement of any utility shafts, vents, ducts, lines and equipment (the "Utility Facilities") that traverse the Unit of the servient tenement and provide utility service to the dominant tenement. The location of the easement is the location of the Utility Facilities installed as a part of the original construction of the Unit or as subsequently installed with the consent of the Owner of the servient tenement. The easement right granted hereunder includes access to the Unit as may be necessary to inspect, maintain, repair, replace and/or upgrade the Utility Facilities. The occupants of the servient tenement shall not take any action that would in any manner interfere with the operation of the Utility Facilities.

2.9 Other Rights. Each Unit is entitled to the benefits and/or subject to the burdens of any easements, rights-of-way, or dedications as may be granted or reserved on Map that the Condominium Parcel is in (either the Revised 410 Jessie Street Map or the 418 Jessie Street Map, depending on which Condominium Parcel the Unit is in), any deed to the Condominium, or in any other appropriate public record.

2.10 Appurtenant Rights. Each right or easement described in this **Article 2** is a right or easement that is appurtenant to the Unit; and any transfer of the Condominium automatically transfers the easement appurtenant thereto regardless of whether the instrument of transfer describes the right or the easement.

2.11 Reservation of Rights. Notwithstanding any property rights, including easements, described herein, each Condominium is subject to each of the following:

(i) the right of Declarant or its agents to enter on any portion of the Development to construct and sell the Improvements that Declarant intends to construct on the Property, to make repairs, and to correct any construction problems thereon, provided that such entry does not unreasonably interfere with the use or occupancy of any occupied Condominium unless authorized by its Owner, which authorization shall not be unreasonably withheld;

(ii) the right of the Association's agents to enter any Condominium to cure any violation or breach of this Declaration or the Bylaws or the Rules, as provided by such documents and as allowed by law;

(iii) the right of the Association's agents to enter any Condominium to perform its obligations and duties under this Declaration, including the obligations and the duties with respect to maintenance or repair of any Unit;

(iv) As to Condominiums located in the 410 Jessie Street Condominium Building, the rights and obligations reserved in Conservation Easement recorded on July 22, 2002 in the official records of the City and County of San Francisco as Document No. 2002-H207524-00, including limitations on physical changes to a Unit or Common Area that may affect the exterior of the building, including the windows, the historic fire escapes, or any other portion of the Condominium Building that alters the façade or jeopardizes the building's listing on the National Register of Historic Places and the California Register of Historic Resources as part of the Hales Department Store (901 Market Street) designation.

(v) the rights reserved in **Sections 2.12, 2.14, 9.9 and 13.11.**

2.12 Authority Over Common Area. The Board or Declarant (as long as Declarant owns 25% or more of the Condominiums in the Development) shall have the power and the right in the name of the Association and all of the Owners as their attorney-in-fact to grant, convey or otherwise transfer to any Owner or any other Person fee title, easements, leasehold estates, exclusive use easements or rights, licenses, lot-line adjustments, rights-of-way and/or dedications in, on, over or under the Common Area or other property interests in order to: (i) construct, erect, operate, maintain or replace lines, cables, wires, conduits or other devices for electricity, cable television, internet services, fiber optics, telecommunication equipment, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any similar public or quasi-public Improvements or facilities; (ii) accommodate any encroachment that in the sole discretion of the Board or Declarant does not unreasonably interfere with the use and enjoyment of the Common Area; or (iii) accomplish any other purpose that in the sole discretion of the Board or Declarant is in the interest of the Association and its Members and does not unreasonably interfere with the use and enjoyment of the Building Common Area and/or Association Property. Each Owner in accepting a deed to a Condominium expressly consents to such action and authorizes and appoints the Association and Declarant (as long as Declarant owns 25% or more of the Condominiums in the Development) as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish the action, including, but not limited to, grant deeds, easements, subdivision maps, and lot-line adjustments. Notwithstanding anything herein to the contrary, in no event shall the Board or Declarant: (i) take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of his or her Unit or any Exclusive Use Common Area without the prior written consent of that Owner; or (ii) grant exclusive use of any portion of the Common Area to any Owner without the affirmative vote of a majority of the Members present in person or by proxy at a duly held meeting, unless Member approval is not required as described in Civil Code section 1363.07. If Member approval is required, the Board or Declarant in placing the measure before the Members shall describe whether the Association will receive a monetary consideration for the grant and whether the Association or the transferee is responsible for providing insurance coverage for the Exclusive Use Common Area and shall comply with the secret balloting requirements of Civil Code section 1363.03(b). Furthermore, the conveyance of fee title to any portion of the Common Area as authorized in this **Section 2.12** (other than conveyances made as a part of lot-line adjustments) shall require the consent of a majority of the total voting power of the Association other than Declarant and such consent of the Mortgagees as may be required by **Article 10.**

2.13 Restricted Access to Certain Common Area. Except as otherwise provided hereunder, the Residential Area is restricted to the use of residents of Residential Condominiums and Live/Work Condominiums, their employees, invitees and agents. Except as otherwise provided hereunder, the Residential Area is restricted to the use by the Residential or Live/Work Condominium Owners in the Condominium Building that they are located in. Use of Residential Areas in the 418 Jessie Street Condominium Building is restricted to Owners of Residential Condominiums in the 418 Jessie Street Condominium Building except for the 418 Jessie Street Condominium Building lobby area, elevator and eastern stairwell, which use shall be available to Owners

of Residential and Live/Work Condominiums in the 410 Jessie Street Condominium Building as an alternate means of access to the Recreational Facility/Roof Deck (in addition to the 410-418 Propertyline Doorway described in Section 2.6 of this Declaration). Use of the Recreational Facility/Roof Deck is limited to the Residential and Live/Work Condominiums in the 410 Jessie Street Condominium Building, the Residential Condominiums in the 418 Jessie Street Condominium Building, and any person from 54 Mint Street or 424 Jessie Street buildings, if approved by the Declarant/Board pursuant to Section 2.5, who shall be subject to other conditions provided herein and any Rules enacted by the Association.

2.14 Delegation of Use Rights. An Owner's family members who occupy a Residential or Live/Work Condominium, an Owner's employees who work out of a Live/Work Condominium, or any guests of such Owner and any such Persons as may be permitted by the Rules may use and enjoy any Common Area or easement rights, including the Recreational Facility/Roof Deck, that the Owner of a Residential or Live/Work Condominium has a right to use hereunder. All such use shall be subject to restrictions contained in this Declaration and the Rules. If an Owner rents his or her Condominium, the Owner and the Owner's employees, agents and invitees shall not be entitled to use any Common Area or easement rights other than such use as is directly related to the Owner's rights and duties as a landlord. Such rights may be enjoyed by the tenant and the tenant's employees, agents and invitees during the term of the rental agreement.

Any Owner who rents his or her Condominium must comply with the requirements of **Section 3.2.**

2.15 Exclusive Use Common Area. Portions of the Common Area are set aside for the exclusive use of the occupants of certain Condominiums and constitute Exclusive Use Common Areas. The areas are shown on the Condominium Plans with the designations RD-1001 through RD-1005 for the 410 Jessie Street Condominium Parcel and RD-404A, B-504A, B-602A, B-702A, B-802A, RD-803A, B-900A for the 418 Jessie Street Condominium Parcel, and are set aside for the exclusive use of the occupants of the same Condominium number as that designated for roof deck ("RD") or balcony ("B") purposes. Storage is prohibited in these Exclusive Use Common Areas, except for small barbecues, small potted plants that do not rest directly on the surface of the decking, and deck furniture, such as chairs and tables on balconies areas and chairs, tables and umbrellas on rooftop deck areas.

2.16 Parking Condominiums. The Owners/operators of the Parking Condominiums (Unit 103 in the 410 Jessie Street Condominium Building and Unit 102A in the 418 Jessie Street Condominium Building) shall have the right to enter into agreements with Owners (including owners of the Retail/Restaurant Condominiums) or other persons who are neither Owners nor occupants of Condominiums in the Development to park their vehicles in the Parking Condominiums, including car-sharing services.

The Owner/operator(s) of the Parking Condominiums may offer the initial purchasers of certain Residential or Live/Work Condominiums in the Development the opportunity to enter into an agreement with the Owner/operators of the Parking Condominiums to park a vehicle or vehicles in the Parking Condominiums pursuant to the terms and conditions of a license agreement between the Owner/operator of the Parking Condominiums and the initial purchaser. Because there are not enough parking spaces to accommodate all Owners, and the Owner/operator(s) of the Parking Condominiums may enter into license agreements with persons who do not own Condominiums in the Development to use such parking spaces, there is no express or implied promise as part of these governing documents, and no rights are conferred, for Owners to park in the parking spaces within the Parking Condominiums. This provision shall not be construed to provide any right to any purchaser of a Condominium, nor create any obligations by the Declarant and/or the Owner/operators of the Parking Condominiums to such purchaser or any subsequent purchaser. Any Owners who are licensed to use the parking spaces under an agreement with an Owner/operator of a Parking Condominium shall be bound by the terms and conditions of such agreement, and any rules and regulations adopted by the Owner of the Parking Condominium in connection therewith.

2.17 Storage Condominium. The Owner/operator of the Storage Condominium shall have the right to enter into agreements with any person to use storage spaces within the Storage Condominium,

including Owners of the Condominiums and persons who are neither Owners nor occupants of Condominiums in the Development.

Declarant and/or the Owner/operator of the Storage Condominium may offer the initial purchasers of certain Residential or Live/Work Condominiums the opportunity to enter into an agreement with the Owner of the Storage Condominium the right to use a separately designated storage space or spaces within the Storage Condominium pursuant to the terms and conditions of a license agreement between Owner/operator of the Storage Condominium and the initial purchaser. Because there are not enough storage spaces to accommodate all Owners, and the Owner/operator will be able to enter into agreements with to use such storage spaces, there is no express or implied promise as part of these governing documents, and no rights are conferred, for Owners to use storage spaces part of the Storage Condominium. The Owners who are licensed to use storage spaces under a license agreement shall be bound by the terms and conditions of such an Agreement, and any rules and regulations adopted by the Owner/operator of the Storage Condominium in connection therewith. This provision shall not be construed to provide any right to any purchaser of a Condominium, nor create any obligations by the Declarant and/or the independent owner/operator of the Storage Condominium to such purchaser or any subsequent purchaser.

2.18 Restrictions on Partition. Except as authorized in **Sections 2.12, 9.7 and 9.9**, the Common Area shall remain undivided, and there shall be no judicial partition thereof except as may be authorized by Civil Code section 1359 or any successor statute thereto.

Any proceeds or property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owners' Condominiums as of the date immediately preceding the date of the event giving rise to the right of the Owners to partition the Common Area.

2.19 Construction Activity. Each Owner acknowledges that: (i) the construction of the Development may occur over an extended period of time; (ii) the quiet use and enjoyment of the Owner's Condominium may be disturbed as a result of the noise, dust, vibrations and other effects of construction activities; and (iii) the disturbance may continue until the completion of the construction of the Development.

2.20 Mint Plaza Project and Future Construction Activity. Each Owner acknowledges that the Declarant has been working with the City and County of San Francisco to redevelop the approximately 290-foot-long and 54-foot wide portion of Jessie Street located along the southern edge of the Development and extending between 5th Street and Mint Street into a pedestrian plaza to accommodate a wide range of public and private uses (the "Mint Plaza" project).

As this project moves forward into construction, each Owner acknowledges: (i) the construction of the Mint Plaza project may occur over an extended period of time; (ii) the quiet use and enjoyment of the Owner's Condominium may be disturbed as a result of the noise, dust, vibrations and other effects of construction activities; and (iii) the disturbance may continue until the completion of the construction of the Mint Plaza project.

Each Owner also acknowledges that upon completion of the Mint Plaza project, the area on Jessie Street may be permanently closed to motor vehicle traffic and opened to active use by the public, including without limitation, outdoor restaurant and café seating, newsstands, flower stands, information kiosks, permanent and/or temporary public art, play structures, temporary stages and/or loudspeakers, etc. Mint Plaza will remain a public right-of-way, owned by the City and County of San Francisco and managed by a non-profit corporation. Planned uses of the plaza space include outdoor restaurant and café seating for up to five café/restaurants, including two of the Retail/Restaurant Condominiums in the Development that open onto Jessie Street (Condominium 101 in the 410 Jessie Street Condominium Building and Condominium 101A in the 418 Jessie Street Condominium Building). Other potential uses of the plaza include, but are not limited to, group walking tours, performance art, theatre, live music, street

fairs, weekly farmer's markets and other food-related events, outdoor films, etc. Each owner acknowledges that such uses may cause sound, odors, and other disruptions from uses and facilities that may not be evident at the time of the initial sale.

2.21 Noise Transmissions. The Development has been designed to meet current acoustical building code standards. Compliance with the code standards will not eliminate all noise transmission. The code standards establish minimum performance criteria. Occupants and tenants will hear noises from other Units as well as noises generated from outside the Development.

2.22 Below Market Rate (BMR) Condominiums.

Condominiums 207 and 304 in the 410 Jessie Street Condominium Building are designated as Below Market Rate ("BMR") Condominiums pursuant to SFPC § 315, *et seq.*, and the Notice of Special Restrictions under the Planning Code recorded on February 1, 2006 under recorder's serial number 2006-1121312-00. As explained more thoroughly in the separately recorded Notice of Special Restrictions, such Condominiums are subject to certain resale and rental restrictions, which restrictions apply to initial and subsequent owners of such Condominiums. The restrictions shall also be set forth in the grant deeds to these Condominiums or other appropriately-recorded documents.

Condominiums 203A, Condominium 302A and Condominium 403A in the 418 Jessie Street Condominium Building are designated as BMR Condominiums pursuant to SFPC § 315, *et seq.*, and the Notice of Special Restrictions under the Planning Code recorded on May 18, 2006 under recorder's serial number 2006-1178341-00. As explained more thoroughly in the separately recorded Notice of Special Restrictions, such Condominiums are subject to certain resale and rental restrictions, which restrictions apply to initial and subsequent owners of such Condominiums. The restrictions shall also be set forth in the grant deeds to these Condominiums or other appropriately-recorded documents.

2.23 Maintenance of Streetscape Improvements/Public Right-of-Way adjacent to the Development. Pursuant to Condition #5 of the Notice of Special Restrictions under the Planning Code recorded against the 410 Jessie Street Condominium Building on February 1, 2006 under recorder's serial number 2006-1121312-00, the obligations of the Project Sponsor thereunder shall be satisfied by the Association after transfer of the Property from the Declarant to the Association. Pursuant to Condition #3A of the Notice of Special Restrictions under the Planning Code recorded against the 418 Jessie Street Condominium Building on June 15, 2005 under recorder's serial number 2005-H971732-00, the obligations of the Project Sponsor thereunder shall be satisfied by the Association after transfer of the Property from the Declarant to the Association. Such responsibilities may include the upkeep and maintenance of sidewalk or paved pedestrian areas, lighting, and/or seating improvements installed by Project Sponsor if they exceed City standards.

ARTICLE 3 - Restrictions

3.1 Permitted Uses. The Development is a mixed-use development that is used primarily for residential purposes and also for commercial retail purposes. The applicable uses are as follows:

3.1.1 Residential Condominiums. The Residential Condominiums shall be used for residential purposes only and shall not be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose. Notwithstanding the foregoing, Owners or occupants of the Condominiums may use a room or rooms in the residence as an office, provided that the primary use of the Unit is as a residence, no advertising or signage is used in any manner in connection with the office use, no customers, clients or patients enter the Unit on any regular basis, and the use is in compliance with all local ordinances. The Board shall have the authority to adopt Rules regarding the use of offices within the Development in order to maintain the residential characteristics of the Residential Condominiums. The use of Residential Condominiums or other Improvements in the Development by the Declarant or its designees as models and sales and construction offices for purposes of developing, improving and selling

the Residential Condominiums in the Development shall not be a violation of this restriction, provided that such use shall terminate no later than three years after the date of recordation of this Declaration. No Retail/Restaurant Condominium shall be used for residential purposes at any time.

3.1.2 Retail/Restaurant Condominiums. The Retail/Restaurant Condominiums may be used for the following commercial purposes: Retail and commercial sales, food and beverage preparation, sales and support, nighttime entertainment, and the conduct of any other business or services related to or in furtherance of the foregoing. The Retail/Restaurant Condominiums must be used for "active uses" consistent with the planned development of the Mint Plaza and maintaining a vibrant street life. "Active uses" are uses that allow for public access and generate pedestrian activity such as retail stores, restaurants, theaters, art-related uses such as galleries, entertainment and culture-related facilities.

Notwithstanding the foregoing, the following retail uses are prohibited in or about any of the Retail/Restaurant Condominiums: Adult entertainment, massage parlor or liquor store. No commercial uses may be conducted in any of the Retail/Restaurant Condominiums until the owner of such Retail/Restaurant Condominium complies with all permit, licensing and other commercial requirements and conditions imposed by the City and County of San Francisco. All of the existing entries and window spaces of the Retail/Restaurant Condominiums shall provide views into the Units at the pedestrian eye-level. All windows shall use clear, untinted glass, except for decorative or architectural accent. All uses shall comply with, among other things, Good Neighbor Policies for Nighttime Entertainment Activities in South of Market and Downtown Residential Districts, currently enacted as SFPC Section 803.5(g), or such similar or revisions as may be enacted by the City and County of San Francisco. No Retail/Restaurant Condominium shall be used for residential purposes at any time.

3.1.3 Live/Work Condominiums. The Live/Work Condominiums may be used for the residential and commercial purposes only as allowed under the SFPC. SFPC Section 102.13 defines Live/Work Condominiums as a combination of a residential living space with an integrated work space principally used by one or more residents and limits such residential occupancy to not more than four adults. The SFPC requires that a Live/Work Condominium be occupied by at least one resident whose primary non-residential activity in the Unit is an arts activity as defined by SFPC Section 102.2, which definition includes commercial arts and art-related business service uses. "Art activities" as defined in SFPC Section 102.2, includes "performance, exhibition (except exhibition of films), rehearsal, production, post-production and schools of any of the following: Dance, music, dramatic art, film, video, graphic art, painting, drawing, sculpture, small-scale glass works, ceramics, textiles, woodworking, photography, custom-made jewelry or apparel, and other visual, performance and sound arts and crafts. It shall include commercial arts and art-related business service uses including, but not limited to, recording and editing services, small-scale film and video developing and printing; titling; video and film libraries; special effects production; fashion and photo stylists; production, sale and rental of theatrical wardrobes; and studio property production and rental companies...." Other non-residential activities are permitted, but are limited to those otherwise permitted in C-3 Districts, which includes commercial office. At least one occupant of each live/work Unit, whether occupying the Unit as an owner or tenant, shall hold and maintain a valid and active San Francisco Business License, registered for the project location. The business license shall authorize an arts activity as defined in SFPC Section 102.2. The following use restrictions have been placed on the title to the 410 Jessie Street Condominium Building in the form of a Notice of Special Restrictions recorded on September 15, 1998.

Except as may be permitted by the zoning district in which the Development is located, no part of the Live/Work Condominiums shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such nonresidential purposes inconsistent with the uses allowed under the above referenced SFPC restrictions.

In addition to the foregoing, the following uses are expressly prohibited in or about any of the Live/Work Condominiums: Adult entertainment, massage parlor or liquor store. Further, business or work activities

conducted within the Live/Work Condominiums that involve high levels of nighttime activity, deliveries, visitors, or noise may found to be a nuisance under this Declaration.

No business uses may be conducted in any of the Live/Work Condominiums until the owner of such Live/Work Condominium complies with all permit, licensing and other business requirements and conditions imposed by the City and County of San Francisco.

3.1.4 Parking Condominiums. The Parking Condominiums shall be used for parking purposes only in compliance with all applicable laws and ordinances. Car-sharing services may be provided out of Unit 103 of the 410 Jessie Street Condominium Building.

3.1.5 Storage Condominium. The Storage Condominium shall be used for storage purposes only in compliance with all applicable laws and ordinances.

3.2 Renting. An Owner may rent his or her Condominium provided each of the following conditions is satisfied:

(i) the rental agreement must be in writing;

(ii) the tenant's use of the Condominium must comply with the restrictions described in **Section 3.1**;

(iii) the rental agreement must contain a provision that the rental agreement is subject to this Declaration, the Bylaws and the Rules and that any violation of any of the foregoing shall be a default under the rental agreement;

(iv) before commencement of the rental agreement for the Residential or Live/Work Condominiums, the Owner shall provide the Association with the names, telephone numbers and email addresses of the tenants and each family member who will reside in or, for Live/Work Condominiums, the employees who will work in the Unit and the address, telephone number and email address of the Owner;

(v) before commencement of the rental agreement for the Retail/Restaurant Condominiums, the Owner shall provide the Association with the name, telephone numbers and email address of the commercial tenant who will operate a business in the Retail/Restaurant Condominiums, and the address, telephone number and email address of the Owner;

(vi) no Residential or Live/Work Condominium shall be rented for transient, hotel, time-share, fractional or similar purposes, which shall be defined as (a) rental for any period of less than 30 days; (b) any rental if the occupants of the Unit are provided customary hotel service, such as room service for food and beverage, maid service or furnishing laundry and linen; or (c) any time-sharing arrangement under which occupancy rights for specific periods are distributed between two or more persons.

Any Owner that rents his or her Condominium shall keep the Association informed at all times of the Owner's address, telephone number and email address. Any rental agreement shall be subject to this Declaration, the Bylaws and the Rules; and any breach of any of the foregoing shall constitute a breach by the Owner and also a default under the rental agreement, regardless of whether it so provides in the rental agreement. If any tenant breaches any restriction contained in this Declaration, the Bylaws or the Rules, the Owner, on demand from the Association, immediately shall take such steps as may be necessary to correct the breach, including, if necessary, eviction of the tenant.

Without limiting the foregoing, if any tenant is in violation of the provisions of the Declaration, Bylaws or Rules, the Association may bring an action in its own name and/or in the name of the Owner to have the tenant evicted and/or to recover damages. If the court finds that the tenant is violating or has violated any of the provisions of the Declaration, Bylaws or Rules, the court may find the tenant in

violation of the rental agreement and subject to an unlawful detainer action notwithstanding the fact that the Owner is not the plaintiff in the action and/or the tenant is not otherwise in violation of the tenant's rental agreement. For purposes of granting an unlawful detainer against the tenant, the court may assume that the Association is a third-party beneficiary under the rental agreement and as such may exercise all the rights of the Owner thereunder. The remedy provided herein is not exclusive and is in addition to any other remedy or remedies which the Association has. The Association may recover against the Owner all of its costs, including court costs and reasonable attorneys' fees incurred in prosecuting the unlawful detainer action. If the Owner fails to pay the costs within 30 days of receipt of written demand, the Association may levy a reimbursement assessment as authorized under **Section 6.5** to recover the costs and attorneys' fees. The Association shall give the tenant and the Owner notice in writing of the nature of the violation of the Declaration and/or the Rules and 20 days from the mailing of the notice in which to cure the violation before the Association may file for eviction.

3.3 Nuisance. No activity shall be conducted in any Unit or Common Area that constitutes a nuisance or unreasonably interferes with the use or quiet enjoyment of the occupants of any other Unit. No use is allowed that creates conditions that are hazardous, noxious or offensive through the emission of odor, fumes, smoke, cinders, dust, gas, vibrations, glare, refuse, water carried waste or excessive noise. No activity may be carried on that causes any insurance policy to be cancelled or not renewed or which will impair the structural integrity of the Development. No running, loud conversation or loitering in hallways, elevator, entrance ways or parking areas or creating of any other noise or nuisance in the Common Area is allowed. No wheeled recreational vehicles may be used in the hallways or elevators or any other portion of the Common Area, including all exterior Common Areas. This restriction includes, but is not limited to, bicycles, tricycles, scooters, wagons, skateboards or roller blades.

The Association is made up of a development which involve a variety of different residential and commercial uses defined in this Declaration. Allowed uses for each type of Condominium shall be taken into account in determining if a particular activity is a nuisance. In that regard, Retail/Restaurant Condominiums may include restaurant or entertainment uses, involve delivery, preparation, presentation, sale and consumption of merchandise, household products, food and other consumables (including alcohol and tobacco products) as well as ingress and egress of customers or street side activities. Those activities may involve noise (such as machinery, delivery trucks, customer vehicles, employees, music), odors (such as smells, cooking, baking, smoke, exhaust), pests, traffic (such as customers, employees, deliveries), external lighting (such as floodlights on the building facades, streetlights, vehicle lights, parking lights, external lights, neon lights), obstructions (by signs or other developments), retail and commercial events (including sidewalk sales, outside displays, musical or other performances, food tasting, outdoor tables). Notwithstanding anything else in this section, the commercially reasonable operation of Retail/Restaurant Condominiums, the Parking Condominiums, or the Storage Condominium shall not be deemed a nuisance.

3.4 Animals. Normal and customary household pets may be maintained within the Development in compliance with all local ordinances and the following conditions:

(i) there shall be no more than (a) one dog; or (b) two cats; or (c) one dog and one cat maintained by the occupants of any one residence unless otherwise authorized in writing by the Board;

(ii) dogs shall be on a leash at all times and held by a person capable of controlling the dog while within the Common Area, including elevators;

(iii) no animal shall be maintained for any commercial purposes;

(iv) the owner of the animal immediately shall clean up after his or her animal;

(v) after making a reasonable attempt to notify the Owner, the Association or any Owner may cause any unleashed animal found within the Common Area to be removed to a pound or

animal shelter by calling the appropriate authorities. The Owner shall be responsible for all payments required to repossess the animal;

(vi) each Owner authorizing, bringing or keeping a pet within the Development shall be liable to other Owners, their family members, guests, invitees, tenants and contract purchasers and their respective family members, guests and invitees for any damage to persons or property caused by any pet brought upon or kept within the Development by that Owner or by members of his or her family, guests or invitees;

(vii) the Owner shall be responsible for any damage to any Common Area caused by any animal maintained within the Owner's Condominium;

(viii) Owners are required to inform the Association of the type of breed of pet upon commencement of occupancy and provide the Association with proof of rabies vaccination;

(ix) In no event shall any Owner authorize, bring or keep within the Development (a) any pit bull, rottweiler, Doberman pinscher, mastiff, canaria presa or any other breed known as a "fighting breed" or any dog being a mix thereof, or (b) any snakes, pigs, lizards, spiders, rats or vermin; and

(x) the use of the Common Area by animals shall be subject to such Rules as may be adopted by the Board.

The Board, after notice and a hearing, may require the permanent removal from the Development of any animal that the Board, in its discretion, determines is a nuisance, a danger to the health or safety of any occupant, or otherwise interferes with the quiet use and enjoyment of occupants of any Unit. The Board may find that an animal is a nuisance if the animal or the animal's owner continue to violate the Rules regulating animals after receipt of a demand from the Board to comply with the Rules. As provided elsewhere in this Declaration, regardless of the Board's action, an Owner may also separately enforce its rights as against the other Owner that has an animal that violates the Declaration, the Bylaws, or Rules.

3.5 Television or Radio Equipment. No television, video or radio poles, antennae, satellite dishes, cables or other transmission and/or reception fixtures or personal property (individually and collectively the "Antenna Equipment") shall be installed or maintained on any Unit except as follows:

(i) Antenna Equipment that is one meter or less in length or diameter or diagonal measurement, provided that the location, color and screening requirements shall be in accordance with any guidelines imposed by the Architectural Committee, which guidelines shall comply with applicable State and federal laws regulating restrictions on Antenna Equipment; and

(ii) Antenna Equipment not covered under subparagraph (i) above, the installation of which is approved in advance by the Architectural Committee in accordance with the procedures described in **Article 7**.

Under no circumstances shall any Antenna Equipment be installed on the exterior of any Condominium Building, including any exterior wall, railing, deck or floor without the prior written approval of the Board.

Nothing herein shall be construed to restrict in any manner Declarant's or the Board's right to authorize a cable television franchisee or other provider of similar services to provide cable television, satellite dish, radio or other similar services to the Development.

3.6 Signs. Subject to the provisions of **Section 13.11**, the posting or displaying of any signs within the Development is subject to each of the following:

3.6.1 Residential Condominium Signs: Subject to the provisions of **Section 13.11** and Civil Code section 1353.6, no sign of any kind shall be displayed from any Unit that is visible from any other Unit except any sign approved by the Board either on an individual basis or pursuant to the Rules adopted by the Board or as may be otherwise authorized by law.

3.6.2 Retail/Restaurant Signs: No signs of any kind shall be posted or displayed from any Retail/Restaurant Condominium or anywhere else in the Development except normal and customary commercial signage that: (i) complies with applicable State and local ordinances, (ii) is placed within or on the exterior window or within the sign band located on the exterior surface of the building, (iii) there is no movement or flashing if the sign is neon or lighted, and (iv) complies with restrictions on Retail/Restaurant Condominiums, including but not limited to clear window requirements consistent with "active uses," and complies with The Retail/Restaurant Unit Signage Guidelines attached hereto as Exhibit D.

3.7 Clothesline. No exterior clothesline shall be erected or maintained on any Unit; and there shall be no exterior drying or laundering of clothes on any balcony, patio, porch or other outside area of any Unit.

3.8 Window Coverings. The interior surfaces of all windows shall be covered with normal and customary window coverings such as curtains, drapes, shutters or blinds. The exterior side of window coverings shall be white or off-white in color unless approved otherwise in writing by the Architectural Committee.

3.9 Alterations, Modifications or Additions. There shall be no alterations, modifications or additions made to any Unit or any Improvement thereon except in compliance with the provisions of **Article 7**.

3.10 Compliance with Law. No Owner shall permit anything to be done or kept in his or her Unit that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal agency. Nothing shall be done or kept in any Unit that might increase the rate of or cause the cancellation of any insurance maintained by the Association.

3.11 Sound Transmissions. No Unit shall be altered in any manner that would increase sound transmissions, resonances or reverberations to any adjoining or other Unit. This includes, but is not limited to, the replacement, modification or penetration of any floor, ceiling or wall; floor, ceiling or wall insulation or underlayment material, or the penetration of any floor, ceiling or wall, where the change increases sound transmissions, resonances or reverberations to any other Unit.

3.12 Floors. Except as provided in Section 3.15 or as allowed under Article 7 hereof, there shall be no alteration of the floor coverings which will result in an increase in sound transmission into any other Units. Only soft-cover floors (or hard surface floors which meet objective acoustical standards of materials and installations adopted by the Declarant and Association, which do not increase sound transmission classifications adopted by the State of California for condominiums or multi-unit residential properties), after prior consultation and written approval by the Declarant or Association, as the case may be, may be installed on the floor levels located above other Units except for replacement of any hard coverings which were originally sold by Declarant with such hard coverings.

3.13 Noise Abatement

(a) With the exception of kitchen, bathrooms, and foyer, seventy percent (70%) of the floor area of each room and hallway of any Residential or Live/Work Condominium located above any other Residential or Live/Work Condominium shall be covered with carpeting.

(b) Each installation of carpeting shall include carpet padding or carpet cushion which meets or exceeds the specifications for Class 1 padding (heavy Traffic, Residential or Commercial)

referred to in the F.H.A. Bulletin numbered UM47A, dated July 8, 1971, unless otherwise authorized by the Board.

(c) All Hi Fi's, stereos, t.v.'s radios, tape recorders, vacuum cleaners, hair dryers, exhaust fans, exercise equipment or similar noise producing products shall be operated in such a manner that they cannot be heard in any bedroom of any other Unit in the Development during the hours of 11 p.m. to 8 a.m.

ARTICLE 4 - Maintenance and Repair Obligations

4.1 Owner's Maintenance and Repair Obligations. Each Owner shall maintain his or her Unit and all Improvements therein in good condition and repair at all times, including, but not limited to, interior doors and walls (including exterior surfaces of bearing walls located within the Unit), floors, cabinets, appliances, and all electrical, heating, plumbing and other utility fixtures situated within the Unit or partially within the Unit and partially within the Common Area and exclusively serving the Unit, such as electrical outlets. Each Owner, at that Owner's cost, shall periodically clean, maintain and repair any windows, exterior door hardware, and sidelights, including repair and replacement of any window, exterior door hardware, sidelights or screen door.

In addition to the periodic exterior window cleaning by the Association, the Owner and/or lessee of each Retail/Restaurant Condominium shall be responsible for cleaning of the windows serving the Retail/Restaurant Condominium as may be otherwise required to keep the windows clean at all times.

If damage to any of the foregoing is covered by insurance maintained by the Association and not covered under any policy the Owner is required to maintain, the Association, on request from the Owner, shall submit an appropriate claim if the claim exceeds the deductible and shall remit any available insurance proceeds to the Owner on receipt of satisfactory evidence that the proceeds are or will be used for repair. Any deductible amount shall be borne by the Owner. In lieu of filing a claim, the Board may elect to cover the amount that would have been paid through insurance through other funds available to the Association. The Association shall repair any damage to any exterior doors serving a Unit (other than the hardware thereon), provided that if the damage is covered by insurance maintained by the Association, the Owner shall be responsible for paying any deductible amount.

Each Owner shall maintain any Exclusive Use Common Areas appurtenant to that Owner's Unit in a neat and clean condition at all times. Each Owner shall maintain, repair and replace any smoke, natural gas or carbon monoxide detectors located in the Owner's Unit.

The Association shall maintain any automatic fire sprinkler heads located in any Unit, provided that each Owner immediately shall notify the Association of any problems with any automatic sprinkler heads located in the Owner's Unit. In order to reduce the potential for water damage (including mold growth) within the Unit, each Owner shall perform each of the following steps: (i) periodically inspect the Unit for water leaks, other evidence of water intrusion (such as condensation on the windows or walls, water stains or other types of water damage) and for the presence of molds, fungi and their spores (collectively "Mold"); (ii) if any water leaks, water intrusion and/or Mold are detected, immediately take appropriate corrective steps to repair the leak and/or reduce water intrusion and repair any resulting water damage (including the removal of any Mold); (iii) maintain proper ventilation (particularly in the bathrooms) and humidity levels to reduce the risk of water damage (including Mold growth); (iv) periodically inspect refrigerator condensation pans, air conditioners (if applicable) and any other water-retaining appliances to ensure they are properly functioning and not leaking water or otherwise creating water damage to the Unit (including Mold growth); (v) periodically inspect carpeting or similar types of floor covering in bathrooms that may be conducive to Mold growth; (vi) replace heating and air conditioning filters not less frequently than quarterly or as recommended by the manufacturer; and (vii) take such other prudent steps as may be appropriate to prevent water leaks and water intrusion and to repair all leaks, sources of water intrusion and water damage (including Mold growth) within the Unit.

Any electrical wiring, plumbing pipes, drains, flues, heating ducts or other utility equipment that exclusively serves one Unit but is located in the common area shall be maintained and repaired by the association; however, the maintenance, repair and/or replacement costs shall be paid by the owner of the Unit. If the owner fails to pay the cost, the association may levy a reimbursement assessment against the owner's Unit. If the utility equipment serves two or more Units, the costs shall be borne by the association. If the maintenance, repair and/or replacement involves equipment, a portion of which exclusively benefits one Unit and a portion of which benefits two or more Units, the board shall allocate the cost between the Unit owner and the association in a fair and equitable manner.

All Owner maintenance and repair activity in the 410 Jessie Street Condominium Building shall comply with the rights and obligations reserved in Conservation Easement recorded on July 22, 2002 in the official records of the City and County of San Francisco as Document No. 2002-H207524-00, including limitations on physical changes to a Unit or Common Area that may affect the exterior of the building, including the windows, the historic fire escapes, or any other portion of the Condominium Building that alters the façade or jeopardizes the building's listing on the National Register of Historic Places and the California Register of Historic Resources as part of the Hales Department Store (901 Market Street) designation.

If any Owner fails to maintain his or her Unit or Exclusive Use Common Area as required herein, the Association, after notice and hearing as described in the Bylaws, may, but is not obligated to, enter the Unit or Exclusive Use Common Area and perform the necessary maintenance and repair. The Association may levy a reimbursement assessment against the Unit in the manner described in **Section 6.5**.

4.2 Association's Maintenance, Repair and Landscaping Obligations. The Association shall maintain in good condition and repair at all times the Common Area improvements, including, but not limited to, foundations, siding, trim, roofs, exterior doors (other than the hardware thereon), historic fire escapes, staircases (except staircases within a Unit), and trash collection areas. The Association shall be responsible for the periodic cleaning of the exterior surfaces of all Residential Condominium windows.

Unless otherwise maintained or repaired by a governmental entity or public or private utility company, the association shall maintain in good condition and repair all utilities and sanitary sewer and storm drainage facilities situated within the Common Area, including, but not limited to, meters, distribution lines, catch basins, storage tanks, wires, ducts, flues, pumps, boilers, and pipes, but excluding any utility equipment and fixtures located within a Unit or partially within the Common Area and within the Unit, such as electrical outlets.

Certain utilities serving the 410 Jessie Street Condominium Building are located in underground vaults owned by the City and County of San Francisco outside the property line and underneath adjacent sidewalks and/or streets (the "Historic Sidewalk Vaults"), including, but not limited to, steam heat exchange equipment, water pumps and meters and fire pumps. The association shall maintain in good condition and repair all such utilities or facilities in the Historic Sidewalk Vaults unless otherwise maintained or repaired by a governmental entity or public or private utility company.. To the extent any governmental authority imposes fees or other requirements for the on-going use of the Historic Sidewalk Vaults, the Association shall discharge such obligations, as appropriate. Further, should any governmental authority revoke permission to use the Historic Sidewalk Vaults the Association shall be responsible for the relocation of any utilities servicing the 410 Jessie Street Condominium Building and undertake such action as may be appropriate to vacate the Historic Sidewalk Vaults.

Further, under The Restatement to the Memorandum of Development Approval recorded on August 8, 2002 under Recorder's Serial # 2002-H219540-00 there exists a tunnel that connects 901 Market Street to 410 Jessie Street. While such document does not impose obligations to repair or maintain such tunnel, if the Tunnel becomes unsafe or hazardous, or if any governmental entity requires that the Tunnel be closed, filled, removed or altered in any manner, or if the Tunnel should collapse and

cause any damage, the Association shall be responsible for its portion of the Tunnel, measured to the center line of Stevenson Street.

The Association shall have the Common Areas periodically inspected for wood-destroying pests and organisms and shall take appropriate corrective measures therefore.

In order to reduce the potential for water damage (including mold growth), the Association shall perform each of the following steps: (i) periodically inspect all portions of the Common Areas and other areas maintained by the association that are accessible from areas maintained by the association for water leaks, other evidence of water intrusion (such as condensation on windows or walls, water stains or other types of water damage) and for the presence of mold; (ii) if any water leaks, water intrusion and/or mold are detected, immediately take appropriate corrective steps to repair the leak and/or reduce water intrusion and repair any resulting water damage (including the removal of any mold); (iii) maintain proper ventilation within enclosed areas and humidity levels to reduce the risk of water damage (including mold growth); (iv) periodically inspect any water-retaining equipment to ensure that they are properly functioning and not leaking water or otherwise creating water damage (including mold growth) to the Common Areas; and (v) take such other prudent steps as may be appropriate to prevent water leaks and water intrusion and to repair all leaks, sources of water intrusion and water damage (including mold growth).

In addition to the foregoing, the Association shall comply with each of the following in performing the Association's maintenance obligations: (i) the Guidelines described in **Section 4.3**, (ii) commonly-accepted homeowners' maintenance obligations, and (iii) any maintenance or repair recommendations received from Declarant, under the procedures described in **Section 4.7**.

The Association's maintenance and repair obligations shall comply with the rights and obligations reserved as to the 410 Jessie Street Condominium Parcel in Conservation Easement recorded on July 22, 2002 in the official records of the City and County of San Francisco as Document No. 2002-H207524-00, including limitations on physical changes to a Condominium or Common Areas that may affect the exterior of the building, including the windows, the historic fire escapes, or any other portion of the Condominium Building that alters the façade or jeopardizes the building's listing on the National Register of Historic Places and the California Register of Historic Resources as part of the Hales Department Store (901 Market Street) designation.

The Association shall use only duly qualified, and to the extent required by law, duly licensed contractors in the State of California to perform all inspection, maintenance, repair, replacement and upgrade work on any Common Area improvements.

If the Association requires access to a Unit in order to inspect, maintain, repair or replace any Common Area improvements maintained by the Association, including the Utility Facilities described in **Section 2.8**, the Association shall provide the Unit occupants with such prior notice as is reasonable under the circumstances and no less than 96 hours' prior notice except in the event of an emergency. Owners must cooperate with the Association in providing the necessary access. Any Owner failing to cooperate shall be liable for any costs incurred by the Association in rescheduling inspections and any other costs incurred by the Association in maintaining or repairing Improvements that could have been avoided had timely access been granted. The Association may levy a reimbursement assessment as authorized in **Section 6.5** to recover its costs.

4.3 Residential and Live/Work Condominium Trash and Recyclable Items Removal. Each Owner of a Residential or Live/Work Condominium shall be responsible, at the Owner's cost, for transporting all trash & recycling generated from their respective Condominiums to the Residential Trash and Recycling Room located in the ground floor Building Common Area within the 418 Jessie Street Condominium Building. Each Owner of a Residential or Live/Work Condominium in the 410 Jessie Street Condominium Building or the 418 Jessie Street Condominium Building shall be provided a key to access this area either from Stevenson Street or through the rear entryway/stair vestibule of the 418 Jessie Street Condominium Building Common Area. The Association shall be responsible for the

maintenance of the 418 Jessie Street Condominium Building Residential and Live/Work Trash and Recycling Room and for the periodic removal of all trash and recyclable items.

Each Condominium Owner, at that Owner's cost, shall be responsible for the removal of all the trash and recyclable items from that Owner's Condominium to the two trash and recyclable items collection areas. All trash or recyclable items shall be kept only in sanitary containers which containers shall be kept in the areas approved by the Board. Each Owner shall take all appropriate, proper and required precautions to protect Persons and Property from any injuries or damages from the trash or other refuse generated from the Owner's Condominium and shall comply with all laws and ordinances regarding the disposal of any hazardous materials. The Board may adopt Rules regulating the trash collection areas. In addition, if the Board determines, in the Board's sole discretion, that a Condominium is generating trash or recyclable items in excess of the trash or recyclable items generated by other Condominiums, it may either: (i) reallocate trash or recyclable items collection costs so that the Condominium generating the excess trash or recyclable items pays for the excess trash or recyclable items collection or (ii) require the Owner of the Condominium to engage and pay for its own trash or recyclable items collection service, in which case the Owner may no longer use the trash and recyclable items collection areas available to the other Condominiums except as may be authorized by the Board in writing.

4.4 Retail/Restaurant, Parking and Storage Condominium Trash and Recyclable Items Removal. Each Owner of a Retail/Restaurant, Parking or Storage Condominiums in the 410 Jessie Street Condominium Building and the 418 Jessie Street Condominium Building shall be responsible, at the Owner's cost, for transporting all trash & recycling generated from their respective Condominiums to the Commercial Trash and Recycling Room located in the ground floor Building Common Area of the 410 Jessie Street Condominium Building. Owners of the Retail/Restaurant, Parking or Storage Condominiums shall have a key to access this area from Stevenson Street. The Association shall not be responsible for the maintenance of the 410 Jessie Street Condominium Building Commercial Trash and Recycling Room and for the periodic removal of all trash and recyclable items therein. The Owners the Retail/Restaurant, Parking and Storage Condominiums in the 410 Jessie Street Condominium Building and the 418 Jessie Street Condominium Building shall be responsible for the maintenance of the 410 Jessie Street Condominium Building Commercial Trash and Recycling Room and for the periodic removal of all trash and recyclable items therein.

Each Condominium Owner, at that Owner's cost, shall be responsible for the removal of all the trash and recyclable items from that Owner's Condominium to the two trash and recyclable items collection areas. All trash or recyclable items shall be kept only in sanitary containers which containers shall be kept in the areas approved by the Board. Each Owner shall take all appropriate, proper and required precautions to protect Persons and Property from any injuries or damages from the trash or other refuse generated from the Owner's Condominium and shall comply with all laws and ordinances regarding the disposal of any hazardous materials. The Board may adopt Rules regulating the Commercial Trash and Recycling Room. In addition, if the Board determines, in the Board's sole discretion, that any Owner of a Retail/Restaurant, Parking or Storage Condominium in the 410 Jessie Street Condominium Building and the 418 Jessie Street Condominium Building is not maintaining the Commercial Trash and Recycling Room in a manner consistent with any Rules regulating the Commercial Trash and Recycling Room or any laws or ordinances regarding the disposal of hazardous materials, it shall notify the Owner or Owners in writing and provide seven (7) days to cure any violation. If the Owner has not cured the violation the Board may take corrective action to remedy the violation and recover any costs associated with such action by charging the responsible Owner or Owners a Reimbursement Assessment as set forth in **Section 6.5**.

4.5 Utility Meters. Each Owner shall be responsible for charges from the meters assigned to them as follows:

4.5.1 Electricity. Each Unit shall have its own electric meter. The Common Area shall have one or more of its own electric meters.

4.5.2 Water & Sewer. Each Condominium shall have a separate sub-meter for water and sewage. Costs will be treated as discussed in paragraph 6.9.2 herein.

4.5.3 Gas. The Residential Condominiums in the 410 Jessie Street Condominium Building share a common gas meter and the Residential and Live/Work Condominiums in the 418 Jessie Street Condominium Building share a common gas meter. Accordingly, costs for domestic and common area gas usage shall be prorated among the Owners of the Residential and/or Live/Work Condominiums in each Condominium Building based on the estimated square footage that each Residential and/or Live/Work Condominium bears to the total estimated square footage of all Residential and/or Live/Work Condominiums in that Condominium Building, using the applicable estimated square footages in Exhibit B. Each Retail/Restaurant Condominium shall have a separate gas meter and shall pay the costs of their individual usage directly to the gas provider. The Parking and Storage Condominiums do not have access to gas and shall not have gas meters.

4.5.4 Additional Meters. The Board may install at its election either BTU meters or flow meters so as to individually meter gas, water, or electricity used by each Unit, to the extent not already provided, in order to recoup from a Unit owner when a particular Unit does, or can reasonably be expected to, use more than an average amount of utilities.

No Owner shall connect with electric current, except through existing electrical outlets in the Unit(s), any apparatus or device, for the purpose of using electric current. If Owner requires water, gas or electric current in excess of that usually furnished or supplied for use of the Unit(s), the Owner shall first procure the written consent of the Association (which the Association may reasonably refuse to give) to use thereof, and the Association may cause a separate water, gas, or electrical current meter to be installed in the Unit to measure the amount of water, gas, and electric current consumed for any such use. The cost of installation, maintenance and repair of any such meters shall be paid by owner. Owner will pay to Association, promptly upon demand, of all such water, gas and electric current consumed as shown by the meters, at the rates charged for such services by the local public utility furnishing the same, plus any additional expense incurred in keeping account of the water, gas and electric current so consumed. If a separate meter is not installed, such excess cost for such water, gas and electric current may be established and adjusted from time to time by an estimate made by a utility company or electrical engineer.

4.6 Maintenance Responsibility List. Attached to this Declaration as Appendix I is a list that identifies whether the Association or the Condominium Owner is responsible for the maintenance and repair of certain items located in or in close proximity to a Unit. The purpose of this List is to identify certain items maintained either by the Association or the Owner as described in **Sections 4.1 and 4.2**. It is not intended to change the allocations. The Board from time to time may update Appendix I by recording an amended Appendix I in the records of the City and County of San Francisco, California. The consent of the Members is not required as long as the allocation of the maintenance and repair responsibilities as reflected in the amended Appendix I is consistent with the allocation responsibilities described in **Sections 4.1 and 4.2**.

4.7 Inspection and Maintenance Guidelines and Schedules. Declarant shall provide each Owner and the Association with inspection and maintenance guidelines and schedules, including manufacturers' guidelines and schedules, for the inspection and maintenance of certain Improvements and personal property situated within the Development (collectively the "Guidelines"). Each Owner and the Association shall retain the Guidelines and shall take all appropriate steps to implement and comply with the Guidelines as required herein. Each Owner, on the transfer of the Owner's Residential Condominium, shall deliver the Guidelines or complete copies thereof to the transferee on or before title is transferred. Replacement copies of the original Guidelines prepared by Declarant may be obtained from Declarant. Declarant may charge a reasonable fee for providing replacement copies.

The Board periodically and at least once every three years shall review and update the Guidelines for all Improvements maintained by the Association, which may be done in conjunction with

the preparation of the reserves study described in **Section 6.3**. The Board shall retain copies of the Guidelines, including all revisions, and shall provide copies of Guidelines pertaining to Improvements maintained by the Owner, to any new Owner within the Development within 60 days of the date of transfer of title to the new Owner.

4.8 Cooperation and Access. Each Owner and occupant shall fully cooperate with the agents of the Association in the performance of the Association's maintenance and repair obligations described in **Section 4.2** above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance or repair problems for which the Association is responsible and access to the Owner or occupant's Condominium and Exclusive Use Common Areas as may be necessary to inspect and, if appropriate, to perform any necessary maintenance or repairs.

If the Owner fails to maintain the insurance required under **Section 8.8** or fails to submit a claim under the policy or remit the appropriate share of the proceeds, the Association may take such action as the Board deems appropriate to recover any damages incurred by the Association as a result of such failure, including levying and collecting a reimbursement assessment and/or seeking other appropriate legal or equitable relief.

4.9 Reimbursement and Indemnification. If the Association incurs any maintenance or repair costs because of the willful or negligent act or omission of any Owner or occupant or their family members, guests, agents or pets (including, but not limited to, any damage to the Building Common Area caused by a water leak or overflow from the Owner's Unit), the Association shall charge the cost to the Owner of the Condominium responsible for the costs and may levy a reimbursement assessment as described in **Section 6.5**. The Owner immediately shall pay the charge or reimbursement assessment to the Association, together with interest thereon at the rate of 12% per annum, but not in excess of the maximum rate authorized by law. If the Owner disputes the charge, the Owner shall be entitled to notice and a hearing as provided in **Section 5.6.4**. The Association shall not charge the Owner to the extent that the cost is met through insurance maintained by the Association, provided that any deductible amount shall be paid by the Owner.

4.10 Declarant Inspection Rights. Declarant reserves the right, but not the duty, during the period commencing on the date Declarant transfers title to the last Condominium in the Development and terminating on the 11th anniversary date thereof to have access no less than two times per year to all portions of the Development maintained by the Association by Declarant's agents for purposes of inspecting the Improvements maintained by the Association, including, but not limited to: roofing system, flashing, caulking, structural components, life safety systems, windows, central boiler, elevators, and electrical and plumbing systems. The Association shall provide Declarant's agent with access to the Development to conduct the inspections no later than 5 calendar days after receiving a request for such access.

On completion of each inspection, a report shall be prepared regarding the quality of the maintenance and, if applicable, recommendations for maintenance, repair or replacement. A copy of the report shall be provided to the Association. If the report contains maintenance, repair or replacement recommendations, the Association shall implement the recommendations within the recommended time frame set forth in the report.

Nothing herein establishes any obligation on Declarant or any agent of the Declarant to conduct inspections or provide reports. In addition, the extent of the inspection shall be at the sole discretion of the Declarant. Declarant assumes no duty or liability to inspect all the Common Area improvements maintained by the Association and assumes no duties or liabilities in connection with Declarant's failure to uncover any defect, damage or maintenance or repair omission by the Association during any inspection conducted by Declarant.

ARTICLE 5 - The Association

5.1 Formation of the Association. The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. The Association shall commence operations no later than the date that assessments commence. Pending the commencement of the Association's operations, Declarant shall perform the duties and shall have the rights of the Association as described herein.

5.2 Governing Body. The governing body of the Association shall be the Board. It shall be the responsibility of the Board to ensure that the Association exercises its rights and performs its duties as described within this Declaration, the Articles, the Bylaws and any amendments thereto.

5.3 Membership. Each Owner shall automatically be a Member of the Association. If there is more than one fee title Owner of a Condominium, each Owner shall be a Member. The holder of a security interest in a Condominium shall not be a Member of the Association except and until that holder obtains both the legal and equitable interest in the Condominium. If any Owner executes an installment contract of sale for the sale of that Owner's Condominium, the purchaser shall become the Member if the contract is recorded in the public records and if the Association is notified in writing of the contract, and the Owner shall no longer be a Member. If the Purchaser's rights are terminated under the contract without transfer of title to the Purchaser, the Board, upon receipt of satisfactory evidence of the termination of the Purchaser's rights, shall reinstate the Owner as the Member; and the Purchaser shall no longer be a Member. Membership shall be appurtenant to the Condominium and may not be separated therefrom. Any transfer of an Owner's interest in a Condominium (other than a security interest), by operation of law or otherwise, automatically transfers the membership to the Owner's successor in interest. No Owner may resign or revoke his or her membership for any reason.

5.4 Membership Classes and Voting Rights. The Association shall have the following two classes of voting memberships:

5.4.1 Class A. Class A Members are all Owners except the Declarant. Class A Members shall be entitled to one vote for each Condominium in which he or she owns an interest. If more than one Owner owns an interest in a Condominium, only one vote may be cast with respect to that Condominium.

5.4.2 Class B. The Class B Member shall be the Declarant, who shall be entitled to three votes for each Condominium owned by the Declarant. Class B membership shall cease and be irreversibly converted to Class A on the first to occur of the following:

- (a) the total outstanding votes held by the Class A Members equal the total outstanding votes held by the Class B Members; or
- (b) the second anniversary of the first conveyance of a Condominium in the Development.

Voting rights shall vest at the time that assessments are levied against the Owner's Condominium.

Except as set forth below, all matters requiring the approval of the Members shall be approved if: (i) approved by a majority of the votes cast either in person or by proxy at a duly-held regular or special meeting at which a quorum was present; (ii) approved by a majority of the written ballots cast in compliance with the requirements of Corporations Code section 7513 or any successor statute thereto; or (iii) approved by unanimous written consent of all the Members. Notwithstanding the foregoing, approval by the Members shall be subject to each of the following:

(1) Two Membership Classes. As long as two classes of voting membership exist, any action by the Association that requires approval by the Members shall require approval by the members of each class.

(2) Single Membership Class/Declarant-Owned Condominiums. If one class of voting membership exists and Declarant owns any Condominiums, any action by the Association that requires approval by the Members shall require approval by the Members including Declarant's vote(s) and approval by the Members excluding Declarant's votes.

(3) Greater Than a Majority. If, under the terms of this Declaration, a particular action requires approval by more than a majority, the action shall be approved by the Members only if the required percentage of votes approves the action.

(4) Completion Bond and Claims Against Declarant. Votes of the Declarant shall be excluded as provided in Sections 5.11 and 5.14 of this Declaration.

(5) Amendments. Member approval requirements for any amendments to this Declaration, the Articles or Bylaws shall comply with the amendment requirements set forth in the applicable document.

(6) Legal Requirements. If the voting requirements and/or procedures conflict with any applicable statutory requirements, the statutory requirements shall control.

5.5 Joint Ownership Votes. The vote that is attributed to each Condominium may not be cast on a fractional basis. If the Condominium has more than one Owner and the Owners are unable to agree as to how the vote shall be cast, the vote shall be forfeited on the matter in question. Any vote cast by an Owner for any Condominium is presumed conclusively to be the vote cast by all the Owners of that Condominium. If more than one Owner casts a vote attributed to a Condominium on any matter on which only one vote could be cast for that Condominium, the votes cast by such Owners shall be counted as one vote if the votes are the same; and if the votes are different, the vote cast by such Owners shall not be counted and shall be forfeited.

5.6 Powers of the Association. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the general nonprofit mutual benefit corporation laws of California, subject only to such limitations on the exercise of these powers as are set forth in the Articles, Bylaws and this Declaration. The Association shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Association under this Declaration, the Articles and the Bylaws and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including, without limitation, each of the following:

5.6.1 Levying Assessments: The Board shall establish, fix and levy assessments against the Condominiums and collect and enforce payment of such assessments in accordance with the provisions of **Article 6** of this Declaration.

5.6.2 Adopting Rules: The Board may adopt, amend and repeal Rules as it considers appropriate. Rules shall apply generally to the management and operation of the Development and/or the conduct of the business and affairs of the Association and may regulate the use and enjoyment of the Common Area, the use of any commonly-metered utilities that are paid by the Association and such other matters as are authorized in this Declaration. The Rules shall satisfy the requirements of Civil Code section 1357.110 and, to the extent applicable, the procedural requirements for the adoption, amendment or repeal of the Rules as set forth in Civil Code section 1357.130 and for the reversal of Rules as set forth in Civil Code section 1357.140. A copy of the Rules as adopted, amended or repealed shall be mailed or otherwise delivered to each Owner; and a copy shall be posted in a conspicuous place within the Development if an appropriate space is available for such posting. If any provision of this Declaration, the

Articles or the Bylaws is inconsistent with or materially alters any Rules, this Declaration, the Articles and the Bylaws shall control to the extent of any such inconsistencies. Members shall have the same access to the Rules as they have to the accounting books and records of the Association.

Such Rules shall take account of the different uses permitted in Residential Condominiums, Retail/Restaurant Condominiums, Live/Work Condominiums, Parking Condominiums, and Storage Condominium, and may provide different standards or requirements for the different types of Condominiums to allow for their different permitted uses. In that regard, the Board retains discretion to enact "Retail/Restaurant Rules," "Residential Rules," "Live/Work Rules" to the extent it deems that desirable or necessary. However, the Board may not adopt Rules that restrict the commercially reasonable permitted uses of Residential Condominiums, Retail/Restaurant Condominiums, Live/Work Condominiums, Parking Condominiums, and the Storage Condominium, as defined herein, without at least two thirds of the voting power of such condominium type affirmatively agreeing to such change in Rules applicable to that condominium type.

Any Rules adopted by the Board shall apply to all Owners or occupants within the areas to which they apply in a uniform and nondiscriminatory manner. The Board may adopt a Rule as the result of an act or omission of any Owner or occupant or their family members or guests or a Rule that does not directly affect all Owners or occupants in the same manner as long as the Rule applies to all Owners or occupants within the areas to which they apply.

5.6.3 Borrowing Money: The Board may borrow money to meet any anticipated or unanticipated cost of the Association and, subject to the provisions of **Section 5.12(ix)**, may mortgage, encumber or pledge Association assets (including, but not limited to, assessments) as security for such borrowing.

5.6.4 Imposing Disciplinary Action: In addition to any other enforcement rights described in this Declaration and the Bylaws or as may be authorized by law and subject to the due process requirements imposed by this Declaration, the Bylaws or by law, the Board may take any of the following actions against any Person whose act or failure to act violates or threatens to violate any provisions of this Declaration, the Bylaws or Rules: (a) impose monetary penalties, including late charges and interest; (b) suspend voting rights in the Association; and (c) commence any legal or equitable action for damages, injunctive relief or both. Subject to the provisions of **Section 13.9**, the determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any Owner who consents; and, except as otherwise provided herein, the prevailing party in such action shall be entitled to recover costs and reasonable attorneys' fees. The Board, in its sole discretion, may resolve or settle any dispute, including any legal action in which the Association is a party, under such terms and conditions as it considers appropriate.

(i) If the Board adopts a policy imposing monetary penalties, including any fee on any Member for a violation of the governing documents or the Rules, including any monetary penalty relating to the activity of a guest or invitee of a Member, the Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed. The Board may change the schedule from time to time and shall distribute a notice of such changes to the Members in the same manner as the schedule of penalties.

(ii) The imposition of any disciplinary action, including, but not limited to, the imposition of monetary penalties or the suspension of use and/or voting privileges except as otherwise noted herein, shall be subject to the following procedures and requirements:

(a) **Notice of Hearing:** Prior to the time the Board meets to consider or impose discipline upon a Member, the Board shall notify the Member, by either personal delivery or first-class mail, at least 15 days prior to the meeting. The notice shall contain, at a minimum, the date, time and place of the meeting, the nature of the alleged violation for which the Member may be disciplined, and a statement that the Member has a right to attend and may address the Board at the meeting.

(b) **Hearing:** If requested by the Member, the Board shall conduct the disciplinary proceeding in executive session. The Member, the Member's legal counsel, and the Association's legal counsel shall be entitled to attend the executive session meeting. The Board may interview witnesses and other interested parties in executive session.

(c) **Notice of Action Taken:** If the Board elects to impose discipline on the Member, the Board shall notify the Member of the disciplinary action within ten days following the election to impose the disciplinary action.

(d) **No Forfeiture:** Under no circumstances may the Association cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Condominium on account of the failure of the Owner to comply with the provisions of this Declaration, Articles, Bylaws or Rules, except by judgment of a court or decision of an arbitrator or on account of a foreclosure or sale under power of sale for failure of the Owner to pay assessments duly levied by the Association.

(e) **Assessment Charges:** The provisions of this **Section 5.6.4** do not apply to charges imposed against a Member for reasonable late payment penalties or charges to reimburse the Association for loss of interest and for costs reasonably incurred (including attorneys' fees) in collecting delinquent assessments.

5.6.5 Delegating Duties: Except as may be limited by the Bylaws, the Board may delegate any of the Association's powers and duties to its employees, committees or agents, including a professional management agent.

5.6.6 Implementing Special Fees: The Board may implement special fees to reimburse the Association for special costs incurred as a result of actions taken by Owners. By way of example, the Association may establish a moving fee to reimburse the Association for excess trash collection costs resulting from the move. Fees not paid in a timely manner may be collected through a reimbursement assessment levied against the Owner's Condominium.

5.6.7 Dispute Resolution Procedures: The Board shall implement dispute resolution procedures for disputes between the Association and a Member involving the rights, duties or liabilities under the Governing Documents, the Davis-Stirling Common Interest Development Act (Civil Code sections 1350-1376) or the Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8910) that comply with the requirements of Civil Code sections 1363.810 through 1363.850.

5.7 Duties of the Association. In addition to the duties described in the Articles or Bylaws, or elsewhere in this Declaration, the Association shall have the duty to manage the Common Areas; perform the maintenance as described in **Section 4.2**; prepare, periodically update, and comply with the maintenance and inspection guidelines described in **Section 4.3**; prepare and distribute financial statements, reports and the other documents and notices described in **Section 5.10**; enforce bonded obligations as described in **Section 5.11**; levy and collect assessments as described in **Article 6**; prepare when required the reserve studies described in **Section 6.3** and annually review and implement adjustments as required; and procure, maintain and review the insurance as described in **Article 8**. The Association shall perform such other acts as may be reasonably necessary to exercise its powers to perform its duties under any of the provisions of this Declaration, the Articles, Bylaws, Rules or Board resolutions.

5.8 Taxes and Assessments. The Association shall pay all real and personal property taxes and assessments and all other taxes levied against the Association, the Common Area or the personal property owned by the Association. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

Until such time as real property taxes against the Property are segregated so that real property taxes are assessed against each Condominium (in addition to any supplemental tax assessments levied against any Condominium), the non-segregated tax amount shall be allocated among all the Condominiums in the same manner that regular assessments are allocated as described in **Section 6.9** and if any portion of the regular assessments are prorated among the Condominiums, the non-segregated tax amount shall be allocated in the same manner. The Association shall take all appropriate steps to collect each Condominium's allocable share so that the non-segregated taxes may be paid in a timely and proper manner. The Association may levy a special assessment against the Condominiums to collect the non-segregated tax amount. Any Owner who breaches the Owner's duty to pay the Owner's allocable share in a timely and proper manner shall be liable for any penalties, interests, fees or other such costs incurred as a result of the breach.

5.9 Utility Service to the Common Areas. The Association shall acquire, provide and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas and other necessary utility services for the Common Area and any other Association property.

5.10 Reporting and Notice Requirements. The Association shall prepare and distribute the documents described in this **Section 5.10**. The reporting requirements incorporate the requirements imposed on homeowners associations under the Davis-Stirling Common Interest Development Act ("Act") in effect as of January 1, 2007. If the reporting requirements in the Act are subsequently amended, the reporting requirements in the Act, as amended, shall apply.

5.10.1 Pro Forma Operating Budget. A pro forma operating budget for each fiscal year shall be distributed not less than 30 days nor more than 90 days before the beginning of the fiscal year consisting of at least the following:

(1) Estimated revenue and expenses on an accrual basis.

(2) A summary of the Association's reserves based on the most recent reserves review or study conducted pursuant to **Section 6.3**, based only on assets held in cash or cash equivalents, which shall be printed in bold type and shall include the following:

(A) the current estimated replacement cost, estimated remaining life and estimated useful life of each major component which the Association is obligated to maintain (collectively the "Major Components");

(B) as of the end of the fiscal year for which the study was prepared:

(i) the current estimate of cash reserves necessary to repair, replace, restore or maintain the Major Components;

(ii) the current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the Major Components; and

(iii) if applicable, the amount of funds received from either a compensatory damage award or settlement to the Association from any Person for injuries to property, real or personal, arising out of any construction or design defects and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to **Section 5.10.1(2)(B)(ii)**. In lieu of complying with the foregoing requirements, if the Association is obligated to issue a review of its financial statement pursuant to **Section 5.10.2** below, the Association may include in the review a statement containing all of the information required by this **Section 5.10.1(2)(B)(iii)**;

(C) the percentage that the amount in **Section 5.10.1(2)(B)(ii)** is to the amount in **Section 5.10.1(2)(B)(i)**; and

(D) the current deficiency in reserve funding expressed on a per Condominium basis. The figure shall be calculated by subtracting the amount determined for purposes of **Section 5.10.1(2)(B)(ii)** from the amount determined for purposes of **Section 5.10.1(2)(B)(i)** and then dividing the result by the number of separate interests within the Association, except that if assessments vary by the size or type of ownership interest, then the Association shall calculate the current deficiency in a manner that reflects the variation.

(3) A statement as to both of the following:

(A) whether the Board has determined to defer or not undertake repairs or replacement of any Major Component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement;

(B) whether the Board, consistent with the reserve funding plan adopted pursuant to Civil Code section 1365.5(e), has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any Major Component or to provide adequate reserves therefor; and if so, the statement shall also set out the estimated amount, commencement date and duration of the assessment;

(C) the mechanism or mechanisms by which the Board will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacement or repair, or alternative mechanisms; and

(D) whether the Association has any loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment and when the loan is scheduled to be retired.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement or additions to the Major Components. The report shall include, but need not be limited to, reserve calculations made using the formula described in Civil Code section 1365.2.5(b)(4) and may not assume a rate of return on cash reserves in excess of 2 percent above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

In lieu of the distribution of the pro forma operating budget, the Board may elect to distribute a summary of the budget to all its Members with a written notice in at least 10-point bold type on the front page of the summary that the budget is available at the Association's business office or another suitable location within the boundaries of the Development and that copies will be provided on request and at the expense of the Association. If any Member requests a copy of the pro forma operating budget to be mailed to the Member, the Association shall provide the copy to the Member by first-class mail at the expense of the Association, which copy shall be mailed within five days of the receipt of the request.

5.10.2 Reserve Funding Plan Summary. Commencing January 1, 2009, a summary of the reserve funding plan adopted by the Board, as specified in Civil Code section 1365.5(e)(4). The summary shall include notice to Members that the full reserve study plan is available upon request and the Association shall provide the full reserve plan to any Member upon request.

5.10.3 Financial Statement Review. A review of the financial statement of the Association shall be prepared in accordance with Generally Accepted Accounting Principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income of the Association exceeds \$75,000. A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

5.10.4 Policies and Practices Statement. A statement of the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of assessments. A copy of this statement shall be distributed to each Owner and any Mortgagee no less than 30 days nor more than 90 days immediately preceding the beginning of each fiscal year.

5.10.5 Governing Documents. Copies of this Declaration, the Articles, Bylaws, Rules and other applicable documents as required by Civil Code section 1368(a) shall be provided any Owner within ten days of the mailing or delivery of a written request. The items required to be made available pursuant to this **Section 5.10.5** may be maintained in electronic form and requesting parties shall have the option of receiving them by electronic transmission or machine readable storage media if the Association maintains these items in electronic form. The Board may impose a fee to provide these materials but not to exceed the Association's reasonable costs in preparing and reproducing the material.

5.10.6 Minutes. A statement describing the Members' rights to obtain copies of the minutes of meetings of the Board, including a description of how and where these minutes may be obtained shall be distributed to the Members at the time the Pro Forma Operating Budget described in **Section 5.10.1** is distributed to the Members.

5.10.7 Dispute Resolution Summary. A dispute resolution summary shall be provided to the Members either at the time the Pro Forma Operating Budget described in **Section 5.10.1** is distributed to Members or in the manner set forth in Corporations Code section 5016 and shall include a description of the Association's internal dispute resolution procedures required by Civil Code section 1363.850 and the following statement:

Failure by any member of the Association to comply with the dispute resolution requirements of Civil Code section 1369.520 may result in the loss of your rights to sue the Association or another member of the Association regarding enforcement of the governing documents.

5.10.8 Insurance Summary. A summary of the Association's property, general liability, earthquake, flood and fidelity policies, if any (individually and collectively referred to as the "Policy" or "Policies"), shall be distributed to the Members not less than 30 days nor more than 90 days preceding the beginning of the Association's fiscal year. The summary shall include the following information on the Policies:

- (A) the name of the insurer;
- (B) the type of insurance;
- (C) the Policy limits of the insurance; and
- (D) the amount of deductibles, if any.

The Association, as soon as reasonably practical, shall notify its Members by first-class mail if any of the Policies have been cancelled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any Policy. If the Association receives any notice of non-renewal of a Policy, the Association immediately shall notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

To the extent that the information required to be disclosed as described in this **Section 5.10.8** is specified in the insurance policy declaration page, the Association may meet its disclosure obligations by making copies of that page and distributing copies to all its Members.

The summary required in this **Section 5.10.8** shall contain, in at least 10-point boldface type, the following statement:

This summary of the Association's policies of insurance provides only certain information as required by subdivision (e) of section 1365 of the Civil Code and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Association member, upon request and reasonable notice, may review the Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property, or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage.

5.10.9 Assessment/Foreclosure Notice. A written notice regarding assessments and foreclosures required by Civil Code section 1365.1(b) shall be distributed to each Member during the 60-day period immediately preceding the beginning of the Association's fiscal year. The notice shall be printed in at least 12-point type.

5.10.1 5.10.10 Architectural Approval/Dispute Resolution Procedure Notices. The Association shall annually provide the Members with notice of the requirements for approval by the Architectural Committee in accordance with the procedures described in **Article 7** for physical changes to the Condominiums. The notice shall describe the types of changes that require approval, shall include a copy of the procedure used to review and approve or disapprove a proposed change, and shall include a description of the dispute resolution procedures implemented by the Board as required under **Section 5.6.7**.

Such requirements shall take account of the different uses permitted in Residential Condominiums, Retail/Restaurant Condominiums, Live/Work Condominiums, Parking Condominiums, and the Storage Condominium, and may provide different standards or requirements for the different types of Condominiums which to allow for those differential permitted uses.

As to the 410 Jessie Street Condominium Parcel, such requirements shall be consistent with the rights and obligations reserved in Conservation Easement recorded on July 22, 2002 in the official records of the City and County of San Francisco as Document No. 2002-H207524-00, including limitations on physical changes to a Condominium or Common Area that may affect the exterior of the building, including the windows, the historic fire escapes, or any other portion of the Condominium Building that alters the façade or jeopardizes the building's listing on the National Register of Historic Places and the California Register of Historic Resources as part of the Hales Department Store (901 Market Street) designation.

5.10.11 Secondary Notice Address. A Member may provide written notice by facsimile transmission or United States mail to the Association of a secondary address. If a secondary address is provided, the Association shall send any and all correspondence and legal notices required, pursuant to Civil Code sections 1365 through 1365.1, 1365.2, 1365.2.5 and 1365.5, to both the primary and the secondary address.

5.11 Enforcement of Bonded Obligations. If the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of the Declarant or a successor or assign to complete the Common Area improvements not completed at the time the California Department of Real Estate issued a final subdivision report, the Board will consider and vote on

the question of action by the Association to enforce the obligations under the Bond with respect to any Improvement for which a notice of completion has not been filed by the later of: (i) 60 days after the completion date specified for that Improvement in the "planned construction statement" appended to the Bond; or (ii) 30 days after the expiration of any written extension given by the Association. If the Board fails to consider and vote on the action to enforce the obligations under the Bond, or if the Board decides not to initiate action to enforce the obligations under the Bond, then on receipt of a petition signed by Owners representing not less than 5% of the total voting power of the Association, the Board shall call a special meeting of Owners for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the Bond. The Board shall give written notice of the meeting to all Owners entitled to vote in the manner provided in this Declaration or in the Bylaws for notices of special meetings of Owners. The meeting shall be held not less than 35 days nor more than 45 days after receipt of the petition. At the meeting, the vote in person or by proxy by a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the Bond shall be considered the decision of the Association; and the Board shall implement this decision by initiating and pursuing appropriate action in the name of the Association.

Upon satisfaction of the Declarant's obligation to complete the Common Area improvements, the Board shall acknowledge in writing that it approves the release of the bond and shall execute any other documents or instruments as may be necessary or advisable to effect the release of the Bond. The Board shall not condition its approval to release the Bond on the satisfaction of any condition other than the completion of the Common Area improvements as described on the "planned construction statement". Any dispute between the Declarant and the Association regarding the release of the Bond shall be resolved in accordance with the Bond escrow instructions or, if these instructions are not operative for any reason, in accordance with the procedures of **Article 12**.

5.12 Limitations on Authority of the Board. Except as may be provided for elsewhere in this Declaration, the Association is prohibited from taking any of the following actions:

(i) except as otherwise provided in law, or order of the court, or an order pursuant to a final and binding arbitration decision, the Association shall not deny an Owner or occupant physical access to his or her Condominium, either by restricting access through the Common Areas to the Owner's Unit or by restricting access solely to the Owner's Unit;

(ii) the Association may not voluntarily assign or pledge the Association's right to collect payments or assessments or to enforce or foreclose a lien to a third party except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or State law when acting within the scope of that charter or license as security for a loan obtained by the Association; however, the foregoing provision may not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection;

(iii) adopt a Rule or regulation that arbitrarily or unreasonably restricts an Owner's ability to market the Owner's Condominium; or

(iv) establish an exclusive relationship with a real estate broker through which the sale or marketing of Condominiums is required to occur. This restriction does not apply to the sale or marketing of Common Areas owned by the Association.

Furthermore, the Board shall not take any of the following actions except with the consent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code section 7513 or any successive statute thereto, of a simple majority of the Members other than Declarant constituting a quorum of more than 50% of the voting power of the Association residing in Members other than the Declarant:

(v) incur aggregate expenditures for capital Improvements to the Common Area in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year;

(vi) sell during any fiscal year property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that fiscal year;

(vii) pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business, provided that the Board may reimburse a member or officer for expenses incurred in carrying on the business of the Association;

(viii) enter into a contract with a third person to furnish goods or services for the Common Area or the Association for a term longer than one year with the following exceptions:

(a) a management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration;

(b) a contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission, provided the term does not exceed the shortest term for which the supplier will contract at the regulated rate;

(c) prepaid casualty or liability insurance policies not to exceed three years' duration, provided the policy permits for short rate cancellation by the insured;

(d) agreements for cable television services and equipment or satellite dish television services and equipment not exceeding five years in duration, provided the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of 10% or more;

(e) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not exceeding five years' duration, provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of 10% or more; and

(f) a contract for a term not to exceed three years that is terminable by the Association after no longer than one year without cause, penalty or other obligation upon 90 days written notice of termination to the other party; or

(ix) borrow money secured by any Association assets as authorized under **Section 5.6.3.**

5.13 Notice of Significant Legal Proceedings. Notwithstanding anything herein to the contrary, not later than 30 days prior to the filing of any civil action against the Declarant or other developer for alleged damage to the Common Area, alleged damage to the separate interests that the Association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the Common Area or separate interests that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member of the Association. The notice shall specify the date and location of the meeting and both of the following:

(i) that a meeting will take place to discuss problems that may lead to the filing of a civil action; and

(ii) the options, including civil actions, that are available to address the problems.

If the Board in good faith determines that there is insufficient time to provide prior notice to the Members as required herein prior to the expiration of any applicable statute of limitations, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association, provided that as soon as is reasonably practical thereafter, and not later than 30 days following the commencement of the proceeding, the Board shall provide the Members with notice as required herein.

5.14 Claims Against Declarant. The sole and exclusive authority to initiate claims on behalf of the Association in connection with Improvements or landscaping maintained by the Association shall rest with the Board members elected solely by Class A Members described in **Section 5.4.1** of this Declaration (the "Non-Declarant Directors"). Any Non-Declarant Director may at any time request a meeting for the purpose of discussing, inspecting, investigating and/or initiating any such claims. Notice of the meeting shall be sent in the same manner as notice for special meetings of the Board. Any member of the Board appointed by Declarant or elected by votes cast by Declarant shall be entitled to attend the meeting but shall not be entitled to vote. The meeting shall be open for all Members of the Association unless the Non-Declarant Directors adjourn to an executive session as authorized by the Bylaws. The decision of a majority of the Non-Declarant Directors shall control. If the Non-Declarant Directors elect to initiate a claim, the authority to initiate a claim also shall require the approval of the votes cast by a majority of the Class A Members present in person or by proxy at a duly-held meeting. Any Non-Declarant Director may call a special meeting of the Members for this purpose. For purposes of this **Section 5.14**, if the Class B membership has been converted to Class A membership as described in **Section 5.4**, the quorum requirements shall be based on the total votes of the Class A Members other than the votes held by Declarant and the Declarant votes shall not count for approval or disapproval purposes. The claim is subject to the provisions and procedures set forth in **Article 12**. If requested by the Non-Declarant Directors, the Association shall provide the administrative support for the notice and conduct of its meetings and any meeting of the Members called to approve the initiation of a claim. In addition, the Association shall provide such reasonable financial support as may be necessary in order for the Non-Declarant Directors to inspect, investigate and/ or initiate the claim on behalf of the Association, subject to the applicable requirements and procedures set forth in **Sections 5.13, 6.6** and **Article 12**. The provisions of this **Section 5.14** are effective automatically on the date the first Non-Declarant Director is elected to the Board.

5.15 Access to Association Records. The Association shall comply with the requirements of Civil Code section 1365.2 in making the "Association Records" and "Enhanced Association Records", as defined in Civil Code section 1365.2(a), available for copy and inspection unless exempt under the provisions of Civil Code section 1365.2(n).

ARTICLE 6 - Assessments

6.1 Obligations to Pay Assessments. The Owner of each Condominium is obligated to pay any assessments levied against that Owner's Condominium on or before the due date of the assessment. If there is more than one Owner of the Condominium, the obligation is joint and several. Each Owner on acceptance of a deed to a Condominium automatically personally assumes the obligation to pay any assessments against the Owner's Condominium (including, but not limited to, any portion of the annual regular assessment not yet due and payable) and agrees to allow the Association to enforce any assessment lien established hereunder by nonjudicial proceedings under the power of sale or by any other means authorized by law. The Owner shall be liable for the full assessment levied against that Owner's Condominium regardless of the Owner's possession or use of the Condominium, the Common Area or any services rendered by the Association. The Owner has no right or power to commit or omit any act, such as waiving the right to use the Common Area, in an attempt to eliminate or reduce the assessments against that Owner's Condominium. An assessment shall be both a personal obligation of the Owners of the Condominium against which the assessment is levied and, on the recordation of a notice of delinquent assessment, a lien against the Condominium. Any Owner who transfers a Condominium shall remain personally liable for any unpaid assessments that accrued on or before the date of the transfer. No Owner shall be liable for any defaults of the Owner's predecessor in interest in the payment of any assessment that has accrued prior to the Owner taking title to the Property unless that Owner expressly assumes the obligation to cure the delinquent assessments. Notwithstanding the foregoing, any Owner who takes title to a Condominium on which a lien for a delinquent assessment has been established will take title subject to the lien and the Association's enforcement remedies as a result thereof unless the Owner takes title under a foreclosure or trustee sale resulting from a foreclosure or exercise of a power of sale under a Mortgage, deed of trust, or other lien recorded before the recordation of the notice of delinquent assessment and except as provided in Section 10.3.

6.2 Annual Regular Assessment. Prior to the beginning of each fiscal year of the Association, the Board shall meet for the purpose of establishing the annual regular assessment for the forthcoming fiscal year. At such meeting, the Board shall review the preliminary pro forma operating budget prepared for the forthcoming fiscal year, any written comments received from Members and Mortgagees, and such other related information that has been made available to the Board. After making any adjustments that the Board considers appropriate and subject to such Member approval as may be required by **Section 6.6**, the Board will establish an annual regular assessment for the forthcoming fiscal year. Each annual regular assessment shall include a portion for reserves as described in **Section 6.3**.

If the Board for any reason fails to take the appropriate steps to establish the annual regular assessment for the next fiscal year, the annual regular assessment for the preceding fiscal year shall continue in effect subject to the Board's right at anytime during the next fiscal year to adjust the assessment pursuant to the procedures described herein.

6.3 Reserves, Reserve Accounts and Reserves Study. Each annual regular assessment shall include a portion for reserves in such amount as the Board in its discretion considers appropriate to meet the cost of the future repair, replacement or additions to the Major Components as described in **Section 5.10.1** that the Association is obligated to maintain and repair. For all purposes in this Declaration and in the Bylaws, reserve accounts shall mean: (i) the funds that the Board has identified for the foregoing purposes ("Regular Reserve Funds") and (ii) the funds received and not yet expended or disposed from either a compensatory damage award or settlement to the Association from any Person for injuries to property, real or personal arising from any construction or design defects (the "Construction Reserve Funds"). Construction Reserve Funds shall be separately itemized from funds designated as Regular Reserve Funds.

Reserve funds shall be deposited in a separate account; and the signatures of at least two persons, who shall either be members of the Board or one officer who is not a member of the Board and a member of the Board, shall be required to withdraw monies from the reserve account. Reserve funds may not be expended for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, Major Components that the Association is obligated to maintain.

Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reason that the transfer is needed and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, provided that the Board, on the making of a finding supported by documentation that a temporary delay is in the best interest of the Development, may delay temporarily the restoration. The Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account and, if necessary, shall levy a special assessment to recover the full amount of the expended funds within the time limits required herein. This special assessment shall be subject to the assessment increase restrictions set forth in **Section 6.6** and Civil Code section 1366(b).

If the Board elects to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of that decision in the next available mailing to all Members pursuant to Corporations Code section 5016. The notice shall inform Members of the availability of an accounting of these expenses. The Board shall distribute a written accounting of this expense to the Members on at least a quarterly basis, with the first accounting to be delivered no later than the 30th day following the Board's decision to use reserve funds for litigation, either directly or through a transfer to operating funds. In any proposed litigation in which the amount in controversy is expected to exceed \$25,000, the first accounting shall include a description of expenses paid to date, a description of the principal terms and conditions of any contract with any Person providing services in connection with the litigation, including attorneys and expert witnesses, a good faith estimate of the total legal fees, expert fees and other litigation costs that may be incurred, and a sample disclosure that

Members should provide prospective purchasers, lenders and other parties that have obtained or may obtain an interest in the Owner's Condominium regarding the litigation. In each subsequent accounting, the information required in the first accounting shall be appropriately updated.

At least once every three years, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the Major Components that the Association is obligated to repair, replace, restore or maintain as a part of a study of the reserve account requirements of the Development if the current replacement value of the Major Components is equal to or greater than one-half of the gross budget of the Association, excluding the Association's reserve account for that period. **The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.**

The study, at a minimum, shall include:

(i) identification of the Major Components that the Association is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years;

(ii) identification of the probable remaining useful life of the Major Components identified in subparagraph (i) as of the date of the study;

(iii) an estimate of the cost of repair, replacement, restoration, or maintenance of the Major Components identified in subparagraph (i) during and at the end of its useful life;

(iv) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the Major Components during and at the end of its useful life after subtracting total reserve funds as of the date of the study; and

(v) a reserve funding plan that indicates how the Association plans to fund the contribution identified in paragraph (iv) to meet the Association's obligations for the repair and replacement of all Major Components with an expected remaining life of 30 years or less, not including those components that the Board has determined will not be replaced or repaired. The plan shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan. The plans shall be adopted by the Board at an open meeting before the membership of the Association as described in Civil Code section 1363.05. If the Board determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the Board that is consistent with the procedure described in Civil Code section 1366.

As used herein, "reserve accounts" has the meaning set forth in Civil Code section 1365.5(f) or any successor statute thereto.

6.4 Special Assessments. Subject to the restrictions described in **Section 6.6**, the Board may levy a special assessment if the Board in its discretion determines that the Association's available funds are or will become inadequate to meet the estimated expenses of the Association, including, but not limited to, expenses resulting from inadequate reserves, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital Improvements, inadequate insurance proceeds, or other unanticipated expenses. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board considers appropriate.

6.5 Reimbursement Assessments. The Board shall have the authority to levy reimbursement assessments against one or more Owners to reimburse the Association for any costs incurred or to be incurred by the Association as the result of any act or omission of any Owner or occupant of any Condominium or their family members, guests, agents or pets, including any costs and penalties related to delinquent and/or unpaid domestic water and sewage bills charged to an Owner by a

third party provider as authorized in **Section 6.9.2** and **Section 6.10**. If the reimbursement assessment is levied and paid before all or any portion of the costs have been incurred by the Association and the amount paid exceeds the costs incurred, the Association promptly shall refund the excess to the Owner. If the costs exceed the amount paid by the Owner, the Owner shall reimburse the Association within 30 days thereafter. If payment is not made when due, the payment shall be considered a delinquent assessment and the Association may enforce the delinquent assessment as described in **Section 6.10** subject to the non-judicial foreclosure restrictions described in this **Section 6.5**.

In addition to reimbursing the Association for costs necessary to repair any Common Area improvements or other property that is maintained by the Association, the Association may seek reimbursement for any costs incurred by the Association, including attorneys' fees, to bring the Owner or occupant or the Owner's Condominium into compliance with this Declaration, the Articles, Bylaws or Rules. Except for reimbursement assessments covered under Section 6.9 to pay the Owner's share of water costs, a reimbursement assessment may not be levied against any Condominium until notice and hearing have been provided the Owner as described in **Section 5.6.4**; and under no circumstances may a reimbursement assessment (or a monetary penalty imposed by the Association as a disciplinary measure for violation of this Declaration or the Rules) become a lien against the Owner's Condominium that is enforceable by nonjudicial foreclosure proceedings under a power of sale. The foregoing restriction on enforcement is not applicable to late payment penalties or interest for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

6.6 Assessment Increase Restrictions. The Association shall provide notice by personal delivery or by first-class mail to the Owners of any increase in the regular or special assessments not less than 30 days nor more than 60 days prior to the due date of the increased assessment.

The Board may not (i) impose an annual regular assessment for any fiscal year more than 20% above the annual regular assessment for the Association's preceding fiscal year or (ii) impose special assessments which in the aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year without the approval of a majority of the votes of Owners at a meeting of the Members of the Association at which a quorum is present. For purposes of this **Section 6.6**, a "quorum" means more than 50% of the Owners, and the meeting must be conducted in accordance with Corporations Code sections 7510 through 7527 and 7613, or such successor statutes that may be enacted in the future. The foregoing restrictions on assessment increases do not apply to increases necessary for emergency situations. An emergency situation is any one of the following:

- (i) an extraordinary expense required by an order of court;
- (ii) an extraordinary expense necessary to repair or maintain the Development or any part of it that the Association is responsible to maintain where a threat to personal safety on the Property is discovered; or
- (iii) an extraordinary expense necessary to repair or maintain the Development or any part of it that the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget required under Civil Code section 1365, provided that before the imposition or collection of any assessment under this subparagraph the Board must pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process and shall distribute the resolution to the Members with the notice of the assessment.

If the Board fails to distribute the Pro Forma Operating Budget as required by **Section 5.10.1** for any fiscal year, the Association may not increase its annual regular assessment for that fiscal year, as authorized by Civil Code section 1366(b), unless the Board has obtained the approval of a majority of the votes of the Owners at a meeting of the Members at which a quorum was present. For the foregoing

purposes, a quorum means more than 50% of the Owners of the Association; and the meeting must be conducted in accordance with Corporations Code sections 7510 through 7527 and 7613 or any successor statute thereto.

6.7 Commencement of Regular Assessments. Annual regular assessments shall commence for all Condominiums on the first day of the month coinciding with or immediately following the date of the first transfer of title of a Condominium by the Declarant to a purchaser under the authority of a final subdivision public report issued by the California Department of Real Estate. No Condominium shall be subject to any special assessments until regular assessments have commenced against that Condominium.

6.8 Due Dates of Assessments. Unless otherwise directed by the Board or unless accelerated as described herein, the annual regular assessment shall be collected in 12 equal monthly installments; and each installment shall be due and payable on the first day of each month. If any monthly installment is delinquent, the Board, at its election, may accelerate the remaining installment payments so that the entire remaining balance of the annual regular assessment is immediately due and payable. Special assessments shall be due on such date or dates as selected by the Board. Reimbursement assessments shall be due and payable ten days after the Owner receives the notice of the reimbursement assessment. The notice shall be deemed received on the date described in **Section 13.14.**

Any annual regular assessment installment (including any accelerated installments), special assessment or reimbursement assessment not paid within 15 days after the due date shall be delinquent, shall bear interest at the rate of 12% per annum from 30 days after the due date until paid, and shall incur a late penalty in an amount to be set by the Board from time to time, not to exceed the maximum amount permitted by law.

6.9 Allocation of Regular and Special Assessments. Regular and special assessments levied by the Board shall be allocated among the Condominiums as described in the cost allocations categories set forth in **Sections 6.9.1 and 6.9.2.** The allocations are based on the Proforma Operating Budget (RE623) submitted to and accepted by the California Department of Real Estate as a part of the application for a final subdivision report (referred to in this **Section 6.9** as the "Proforma Operating Budget"). Where costs are prorated among the Condominiums, the proration shall be based on the estimated square footages of the Units as described in Exhibit B to this Declaration. The square footages in Exhibit B are estimates only and were derived from plans not from actual measurements of the Units. The actual square footages may differ. If there is any discrepancy between the square footages set forth in Exhibit B and the actual square footages or the square footages set forth on the Condominium Plan or in any other document, the square footages in Exhibit B shall control in order to maintain a stable, reliable and constant proration schedule. If any line item described in the Proforma Operating Budget is replaced with an equivalent line item it shall be allocated in the same manner as the replaced line item. If any new line items are added, the line item shall be allocated as the Board determines, in its sole discretion, is a fair and equitable allocation.

If any costs described in **Sections 6.9.1 or 6.9.2** are combined with another cost allocation category, such as insurance, the Board shall make a fair and equitable allocation of the costs so that the costs are appropriately allocated between or among the categories. In making the allocation, the Board may rely on qualified consultants.

Notwithstanding anything herein to the contrary, if any Condominium is used in such a manner that increases the Association's maintenance, reserve, insurance or administrative costs and the increase can be attributed reasonably to the use of a particular Condominium, the Board may specially allocate the amount of the increase to that Condominium. Prior to implementing such a special allocation, the Board shall provide notice to the Condominium Owner, which shall include a reasonable description of the reasons for the special allocation and shall offer the Owner the opportunity to address the Board regarding the Owner's position on the special assessment.

6.9.1 General Building Expenses. The general building expenses identified in the Proforma Operating Budget shall be allocated evenly among all 83 Condominiums provided that the following general common expense line items shall be prorated among the Condominiums based on the estimated square footage that each Condominium bears to the total estimated square footage of all Condominiums using the estimated square footages in Exhibit B and in accordance with the proration schedule set forth in the Proforma Operating Budget:

- Insurance
- Exterior Paint Reserve
- Roof Reserve
- Exterior Custodial
- Miscellaneous Repairs
- Pest Control
- Fire Alarm Monitoring
- Fire Extinguishers
- Fire Alarm System & Certification Reserve
- Access Control (Security/Concierge, Intercom)
- Heating and Air Conditioning maintenance
- Common Area Electricity
- Exterior Light Fixture Reserve
- Mechanical Equipment Reserve.

6.9.2 Residential Expenses. The residential common expenses identified in the Proforma Operating Budget shall be allocated evenly among the Residential and Live/Work Condominiums provided that the following general common expense line items shall be prorated among the Residential and Live/Work Condominiums based on the estimated square footage that each Residential and Live/Work Condominium bears to the total estimated square footage of all Residential and Live/Work Condominiums using the applicable estimated square footages in Exhibit B and in accordance with the proration schedule set forth in the Proforma Operating Budget:

- Gas
- Interior Paint Reserve
- Interior Custodial
- Interior Light Fixture Reserve
- Carpet Reserve
- Residential Garbage Disposal
- Roof Deck Spa
- Roof Deck Gardening/Planter Boxes
- Recreational Facility Exercise Equipment Rental
- Roof Deck Planter Box Reserve
- Recreational Facility Reserve
- Recreational Facility/Roof Deck Furnishings Reserve

The City & County of San Francisco Public Utilities Commission (PUC) provides one combined water and sewage bill, based on the assumption that an individual's contribution to sewage would be commensurate with an individual's consumption of water. Water provided to each Condominium Building is under one common meter. Declarant has installed submeters so that individual water usage by each Condominium may be measured. The total cost for providing municipal water and sewage services for both Condominium Buildings will be paid by the Association. The Association has or will enter into an agreement with a third-party provider to read the submeters, allocate the costs based on each Owner's

actual usage, and bill each Owner individually for that Owner's prorated share of the costs incurred by the Association for domestic water and sewage. In addition, Owners of Residential and Live/Work Condominiums will be billed an additional charge to cover the costs of providing water and sewer services to common areas (primarily the Recreational Facility/Roof Deck). This charge will be divided evenly among all of the Residential and Live/Work Condominiums in the Development. Each Owner shall be required to pay the third-party provider directly for the Owner's share plus a service charge, and the provider will remit the payment to the Association less the service charge. The Association will thereupon remit the payment to the PUC. If any Owner fails to pay the Owner's share of the water and sewage bill in a timely and proper manner and the Association pays the delinquent amount to cover the shortfall, the Board shall levy a reimbursement assessment against the Owner's Condominium and enforce the assessment as described in **Section 6.10**.

6.10 **Enforcement of Delinquent Assessments**. The Association may elect to pursue one or both of the following remedies in the event of a delinquent assessment:

6.10.1 **Personal Obligation**. The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the assessment and in such action shall be entitled to recover the delinquent assessment or assessments, accompanying late charges, interest, costs and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in **Section 6.10.2**.

6.10.2 **Assessment Lien**. Except as otherwise provided in **Section 6.5** and subject to the provisions of **Section 6.10.3**, the Association may impose a lien against the Owner's Condominium for the amount of the delinquent assessment or assessments, plus any costs of collection (including attorneys' fees), late charges and interest by taking the following steps:

(a) At least 30 days prior to recording a lien upon the Owner's Condominium to collect a delinquent assessment, the Association shall notify the Owner in writing by certified mail of the following (the "Delinquency Notice"):

(1) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the Owner of the Condominium has the right to inspect the Association records, pursuant to section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION".

(2) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorneys' fees, any late charges, and interest, if any.

(3) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the Association.

(4) The right to request a meeting with the Board as provided by **Section 6.10.2(b)(3)**.

(5) The right to dispute the assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Civil Code sections 1369.510 through 1369.590 before the Association may initiate

foreclosure against the Owner's Condominium, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(b) Any payments made by the Condominium Owner toward the delinquent assessment shall first be applied to the assessments owed; and only after the assessments owed are paid in full shall the payments be applied to the fees and the costs of collection, attorneys' fees, late charges or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the Person who received it. The Association shall provide a mailing address for overnight payment of assessments.

(1) Prior to recording a lien for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850.

Prior to initiating a foreclosure for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, shall participate in dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850 or alternative dispute resolution with a neutral third party pursuant to Civil Code sections 1369.510 through 1369.580. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(2) The decision to record a lien for delinquent assessments shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board members in an open meeting. The Board shall record the vote in the minutes of that meeting.

(3) An Owner may submit a written request to meet with the Board to discuss a payment plan for the delinquent assessment. The Association shall provide the Owners the standards for payment plans if any exist. The Board shall meet with the Owner in executive session within 45 days of the postmark of the request if the request is mailed within 15 days of the date of the postmark of the Delinquency Notice unless there is no regularly-scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Members to meet with the Owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an Association's ability to record a lien on the Owner's Condominium to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

(c) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with **Section 6.8**, shall be a lien on the Owner's Condominium from and after the time the Association causes to be recorded with the county recorder of the county in which the Condominium is located a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Civil Code section 1366, a legal description of the Owner's interest in the Development against which the assessment and other sums are levied, and the name of the record owner of the Owner's interest in the Development against which the lien is imposed. The itemized statement of the charges owed by the Owner described in **Section 6.10.2(a)(2)** shall be recorded together with a notice of delinquent assessment. In order for the lien to be enforced by nonjudicial foreclosure as provided in **Section 6.10.2(e)**, the notice of delinquent assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice of delinquent assessment shall be signed by any officer of the Association or by the Person designated by the Association for that purpose. A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an Owner in the Association's records, and the notice shall be mailed no later than ten calendar days after recordation. Within 21 days

of the payment of the sums specified in the notice of delinquent assessment, the Association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the Condominium Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

A monetary charge imposed by the Association: (i) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area improvements or landscaping for which the Member or the Member's guests or tenants were responsible; or (ii) as a disciplinary measure for failure of a Member to comply with the Governing Documents, except for the late payments, may not be characterized nor treated as an assessment that may become a lien against the Member's Condominium enforceable by the sale of the interest under Civil Code sections 2924, 2924b and 2924c.

(d) A lien created pursuant to **Section 6.10.2(c)** shall be prior to all other liens recorded subsequent to the notice of assessment, except as described in **Article 10**.

(e) Subject to the limitations of this **Section 6.10**, after the expiration of 30 days following the recording of a lien created pursuant to **Section 6.10.2(c)**, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Civil Code section 2934a. Any sale by the trustee shall be conducted in accordance with Civil Code sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Civil Code sections 2924c and 2924d plus the cost of service for either of the following: (i) the notice of default pursuant to Civil Code section 1367.1(j); or (ii) the decision of the Board to foreclose upon the separate interest of an Owner as described in Civil Code section 1367.4(c)(3).

(f) If it is determined that a lien previously recorded against a Condominium was recorded in error, the party who recorded the lien, within 21 calendar days, shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the Condominium Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(g) In addition to the requirements of Civil Code section 2924, a notice of default shall be served by the Association on the Owner's legal representative in accordance with the manner of service of summons in Code of Civil Procedure sections 415.10 through 415.95. The Owner's legal representative shall be the person whose name is shown as the Owner of the Condominium in the Association's records, unless another person has been previously designated by the Owner as his or her legal representative in writing and mailed to the Association in a manner that indicates that the Association has received it.

(h) Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this section to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, at the time the Association issues the Pro Forma Operating Budget pursuant to Civil Code section 1365. The Owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. The Owner may identify or change a secondary address at any time, provided that, If a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

(i) This **Section 6.10.2** is subordinate to and shall be interpreted in conformity with **Section 6.10.3**.

(j) If the Association fails to comply with the procedures set forth in this **Section 6.10.2**, prior to recording a lien, the Association shall recommence the required notice process.

Any costs associated with recommencing the notice process shall be borne by the Association and not by the Condominium Owner.

6.10.3 Assessment Enforcement Restrictions.

(a) If the Association seeks to collect delinquent regular or special assessments of an amount less than one thousand eight hundred dollars (\$1,800), not including any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, pursuant to Code of Civil Procedure sections 116.110 through 116.950. If the Association chooses to proceed by an action in small claims court, and prevails, the Association may enforce the judgment as permitted under Code of Civil Procedure sections 116.810 through 116.880. The amount that may be recovered in small claims court to collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

(A) The amount owed as of the date of filing the complaint in the small claims court proceeding.

(B) In the discretion of the court, an additional amount to that described in **Section 6.10.3(a)(1)** equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid assessments and any reasonable late charges, fees and costs of collection, attorneys' fees, and interest, up to the jurisdictional limits of the small claims court.

(2) By recording a lien on the Owner's Condominium upon which the Association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, equals or exceeds one thousand eight hundred dollars (\$1,800) or the assessments are more than 12 months delinquent. If the Association chooses to record a lien under these provisions, prior to recording the lien, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in Civil Code sections 1363.810 through 1363.850.

(3) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

(b) If the Association seeks to collect delinquent regular or special assessments of an amount of one thousand eight hundred dollars (\$1,800) or more, not including any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, or any assessments that are more than 12 months delinquent, the Association may use judicial or nonjudicial foreclosure subject to the following conditions:

(1) Prior to initiating a foreclosure on an Owner's Condominium, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850 or alternative dispute resolution as set forth in Civil Code sections 1369.510 through 1369.580. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(2) The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board

members in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all members. The Board shall maintain the confidentiality of the Owner or Owners of the Condominium by identifying the matter in the minutes by the parcel number of the property, rather than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale.

(3) The Board shall provide notice by personal service to an Owner of a Condominium who occupies the Condominium or to the Owner's legal representative, if the Board votes to foreclose upon the Condominium. The Board shall provide written notice to an Owner who does not occupy the Condominium by first class mail, postage prepaid, at the most current address shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's Condominium may be treated as the Owner's mailing address.

(4) A nonjudicial foreclosure by the Association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The redemption period within which the Condominium may be redeemed from a foreclosure sale under this paragraph ends 90 days after the sale. In addition to the requirements of Civil Code section 2924f, a notice of sale in connection with an Association's foreclosure of a Condominium shall include a statement that the Property is being sold subject to the right of redemption created by Civil Code section 1367.4(c)(4).

6.10.4 Erroneous Liens. If it is determined, through dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850 or alternative dispute resolution with a neutral third party pursuant to Civil Code sections 1369.510 through 1369.590, that the Association has recorded a lien for a delinquent assessment in error, the Association shall promptly reverse all late charges, fees, interest, attorneys' fees, costs of collection, costs imposed for the notice prescribed in Civil Code sections 1367.1(a) and 1367.1(b) and pay all costs related to the dispute resolution or alternative dispute resolution.

The provisions of this Section 6.10 are intended to comply with the requirements of Civil Code sections 1367.1, 1367.4 and 1367.5 in effect as of January 1, 2007. If these sections are amended or rescinded in any manner, the provisions of this Section 6.10 automatically shall be amended or rescinded in the same manner. Civil Code sections 1367.1, 1367.4 and 1367.5 may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.

6.11 Assessment Exemption. The Declarant and any other Owner of a Condominium are exempt from the payment of that portion of any assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time assessments commence. This exemption from the payment of assessments shall be in effect until the earliest of the following events:

- (i) a notice of completion of the common facility has been recorded; or
- (ii) the common facility has been placed into use.

6.12 Estoppel Certificate. Within ten days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or occupant of the Owner's Condominium is in violation of any of the provisions of this Declaration, the Articles, Bylaws or Rules; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year in which the request is received; and (iii) the amount of any assessments levied against the Owner's Condominium that are unpaid as of the date of the statement, including any late charges, interest or costs of collection, and that, as of the date of the statement, are or may be made a lien against the Owner's Condominium as provided by this Declaration. The Association may charge a fee to provide this information provided the fee shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

6.13 Restrictions on Association Funds. Pursuant to the requirements of Civil Code section 1363.04, no Member funds shall be used for campaign purposes in connection with any election of members to the Board or for company purposes in connection with any other Association election, except to the extent necessary to comply with duties of the Association imposed by law.

ARTICLE 7 - Architectural Review

7.1 Architectural Committee. An Architectural Committee may be established by the Declarant or by the Board. The Committee shall consist of three members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original final subdivision public report for the Development. Declarant's appointees need not be Members of the Association. Declarant shall have the right to appoint a majority of the members of the Committee until 95% of all the Condominiums in the Development have been sold or until the tenth anniversary of the issuance of the final public report for the Development, whichever occurs first. On the first anniversary date of the issuance of the public report for the Development, the Board shall have the power to appoint one member to the Committee. After 95% of the Condominiums of the Development have been sold or the tenth anniversary date of the issuance of the final public report for the Development, whichever first occurs, the Board shall have the power to appoint all of the members of the Committee. The Board appointees shall be Members of the Association and shall serve at the will of the Board. The term of the members shall be as designated by the Declarant or by the Board. If a member is removed from the Committee for any reason, the Person appointing the member immediately shall appoint a replacement for the balance of the removed member's term. Until a replacement is named, the remaining members of the Committee shall have full authority to act on behalf of the Committee. No member of the Committee shall be entitled to any compensation for serving as a member, provided that member shall be entitled to be reimbursed by the Committee for any expenses incurred by the member in performing its duties, provided the member received prior authorization for the incurrence of the expense. All actions of the Committee shall be governed by a majority vote of the members. The Committee shall meet at such times and places as it shall designate. Meetings of the Committee shall be open to all Members of the Association. The Committee may adopt guidelines regarding the type, location, quality, size, height and other matters relating to any Improvements or landscaping to be constructed or installed in the Condominiums and may establish a procedure for reviewing all plans and specifications submitted to it for prior approval and shall be responsible for periodic review and modification of the guidelines. The guidelines shall comply with the use restrictions described in **Article 3**. Factors that shall be considered in approving proposed plans and specifications shall include without limitation: (i) conformity and harmony of external design with other Condominiums in the Development; (ii) effect of the proposed location on neighboring Condominiums; (iii) proper facing of elevations with respect to nearby streets and adjoining Condominiums; (iv) overall conformity with the general purpose of the Development and the restrictions in this Declaration; (v) compliance with the rights and obligations reserved in Conservation Easement recorded on July 22, 2002 in the official records of the City and County of San Francisco as Document No. 2002-H207524-00, including limitations on physical changes to a Condominium or Common Area that may affect the exterior of the 410 Jessie Street Condominium Building, including the windows, the historic fire escapes, or any other portion of the Condominium Building that alters the façade or jeopardizes the building's listing on the National Register of Historic Places and the California Register of Historic Resources as part of the Hales Department Store (901 Market Street) designation; and (vi) the guidelines.

7.2 Approval. None of the following actions shall take place anywhere within the Development without the prior written approval of the Committee:

(i) any construction, installation, addition, repair (including exterior painting), replacement, alteration or removal of any Unit Improvement that is part of a building structure (including flooring, interior and exterior walls, windows and window frames) or any portion of any Unit Improvement that can be seen from the Common Area or any other Unit;

(ii) any planting or landscaping (including the removal of any tree); or

(iii) any replacement or modification to any floor coverings or wall or ceiling materials or any penetration or other disturbance of any wall, floor, or ceiling if the replacement, modification, penetration or disturbance could result in any increase in the sound transmissions, resonances or reverberations from the Unit to any other Unit.

Approval shall require the applicant to submit to the Committee plans and specifications in a manner and form satisfactory to the Committee. All plans and specifications shall conform with any guidelines established by the Committee. Plans shall adequately describe the proposed Improvements; plot layout; all exterior elevations; materials and colors; signs, landscaping plans (for the Exclusive Use Common Areas), trash enclosures; easements and utility locations; construction schedule; and such other information as the Committee shall require. The Committee, in its sole discretion, may grant variances or exceptions from any guidelines it has established for approving plans and specifications, which variances or exceptions may contain such conditions and time limitations as the Committee deems appropriate.

Notwithstanding anything herein to the contrary, any Owner may repaint the interior of the Owner's Unit in any color the Owner desires or remodel the Unit with prior written approval of the Committee which approval shall be granted if the Committee finds the remodeling does not in any manner remove or affect any bearing wall or fire rated wall, affect the structural integrity of the Common Area, alter the exterior appearance of the Condominium Building, or increase the sound transmissions, resonances or reverberations from the Unit to any other Condominium. It shall be the Owner's sole responsibility to comply with all building code requirements and permitting requirements in connection with any modification to the Owner's Unit.

The Committee may establish reasonable fees to reimburse the Committee for any out-of-pocket costs incurred by the Committee in reviewing plans and specifications. Except as paid or reimbursed by the applicant, any costs incurred by the Committee in the performance of its duties shall be paid by the Association. If the Committee fails to approve or disapprove any plans or specifications within 60 days of receipt of either the plans and specifications or any advance payments required by the Committee, whichever shall occur later, the plans and specifications shall be deemed approved unless a written extension is executed by the Person submitting the plans and by the Committee. The burden shall be on the applicant to establish that the Committee did receive the plans and specifications and/or advance payments and to establish the date of receipt.

The Committee shall be entitled to determine that the proposed work is unacceptable even if the same or similar work previously had been approved for another Condominium as long as the Committee finds that reasonable factors exist to distinguish this application from the approved work. The Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposal when the proposed work will result in Improvements and/or landscaping that can be seen from any other Condominium, Common Area or public right-of-way as long as the Committee acts in good faith and not unreasonably, arbitrarily or capriciously.

The Committee may impose terms and conditions on any approval, including: (i) contractor licensing requirements; (ii) insurance requirements; (iii) completion and labor and material bonds or other acceptable collateral; and (iv) construction regulations such as authorized hours of construction, access restrictions, noise restrictions and clean-up requirements.

Any member of the Committee or any authorized agent of the Committee from time to time and anytime during normal business hours may enter any Condominium for the purpose of inspecting any construction to confirm compliance with the plans and specifications as approved by the Committee.

In reviewing and approving plans, the Committee shall comply with the requirements of Civil Code section 1378, the restrictions contained in **Article 3** and with all federal, State and local laws regulating the rights of handicapped persons. If there is any conflict between this **Article 7** and Civil Code section 1378, Civil Code section 1378 shall control to the extent of the conflict.

7.3 Architectural Committee's Decision. The decision on any proposed work shall be in writing. No approval shall be granted unless the Committee determines that the proposed work will be in compliance with the rights and obligations reserved in the Conservation Easement recorded on July 22, 2002 in the official records of the City and County of San Francisco as Document No. 2002-H207524-00 (covering the 410 Jessie Street Condominium Building), including limitations on physical changes to a Condominium or Common Area that may affect the exterior of the buildings, including the windows, the historic fire escapes, or any other portion of the Condominium Building that alters the façade or jeopardizes the buildings' listing on the National Register of Historic Places and the California Register of Historic Resources as part of the Hales Department Store (901 Market Street) designation.

If a proposed change is disapproved by the Committee, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the Board. If disapproved, the applicant is entitled to reconsideration by the Board at an open meeting of the Board unless the disapproval decision was made by the Board instead of the Committee or unless the Architectural Committee has the same members as the Board. Reconsideration by the Board does not constitute a dispute resolution procedure described in **Section 5.6.7.**

7.4 Completion of Work. On receipt of approval, the Owner shall commence the work as soon as reasonably practicable and shall diligently pursue the completion of the work. If the work is not commenced within 90 days after receipt of approval or completed within 180 days or such later date as the Committee shall approve in writing, the approval automatically shall be deemed revoked and no further work shall be done without again obtaining the written approval of the Committee as described herein. The work shall be done in strict compliance with the approved plans except for minor non-material changes as may be necessary during the course of construction.

7.5 Non-liability. The Association, the Committee, the Declarant, or the other Condominium Owners, or their respective successors or assigns, shall not be liable to any Person submitting plans to the Committee for approval or to any other Condominium Owners or occupants by reason of any act or omission arising out of or in connection with the approval or disapproval of any plans or specifications. Approval shall not constitute any warranty or representation by the Committee or its members that the plans satisfy any applicable governmental law, ordinance or regulation or that any Improvement constructed in accordance with the plans shall be fit for the use for which it was intended and safe for use and occupancy. Applicants shall make their own independent verifications of the foregoing and shall not rely on the Committee or its members in any manner in this regard.

7.6 Enforcement. If any Owner or occupant violates the provisions of this **Article 7**, the Declarant or the Association, in addition to levying monetary fines or penalties and in addition to any other remedy available at law or equity, may bring an action to compel compliance, including an action for a court order mandating the removal of any Improvement or other property constructed or installed in violation of the provisions of this **Article 7**. In such action, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

7.7 Board's Authority. If for any reason the Committee is not established or not active, the Board shall perform the duties and shall have the rights of the Committee as described in this **Article 7**. Notwithstanding anything herein to the contrary, modifications, changes or additions to any Common Area improvements authorized by the Board shall not require approval from the Committee.

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

7.9 Declarant Exemption. Declarant, or its successor or assign, shall not be subject to the approval requirements of this **Article 7** in connection with the construction or alteration of

any Improvement within the Development or the installation of any landscaping, provided that this exemption shall expire on the third anniversary date of the recordation of this Declaration. In addition Declarant, or its successor or assign shall not be subject to the approval requirements of this **Article 7** in connection with any repairs or modifications made to any Improvements as may be required by law or pursuant to an agreement with any Condominium Owner or the Association.

ARTICLE 8 - Insurance

8.1 Liability and Fidelity Insurance. The Association shall obtain and maintain the following liability policies:

8.1.1 Commercial General Liability Policy: A commercial general liability insurance policy insuring the Association, any manager, Declarant, the Association's directors and officers, and the Owners and occupants of the Condominiums and their respective family members against any liability incident to any bodily injury or property damage from any accident or occurrence within the Common Area. The policy shall also cover any liability incident to any bodily injury or property damage from any accident or occurrence within any Condominium related to any maintenance or repair work required to be performed on any Condominium by the Association pursuant to this Declaration, including, but not limited to, work performed in any Common Area. The policy shall include, if obtainable, a cross liability or severability of interest endorsement insuring each insured against the liability to each other. The limits of such insurance shall not be less than \$3,000,000 covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and other liability or risk customarily covered with respect to projects similar in construction, location and use and shall require at least 30 days' written notice to the Association before the policy can be cancelled or substantially modified unless the policy is being replaced with a policy of equivalent coverage. Such policy shall also provide coverage as to potential liability in connection the Association's responsibility, if any, for offsite improvements, such as sidewalk improvements, adjacent utilities, and a historic tunnel, as further detailed herein, including but not limited to at § 2.19 and § 4.2, as well as liability that may incurred in carrying out any such responsibilities. The policy shall be primary and noncontributing with any other liability policy covering the same liability.

8.1.2 Directors and Officers Liability Policy: A directors and officers liability policy containing such terms and conditions as are normally and customarily carried for directors and officers of a residential condominium association. The deductible amounts and any liability award in excess of available insurance proceeds arising from any liability incident to the ownership or use of the Common Area or any other real or personal property owned or maintained by the Association shall be paid by the Association regardless of whether the Association was named as a defendant therein. If a special assessment is necessary to pay the deductible or excess liability award, the assessment shall be allocated equally among the Condominiums.

8.1.3 Fidelity Policy. A blanket fidelity insurance policy covering any Person who either handles or administers (or is responsible for) Association funds, whether or not that Person receives compensation for services. The Association shall be the insured under the policy and the policy shall provide that ten days' written notice be provided to the Association before the policy can be canceled or substantially modified for any reason. The policy amounts shall satisfy the Federal National Mortgage Association ("FNMA") requirements and in no event shall be less than the sum of three months of assessments on all Condominiums subject to assessments.

8.2 Association Property Insurance. The Association shall obtain and maintain a master property insurance policy that satisfies each of the following conditions:

8.2.1 Property Covered. The policy shall cover the following real and personal property:

(a) **Common Area.** All Common Area improvements, including buildings and any additions or extensions thereto; all fixtures, machinery and equipment permanently affixed to the building and not located within a Unit; windows; fences; monuments; lighting fixtures; exterior signs; and personal property owned or maintained by the Association; Recreation Facility/Roof Deck; but excluding land; foundations; excavations; and other items typically excluded from property insurance coverage;

(b) **Residential and Live/Work Condominiums.** The standard fixtures originally installed by the Declarant and any equivalent replacements thereto, including, but not limited to, interior walls and doors; ceiling, floor and wall surface materials (e.g., paint, wallpaper, mirrors, carpets, and hardwood floors); utility fixtures (including gas, electrical and plumbing); cabinets; attached or built-in cabinetry, bookcases, and similar such items; built-in appliances; heating and air-conditioning systems; water heaters installed as a part of the original construction of the residence and any equivalent replacements thereto; but excluding any personal property located in the Unit; any trade fixtures and excluding any Improvements or upgrades to any of the foregoing to the extent the replacement cost of any such Improvement or upgrade made after completion of the original construction of the Unit exceeds the replacement cost of the original Improvements as determined on the date that immediately precedes the date of the damage or destruction of the Improvement or upgrade; and

(c) **Retail/Restaurant, Storage and Parking Condominiums.** The load bearing structural components of the Units, the walls located between the adjoining Units or between a Unit and the Common Area and the sheet rock on these walls.

8.2.2 **Covered Cause of Loss.** The policy shall provide coverage against losses caused by fire and all other hazards normally covered by a "special form" policy or its equivalent.

8.2.3 **Dollar Limit.** The dollar limit of the policy shall not be less than the full replacement value of the covered property described in **Section 8.2.1** above, provided that there may be lower dollar limits for specified items as is customarily provided in property insurance policies.

8.2.4 **Primary.** The policy shall be primary and noncontributing with any other insurance policy covering the same loss.

8.2.5 **Endorsements.** The policy shall contain such endorsements as the Board in its discretion shall elect after consultation with a qualified insurance consultant.

8.2.6 **Waiver of Subrogation.** The policy shall waive all subrogation rights against any Owner or occupant and their family members and invitees except to the extent of any deductible.

8.2.7 **Deductible.** The amount of any deductible shall be paid by the Association and/or Owner as provided herein or pursuant to guidelines adopted by the Board. When a claim is made on the Association's property insurance policy, the Owner is responsible for payment of damage up to the amount of the deductible in circumstances: (i) where damage is limited to the Owner's Unit or Common Area immediately abutting the Unit or exclusively serving the Unit; (ii) where damage is caused by the fault of the Owner or that Owner's tenant, family or guests; and/or (iii) where damage is caused by the failure of some portion of the Unit which the Owner is responsible for maintaining. In cases where damage affects more than one Condominium or a Condominium and the Common Area and **Section 8.2.7 (ii) or (iii)** does not apply, each Owner is responsible for the cost to repair the Owner's Unit up to the deductible and the Common Area immediately abutting the Unit or exclusively serving the Unit and the Association is responsible for the cost to repair any other Common Area improvements up to the deductible. If the cumulative cost of repairs exceeds the deductible, the burden of the deductible shall be prorated between or among the claimants based on the proportion that the costs of repairs to the Unit or Common Area bears to the total cost of repairs. The Association may levy a reimbursement assessment against an Owner's Condominium as authorized under **Section 6.5** for the Owner's share of the deductible.

8.3 Insurance Rating and Cancellation. The insurance company providing the Association's insurance under **Sections 8.1 and 8.2** shall have a A.M. Best rating of not less than A:VII if licensed to do business in the State of California and a rating of not less than A+:X if not licensed to do business in the State of California. If the A.M. Best ratings are no longer available, the insurance ratings shall be based on equivalent ratings issued by an independent insurer company rating entity used by financial institutions for insurance rating purposes. All of the policies of insurance maintained by the Association shall contain a provision that such policy or policies shall not be cancelled or terminated, or expired by their terms, or not renewed without 30 days' prior written notice to the Board, the Owners and their respective first Mortgagees (provided that such Owners or Mortgagees have filed written requests with the carrier for such notice) and every other Person in interest who shall have requested such notice of the insurer.

8.4 Board's Authority to Revise Insurance Coverage. Subject to the provisions of **Section 8.6**, the Board shall have the power and right to deviate from the insurance requirements contained in this **Article 8** in any manner that the Board, in its discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this **Article 8**, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefore at least 30 days prior to the effective date of the reduction.

The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Each Owner, by acceptance of a deed to a Condominium, irrevocably appoints the Association or the Insurance Trustee, described in **Section 8.7**, as that Owner's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing and taking other related actions in connection with any insurance policy maintained by the Association and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Owner had personally taken the action.

8.5 Periodic Insurance Review. The Board periodically (and not less than once every three years) shall review the Association's insurance policies and make such adjustments to the policies' terms and conditions as the Board considers to be in the best interests of the Association. If applicable, the review shall include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Association's property insurance policy unless the Board is satisfied that the current dollar limit of the property insurance policy, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs.

8.6 FNMA and FHLMC Requirements. Notwithstanding anything herein to the contrary, the Association shall maintain such policies, containing such terms, amount of coverage, endorsements, deductible amounts, named insureds, loss payees, standard mortgage clauses, notice of changes or cancellation, and an appropriate insurance company rating that shall satisfy the minimum requirements imposed 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 requirements shall be met.

8.7 Insurance Trustee. All property insurance proceeds payable to the Association under any property insurance policy procured by the Association as described in **Section 8.2**, subject to the rights of Mortgagees under **Article 10**, may be paid to a trustee as designated by the Board to be held and expended for the benefit of the Owners and Mortgagees as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the county in which the Development is located that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association will have the duty to contract for such work as provided for in this Declaration.

8.8 Owners' Insurance. Each Residential and Live/Work Condominium Owner shall maintain property insurance against losses to personal property located within the Owner's Unit. **The Association's insurance policies will not provide coverage for losses to the Owner's personal property or for any upgrades or additions to any fixtures or improvements located within the Unit to the extent not covered under Section 8.2.1(b).** In addition, each Condominium Owner shall maintain a general liability insurance policy in an amount not less than \$100,000. The liability policy shall cover any liability for injury to any Person or damage to any Improvements or personal property within the Development caused by any act or omission of Owner or tenant of the Owner's Condominium, or their family members, employees, agents or invitees. Each Owner is advised to carry Condominium owner building insurance for the Improvements within the Unit to the extent not covered under **Section 8.2.1(b)** and loss assessment coverage in such amounts as may be recommended by a qualified consultant.

Each Retail/Restaurant, Parking and Storage Condominium Owner shall maintain insurance against any loss to personal property located within the Owner's Unit, any fixtures within the Unit, including trade fixtures, and liability insurance as required under **Section 8.8.2.**

The liability and property insurance policies shall contain a waiver of subrogation rights by the insurer as to the other Owners, the Association and any first Mortgagee of the Owner's Unit. The Association shall be named as an additional insured under the policy. The Board may from time to time increase the liability coverage amounts under such terms and conditions as the Board shall elect and may require each Owner to periodically submit appropriate evidence that the required policies are in full force and effect.

Except as allowed herein, no Owner shall separately insure any property covered by the Association's property insurance policy as described in **Section 8.2** above. If any owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Association, the Owner will be liable to the Association to the extent of the diminution. The Association may levy a reimbursement assessment against the Owner's Condominium to collect the amount of the diminution.

Each Owner is strongly advised to seek the advice of a qualified insurance consultant regarding the Owner's property and liability insurance obligations under this Section 8.8 and regarding loss assessment and Condominium owners building insurance coverage.

8.8.1 Contractor's Insurance. During the period of any construction in the Development by, or at the request of, any Owner of construction whose cumulative cost or value is over five thousand dollars (\$5,000.00), the Owner shall obtain or require its contractor(s) to obtain, and thereafter maintain so long as such construction activity is occurring, at least the following minimum insurance coverage:

Workers' compensation - statutory limits;

Employer's liability - One hundred thousand dollars (\$100,000.00); and

Commercial General Liability and Commercial Automobile Liability as follows: (i) Combined Single Limit (covering personal injury liability, bodily injury liability, and property damage liability) of not less than One Million Dollars (\$1,000,000.00) in case of Commercial General Liability and Five Hundred Thousand Dollars (\$500,000.00) for Commercial Automobile Liability for total claims for any one occurrence; (ii) Independent Contractor's Liability or Owner's Protective Liability with the same coverage as in (i) above; (iii) Products/Completed Operations Coverage which shall be kept in effect for two (2) years after completion of the work; (iv) XCU hazard coverage, if applicable; (v) Broad Form Property Damage Endorsements; (vi) Personal Injury Endorsements; and (vii) Blanket Contractual Liability Endorsement.

8.8.2 Retail/Restaurant Condominium Owners' Required Liability Insurance. Each Owner of a Retail/Restaurant Condominium agrees to maintain, and/or cause to be maintained, at no cost to the other Owners, liability insurance insuring its interests against claims for personal injury, bodily injury, death and property damage occurring on, in or about the Development and the ways immediately adjoining the Development, with a Combined Single Limit (covering personal injury liability, bodily injury liability and property damage liability) of not less than three million dollars (\$3,000,000.00) for total claims for any one occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and other liability or risk customarily covered with respect to projects similar in construction, location and use and shall require at least 30 days' written notice to the Association before the policy can be cancelled or substantially modified unless the policy is being replaced with a policy of equivalent coverage. A certificate of self-insurance in proper form from an Owner shall be sufficient. The insurance limits in this **Section 8.8.2** shall be subject to increase from time to time by such amounts as the Board determines is necessary or desirable, as may be evidence by the practice of similarly situated properties. Each Retail/Restaurant Condominium Owner shall promptly notify the Association and the other Owners of any asserted claim with respect to which other Owners are or may be indemnified against hereunder and shall be delivered to such other Owners and the Association copies of process and pleadings.

8.9 Other Insurance. In addition to the policies described in **Sections 8.1 and 8.2**, the Association may obtain and maintain the following insurance:

- (i) Workers Compensation Insurance to the extent required by law;
- (ii) flood insurance on Common Area improvements if the Development is located in an area designated by an appropriate governmental agency as a special flood hazard area and the Improvements are of the nature on which property insurance is normally maintained; and
- (iii) such other insurance as the Board in its discretion considers necessary or advisable.

ARTICLE 9 - Damage, Destruction or Condemnation

9.1 Restoration Defined. As used in this **Article 9**, the term "restore" shall mean repairing, rebuilding or reconstructing Improvements damaged or destroyed as a result of a fire or other casualty to substantially the same condition and appearance in which they existed prior to fire or other casualty damage.

9.2 Insured Casualty. If any Improvement is damaged or destroyed from a risk covered by the insurance required to be maintained by the Association and the insurance proceeds are sufficient to cover the loss, then the Association, to the extent permitted under existing laws and except as otherwise authorized under this **Article 9**, shall restore the Improvement to the same condition as it was in immediately prior to the damage or destruction subject to such changes as may be approved by the Architectural Committee or required by law. The Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. The insurance proceeds shall be paid to and held by the Association or an insurance trustee selected under the provisions of **Section 8.7**. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid into reserves and held for the benefit of the Association.

9.3 Inadequate Insurance Proceeds or Uninsured Loss. If the insurance proceeds are insufficient to restore the damaged Improvement or the loss is uninsured, the Board shall add to any available insurance proceeds all reserve account funds designated for the repair or replacement of the damaged Improvement. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to pay the total costs of restoration, a special assessment shall be levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in this Declaration and by law. If the total funds then

available are sufficient to restore the damaged Improvement, the Improvement shall be restored. Any special assessment levied to cover a shortfall in available repair proceeds shall be allocated among the Condominiums in accordance with the proration schedule set forth in the DRE Budget described in **Section 6.9** and without regard to the extent of damage or destruction to the individual Condominiums.

If the total funds available to the Association are still insufficient to restore the damaged Improvement, then the Board first shall attempt to impose an additional special assessment pursuant to **Section 9.4** below and, second, use a plan of alternative reconstruction pursuant to **Section 9.5** below. Any special assessment levied to cover a shortfall in available repair proceeds shall be allocated among the Condominiums without regard to the extent of damage or destruction to the individual Condominiums. If the Members do not approve such actions, then the provisions of **Section 9.6** shall apply.

9.4 Additional Special Assessment. If the total funds available to restore the damaged Improvement as provided in **Section 9.3** are insufficient, then a meeting of the Members shall be called for the purpose of approving a special assessment to make up all or a part of the deficiency ("Additional Special Assessment"). The Additional Special Assessment shall be allocated among the Condominiums in accordance with the proration schedule set forth in the DRE Budget described in **Section 6.9** and without regard to the extent of the damage or destruction to the individual Condominiums. If the amount of the Additional Special Assessment approved by the Members and the amounts available pursuant to **Section 9.3** above are insufficient to restore the damaged Improvement or if no Additional Special Assessment is approved, the Association shall consider a plan of alternative reconstruction in accordance with **Section 9.5**.

9.5 Alternative Reconstruction. The Board shall consider and propose plans to reconstruct the damaged Improvement making use of whatever funds are available to it pursuant to **Section 9.3** and **Section 9.4** above ("Alternative Reconstruction"). All proposals shall be presented to the Owners. If two-thirds of the voting power of the Owners whose residences were materially damaged as determined by the Association ("Affected Owners") and a majority of the voting power of the Members, including the Affected Owners, agree to any plan of Alternative Reconstruction, then the Board shall contract for the reconstruction of the damaged Improvement in accordance with the plan of Alternative Reconstruction making use of whatever funds are then available to it. If no plan of Alternative Reconstruction is agreed to, then the provisions of **Section 9.6** shall apply.

9.6 Sale of Condominiums. If the damaged Improvement is part of a Condominium Parcel (the "Damaged Condominium Parcel"), the damage renders one or more of the Condominiums within the Damaged Condominium Parcel uninhabitable, and the Improvements will not be restored in accordance with the provisions of **Sections 9.3, 9.4 and/or 9.5**, the Board, as the attorney-in-fact for each Owner of a Condominium in the Damaged Condominium Parcel, shall be empowered to sell the Condominiums in the Damaged Condominium Parcel in their then present condition on terms to be determined by the Board, so long as the terms are consistent as to the 410 Jessie Street Condominium Building with the rights and obligations reserved in Conservation Easement recorded on July 22, 2002 in the official records of the City and County of San Francisco as Document No. 2002-H207524-00, including limitations on physical changes to a Condominium or Common Area that may affect the exterior of the Condominium Building, including the windows, the historic fire escapes, or any other portion of the Condominium Building that alters the façade or jeopardizes the building's listing on the National Register of Historic Places and the California Register of Historic Resources as part of the Hales Department Store (901 Market Street) designation, provided that the Board receives adequate assurances that the purchaser shall, and has the financial capability to: (i) restore the Damaged Condominium Parcel (either by renovation or removal and rebuilding); (ii) remove the Damaged Condominium Parcel and restore any remaining Improvements as may be necessary; (iii) remove the Damaged Condominium Parcel (including foundations), grade the area, and appropriately landscape or otherwise improve the area in any manner as may be acceptable to the Board; or (iv) perform any combination of the foregoing. Any work to be performed by the purchaser with respect to any of the foregoing shall be subject to the provisions of **Article 7**. In lieu of selling the Damaged Condominium Parcel to a third Person, the Association may purchase the Condominium Parcel on satisfaction of the following conditions:

(i) Members holding 67% of the total voting power (including the votes allocated to the Condominiums within the Damaged Condominium Parcel) approve of the purchase;

(ii) the purchase price is the fair market value of the Damaged Condominium Parcel as of the date of sale as determined by an appraisal made by a qualified and independent real estate appraiser;

(iii) any special assessment needed to fund the purchase price shall be levied against all Condominiums, including the Condominiums within the Damaged Condominium Parcel;

(iv) the Association has an adequate source of funds to repair, renovate or rebuild all or a portion of the Damaged Condominium Parcel and/or to remove and appropriately landscape the remaining area. For this purpose, no Condominium that is being purchased shall be subject to any assessment intended to be used as a source of such funds.

The proceeds from the sale, together with the insurance proceeds for the Damaged Condominium Parcel received and any reserve funds allocated to the Damaged Condominium Parcel, after deducting therefrom the Association's sale expenses, including commissions, title and recording fees, legal costs, and that portion of the proceeds allocated for the removal of the Damaged Condominium Parcel, shall be distributed among the Owners of Condominiums in the Damaged Condominium Parcel and their respective Mortgagees in proportion to the respective fair market values of these Condominiums immediately prior to the date of the event causing the damage as determined by an independent appraisal made by a qualified real estate appraiser selected by the Board.

If a Damaged Condominium Parcel is removed and not restored so that the new Condominium Parcel contains the same number of Condominiums as the removed Condominium Parcel, the Board shall take appropriate steps to adjust the property interests of the remaining Condominium Owners and to effect such amendments as may be necessary to this Declaration, the appropriate Condominium Plan and the appropriate Condominium Map to reflect the revised property interests and other related changes.

9.7 Restoration of Partition Rights. Notwithstanding anything herein to the contrary, if the damage has rendered any Condominium uninhabitable and (i) within one year of the date of the occurrence of the damage, the Association has not elected to repair the damage under the provisions of **Sections 9.2, 9.3, 9.4 or 9.5** or if so has not commenced and diligently pursued the repair work or (ii) the Association has not commenced and diligently pursued the sale of the Development as authorized under Section 9.6, the restriction against partition described in **Section 2.18** shall be null and void and any Owner may bring a partition action under the authority of Civil Code section 1359 or any successor statute thereto.

9.8 Rebuilding Contract. If there is a determination to restore, the Board or its authorized representative shall obtain bids from at least two licensed and reputable contractors and shall accept the repair and reconstruction work from whomever the Board determines to be in the best interests of the Members. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the repair and reconstruction funds shall be disbursed to the contractor according to the terms of the contract. The Board shall take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date. Such construction shall be commenced no later than 180 days after the event requiring reconstruction and shall thereafter be diligently prosecuted to completion. Such construction shall return the Development to substantially the same condition and appearance in which it existed prior to the damage or destruction.

9.9 Authority to Effect Changes. If any Condominium is damaged or destroyed or in need of renovation or rehabilitation and the Condominium is repaired or reconstructed, the Condominium may be repaired or reconstructed in a manner that alters the boundaries of the Units, Common Area, and/or Exclusive Use Common Area, provided the following conditions are satisfied:

(i) the alteration has been approved by the Board, by Members holding a majority of the total voting power of the Association, and by the holders of any first Mortgages to the extent required herein;

(ii) the Board has determined that the alteration is necessary in order to comply with current building code requirements, to meet current building construction standards and procedures, or to improve the conditions and quality of Condominium Parcel;

(iii) the alteration does not materially change the location of any Unit or materially increase or decrease the size of any Unit without the consent of the Condominium Owner and the holders of any first Mortgages thereon. For purposes herein, a material change in the size of the Unit shall mean any alteration that increases or decreases the square footage of the interior floor space of the Unit by more than 10% from the square footage as shown on the Condominium Plan;

(iv) the Board has determined that any alteration that will relocate or reduce the Common Area will not unreasonably interfere with the rights of the Owners and occupants to use and enjoy the Common Area;

(v) the alteration is consistent with the rights and obligations reserved in the Conservation Easement recorded on July 22, 2002 in the official records of the City and County of San Francisco as Document No. 2002-H207524-00 (covering the 410 Jessie Street Condominium Building), including limitations on physical changes to a Condominium or Building Common Area that may affect the exterior of the building, including the windows, the historic fire escapes, or any other portion of the Condominium Building that alters the façade or jeopardizes the building's listing on the National Register of Historic Places and the California Register of Historic Resources as part of the Hales Department Store (901 Market Street) designation; and

(vi) the Condominium Plan is amended to reflect the alteration to the Units or Common Area.

Each Owner irrevocably appoints the Association as that Owner's attorney-in-fact and irrevocably grants to the Association the full power in the name of the Owner to effect any alteration to any Unit or Common Area as authorized above, including, but not limited to, the execution, delivery and recordation of any Condominium Plan, amendments, deeds or other instruments.

9.10 Condemnation. If there is a total sale or taking of the Development, meaning a sale or taking (i) that renders more than 50% of the Condominiums uninhabitable (such determination to be made by the Board in the case of a sale and by the Court in the case of a taking) or (ii) that renders the Development as a whole uneconomical as determined by the vote or written consent of 75% of those Owners and their respective first Mortgagees whose Condominiums will remain habitable after the taking, the right of any Owner to partition through legal action as described in **Section 2.18** shall revive immediately. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Development, together with the proceeds of any sale pursuant to any partition action, after payment of all expenses relating to the sale, taking or partition action, shall be paid to all Owners and to their respective Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owners' Condominiums.

In the case of a partial sale or taking of the Development, meaning a sale or taking that is not a total taking as described above, the proceeds from the sale or taking shall be paid or applied in the following order of priority; and any judgment of condemnation shall include the following provisions as part of its terms:

(i) to the payment of the expenses of the Association in effecting the sale or to any prevailing party in any condemnation action to whom such expenses are awarded by the Court to be paid from the amount awarded; then

(ii) to Owners and their respective Mortgagees as their interests may appear whose Condominiums have been sold or taken in an amount up to the fair market value of such Condominiums as determined by the Court in the condemnation proceeding or by an independent, qualified appraiser selected by the Board, less such Owner's share of expenses paid pursuant to the preceding subsection (i) (which share shall be allocated on the basis of the fair market value of the Condominium). After such payment, the recipient shall no longer be considered an Owner, and the Board or individuals authorized by the Board acting as attorney-in-fact of all Owners shall amend the Condominium Plan, the subdivision map (if necessary), and this Declaration to eliminate from the Development the Condominium so sold or taken and to adjust the undivided ownership interests of the remaining Owners in the Common Area based on the ratio that each remaining Owner's undivided interest bears to all of the remaining Owners' undivided interest in the Common Area; then

(iii) to any remaining Owner and to his or her Mortgagees, as their interests may appear, whose Condominium has been diminished in fair market value as a result of the sale or taking disproportionately to any diminution in value of all remaining Condominiums but, as of a date immediately after any announcement of condemnation, in an amount up to the disproportionate portion of the total diminution in value; then

(iv) to all remaining Owners and to their respective Mortgagees, as their interests may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Condominium bears to the fair market value of all remaining Owners' Condominiums as determined by the Court in the condemnation proceeding or by an independent, qualified appraiser selected by the Board.

9.11 Dispute Resolutions. If there are any disputes regarding the rights and/or duties of the Owners or the Association under this **Article 9**, the dispute shall be submitted to mediation and, if necessary binding arbitration, to the Judicial Arbitration and Mediation Services (JAMS), any successor thereto or any other alternative dispute resolution provider acceptable to the parties for resolution. If the mediation is unsuccessful, the dispute shall be resolved by binding arbitration in accordance with JAMS' commercial rules. The mediation and arbitration shall be held in the county where the Development is located. The parties shall be entitled to the discovery rights provided by Code of Civil Procedure section 1283.05. The arbitrator may award costs and attorneys' fees to the prevailing party. The arbitrator's decision shall be binding on the parties and may be enforced in any court of competent jurisdiction.

ARTICLE 10 - Rights of Mortgagees

10.1 Lender Definitions. Unless the context indicates otherwise, the following terms as used in this **Article 10** shall have the definitions contained in this **Section 10.1**. An "institutional" Mortgagee is a first Mortgagee that is: (i) a federally or state chartered or licensed bank or savings and loan association; (ii) a mortgage company or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property or investing in such loans; (iii) an insurance company; (iv) a federal or State agency or instrumentality including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; or (v) an insurer or governmental guarantor of a first Mortgage including the Federal Housing Authority and the Veterans Administration. A "first Mortgage" or "first Mortgagee" is one having a priority as to all other Mortgages encumbering the same Condominium or other portions of the Development. An "eligible Mortgage holder" shall mean a first Mortgagee who has requested the Association to notify the first Mortgagee of any proposed action that requires the consent of a specified percentage of eligible Mortgage holders.

10.2 Encumbrance. Any Owner may encumber his or her Condominium with a Mortgage or Mortgages.

10.3. Rights of Institutional Mortgagees. Any institutional Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the first Mortgage, including judicial foreclosure or nonjudicial foreclosure under a power of sale (but excluding voluntary conveyance to the first Mortgagee), shall take the Condominium free of any obligation to pay any assessments that were delinquent as of the date the institutional Mortgagee acquired title to the Condominium, including any interest, penalties or late charges in connection therewith. The institutional Mortgagee as Owner of the Condominium shall be obligated to pay any assessments that were not delinquent as of the date the institutional Mortgagee took title to the Condominium and all future assessments levied against the Condominium as long as the institutional Mortgagee remains in title, including any special assessments levied by the Association to raise operating or reserve funds needed because of uncollected delinquent assessments, as long as the special assessment is allocated among all the Condominiums as provided in **Section 6.9.**

10.4 Subordination. Any assessment lien established under the provisions of this Declaration is expressly made subject to and subordinate to the rights of any Mortgage that encumbers all or any portion of the Development or any Condominium made in good faith and for value and recorded before the recordation of a notice of delinquent assessment. No assessment lien shall in any way defeat, invalidate or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates in writing its interest to such lien. If any Condominium is encumbered by a Mortgage made in good faith and for value, the foreclosure of any assessment lien cannot operate to effect or impair the lien of any Mortgage recorded prior to the recordation of the notice of delinquent assessment. Upon the foreclosure of any prior-recorded Mortgage, any lien for delinquent assessment shall be subordinate to the Mortgage lien; and the purchaser at the foreclosure sale shall take title free of the assessment lien. By taking title, the purchasers shall be obligated to pay only assessments or other charges that were not delinquent at the time the purchaser acquired title or that were levied by the Association on or after the date the purchaser acquired title to the Condominium. Any subsequently-levied assessments or other charges may include previously-unpaid assessments, provided all Owners, including the purchaser and its successors and assigns, are required to pay their proportionate share of such unpaid assessments.

10.5 Breaches. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith or for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee sale or otherwise.

10.6 Special Voting Requirements. Unless at least 67% of first Mortgagees (based on one vote for each Condominium secured by the first Mortgage) and 67% of the total voting power of the Members of the Association other than Declarant have given their prior written approval, the Association shall not:

(i) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area or any portion thereof. However, the granting of easements for public utilities or for any other public purposes consistent with the intended use of the Common Area by the Association or the granting of easements or rights in the Common Area (other than a sale of the Common Area as authorized under **Section 2.11 or 2.12**) is not a transfer within the meaning of this clause;

(ii) change the method of determining the obligations, assessments, dues or other charges that may be levied against a Condominium;

(iii) by act or omission change, waive or abandon the provisions of this Declaration, or the enforcement of them, pertaining to architectural design or the exterior maintenance of Condominium structures, the maintenance of the Common Area walkways or common fences and driveways, or the upkeep of lawns and plantings within the Development;

(iv) fail to maintain fire and extended coverage insurance on insurable Association property, including any Building Common Area improvements, on a current-replacement-cost basis in an amount not less than 100% of the insurable value (based on current replacement costs); or

(v) use property insurance proceeds for losses to any Association property, including Common Area improvements, for other than the repair, replacement or reconstruction of such property.

Approval by Owners who represent at least 67% of the total allocated votes in the Owner's Association and by eligible mortgage holders who represent at least 51% of the votes of Condominiums that are subject to mortgages held by eligible mortgage holders must be obtained prior to adoption of any amendment of a material nature affecting any of the following matters:

- (i) voting rights;
 - (ii) increases in assessments that raise the previously-assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
 - (iii) reductions in reserves for maintenance, repair or replacement of the Common Area improvements;
 - (iv) responsibility for maintenance and repairs;
 - (v) reallocation of interests in the Common Area or Exclusive Use Common Area or rights to their use;
 - (vi) redefinition of any Unit boundary;
 - (vii) convertibility of Units into Common Area or vice versa;
 - (viii) expansion or contraction of the Development or the addition, annexation or withdrawal of property to or from the Development;
 - (ix) hazard or fidelity insurance requirements;
 - (x) imposition of any restrictions on the leasing of Units;
 - (xi) imposition of any restrictions on a Condominium Owner's right to sell or transfer his or her Condominium;
 - (xii) a decision by the Association to establish self-management when professional management had been required previously by the Governing Documents or by an eligible Mortgage holder;
 - (xiii) restoration or repair of the Development (after damage or partial condemnation) in a manner other than that specified in this Declaration;
 - (xiv) any provisions that expressly benefit Mortgage holders, insurers, or guarantors;
- or
- (xv) any action to terminate the legal status of the Development after substantial destruction or condemnation occurs.

If Owners are considering termination of the legal status of the Development for reasons other than substantial destruction or condemnation of the Property, eligible Mortgage holders that represent at least 67% of the votes of the mortgaged Condominiums must agree.

If any eligible Mortgage holder fails to submit a response to any written proposal for an amendment within 60 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail with a return receipt requested, the eligible Mortgage holder shall be considered to have granted approval.

10.7 Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of any institutional Mortgagees pursuant to their Mortgages in case of distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of any Condominiums or Common Area. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the Development is to such extent void.

10.8 Mortgagee Notice. If any Owner is in default under any provision of this Declaration or under any provision of the Articles, Bylaws or the Rules and the default is not cured within 60 days after written notice to that Owner, the Association, upon request, shall give to any first Mortgagee of such Owner a written notice of such default and of the fact that the 60-day period has expired.

Any Mortgage holder, insurer or guarantor may send a written request to the Association stating both its name and address and the address of the Condominium of which it holds, insures or guarantees a Mortgage to receive timely written notice of any of the following:

- (i) any condemnation or casualty loss that affects either a material portion of the Development or the Condominium securing the Mortgage;
- (ii) any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Unit encumbered by the holder's, insurer's or guarantor's Mortgage;
- (iii) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (iv) any proposed action that requires the consent of a specified percentage of eligible Mortgage holders.

10.9 Tax Payments. First Mortgagees of any Condominium jointly or severally may pay taxes or other charges which are in default and which may be or have become a charge against the Common Area and may pay any overdue premiums on property insurance policies or secure new property insurance on the lapse of a policy for Common Area improvements or other insured property of the Association; and, by making such payments, such Mortgagees shall be owed immediate reimbursement from the Association. The provisions shall constitute an agreement by the Association for the express benefit of all first Mortgagees; and, on request of any first Mortgagee, the Association shall execute and deliver to such Mortgagee a separate written agreement embodying this provision.

10.10 Right of First Refusal. Except as to Units #207 and #304 in the 410 Jessie Street Condominium Building and Units #203, #302 and #403 in the 418 Jessie Street Condominium Building that are designated BMR units, as further set forth in **Section 2.22** and recorded documents referenced therein, no right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium is imposed by this Declaration, the Articles, Bylaws or in any deed restriction of any deed from the Declarant to the first purchaser of the Condominium.

10.11 Professional Management Contracts. Any agreement for professional management by a manager, shall provide for termination by either party without cause and without payment of a termination fee on 90 days' written notice or less and shall have a maximum term of one year, provided that the Association can renew any such contract on a year-to-year basis. Any agreement between the Association and the Declarant for professional management that is entered into before control of the Development has passed to the Owners (other than Declarant) shall provide that the

Association may terminate the agreement without cause at anytime after transfer of control to the Owners (other than Declarant).

10.12 Inspection of Governing Documents. The Association shall have current copies of this Declaration, the Articles, Bylaws, Rules and the books, records and financial statements available for inspection during normal business hours by Owners and holders, insurers or guarantors of first Mortgages.

ARTICLE 11 - Amendments

11.1 Amendment Before Close of First Sale. Before the close of the first sale of a Condominium in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended in any respect or rescinded by Declarant by recording an instrument amending or rescinding this Declaration. The amending or rescinding instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the county in which the Development is located. For purposes herein, a Person is considered controlled by Declarant if the Declarant holds 50% or more of the capital and profit interests if a partnership or limited liability company, 50% or more of the voting shares if a corporation, and 50% or more of the beneficial interests if a trust.

11.2 Amendment After Close of First Sale. After the close of the first sale of a Condominium in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended or revoked in any respect with the vote or written consent of the holders of not less than 51% of the voting rights of each class of Owners or, if a single class of Owners is then in effect, by the vote or written consent of not less than 51% of all votes and 51% of the votes excluding Declarant. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Owners in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Owners shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, Mortgagee or other Person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Notwithstanding anything herein to the contrary, any provision in this Declaration that specifically confers rights or benefits on Declarant as the Declarant and not on any other Owner may not be amended or rescinded without the prior written consent of Declarant except as expressly authorized by Civil Code section 1355.5. The amendment is effective when it has been approved by the appropriate percentage of Owners as required herein, the approval has been certified in a writing executed and acknowledged by the officer designated in this Declaration or by the Association for that purpose (or, if no one has been designated, the President of the Association), and the amendment and certification have been recorded in the county in which the Development is located.

11.3 Special Amendment Requirements. Notwithstanding anything herein to the contrary, no amendment affecting the dimensions of any Unit or the interests in the Common Area or Exclusive Use Common Area shall be effective without the consent of all Owners whose Units, Common Area interests or Exclusive Use Common Area rights are affected by the amendment, except as authorized in **Sections 2.11, 2.12 and 9.9**. The provisions of this **Section 11.3** may not be amended without the unanimous consent of the total voting power of the Association.

11.4 Amendment Rights of Retail/Restaurant, Parking, and Storage Owners. Notwithstanding anything herein to the contrary, any amendment that affects the right of any Retail/Restaurant, Parking, or Storage Condominium Owner under the provisions of **Sections 1.17, 1.23, 1.29, 2.6.2, 2.16, 2.17, 3.1.2, 3.1.4, 3.1.5, 3.3, 3.6.2, 4.4, 8.2.1(c), and 8.8.2** will not be effective without the prior written consent of each such Retail/Restaurant, Parking, or Storage Condominium Owner affected by the amendment. In addition, any amendment that alters the formula for allocating assessments to the Retail/Restaurant, Parking, or Storage Condominiums as set forth in **Section 6.9** shall not be effective without the prior written consent of the Owners that hold a majority of the voting power allocated to the type of condominiums (Retail/Restaurant, Parking, and/or Storage Condominiums)

whose assessment allocation is altered by the amendment. The provisions of this **Section 11.4** may not be amended as to the Retail/Restaurant, Parking, or Storage Condominiums without the unanimous consent of the Owners of the type of condominium (Retail/Restaurant, Parking, and/or Storage Condominiums) whose rights would be altered under this Section by the proposed amendment.

11.5 Corrections. Notwithstanding anything herein to the contrary, Declarant reserves the right as the attorney-in-fact for each Condominium Owner to record an amendment or appropriate instrument of correction to correct any errors in this Declaration, or any exhibits thereto, including any Condominium Plan, and the consent of neither the Association nor any Condominium Owner shall be required provided that if the correction affects the size, location or access or use rights to any Unit or any Exclusive Use Common Area appurtenant to that Unit, the consent of that Condominium Owner shall be required.

ARTICLE 12 - Declarant Disputes

Any claim, dispute or other controversy between the Association and/or any Owner(s) and the Declarant or any director, officer, shareholder, partner, employee or agent of the Declarant or any contractor, subcontractor, design professional, engineer or other person that provided materials, labor or other services to the Development relating to this Declaration, the use, condition or operation of any Condominium or Common Area, or any other Association Improvement, property or landscaping, whether based in contract, tort or statute violation (individually and collectively the "Claim"), shall be subject to the claims procedures set forth in Exhibit C attached hereto and incorporated herein. The claims procedures in Exhibit C do not apply to any action taken by the Association to enforce delinquent assessments against Declarant, which shall be governed by **Section 6.10** of this Declaration.

As described elsewhere in this Declaration, the Development involves the renovation and rehabilitation of two historic buildings listed on the Federal National Register of Historical Places for many different uses, including storage, parking, retail/restaurant, live/work, and residential. This development includes many historic features that are not new construction and may not have been changed as part of the current adaptive reuse project, including, without limitation, portions of the building exteriors and interiors. Because of this, more recent statutory enactments that apply only to original residential construction do not and shall not apply to this development. The building standards that are set forth in Title 7 of the California Civil Code (i.e., Civil Code § 896, et seq., commonly referred to as "S.B. 800") do not apply to this development or the claims referenced under this Article, and the claims resolution procedures as part of S.B. 800 do not and shall not apply to this development or the claims referenced under this Article.

ARTICLE 13 - Miscellaneous Provisions

13.1 Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

13.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions or any portion thereof shall not invalidate any other provision or any portion of the provisions not found invalid or unenforceable.

13.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and nonexclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver of the remedy.

13.4 Discrimination. No Owner shall execute or cause to be recorded any instrument that imposes a restriction on the sale, leasing or occupancy of the Owner's Condominium on the basis of race, sex, marital status, national ancestry, color or religion.

13.5 Access to Books. Any Owner, at any reasonable time and upon reasonable notice to the Board or manager and at the Owner's expense, may cause an audit or inspection to be made of the books and financial records of the Association.

13.6 Notification of Sale. No later than five days after the closing of the sale of any Condominium, the new Owner shall notify the Association of such sale. Such notification shall be in writing and shall set forth the name and address of the new Owner and the date of sale.

13.7 Reservation or Grant of Easements. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in any deed to any Condominium.

13.8 Incorporation of Exhibits. All exhibits referred to herein and attached to this Declaration are incorporated herein by reference as fully set forth herein.

13.9 Enforcement Rights and Remedies. The covenants, restrictions, rights and duties contained in this Declaration constitute covenants running with the land and equitable servitudes that benefit and bind each Condominium in the Development, each Owner, and each successive Owner thereto, and may be enforced by the Association, the Declarant or any Owner in any legal or equitable action pursuant to the procedures described herein. Declarant may enforce any covenants, restrictions, and rights set forth in this Declaration that expressly benefit Declarant without regard to whether Declarant owns any Condominiums in the Development.

Each Owner acknowledges and agrees that if any Person breaches any of the restrictions contained herein, money damages may not be adequate compensation. As a result, each Owner agrees that in the event of a breach, the non-breaching party, in addition to any other remedy available at law or equity, shall be entitled to equitable relief, including, but not limited to, an order compelling the breaching party to perform an act which the party is required to perform under this Declaration or which is necessary to bring the breaching party or the breaching party's Condominium into compliance with restrictions contained herein or prohibiting the breaching party from performing any act that violates the restrictions.

Notwithstanding anything herein to the contrary, the Association shall have the exclusive right to levy assessments and to take appropriate action to enforce delinquent assessments, including imposition of an assessment lien and the foreclosure of the lien. Furthermore, the Association shall have the primary responsibility for enforcing the restrictions contained in **Article 3** and the architectural provisions contained in **Article 7**. If any Owner or occupant desires the Association to take any enforcement action, the Owner or occupant shall notify the Association in writing of the alleged violation. On receipt, the Board shall review the matter and shall determine what action, if any, to take. Neither the Board nor the Association or any director, officer or agent thereof shall be liable if the Board in the exercise of its judgment elects not to take any action. To the extent applicable, the Board shall comply with the due process requirements described in this Declaration. If within 90 days after receipt of the notice the Board has failed to take any corrective action and the alleged violation has not been cured and is continuing, any Owner may bring an action on the Owner's behalf for appropriate legal and/or equitable relief. In such action, the Owner shall bear his or her own costs and attorneys' fees, provided that the prevailing party in such action shall be entitled to recovery of such costs and fees.

Prior to the commencement of any action by the Association, the Declarant or Owner to enforce the Governing Documents, the Davis-Stirling Common Interest Development Act (Civil Code sections 1350-1376) or the Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8910), the Association, the Declarant or the Owner shall comply with the requirements of Civil Code sections 1369.510 through 1369.560 to the extent applicable.

13.10 Term. The term of this Declaration shall be for a period of 50 years from the date on which this Declaration is recorded in the records of the county in which the Development is located. After that time, this Declaration and each of its restrictions and covenants and other provisions automatically shall be extended for successive ten-year periods unless this Declaration is rescinded by

the written consent of Owners holding a majority of the total voting power of the Association. The rescission shall be effective on recordation of a notice of rescission in the records of the county in which the Development is located.

13.11 Reserved Rights of Declarant. Declarant is recording this Declaration as part of the construction of a residential, live/work, and commercial development. No covenant or restriction contained herein shall be applied in any manner that would unreasonably interfere with Declarant's rights to complete the construction of the Improvements and to sell the Improvements. The rights retained by Declarant during the construction and sales period include, but are not limited to, the right to:

- (i) maintain construction equipment, personnel and materials on the Property;
- (ii) use such portions of the Property as may be necessary or advisable to complete the construction or sales;
- (iii) maintain construction and/or sales offices on the Property and appropriate parking to accommodate the foregoing;
- (iv) maintain sale signs or other appropriate advertisements on the Property;
- (v) maintain model homes for viewing by prospective purchasers; and
- (vi) allow prospective purchasers access to the Property to inspect any Common Area or any model homes.

13.12 Assignment by Declarant. Declarant may assign all or any portion of its rights and delegate all or any portion of its duties to any other Person; and from and after the date of such assignment and/or delegation, the Declarant shall have no further rights and/or duties hereunder with respect to the rights assigned and duties delegated. Any successor or assignee of the rights and duties of the Declarant shall execute an instrument assuming the rights and duties of the Declarant hereunder and thereafter shall be entitled to exercise all the rights of Declarant so assigned and shall be obligated to perform all the Declarant's duties so delegated, provided such successor or assignee shall not be liable in any manner for any act or omission committed or omitted by the Declarant before the date the successor or assignee succeeded to the rights of the Declarant hereunder.

13.13 Attorneys' Fees. Except as otherwise provided herein, in the event of any litigation or alternative dispute resolution procedure regarding the rights or obligations of the Declarant, the Association or any Person subject to this Declaration, the prevailing party in such proceeding, in the discretion of the judge or decision-maker, shall be entitled to recover costs, including reasonable attorneys' fees.

13.14 Notices. Any notice permitted or required by this Declaration, the Articles, Bylaws or Rules shall be considered received on the date the notice is personally delivered to the recipient or 48 hours after the notice is deposited in the United States mail, first-class, registered or certified, postage fee prepaid and addressed to the recipient at the address that the recipient has provided the Association for receipt of notice or, if no such address was provided, at the recipient's Condominium address in the Development.

13.15 No Enforcement Waiver. Failure to enforce a restriction in the past in and of itself shall not constitute a defense to any action brought against any Owner for violation of any restriction contained herein. Each Owner, by acceptance of a deed to a Condominium in the Development, acknowledges that the enforcement of these restrictions may vary as a result of different Owners, Boards or Architectural Committees, changing conditions, or other reasons and agrees that the failure of any Owner, Board or Committee to enforce any particular restriction, even if such failure is for an

extended period of time, shall not in any manner restrict or estop the right of any Owner, Board or Committee to enforce these restrictions at any future time.

13.16 Condominium Plan Consent. Declarant, by its execution of this Declaration, and any beneficiary under a deed of trust encumbering the Property, by its subordination to this Declaration, certify that each consents to the amendment and restatement of the Original 410 Jessie Street Condominium Plan, and consents to the Condominium Plan (as defined herein, for the 410 Jessie Street Condominium Parcel and the 418 Jessie Street Condominium Parcel) in its entirety by recordation of the Condominium Plan attached hereto as Exhibit A and incorporated herein.

13.17 Original Declaration and Original Condominium Plan. Upon the recordation of this Declaration and the Condominium Plan attached as Exhibit A, the Original 410 Jessie Street Declaration and the Original 410 Jessie Street Condominium Plan described in Recital A are amended and restated in their entirety by this Declaration and Condominium Plan and thereafter shall be of no force and effect.

Declarant has executed this Declaration as of MARCH 19, 2007.

Fifth Historic Properties, LLC

a California Limited Liability Company

By: Martin McNerney Development, Inc.,
a California corporation, Manager

By: 
Patrick Martin McNerney,
President

418 Jessie Historic Properties, LLC,

a California limited liability company

By: 418 Jessie Properties, LLC,
a California limited liability company,
Manager

By: Martin McNerney Development,
Inc., a California corporation,
Manager

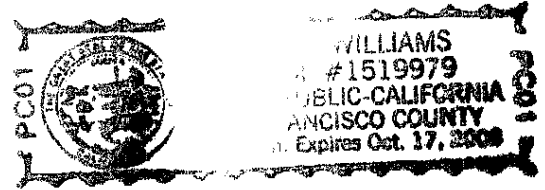
By: 
Patrick Martin McNerney,
President

STATE OF CALIFORNIA

COUNTY OF San Francisco)
) ss.

On March 19, 2007 before me, June Williams, Notary Public personally appeared Patrick McNeer personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature

June Y. Williams

(Seal)

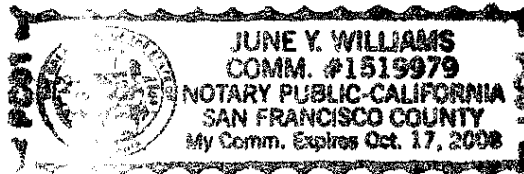
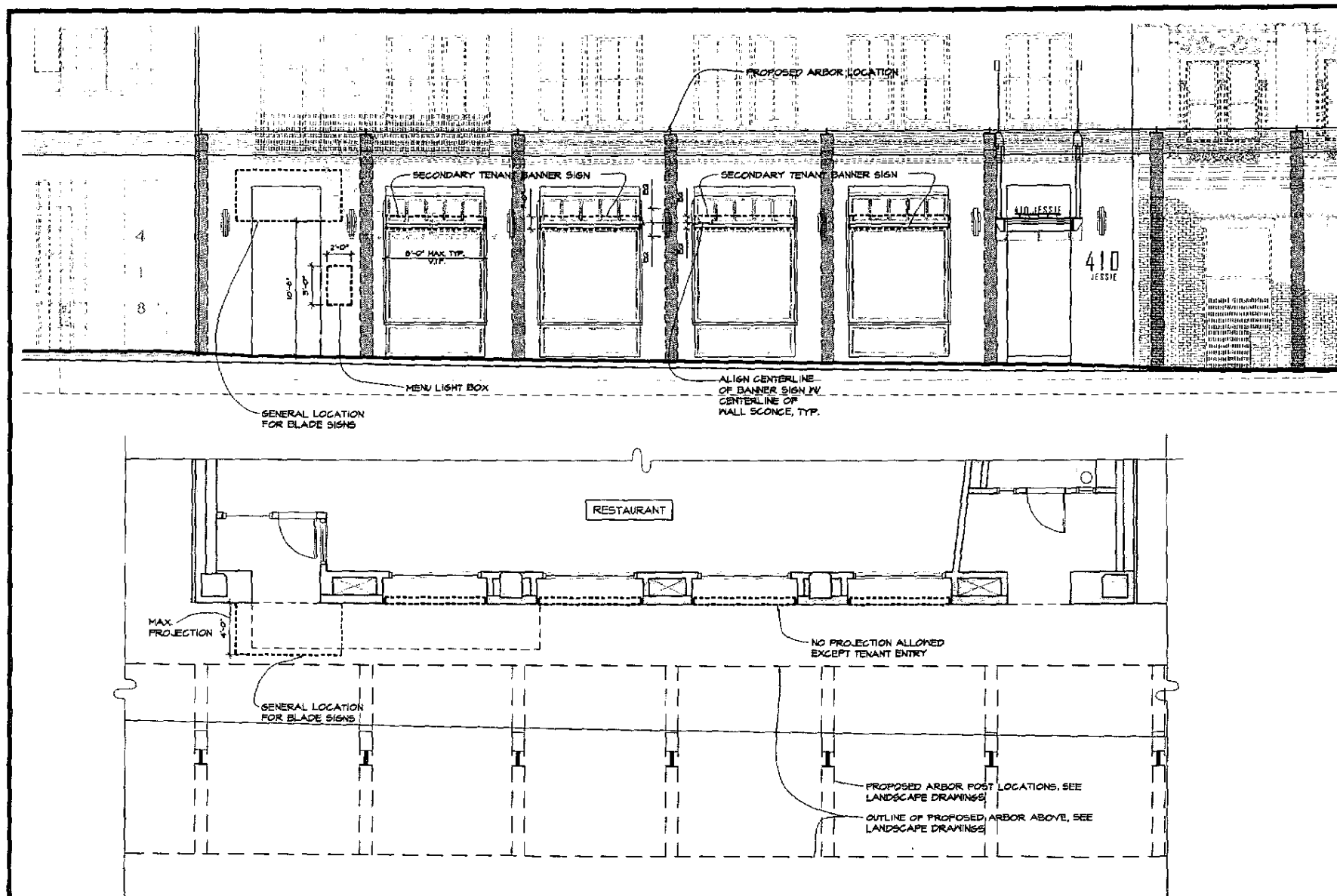


EXHIBIT "D"
TO
COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs)
OF
MINT COLLECTION - 410 & 418 JESSIE STREET
A MIXED USE CONDOMINIUM PROJECT
RETAIL/RESTAURANT UNIT SIGNAGE GUIDELINES

GENERAL RULES GOVERNING EXTERIOR SIGNAGE FOR RETAIL/RESTAURANT UNITS

1. All signage is subject to Section 3.6.2 of the Declaration and must also be approved by the appropriate permitting agencies of the City and County of San Francisco.
2. Primary structure shall be aluminum, stainless steel (316 or 316L solid S.S. only), painted aluminum, or painted steel. All types of vinyl and polycarbonates are prohibited.
3. Text shall be painted, silk-screened, clear aluminum, or stainless steel on standoffs. Ancillary text is to be silk-screened or painted.
4. Text illumination options are as follows: A) neon stencil over sans serif painted or silk-screened letters B) cast aluminum or stainless steel letters on standoffs with neon ambient illumination
5. Ambient or non-visible signage lighting shall be any light source permitted by applicable City and County of San Francisco codes.
6. Colors shall be compatible with exterior coloring of the Development.
7. Banners and Menu Boxes, see Exhibits D1, D2 and D3 for size, location and dimensions.
8. For Blade Signs, see Exhibits D1, D2, and D3, for general size, locations and dimensions. Blade signs shall not project more than 4 feet from building face. Illumination (if visible) is to be neon or led neon only.



Mint Collection -
410 & 418 Jessie Street
A MIXED USE CONDOMINIUM
PROJECT

DESCRIPTION: SIGNAGE GUIDELINES:
410 JESSIE

SKETCH NUMBER:

EXHIBIT D.1

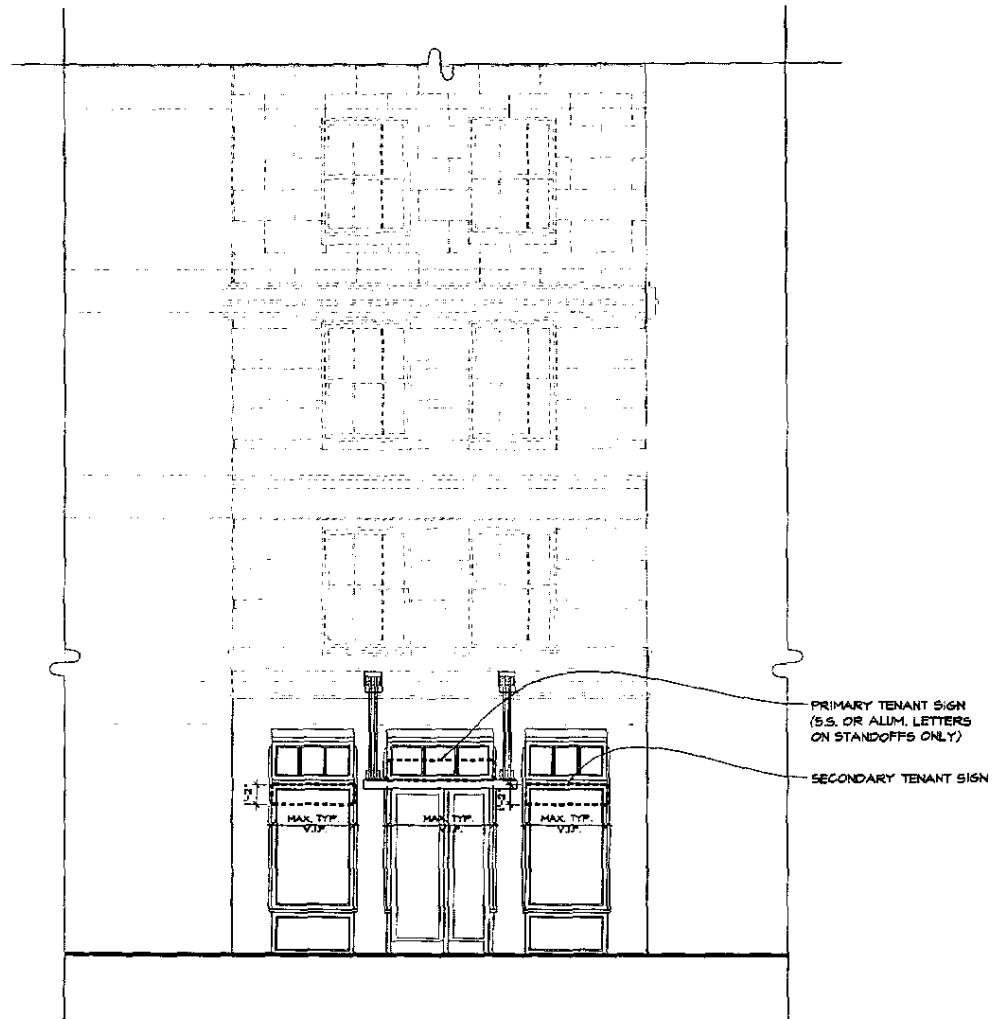
REVISIONS:

DATE:	03/15/2007	SCALE:	3/32" = 1'-0"
DRAWN BY:	AC/JHF	JOB NO.:	0625
CHECKED BY:	WPD	CAD FILE:	0625_EXHIBIT_D1.dwg

num/dd/yyyy	description

ib + a
interior
building
architects

300 Beale Street, Suite A
San Francisco, CA 94105
tel: (415) 512-0550
fax: (415) 512-9663
www.ibadesign.com



Mint Collection -
410 & 418 Jessie Street
A MIXED USE CONDOMINIUM
PROJECT

DESCRIPTION: SIGNAGE GUIDELINES:
36 5th STREET

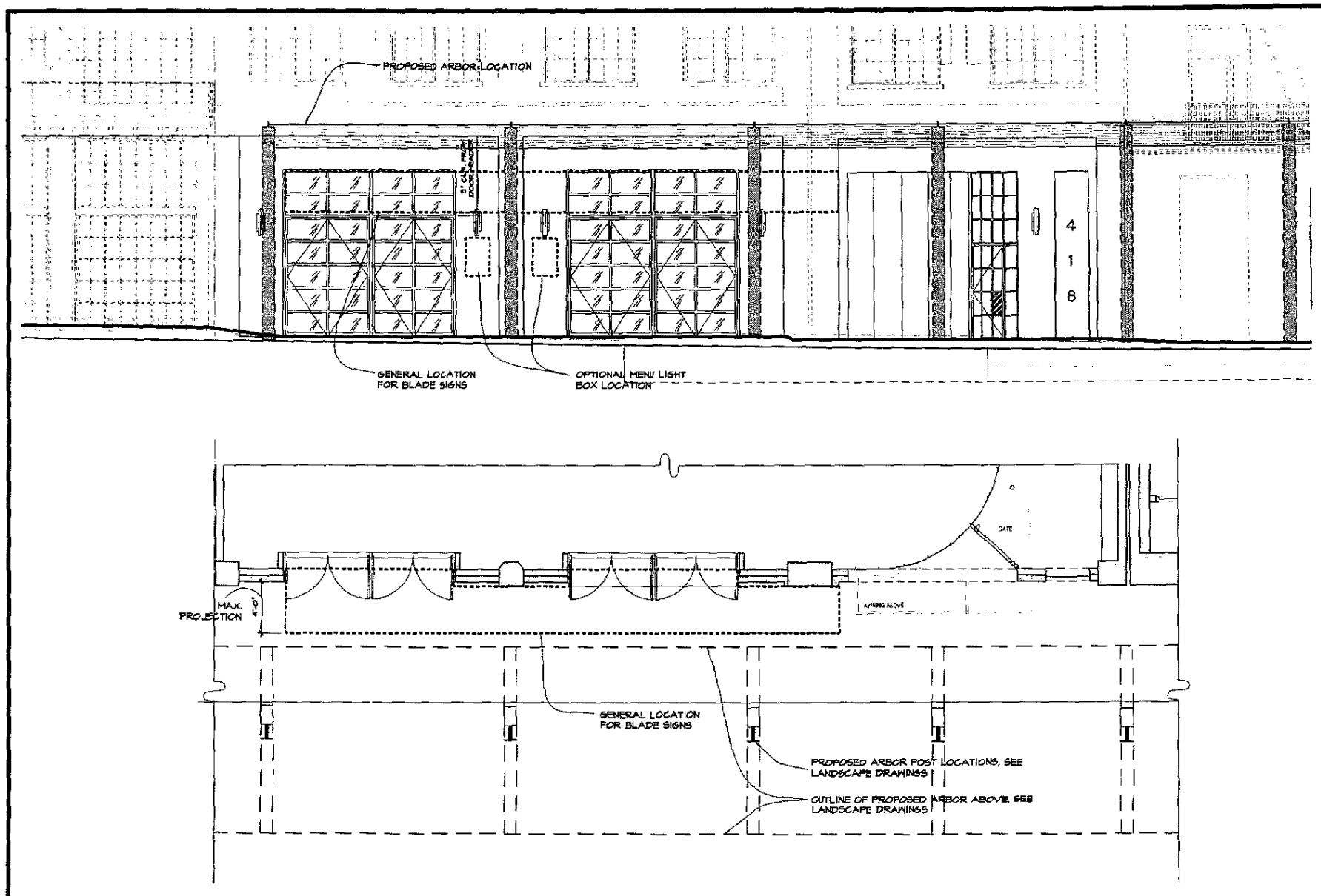
SKETCH NUMBER:
EXHIBIT D.2

DATE: 03/15/2007	SCALE: 3/32" = 1'-0"
DRAWN BY: -	JOB NO.: 0625
CHECKED BY: WPD	CAD FILE: 0625_EXHIBIT_D2.dwg

REVISIONS:

mm/dd/yyyy	description

ib + a
architectural
interior design
300 Beale Street, Suite A
San Francisco, CA 94105
tel: (415) 512-6660
fax: (415) 512-6663
www.iadesign.com



Mint Collection -
410 & 418 Jessie Street
A MIXED USE CONDOMINIUM
PROJECT

DESCRIPTION: SIGNAGE GUIDELINES:
418 JESSIE

SKETCH NUMBER:
EXHIBIT D.3

DATE: 03/15/2007 SCALE: 3/32" = 1'-0"
DRAWN BY: AC/JHF JOB NO.: 0625
CHECKED BY: WPD CAD FILE: 0625_EXHIBIT_D3.dwg

REVISIONS:
mm/dd/yyyy description



APPENDIX I - Unit Maintenance and Repair Responsibilities¹

Note: This Appendix is not intended to be an all inclusive list of the items maintained either by the Owner or the Association. Its purpose is to describe maintenance responsibilities over certain items where there may be some uncertainty as to the responsible maintaining party. Unless otherwise limited, maintenance means inspection, cleaning, maintenance, repair and replacement.

ASSOCIATION

Within the Unit

Building fire alarm system
Structural repairs to load-bearing walls
Fire sprinkler heads

Within the Common Area, Including Exclusive Use Common Area:

Exterior Unit door surfaces (including repainting only)
Exterior fire escapes, railings and surfaces
Exterior balcony/deck lighting fixtures (except bulb replacement)
Dividing wall between decks
Balcony/deck membranes/coating/paint
Cleaning exterior window surfaces
[Except as noted, the Association maintains all other Common Area improvements and landscaping.]

CONDOMINIUM OWNER

Within the Unit:

Interior doors and hardware
Interior walls (except structural repairs to load-bearing walls)
Wall coverings (e.g., wallpaper)
Floor coverings (e.g., tile, carpets, carpet pads, and hardwood floors)
Ceiling coverings
Paint
Light fixtures and light bulbs
Cabinets
Appliances (e.g., refrigerators, stoves, ovens, dishwashers, garbage disposals, trash compactors)
Electrical system (e.g., light fixtures, light switches, light bulbs, bathroom fan fixtures, and wiring)
Heating and Air Conditioning Controls
Plumbing and water system (e.g., toilets, showers, tubs, faucets, pipes and drains)
Window coverings
Door locks
Door bells
Door thresholds
Mirrors
Smoke detectors
Trade fixtures

Within the Common Area:

¹ The purpose of this exhibit is to describe the party responsible for maintaining and repairing certain items located within the Unit and within certain portions of the Common Area located in close proximity to the Unit in accordance with the provisions of **Sections 4.1 and 4.2.**

Light fixtures wired to the Owner's Unit
Exterior door hardware, including gaskets and seals
Exterior balcony/deck lighting fixtures (bulb replacement only)
Any lighting fixtures (including bulb replacement) that is connected into the Unit's electrical system
(including front door and balcony/deck exterior lights)
Windows, window seals and door screens
Windows (replacement or repair of broken windows)
Electrical wiring, plumbing pipes and drains that exclusively serve the Unit²

² Pursuant to **Section 4.1** of the Declaration these items shall be maintained and repaired by the Association and the cost shall be paid by the Condominium Owner.

CONSENT AND SUBORDINATION

The undersigned, Wendy Roess-DeCenzo, Beneficiary, under that certain Deed of Trust recorded on April 15, 2005, in Recorder's Serial Number 2005-H937355-00, Official Records of the County Recorder of the County of San Francisco, executed by 418 Jessie Historic Properties, LLC, as Trustor, with Old Republic Title Company, a CA Corporation, as Trustee, does hereby consent to the execution and recordation of the attached Declaration of Conditions, Covenants and Restrictions and does hereby subordinate said Deed of Trust to said Declaration of Conditions, Covenants and Restrictions to the same extent and with the same force and effect as if said Declaration of Conditions, Covenants and Restrictions had been executed and recorded prior to the execution and recordation of said Deed of Trust.

IN WITNESS WHEREOF, the undersigned has executed this Consent and Subordination this 20 day of NOVEMBER, 2006.

DATED: 11/30/2006

Wendy Roess-DeCenzo
Beneficiary

BY: 

BY: _____

(PLEASE ATTACH NOTARY ACKNOWLEDGEMENT HERETO)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

SAN FRANCISCO

SS.

On

11/30/06

Date

before me,

June Y Williams Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally

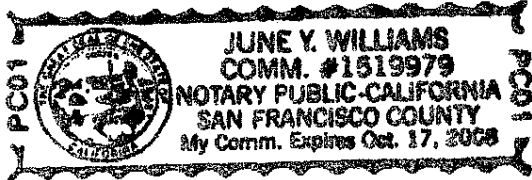
appeared

Wendy Roess-DeCenzo

Name(s) of Signer(s)

☒ personally known to me

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



WITNESS my hand and official seal.

June Y Williams

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer is Representing: _____

Signer's Name: _____

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

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer is Representing: _____

CONSENT AND SUBORDINATION

The undersigned, East West Bank, Beneficiary, under that certain Deed of Trust recorded on April 15, 2005, in Recorder's Serial Number 2005-H937353, Official Records of the County Recorder of the County of San Francisco, executed by 418 Jessie Historic Properties, LLC, a California limited liability company, as Trustor, with Old Republic Title Company, as Trustee, does hereby consent to the execution and recordation of the attached Declaration of Conditions, Covenants and Restrictions and does hereby subordinate said Deed of Trust to said Declaration of Conditions, Covenants and Restrictions to the same extent and with the same force and effect as if said Declaration of Conditions, Covenants and Restrictions had been executed and recorded prior to the execution and recordation of said Deed of Trust.

IN WITNESS WHEREOF, the undersigned has executed this Consent and Subordination this 15th day of DECEMBER, 2006.

DATED: 12/1/06

East West Bank
Beneficiary

BY: [Signature]

BY: [Signature]

(PLEASE ATTACH NOTARY ACKNOWLEDGEMENT HERETO)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Alameda

SS.

On

Dec 01, 2006

Date

before me,

Mandy Wong Lin

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

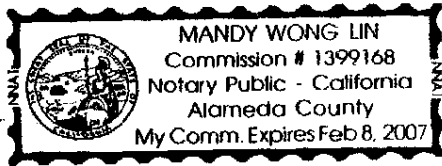
personally appeared

Fely Kwan

Name(s) of Signer(s)

☐ personally known to me

☒ proved to me on the basis of satisfactory evidence



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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document:

Consent And Subordination

Document Date:

12/1/06

Number of Pages:

1

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer

Signer's Name:

☐ Individual

☐ Corporate Officer — Title(s):

☐ Partner — ☐ Limited ☐ General

☐ Attorney-in-Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here