

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
KEARNY MESA COMPLEX

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF KEARNY MESA COMPLEX (“Declaration”) is made this ____ day of _____, 2006 by KM COMPLEX, L.P., a California limited partnership (“Declarant”) with reference to the facts set forth in the Article hereof entitled “Recitals.”

ARTICLE I RECITALS

1.1 PROPERTY OWNED BY DECLARANT. Declarant is the owner in fee simple of that certain real property situated in the City of San Diego, County of San Diego, State of California, more particularly described on **Exhibit “A”** attached hereto and incorporated herein (“Property”).

1.2 NATURE OF PROJECT. Declarant intends to establish a plan of condominium ownership and to market and sell the Property as a condominium project within the meaning of California Civil Code Section 1351(f) and to subject the Property to certain limitations, restrictions, conditions and covenants as hereinafter set forth, in accordance with the provisions of California Civil Code Sections 1350 et seq., or any successor statutes or laws. To that objective, Declarant desires and intends to impose on the Property certain mutually beneficial restrictions, limitations, easements, assessments and liens under a comprehensive plan of improvement and development for the benefit of all of the Owners, the Condominiums, Common Area (as defined below) and Association Property (as defined below) and the future Owners of said Condominiums, Common Area and Association Property. The Condominiums created hereby shall be commercial condominiums, to be used for office, research and development, retail, telecommunications, retail, and warehouse purposes, subject to the restrictions contained in Article 7 hereof.

1.3 DESCRIPTION OF PROJECT. The Project was originally constructed on or about 1974 and is therefore not new. The Declarant purchased the Project in September 1997. The Declarant did not build or develop the Buildings or any of the other amenities, facilities and other Improvements at the Project. Since its original construction, the Project has been operated as a commercial rental project. Because the Project is not new construction, the Project may not comply with all of the current building codes and may not comply with other laws that have been enacted since the Project was built. Except as may be required by local ordinance, Declarant does not intend to bring the Project up to current building code standards or to correct other deficiencies except as disclosed in writing to any Owner who acquires fee title to a Condominium from Declarant. That means that there may be defects in the Project that the Declarant has not discovered, or, if discovered, has not corrected.

Declarant intends to sell and market the Project as commercial condominiums. The Project is planned to consist of a maximum of 87 condominiums. Declarant makes no guarantee that the Project will be marketed and sold as presently proposed. Owners of a Condominium will receive title to a Unit plus an undivided fractional interest as tenant in common to the Common Area in the Project, and in some cases, non-exclusive use easements

over a portion of the Special Benefit Areas and/or an Assigned Generator Area. Each Condominium Owner will also receive certain easements for ingress, egress, use and enjoyment over the Association Property and the Common Area. Such easements are more particularly described in this Declaration and the deeds conveying the Units to the Owners. Each Condominium shall have appurtenant to it a membership in the Kearny Mesa Complex Owners Association, a California nonprofit mutual benefit corporation (“Association”).

DECLARATION

Declarant declares that the Property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, restrictions, easements, covenants, conditions, liens and charges, all of which are declared and agreed to be in furtherance of a plan of condominium ownership as described in California Civil Code Section 1350 et seq. or any successor statutes or laws for the subdivision, improvement, protection, maintenance, and sale of Condominiums within the Property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Property. All of the limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land, shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in the Property, shall be enforceable equitable servitudes and shall be binding on and inure to the benefit of the successors-in-interest of such parties. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of California Civil Code Section 1354, and any successor statutes or laws.

ARTICLE II DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article shall, for all purposes of this Declaration, have the meanings herein specified.

2.1 ADDITIONAL CHARGES. The term “Additional Charges” means costs, fees, charges and expenditures, including without limitation, attorneys’ fees, late charges, interest and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of assessments, fines and/or penalties.

2.2 ALLOCABLE SHARE(a) The term “Allocable Share” means each Owner’s share of assessments which shall be a percentage share referenced in Schedule 2.2, which Schedule is attached hereto and incorporated herein by reference. By accepting a deed to its Unit, each Owner acknowledges and agrees that it shall have no right to challenge its Allocable Share of Assessments, as determined by the Association.

(b) Notwithstanding the foregoing, the term “Allocable Share” with respect to the Special Benefit Areas means each Special Benefit Area Owner’s share of Special Benefit Area Assessments which shall be calculated as follows: (i) at the beginning of the Association’s fiscal year, the Board shall inventory all Special Equipment (i.e., satellite dishes, antennas, conduits, HVAC units, etc.) located within the Special Benefit Areas, and each individual item located thereon or therein shall be given a value of “one” (the “Equipment Total”), provided, however, in the event that a single conduit or other piece of equipment contains numerous innerducts, fiber, cabling, wiring, piping, tubing and/or any other item, owned

by different parties, each item within such conduit or other piece of equipment shall be given a value calculated by dividing such conduit or other piece of equipment (with a value of “1”) by the number of items therein (for example, if there are five innerducts within one conduit, each innerduct shall be given a value of .2), (ii) while calculating the Equipment Total, the Board shall also inventory the Special Equipment located within the Special Benefit Area owned by each Special Benefit Area Owner, or its Invitees (the “Individual Total”), (iii) each Special Benefit Area Owner’s Allocable Share shall be the ratio between the Individual Total and the Equipment Total. By accepting a deed to a Unit which includes an appurtenant right to use a portion of the Special Benefit Areas, each Special Benefit Area Owner acknowledges and agrees that it shall have no right to challenge its Allocable Share of Special Benefit Areas Assessments, as determined by the Association.

2.3 ALTERATION. The term “Alteration” means any alteration, addition or modification to a Unit that (i) is visible from the exterior of a Unit, (ii) impacts or affects in any manner the structural systems or structural integrity of a Building, the life safety systems of a Building, or any shared utility lines or systems, (iii) affects the grade or drainage patterns of any Common Area or Association Property; or (iv) affects any demising walls as described in **Section 3.7** herein. The term “Alteration” also includes the installation of any Special Equipment in a Special Benefit Area or Assigned Generator Area.

2.4 ARCHITECTURAL GUIDELINES. The term “Architectural Guidelines” means the design criteria that may be adopted by the Board pursuant to the provisions of **Article 9** of this Declaration.

2.5 ARTICLES. The term “Articles” means the Articles of Incorporation of the Association as they may from time to time be amended which are or shall be filed in the Office of the Secretary of State for the State of California.

2.6 ASSOCIATION. The term “Association” means the Kearny Mesa Complex Owners Association, a California nonprofit mutual benefit corporation, its successors and assigns.

2.7 ASSOCIATION PROPERTY. The term “Association Property” means all real property owned, from time-to-time, in fee title or held as an easement by the Association. The Association Property shall be held by the Association for the benefit of the Owners.

2.8 BOARD. The term “Board” means the Board of Directors of the Association.

2.9 BUILDING. The term “Building” refers to each building within the Project.

2.10 BYLAWS. The term “Bylaws” means the Bylaws of the Association, as they may from time to time be amended, which are or shall be adopted by the Board.

2.11 CAPITAL IMPROVEMENT ASSESSMENTS. The term “Capital Improvement Assessments” means the assessments which are levied pursuant to the provisions of **Section 6.5** of this Declaration.

2.12 CITY. The term “City” means the City of San Diego, California.

2.13 COMMON AREA. The term “Common Area” refers to that portion of the Project which is not designated as a Unit in the Condominium Plan, which Common Area is owned in equal undivided interests by the Owners of the Units located in the Project. The Common Area includes, without limitation, the exterior walls, roofs and foundation of the Buildings, the bearing walls located within a Unit, if any, and all structural components within a Unit which may be required for the support of the building within which the Unit is located, except for the finished surfaces thereof. Any Utility Facilities serving more than one Unit, wherever located, are a part of the Common Area.

2.14 COMMON EXPENSES. The term “Common Expenses” refers to the actual and estimated costs and expenses incurred or to be incurred by the Association, including, but not limited to, the following:

2.15.1 maintenance, management, operation, repair and replacement of the Common Area and Association Property and all other areas within the Property which are maintained by the Association;

2.15.2 assessments due but unpaid hereunder;

2.15.3 management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, architects and employees;

2.15.4 the costs of any utilities, trash pickup and disposal, landscaping, and other services benefiting the Owners and their Units to the extent such services are paid for by the Association;

2.15.5 the costs of any and all utilities metered to more than one Unit (which costs may be allocated only to those Units who do not have separate metering) and other commonly metered charges for the Project;

2.15.6 the costs of fire, casualty, liability, worker’s compensation and other insurance maintained by the Association hereunder;

2.15.7 reasonable reserves as deemed appropriate by the Board or otherwise required pursuant to the Governing Documents;

2.15.8 the costs of bonding of the members of the Board, any professional managing agent or any other person handling the funds of the Association;

2.15.9 taxes paid by the Association;

2.15.10 amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Area, Association Property or portions thereof;

2.15.11 costs incurred by the Board or other committees of the Association; and

2.15.12 the costs of any other item or items designated by, or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with the operation and/or maintenance of the Common Area, Association Property or in furtherance of the purposes or the discharge of any obligations imposed on the Association by the Governing Documents.

2.15.13 Common Expenses, however, shall not include costs which are included in the Special Benefit Area Assessment, as described in Section 6.10.2 hereof.

2.15 CONDOMINIUM. The term “Condominium” means an estate in real property as defined in California Civil Code Section 1351(f) and any successor statutes or laws, consisting of an undivided interest as a tenant-in-common in all or any portion of the Common Area, together with a separate fee interest in a Unit and any other separate interests in the Property as are described in this Declaration, the Condominium Plan or in the deed conveying the Condominium.

2.16 CONDOMINIUM PLAN. The term “Condominium Plan” means the condominium plan recorded pursuant to California Civil Code Section 1351, and any amendments to the plan.

2.17 COUNTY. The term “County” means the County of San Diego, California.

2.18 DECLARANT. The term “Declarant” means Kearny Mesa Complex, L.P., a California limited partnership and its successors and assigns, if such successors and assigns acquire any or all of Declarant’s interest in the Property for the purpose of purchase or sale, and Declarant has expressly transferred or assigned to such successors or assigns its rights and duties as Declarant to a portion or all of the Project. For any successor or assignee of “Declarant” to be deemed a Declarant under the terms of this Declaration, Declarant shall record in the County a certificate so designating said successor or assignee as Declarant. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale.

2.19 DECLARATION. The term “Declaration” means this Declaration of Covenants, Conditions and Restrictions of Kearny Mesa Complex, as this Declaration may from time to time be amended, modified or supplemented.

2.20 ENFORCEMENT ASSESSMENTS. The term “Enforcement Assessments” means the assessments which are levied pursuant to the provisions of **Section 6.7** of this Declaration.

2.21 ENVIRONMENTAL LAWS. The term “Environmental Laws” means all present and future federal, state or local laws, ordinances, rules, regulations, decisions and other requirements of governmental authorities relating to the environment or to any Hazardous Material, including without limitation the following federal laws: The Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, the Hazardous

Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, the California Health & Safety Code, the California Water Code, and any amendments to the same and regulations, ordinances and orders adopted, published and/or promulgated pursuant thereto.

2.22 EXCLUSIVE USE BALCONY AREAS. The term “Exclusive Use Balcony Areas” refers to those areas within the Common Area and/or Association Property designated as “Exclusive Use Balcony Areas” on the Condominium Plan over which exclusive easements have been reserved for the benefit of certain Owners for balcony purposes.

2.23 EXCLUSIVE USE EASEMENT OR EXCLUSIVE USE EASEMENT AREA. The term “Exclusive Use Easement” or “Exclusive Use Easement Area” means those portions of the Common Area and/or Association Property over which exclusive easements are reserved for the benefit of certain Owners in accordance with California Civil Code Section 1351(i), described in this Declaration and the Condominium Plan. Exclusive Use Easements, if any, are granted to an Owner in such Owner’s grant deed and are appurtenant to such Owner’s Condominium.

2.24 FINAL MAP. The term “Final Map” means the final subdivision map covering the Project.

2.25 GOVERNING DOCUMENTS. The term “Governing Documents” collectively means this Declaration and the Articles, Bylaws, the Architectural Guidelines, if any, and the Rules and Regulations, as may be amended from time to time.

2.26 HAZARDOUS MATERIALS. The term “Hazardous Materials” refers to any toxic substance, material or waste which is or becomes (i) regulated by any local governmental authority, the State of California or the United States Government; or (ii) defined as a “hazardous waste,” “extremely hazardous waste,” “restricted hazardous waste,” “Non-RCRA hazardous waste,” RCRA hazardous waste,” recyclable material,” under any federal, state or local statute or regulation promulgated thereunder.

2.27 IMPROVEMENTS. The term “Improvements” means any Buildings, fences, walls, plantings, trees and shrubs, paving, utility facilities, poles, signs, and all other structures or improvements of every type and kind installed or erected on the Property.

2.28 INVITEE. The term “Invitee” means any person whose presence within the Project is approved by or is at the request of a particular Owner, including, but not limited to, lessees, tenants, employees, licensees, subtenant, representatives, contractors, or invitees of such Owner, and/or such Owner’s tenants, lessees or sublessees.

2.29 LEASE. The term “Lease” means any lease, license or other agreement whereby an occupant acquires rights to use or occupy any portion of the Units.

2.30 MEMBER. The term “Member” means every person or entity who holds a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of a Condominium.

2.31 MORTGAGE. The term “Mortgage” means any duly recorded mortgage or deed of trust encumbering a Condominium in the Project.

2.32 MORTGAGEE. The term “Mortgagee” means a mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

2.33 NOTICE AND HEARING. The term “Notice and Hearing” means the procedure which gives an Owner notice of an alleged violation of the Governing Documents and the opportunity for a hearing before the Board.

2.34 OWNER. The term “Owner” refers, individually or collectively, as the context requires, to the record owner(s), whether one or more persons or entities, including Declarant, of the Condominium(s) excluding those having such interest merely as security for the performance of an obligation.

2.35 PERSON OR PERSONS. The term “Person” or “Persons” means and include individuals, partnerships, firms, associations, joint ventures, corporations, or any other form of business entity.

2.36 PROJECT. The term “Project” means all of the real property described on **Exhibit “A”** together with all Improvements situated thereon.

2.37 PROPERTY. The term “Property” means all of the real property described in **Exhibit “A”** of this Declaration.

2.38 REGULAR ASSESSMENTS. The term “Regular Assessments” means the assessments that are levied pursuant to the provisions of **Section 6.3** of this Declaration.

2.39 RULES AND REGULATIONS. The term “Rules and Regulations” refers to the Rules and Regulations previously provided to the Owners as well as any other or additional rules and regulations adopted by the Board pursuant to this Declaration or the Bylaws, as such rules and regulations may be amended from time to time.

2.40 SIGNAGE. The term “Signage” refers to any signage, billboards, posters, banners, flags or any other signage medium of any type or kind.

2.41 SPECIAL ASSESSMENTS. The term “Special Assessments” means the assessments that are levied pursuant to the provisions of **Section 6.4** of this Declaration.

2.42 SPECIAL BENEFIT AREAS. The term “Special Benefit Areas” refers to the portions of the Common Areas which directly receive a special benefit from the Association for maintenance of certain areas and for which additional Assessments may be imposed on the Special Benefit Area Owners, as provided in the Special Benefit Area Budget or as otherwise determined by the Association. The initial Special Benefit Areas are described on **Exhibit “B”**

attached hereto and incorporated herein. The right to exclusive or non-exclusive use of a portion of the Special Benefit Area may be granted by the Declarant to the initial Owner of a Unit in the deed to such Unit, or by the Association to subsequent Owners of a Unit, and such right, if granted, shall be appurtenant to such Unit; provided, however, as further described in Section 3.5 hereof, such deed need not (although it may) specify the specific location of the Special Benefit Area which such Owner is entitled to utilize, and provided further, that Declarant may continue to use such Special Benefit Areas for its tenants at the Project during such time as Declarant owns any Units. Unless otherwise approved by the Declarant (during such time as Declarant owns any Units) or the Association (after the Declarant has sold all of the Units), the Special Benefit Areas are to be used solely for the installation, maintenance, and operation of HVAC equipment, telecommunication and cable transmitting and receiving equipment and all facilities related thereto, satellite and microwave dishes, and other antenna, transmitting, receiving and relay equipment and devices for use in connection with operations inside and/or outside of the applicable Unit and wiring, cabling and conduits associated with such items, as well as other conduits to be used by an Owner (and/or its Invitees) in connection with the conduct of its business in the Unit (collectively, or individually, "Special Equipment").

2.43 SPECIAL BENEFIT AREA BUDGET. The term "Special Benefit Area Budget" refers to the elements of the budget, if any, for the Association which itemizes the cost components to be assessed against the Units that have the right to use a portion of the Special Benefit Areas, as provided in this Declaration and the Bylaws.

2.44 SPECIAL BENEFIT AREA OWNER OR OWNERS. The terms "Special Benefit Area Owner" or "Special Benefit Area Owners" refer to the Owners of Units that have the appurtenant right to use a portion or portions of any Special Benefit Area pursuant to the terms hereof.

2.45 SQUARE FEET OR SQUARE FOOTAGE. The terms "Square Feet" or "Square Footage" of each Unit and of the Project shall be the rentable square footage, calculated pursuant to Standard Method of Measuring Floor Area in Office Buildings, ANSI Z65.1-1996 ("BOMA"), as determined by Declarant.

2.46 SUPPLEMENTARY CONDOMINIUM PLAN. The term "Supplementary Condominium Plan" means any Condominium Plan which (i) supplements a previously recorded Condominium Plan, or (ii) corrects errors in the originally recorded Condominium Plan.

2.47 SUPPLEMENTARY DECLARATION. The term "Supplementary Declaration" means those certain declarations of covenants, conditions and restrictions, or similar instruments, which may do any or all of the following: (a) identify areas referenced in this Declaration to be maintained by the Association, and/or (b) make corrections to the provisions of this Declaration or previously recorded supplementary declaration(s).

2.48 UNIT. The term "Unit" means the elements of a Condominium which are not owned in common with the other Owners of Condominiums in the Project, such Units and their respective boundaries and elements being shown and described on the Condominium Plan. The dimensions of the Unit are measured from the unfinished floor and walls, and the underside of the roof panels, except as otherwise noted herein. The Unit includes all Improvements situated

within its boundaries, and includes, without limitation, (i) interior walls (except interior bearing walls), (ii) the interior undercoated surfaces of bearing walls and perimeter walls, floors and ceilings, (iii) any door or window including any sliding glass doors, (iv) appliances, cabinets, interior doors, and all electrical, heating, plumbing and other utility fixtures, (v) the openings and outlets of all Utility Facilities that are located partially within the Unit and partially in the Common Area, such as electrical outlets, and that exclusively serve the Unit, and (vi) all Utility Facilities serving solely that Unit, whether located in the Unit or the Common Area. The following are not part of any Unit: bearing walls, columns, floors, roofs and foundations; and Utility Facilities that serve two or more Condominiums, wherever located. In interpreting deeds and plans, the then existing physical boundaries of the Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries, rather than the boundaries expressed in the deed or Condominium Plan, regardless of minor variances between boundaries shown on the Condominium Plans or deed and regardless of settling or lateral movement of the Building.

2.49 UTILITY FACILITIES. The term “Utility Facilities” means all utility facilities including intake and exhaust systems, storm and sanitary sewer systems, drainage systems, ducting systems for ventilation and utility services, domestic water systems, natural gas systems, heating and air conditions systems, electrical systems, fire protection water and sprinkler systems, telephone systems, cable television systems, telecommunications systems, satellite communication systems, water systems, sump pumps, central utility services and all other utility systems and facilities reasonably necessary to service any Improvement situated in, on, over and under the Project.

2.50 VOTING POWER. The term “Voting Power” refers to the total voting power of all classes of Members of the Association as set forth in **Section 5.2.**

ARTICLE III OWNERSHIP AND EASEMENTS

3.1 OWNERSHIP OF CONDOMINIUM. Title to each Condominium in the Project shall be conveyed in fee to an Owner. Ownership of each Condominium within the Project shall include (a) a Unit, (b) an undivided interest as tenant in common in the Common Area of the Project, (c) a membership in the Association, (d) any exclusive easement or easements appurtenant to such Condominium over the Common Area and/or Association Property as described in this Declaration, the Condominium Plan and the deed to the Condominium; (e) if applicable, a non-exclusive use easement over the Special Benefit Areas, and (f) if applicable, a license to use a specific Assigned Generator Area. The Condominium Owners shall have a non-exclusive easement for ingress and egress over the Common Area and the Association Property, subject to any exclusive easements, other exclusive rights granted to individual Owners, or other easements of record.

3.2 DELEGATION OF USE. Any Owner entitled to the right and easement of use and enjoyment of the Common Area and the Association Property, as well as any portion of the Special Benefit Areas and/or an Assigned Generator Area, may delegate such Owner’s rights provided in this Declaration to use and enjoyment of such areas to his or her other tenants, contract purchasers or subtenants who occupy such Owner’s Condominium, subject to

reasonable regulation by the Board. An Owner who has made such a delegation of rights shall not be entitled to use or enjoyment of the Common Area, such other exclusive use areas and the Association Property for so long as such delegation remains in effect, other than such access rights as are directly related to the Owner's rights and duties as landlord.

3.3 EASEMENTS. The ownership interests in the Common Area, Association Property, and to the extent applicable, the Units described in this Article are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted under this Declaration shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their Condominiums, the Association and Association Property, and the Common Area and the Declarant, superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Condominiums may, but shall not be required to, set forth the easements specified in this Article; provided, however, that as set forth in this Declaration, such deeds, if applicable, shall specify that a specific Unit has an appurtenant right to use a portion of the Special Benefit Areas.

3.3.1 Declaration Subject to Easements. Notwithstanding anything herein expressly or impliedly to the contrary, this Declaration and the Project shall be subject to all previously existing easements, all easements shown on the Final Map and the Condominium Plan, and to all easements heretofore or hereafter granted by Declarant for the installation and maintenance of utilities and drainage facilities that are necessary for the Project.

3.3.2 Utilities. There are reserved and granted for the benefit of each Unit, as dominant tenement, over, under, across and through the Project (including the Common Area and Association Property and each other Unit), as the servient tenement and for the benefit of the Association Property, as dominant tenement, over, under and across each Unit, as servient tenement, non-exclusive easements for the maintenance, repair and replacement of the Utility Facilities. If it is necessary for the Association or an Owner to repair, maintain or replace any Utility Facilities ("Utility Work"), the Association or Owner shall comply with the following requirements (i) adequate provision shall be made for the safety and convenience of all persons using the surface of such areas; (ii) the areas and facilities shall be replaced or restored to the condition in which they were prior to the performance of such Utility Work; (iii) all costs, fees and expenses incurred as a result of such Utility Work shall be borne solely by the Owner (x) which undertakes such Utility Work or (y) who benefits from the Association's undertaking of such work; (iv) any construction activities pursuant to such easement rights shall be performed so as to not unreasonably interfere with access to, use, occupancy, or enjoyment of the remainder of the Property, (v) the Owner exercising its rights under such easements shall indemnify, hold harmless and defend the Association and all other Owners from and against all claims, losses, liabilities and expenses (including attorneys' fees and court costs) arising from such exercise, and (vi) all governmental requirements applicable thereto are satisfied. If it is necessary for the Association to gain access to a Unit in order to perform any Utility Work, the Association shall provide such Owner with reasonable advance written notice which specifies the type, duration of, and date upon which access is needed, and the Association and such Owner shall cooperate such that Association can gain access to such Unit as necessary to complete the Utility Work. The Association shall be responsible for any damage resulting from such entry.

3.3.3 HVAC Units. There are reserved and granted for the benefit of each Unit, as dominant tenement, over, under, across and through the Project (including the Common Area and Association Property and each other Unit), as the servient tenement and for the benefit of the Association Property, as dominant tenement, over, under and across each Unit, as servient tenement, non-exclusive easements for the installation, maintenance, repair and replacement of heating, ventilation and air conditions units (“HVAC Units”). If it is necessary for the Association or an Owner to repair, maintain or replace any HVAC Units (“HVAC Work”), the Association or Owner shall comply with the following requirements (i) adequate provision shall be made for the safety and convenience of all persons using the surface of such areas; (ii) the areas and facilities shall be replaced or restored to the condition in which they were prior to the performance of such HVAC Work; (iii) all costs, fees and expenses incurred as a result of such HVAC Work shall be borne solely by the Owner (x) which undertakes such HVAC Work or (y) who benefits from the Association’s undertaking of such work; (iv) any construction activities pursuant to such easement rights shall be performed so as to not unreasonably interfere with access to, use, occupancy, or enjoyment of the remainder of the Property, (v) the Owner exercising its rights under such easements shall indemnify, hold harmless and defend the Association and all other Owners from and against all claims, losses, liabilities and expenses (including attorneys’ fees and court costs) arising from such exercise, (vi) the Owner shall obtain the prior written approval of the Association, after providing the Association with a written summary of the specific nature of the HVAC Work to be undertaken and (vii) all governmental requirements applicable thereto are satisfied. If it is necessary for the Association to gain access to a Unit in order to perform any HVAC Work, the Association shall provide such Owner with reasonable advance written notice which specifies the type, duration of, and date upon which access is needed, and the Association and such Owner shall cooperate such that Association can gain access to such Unit as necessary to complete the HVAC Work. The Association shall be responsible for any damage resulting from such entry.

3.3.4 Encroachment. There are hereby reserved and granted for the benefit of each Unit, as dominant tenement, over, under and across each other Unit, and Common Area and Association Property, as servient tenements, and for the benefit of the Common Area and Association Property, as dominant tenement, over, under and across each Unit, and Common Area and Association Property as servient tenement, non-exclusive easements for encroachment, support, occupancy and use of such portions of the Units, Association Property and/or Common Area as are encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building, structure, or other improvements or any portion thereof, or any other cause. In the event any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure that is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching improvement shall exist for as long as the encroachments exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may, but need not be, cured by repair and restoration of the structure.

3.3.5 Support, Maintenance and Repair. There is hereby reserved and granted a non-exclusive easement appurtenant to the Common Area and the Association Property and to all other Units, as dominant tenements, through each Unit and the Common Area and

Association Property, as servient tenements, for the support, maintenance and repair of the Common Area and Association Property and all Units to the extent necessary; provided, however, if access to any Unit is needed in connection with the exercise of the rights granted in this Section 3.3.5, the Association shall provide such Owner with reasonable advance written notice which specifies the type, duration of, and date upon which access is needed, and the Association and such Owner shall cooperate such that Association can gain access to such Unit as necessary to complete its work. The Association shall be responsible for any damage resulting from such entry.

3.3.6 Association Easement. The Association shall have a non-exclusive easement over the Common Area for performing its duties and exercising its powers described in this Declaration.

3.3.7 Easements for Common Area and Association Property. Subject to the provisions of this Declaration, every Owner of a Condominium shall have, for himself or herself and such Owner's Invitees, a nonexclusive easement of access, ingress, egress, use and enjoyment of, in, to and over the Common Area and the balance of the Association Property. Such easements shall be appurtenant to and shall pass with title to such Condominiums, subject to the rights and restrictions set forth below.

(a) Dedicate or Grant Easements. The Association shall have the right, without the consent of the Owners, to grant both exclusive and non-exclusive easements over all or any portion of the Common Area and the Association Property.

(b) Control Parking. Subject to the provisions of this Declaration, the Association shall have the right to control parking within the Project and to promulgate rules and regulations to control parking in a manner consistent with this Declaration.

3.3.8 Easements to Declarant. Declarant shall have and hereby expressly reserves the easements necessary for Declarant to exercise its rights set forth in **Article 10** of the Declaration. In addition Declarant hereby reserves the following easements, so long as Declarant owns any Unit (collectively, "Equipment Easements"): (a) a non-exclusive easement over the roofs and exterior walls of the Buildings for the purpose of installation, operation and maintenance of telecommunication and cable transmitting and receiving equipment and all facilities related thereto, satellite and microwave dishes, and other antenna, transmitting, receiving and relay equipment and devices for use in connection with operations inside and/or outside of the Project (collectively, "Telecommunications Equipment"), (b) a non-exclusive easement over the Common Area and Association Property for the purpose of installation, operation and maintenance of electrical generators and all facilities relating thereto (collectively, "Generating Equipment"), (c) a non-exclusive easement over the Common Area and Association Property necessary for the routing of cabling to operate and service the Telecommunications Equipment and Generating Equipment, and (d) a non-exclusive easement over the Common Area and Association Property as necessary for the purpose of ingress, egress and access to the Telecommunications Equipment and Generating Equipment for installation, maintenance, repair, replacement and removal. In no event shall the easement areas extend into any Unit, except for Units owned by Declarant. The Declarant and its tenants shall not unnecessarily interfere with the rights of other Owners or occupants of the Project, the operation of the Project, and the

access to, use of, or enjoyment of the Project by the Owners, and shall not interfere with any other Owner's utility service. As used herein, the Telecommunications Equipment and the Generating Equipment shall collectively be referred to as the "Equipment."

In its exercise of the easement rights set forth above ("Easement Rights"), the Declarant shall (i) adequately provide for the safety and convenience of all persons within the Project; (ii) upon the removal of any Equipment, replace or restore the Project to the condition it was in prior to the exercise of such Easement Rights; (iii) be responsible for all costs, fees and expenses incurred as a result of the exercise of such Easement Rights; and (iv) notify the Association in writing not less than thirty (30) days prior to commencement of the installation, removal, replacement or relocation of the Equipment, and not less than five (5) days prior to the commencement of the maintenance of the Equipment (except in the case of an emergency in which case no prior notice is required) during which time the Association shall have the right to post notices of non-responsibility and (v) at least thirty (30) days prior to commencement of the installation or repair of the Equipment shall provide a work plan to the Association designating the locations for the Equipment which shall demonstrate that the installation will not materially and adversely interfere with any structural component of the Common Area. The Declarant shall be entitled to lease its easement interest described herein to a tenant under a Lease of a Unit owned by Declarant, subject to the restrictions contained in this Declaration.

3.4 EXCLUSIVE USE EASEMENT AREA DEMISING WALLS. The Declarant and, subject to the provisions of **Article 9** of this Declaration, the Association, shall have the right to grant to an Owner who acquires fee title to two (2) or more adjacent Units, without amending this Declaration or the Condominium Plan, an Exclusive Use Easement on and through any demising wall(s) separating two (2) or more Units and the right to alter, modify or remove such demising walls or floors subject to the consent of the Declarant so long as Declarant owns any portion of the Project, and conformance with the requirements of the Board, pursuant to the provisions of **Article 9**. If an Owner receives the required approvals hereunder and combines two (2) or more adjacent Units, such Units shall be treated as separate Units for all purposes hereunder, including separate assessments for each individual Unit.

3.5 Formation OF SPECIAL BENEFIT AREAS. Establishment of Special Benefit Areas. The Declarant hereby establishes the Special Benefit Areas described on **Exhibit "B"**, such Special Benefit Areas to be used for the purposes set forth in Section 2.42 hereof, or as otherwise approved by the Declarant (or, when the Declarant no longer owns any Units, the Association). As set forth in Section 2.42 hereof, Declarant shall, so long as Declarant owns a Unit, and thereafter the Association, shall have the sole right to convey to an Owner an exclusive, irrevocable license and right to use a certain portion(s) of the Special Benefit Areas. Declarant shall, upon conveying the right to use a portion(s) of the Special Benefit Area to an Owner, designate such conveyance in the records of the Association. Upon such conveyance, such Owner shall have the exclusive and perpetual right to the use of such portion of the Special Benefit Area, subject to the rights of the Declarant and Association set forth herein and to the Rules and Regulations promulgated by the Association, and provided that such usage does not interfere with the usage of the Special Benefit Areas by other Special Benefit Area Owners or with the use and enjoyment of the Units by the Owners. At all times, Special Benefit Area Owners shall comply with the Rules and Regulations and the terms of this Declaration, as well as all federal, state and local laws, statutes, codes, ordinances and regulations, rules, directives and

orders applicable with respect to the installation, maintenance, repair and operation of any Special Equipment located within a Special Benefit Area.

3.5.1 Relocation of Special Benefit Areas. Notwithstanding the foregoing, but provided that in no event shall a Special Benefit Owner be deprived of the right to use a portion of the Special Benefit Area as conveyed to such Owner, based on the Association's good faith determination that such relocation is necessary, the Association reserves the right to relocate from time to time the location of any Special Benefit Area Owner's Special Equipment to comparably functional space upon or within the Special Benefit Areas as designed by the Association, by giving such Special Benefit Area Owner prior written notice that the Association requires such relocation (the "Relocation Notice"). Said Special Benefit Area Owner shall effectuate the relocation of its Special Equipment to the area designated by the Association in its reasonable judgment within sixty (60) days after the date of the Relocation Notice. The costs of relocating a Special Benefit Owner's Special Equipment pursuant to the terms hereof shall be divided equally by the Special Benefit Area Owners who benefit from said relocation.

3.5.1 Additional Special Benefit Areas. Subject to the provisions of **Sections 4.3.12** and **4.5** of this Declaration, the Association may establish additional Special Benefit Areas. Upon its approval, the additional Special Benefit Area(s) shall be described in a Supplementary Declaration recorded by the Association. From and after the formation of an additional Special Benefit Area, such areas shall be administered by the Association in the same manner as all other Special Benefit Areas provided for in this Declaration. As set forth in Section 4.5 hereof, nothing contained herein shall give the Association any rights to approve (or disapprove) Special Benefit Areas established by the Declarant upon the recordation of this Declaration or the recordation of a Supplementary Declaration.

ARTICLE IV THE ASSOCIATION

4.1 THE ORGANIZATION. The Association is a nonprofit mutual benefit corporation to be formed under the Nonprofit Mutual Benefit Law of the State of California prior to the conveyance of the first Condominium to an Owner. On the conveyance of the first Condominium to an Owner, the Association shall be charged with the duties and invested with the powers set forth in this Declaration and the other Governing Documents.

4.2 ASSOCIATION ACTION; BOARD OF DIRECTORS AND OFFICERS; MEMBERS' APPROVAL. Except as to matters requiring the approval of Members as set forth in this Declaration, the Articles, or the Bylaws, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with this Declaration and the Bylaws. Except as otherwise provided in this Declaration, the Articles and the Bylaws, all matters requiring the approval of Members shall be deemed approved if Members holding a majority of the total Voting Power assent to them by written consent as provided in the Bylaws or if approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws.

4.3 POWERS OF THE ASSOCIATION. The Association shall have all the powers of a nonprofit corporation organized under the Nonprofit Mutual Benefit Corporation Law of

California subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws and this Declaration. It 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, the powers set forth below.

4.3.1 Assessments. The Association shall have the power to establish, fix, and levy assessments against the Owners and to enforce payment of such assessments, in accordance with the provisions of this Declaration.

4.3.2 Right of Enforcement and Notice and Hearing.

(a) Enforcement Actions. The Association in its own name and on its own behalf, can commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the Governing Documents or any resolutions of the Board, and to enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Association can temporarily suspend the membership rights and privileges or can assess monetary penalties against any Owner or other person entitled to exercise such rights or privileges for any violation of the Governing Documents or Board resolutions.

(b) Notice Requirements. Before a decision to impose such a suspension or monetary penalties is reached by the Board, the aggrieved Owner shall be provided with an opportunity to be heard by the Board, orally or in writing, and shall be provided with at least fifteen (15) days written notice of such hearing, or any such longer period as may be required under California Corporations Code Section 7341, or any successor statute or law. Additionally, the Board shall provide written notice of any sanctions to be imposed and the reasons for such sanctions, not more than fifteen (15) days following the Board action. For the purposes of this Subsection, notice shall be given by any method reasonably calculated to provide actual notice. Notice may be hand-delivered to the Owner or sent by first class registered or certified mail, return receipt requested or overnight courier delivery and addressed to the Owner at the last address of the Owner shown on the Association's records, or any other method deemed reasonable by the Board for delivering notices.

4.3.3 Delegation of Powers, Professional Management. The Association acting by and through the Board can delegate its powers, duties, and responsibilities to committees or employees, including a professional managing agent.

4.3.4 Association Rules. The Board shall have the power to adopt, amend and repeal Rules and Regulations as it deems reasonable. The Rules and Regulations, if any, shall govern the use of the Common Area (and may include specific Rules and Regulations with respect to the use of the Special Benefit Areas and the Assigned Generator Areas) and the Association Property by all Owners and their Invitees. However, the Rules and Regulations, if any, shall not be inconsistent with or materially alter any provisions of the Governing Documents. A copy of the Rules and Regulations, if any, as adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. In case of any conflict between any of the Rules and Regulations and any other provisions of this Declaration, the Articles, or Bylaws, the

conflicting Rules and Regulations shall be deemed to be superseded by the provisions of this Declaration, the Articles and the Bylaws.

4.3.5 Right of Entry and Enforcement. Except in the case of emergencies in which case no prior notice need be given, the Board or any authorized representative thereof shall have the right, upon twenty-four (24) hours prior notice and during reasonable hours, to enter into a Unit for the purpose of construction, maintenance or emergency repair for the benefit of the Common Area, Association Property, or the other Condominiums, or to perform its obligations under the Declaration, or to cure any default by an Owner under this Declaration. Such persons shall not be deemed guilty of trespass by reason of such entry. If any such repair or maintenance is due to the failure of an Owner to perform its obligations hereunder, the cost of such maintenance or repair shall be assessed against said Owner as an Enforcement Assessment in accordance with the provisions of the Article hereof entitled "Assessments."

4.3.6 Easements and Rights of Way. The Association, acting by and through the Board, and without the vote of the Owners, may grant and convey to any third party easements and licenses for use and rights of way in, on, over or under the Common Area and/or the Association Property conveyed or otherwise transferred to said Association or under its jurisdiction in accordance with the provisions of this Declaration.

4.3.7 Capital Improvements. Subject to the terms of this Declaration, the Board may, on its own motion or acting on a petition signed by two-thirds (2/3rds) of the Owners, approve the construction, installation or acquisition of a particular capital improvement to the Common Area and/or the Association Property.

4.3.8 Other Property. The Association, acting by and through the Board, may acquire and hold, as trustee for the benefit of its Members, tangible and intangible personal property and to dispose of the same by sale or otherwise.

4.3.9 Contract for Goods and Services. The Association shall have the power to contract for goods and services for the benefit of the Association Property and the Common Area and/or the Project necessary for the Association to perform its duties and obligations hereunder.

4.3.10 Rights Regarding Title Policies. If any title claims regarding the Association Property, are made by any third party, the Association shall have the power to pursue such claims on any title insurance policy held by the Owners or the Association and each Owner hereby delegates, on a non-exclusive basis, and assigns to the Association any rights it may have under its title insurance policies to the extent that the title claim relates to the Association Property.

4.3.11 Claims and Actions. Subject to the provisions of this Declaration, the Association shall have the power, but not the duty, to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Association in matters pertaining to (a) the application or enforcement of this Declaration and (b) any and all claims, causes of action, damages and suits for defects relating in any way to the design or construction of the Association Property or Common Area or any portion thereof, on behalf of the Owners; provided that no action shall be taken pursuant to subsection (b) without first

obtaining the consent of a majority of the Voting Power. Any recovery by the Association with respect to any damage to or defect in the Association Property shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such damage or defect.

4.3.12 Special Benefit Areas. Subject to the restrictions set forth in **Sections 4.5** and **6.10** of this Declaration, the Association shall have the power to form and administer Special Benefit Areas in accordance with the terms and provisions of this Declaration and the Bylaws. In connection with the administration of Special Benefit Areas, the Association shall have the power to establish advisory committees for any Special Benefit Areas, comprised of Special Benefit Area Owners. Such advisory committees may propose special rules and regulations with respect to Special Benefit Areas which may be adopted by the Board. The Board shall also adopt special election procedures for the election of members of such advisory committees.

4.4 DUTIES OF THE ASSOCIATION. In addition to the powers delegated to it by its Articles and the Bylaws, and without limiting their generality, the Association, acting by and through the Board, has the obligation to perform each of the duties set forth below.

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

4.4.2 Water and Other Utilities. The Association shall have the duty to acquire, provide and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas and other necessary utility services for the Association Property.

4.4.3 Utilities Suppliers. The Association shall have the duty to permit utility suppliers and other providers of any telecommunications or other services to use portions of the Common Area and/or the Association Property reasonably necessary to the ongoing development and operation of the Project.

4.4.4 Maintenance of Project. The Association shall landscape, maintain and/or replace and repair the Common Area and Association Property, and any other portions of the Project described in **Article 8** pursuant to the provisions of this Declaration.

4.4.5 Insurance. The Association shall obtain, from reputable insurance companies and maintain the insurance described in the Article hereof entitled "Insurance."

4.4.6 Notice Prior to Litigation. The Board shall notify all Owners of any litigation filed for or on behalf of the Association pursuant to the provisions of **Sections 16.3** and **16.4** of this Declaration.

4.4.7 Refuse and Rubbish Collection. The Association shall provide refuse and rubbish collection for the Owners, which cost shall be included as a Common Expense. The Association shall provide receptacles for the collection of recyclable materials.

4.4.8 Financial Matters. The Association shall have the duty to prepare annual budgets, reports, balance sheets and operating statements for the Association as required under this Declaration and the Bylaws.

4.4.9 Use of Proceeds to Repair. In the event the Association receives, on its own behalf, or for the benefit of the Owners, any proceeds as a result of any construction defect or other claims or litigation brought by the Association, then the Association shall apply such proceeds first for the purpose of repairing such defects or replacing reserve funds previously utilized by the Association to cause such repairs and then to the costs of such litigation.

4.4.10 Special Benefit Area Administration. Except as otherwise set forth herein, the Association shall administer and perform any obligations associated with any Special Benefit Area created pursuant to this Declaration.

4.5 SPECIAL BENEFIT AREA LIMITATION. For so long as Declarant owns twenty-five percent (25%) or more of the Square Footage of the Project, (a) Declarant shall have sole control over the creation, elimination and designation of Special Benefit Areas; provided, however, that Declarant shall act in a commercially reasonable manner in exercising its rights under this Section 4.5, and the Association shall be notified of any actions taken by Declarant pursuant to this Section 4.5, and (b) neither the Association nor any Owner, without the prior written consent of Declarant, shall create or eliminate any device to apportion any Common Expenses of the Association against fewer than all of the Owners and their Units; provided, however, that as set forth herein, the Special Benefit Area Assessment may be assessed only upon the Special Benefit Area Owners.

4.6 NO PERSONAL LIABILITY; INDEMNIFICATION OF BOARD MEMBER. No volunteer officer or volunteer director of the Board, or of any committee of the Association (each a "Management Party"), shall be personally liable to any Owner, or to any other party, including the Association, for any act or omission of any Management Party if such Person has, on the basis of such information as may be possessed by him or her, acted in good faith without willful, wanton or gross misconduct within the scope of the Person's Association duties (collectively, an "Official Act"). California Civil Code Section 1365.7, as drafted as of the date of recordation of this Declaration, does not apply to common interest developments that are not "exclusively residential." The Project consists of commercial Condominiums. However, the criteria and requirements set forth in California Civil Code Section 1365.7 are hereby incorporated herein by reference, and shall apply to the Management Parties, regardless of the fact that the Project consists of commercial Condominiums.

The Association has the power and duty to indemnify, defend, protect and hold harmless each Management Party for all damages, and expenses incurred (including, without limitation, reasonable attorneys' fees), and satisfy any judgment or fine levied as a result of any action or threatened action brought because of an act or omission that such Person reasonably believed was an Official Act. Management Parties are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any Person entitled to such indemnification. The Association has the power, but not the duty, to indemnify any other person

acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act. The Association also has the power, but not the duty, to contract with any person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

ARTICLE V
MEMBERSHIP AND VOTING
RIGHTS IN ASSOCIATION

5.1 MEMBERSHIP.

5.1.1 Qualifications. Each Owner of a Condominium which is subject to assessment, including Declarant, shall be a Member of the Association. Ownership of a Condominium, or interest in it, shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership or ownership interest in the Condominium in the Project ceases, at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Condominium merely as security for performance of an obligation are not to be regarded as Members.

5.1.2 Members' Rights and Duties. Each Member shall have the rights, duties, and obligations set forth in the Governing Documents, as the same may from time to time be amended.

5.1.3 Transfer of Membership. The Association membership of each person or entity who owns, or owns an interest in, one or more Condominiums shall be appurtenant to each such Condominium, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such Condominium, or interest in it, and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Condominium or interest in it shall operate automatically to transfer the appurtenant membership right in the Association to the new Owner. Notwithstanding the foregoing, Declarant's Class B membership may not be transferred except to a successor to Declarant's rights to all or a portion of the Project. Transfer of Declarant's Class B membership shall be evidenced by the recordation in the Office of the County Recorder of an Assignment of Declarant's Rights which specifically assigns such Declarant's Class B membership rights.

5.1.4 Commencement of Voting Rights. An Owner's right to vote, including Declarant, shall not vest until Regular Assessments have been levied upon such Owner's Condominium as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided for herein and in the other Governing Documents.

5.2 NUMBER OF VOTES. The Association shall have three (3) classes of voting membership:

5.2.1 Class A Members. Class A Members shall be all Owners. Each such Owner shall be entitled to one (1) vote for each 1,000 Square Feet of floor area in such Owner's Unit, rounded to the nearest thousand (e.g. an Owner with a Unit between 2,000 Square Feet and 2,499 Square Feet shall have two (2) votes; an Owner with a Unit between 2,500 Square Feet and 2,999 Square Feet shall have three (3) votes). When more than one (1) person holds an interest in any Condominium, all such persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall

more than one (1) vote be cast per 1,000 Square Feet of floor area with respect to any Condominium.

5.2.2 Class B Members. The Class B Member shall be Declarant. Declarant shall have three (3) votes for each 1,000 Square Feet of floor area in any Units owned by Declarant (e.g. if Declarant owns a Unit of 2,000 Square Feet, Declarant shall have six (6) votes for such Unit). The Declarant's Class B membership shall terminate upon the date the Declarant no longer owns any Units in the Property.

5.2.3 Class C Members. The Class C member shall be Declarant. The Class C membership shall not be considered a part of the Voting Power of the Association, and Declarant shall not be entitled to exercise any Class C votes except for the purpose of electing a majority of the members of the Board pursuant to the provisions set forth below. The Class C Member shall be solely entitled to elect a majority of the members of the Board until the date that Declarant no longer owns any Unit in the Project, as further provided in the Bylaws.

5.2.4 Joint Owner Votes. The voting rights for each Condominium may not be cast on a fractional basis. If the joint Owners of a Condominium are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit the vote on the matter in question. If any Owner exercises the voting rights of a particular Condominium, it will be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of the same Condominium. If more than one (1) person or entity exercises the voting rights for a particular Condominium, their votes shall not be counted and shall be deemed void.

ARTICLE VI ASSESSMENTS

6.1 CREATION OF LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS. Declarant, for each Condominium owned within the Property, hereby covenants, and each Owner of a Condominium by acceptance of a deed therefor, is deemed to covenant and agree, to pay to the Association all assessments levied pursuant to the provisions of this Declaration. All assessments levied hereunder, together with interest, costs and reasonable attorneys' fees assessed hereunder, shall be a charge on the land and shall be a continuing lien upon the Condominium against which each such assessment is made, the lien to be effective upon recordation of a notice of delinquent assessments. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due and shall, except with respect to any Mortgagee as provided in **Section 6.13**, bind his or her heirs, devisees, personal representatives and assigns. No such assumption of personal liability by a successive Owner (including a contract purchaser under an installment land contract) shall relieve any Owner against whose Condominium the lien was levied from personal liability for delinquent assessments. If more than one person or entity was the Owner of a Condominium, the personal obligation to pay such assessment or installment respecting such Condominium shall be both joint and several.

6.2 PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively to carry out the duties and obligations of the Association, for the

common good of the Owners. The Association agrees to perform its duties under this Declaration on a nonprofit basis, with an end to keeping Common Expenses and assessments at a reasonable minimum.

6.3 REGULAR ASSESSMENTS.6.3.1 Payment of Regular Assessments. Regular Assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year (the “Common Expense Budget”), which budget shall be prepared in accordance with the provisions of the Governing Documents. Regular Assessments shall be levied on a fiscal year basis. Based on such Common Expense Budget, each Owner shall on the first day of each month during the term of this Declaration pay to the Association as such Owner’s Regular Assessment, one-twelfth (1/12th) of such Owner’s Allocable Share of Common Expenses for such fiscal year. Within ninety (90) days after the end of each fiscal year, the Association shall give each Owner a statement of the Common Expenses applicable to such Owner for such fiscal year. If any Owner has paid more than its Allocable Share of Common Expenses during any fiscal year, such Owner shall receive a credit by the Association toward its next Allocable Share of Common Expenses payment. If any Owner has paid less than its Allocable Share of Common Expenses for such fiscal year, then such Owner shall pay to the Association, within thirty (30) days following the receipt of the Association’s statements, the deficiency in its Allocable Share of Common Expenses.

6.3.2 Budgeting. Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member, a budget for the Common Expenses not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the fiscal year or as otherwise required. The Association shall provide notice by first class mail to the Owners of any increase in the Regular Assessments or Special Assessments of the Association, not less than thirty (30) days and not more than sixty (60) days, prior to the increased assessment becoming due and payable.

6.3.3 Non-Waiver of Assessments. If before the expiration of any fiscal year the Association fails to establish Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

6.4 SPECIAL ASSESSMENTS. If the Board determines that the estimated total amount of funds necessary to defray the Common Expenses of the Association for a given fiscal year is or will become inadequate to meet expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements on, damage and destruction or condemnation of, the Common Area and the Association Property, the Board may levy a Special Assessment chargeable to each Owner based upon such Owner’s Allocable Share to defray such costs. The Board may, in its discretion, prorate such Special Assessment over the remaining months of the fiscal year or levy the assessment immediately against each Condominium.

6.5 CAPITAL IMPROVEMENT ASSESSMENT. In addition to any other assessments provided for hereunder, the Association may levy a Capital Improvement Assessment for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement in accordance with the provisions of **Section 4.3.7**.

Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate.

6.6 RECONSTRUCTION ASSESSMENTS. Reconstruction Assessments may be levied by the Board under the conditions and in the manner specified in the Article hereof entitled "Destruction of Improvements."

6.7 ENFORCEMENT ASSESSMENTS. The Association may incur and levy an Enforcement Assessment for the payment of any deductible amount payable under the Association's insurance policy against any Owner whose negligence or willful misconduct causes damage to the Common Area, the Association Property or any other areas the Association is obligated to maintain, or for the cost of bringing an Owner or his or her Condominium into compliance with the provisions of the Governing Documents and/or any other charge designated an Enforcement Assessment in the Governing Documents, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. If the Association undertakes to provide materials or services which benefit individual Owners, then such Owners in accepting such materials or services agree that the costs thereof shall be an Enforcement Assessment. The Board shall have the authority to adopt a reasonable schedule of Enforcement Assessments for any violation of the Governing Documents. If, after Notice and Hearing, as required by this Declaration and that satisfies California Corporations Code Section 7341 and any successor statutes or laws, the Owner fails to cure or continues such violation, the Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Enforcement Assessment as herein provided for nonpayment of an assessment. A hearing committee may be established by the Board to administer the foregoing. Notwithstanding any other provision in this Declaration to the contrary, except as provided in **Section 6.12** of this Declaration, Enforcement Assessments are assessments but they may not become a lien against the Owner's Condominium that is enforceable by a power of sale under California Civil Code Sections 2924, 2924b and 2924c or any successor statutes or laws. This restriction on enforcement is not applicable to late payment penalties 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.

6.8 LIMITATION ON ASSESSMENTS. Any assessments levied pursuant to this Declaration or any other Governing Document shall not exceed the maximum amount permitted by applicable law.

6.9 ALLOCATION OF ASSESSMENTS TO CONDOMINIUMS. The Assessments shall be allocated to each assessable Unit as set forth below. The Square Footage determination of the Association is binding on all Owners. By accepting a deed to its Unit, each Owner acknowledges and agrees that it shall have no right to challenge the Square Footage of such Owner's Unit or the Project as determined by the Association. The Square Footage calculations for all Units, Buildings and the Project shall be kept in the records of the Association.

6.9.1 General Assessment Component. The Regular Assessments, less the Common Expenses included within the Special Benefit Area Budget, if any, shall be allocated among the Owners and their respective Units, and each such Owner shall pay its Allocable Share of such Regular Assessments ("General Assessment Component").

6.9.2 Special Benefit Area Assessment Component. The portion of the Regular Assessments budgeted exclusively to any particular Special Benefit Area in the Special Benefit Area Budget, if any, shall be assessed solely to the Special Benefit Area Owners, as follows: (a) all costs incurred by the Association and related solely to a particular piece of Special Equipment, or use thereof, within a Special Benefit Area shall be assessed solely to the owner of such piece of Special Equipment, whether or not such cost was included in the Special Benefit Area Budget (“Individual Special Benefit Area Assessment”), and (b) costs incurred by the Association which are applicable to the Special Benefit Areas as a whole, shall be allocated among the Special Benefit Area Owners according to each such Owner’s Allocable Share (as defined in Section 2.2) (“Special Benefit Area Assessment Component”). The Special Benefit Area Assessment Component may include, without limitation, estimated or actual costs and expenses incurred by the Association exclusively for administering and maintaining the Special Benefit Areas, obtaining and maintaining insurance coverage related to the Special Benefit Areas, providing utility service to the Special Benefit Areas (if such service is not separately metered to each Special Benefit Area Owner) and funding reasonable reserves for the repair or replacement of the Special Benefit Areas; provided, that such Special Benefit Assessment Component shall not include costs which, in addition to benefiting the Special Benefit Area Owners, also benefit all of the Owners, unless such costs were incurred as a direct result of the use of the Special Benefit Areas. The Association shall provide for a separate accounting for the funds which are collected and expended on behalf of a Special Benefit Area. The Association shall also provide for a reserve study and the annual review and disclosure of the reserves applicable to a Special Benefit Area to the same extent required for the other budgetary components.

6.9.3 Special Assessments to Certain Owners. The Association shall have the power to make a special monthly assessment for all Owners who elect to use janitorial services provided by the Association for their Units. Any such assessments shall be based on the ratio of such Unit’s Square Footage to the total Square Footage of other Units utilizing such services.

6.9.4 Other Community Assessments. Special Assessments and Capital Improvement Assessments shall be allocated in the same manner as Regular Assessments. Enforcement Assessments shall be levied directly to the individual Units, in a manner consistent with the provisions of **Section 6.7** of this Declaration.

6.10 DATE OF COMMENCEMENT OF REGULAR ASSESSMENTS; DUE DATES. The Regular Assessments provided for herein shall commence as to all Condominiums subject to this Declaration on the first day of the month following the conveyance of the first Condominium to an Owner.

6.11 NOTICE AND ASSESSMENT INSTALLMENT DUE DATES. A single ten (10) day prior written notice of each Special Assessment, Individual Special Benefit Area Assessment, and/or Capital Improvement Assessment shall be given to each Owner. The due dates for the payment of installments normally shall be the first day of each month unless some other due date is established by the Board. Any Assessment shall become delinquent if not paid within fifteen (15) days after its due date. There shall accrue with each delinquent installment a late charge, interest charge to be set by the Board and reasonable costs of collection, including

attorneys' fees, which shall not, in any event, exceed the maximum rates permitted under California Civil Code Section 1366, and any successor statutes or laws.

6.12 COLLECTION OF ASSESSMENTS, LIENS.6.12.1 Right to Enforce. The right to collect and enforce assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative can enforce the obligations of the Owners to pay assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to **Section 6.12.2** enforce the lien rights created. Suit to recover a money judgment for unpaid assessments together with all other Additional Charges shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein, except for monetary penalties imposed by the Association to reimburse the Association for costs incurred by the Association in the repair of damage to Association Property and facilities for which the Member was allegedly responsible, which may become a lien on the Owner's Unit, a monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents or in bringing the Member and his or her Unit into compliance with the Governing Documents may not be characterized nor treated as an assessment which may become a lien against the Member's Unit enforceable by a sale of the interest hereunder. The limitation in the preceding sentence, however, does not apply to any Additional Charges.

6.12.2 Notice of Assessments and Foreclosure. The Association shall distribute a written notice regarding assessments and foreclosure as set forth in California Civil Code Section 1365.1 during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year.

6.12.3 Delinquent Assessments. The Association shall comply with the requirements of California Civil Code Section 1367.1 and any successor statutes or laws when collecting delinquent assessments. The Board or its authorized representative must send to the delinquent Owner or Owners, at least thirty (30) days prior to the recordation of a lien against the delinquent Owner's Unit (as set forth in **Section 6.12.4**), a written notice by certified mail, which notice shall contain all of the information specified in California Civil Code Section 1367.1 and any successor statutes or laws ("Initial Notice"). The delinquent Owner may dispute the debt noticed pursuant to the Initial Notice by submitting to the Board a written explanation of the reasons for the delinquent Owner's dispute ("Owner Explanation"). The Board shall respond to the Owner Explanation in writing to the delinquent Owner within the time frame set forth in California Civil Code Section 1367.1 and any successor laws or statutes. The delinquent Owner may submit a written request to the Board to meet with the Board to discuss a payment plan for the debt noticed in the Initial Notice. The Board shall meet with the delinquent Owner in executive session within the time frame set forth in California Civil Code Section 1367.1 and any successor laws or statutes. The Association shall provide the Owners the standards for payment plans if any exists.

6.12.4 Creation of Lien. If there is a delinquency in the payment of any assessment, or installment on a Condominium, any amounts that are delinquent, together with the late charge described in California Civil Code Section 1366 and any successor statutes or laws, interest at the rate permitted in such Section, and all costs that are incurred by the Board or its

authorized representative in the collection of the amounts, including reasonable attorneys' fees, shall be a lien against such Condominium upon the recordation in the Office of the County Recorder of a notice of delinquent assessment ("Notice of Delinquent Assessment") as provided in California Civil Code Section 1367 and any successor statutes or laws. After its recordation, the Notice of Delinquent Assessment shall be mailed to all Owners of record as provided in California Civil Code Section 1367.1 and any successor statutes or laws.

6.12.5 Assignment. 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 where provided under California Civil Code Section 1367.1(g) and any successor statutes or laws.

6.12.6 Notice of Default; Foreclosure. The Board or its authorized representative can record a notice of default and can cause the Condominium with respect to which a notice of default has been recorded to be sold in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c and any successor statutes or laws, or through judicial foreclosure, and as provided in California Civil Code Section 1367.1 and any successor statutes or laws. However, as a condition precedent to the holding of any such sale under Section 2924c, appropriate publication shall be made. In connection with any sale under Section 2924c, the Board is authorized to appoint its attorney, any officer or director, or any title insurance company authorized to do business in California as trustee for purposes of conducting the sale. The fee of the trustee shall not exceed the amounts prescribed in California Civil Code Sections 2924c and 2924d. If (a) a delinquency is cured before sale, or before completing a judicial foreclosure, or (b) if it is determined that a lien previously recorded against a Condominium was recorded in error, the Board or its authorized representative, within the time frame set forth in California Civil Code Section 1367.1 and any successor statutes or laws, shall cause to be recorded in the office of the County Recorder a certificate setting forth the satisfaction or rescission of such claim and release of such lien upon payment of actual expenses incurred, including reasonable attorneys' fees by any delinquent Owner. If the lien was satisfied, the Association shall provide the delinquent Owner a copy of the lien release or notice that the delinquent assessment has been satisfied and if the Association filed a rescission of the lien, then the Association shall provide such Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission. Any payments made on delinquent assessments shall be applied in accordance with California Civil Code Section 1367.1 and any successor statutes or laws. On becoming delinquent in the payment of any assessments, or installments each delinquent Owner shall be deemed to have absolutely assigned all rent, issues and profits of his or her Condominium to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Owners, shall have the power to bid upon the Condominium at foreclosure sale and to acquire, hold, lease, mortgage and convey the Condominium and vote as an Owner of the Condominium.

6.12.7 Payments Under Protest. Notwithstanding any other provisions set forth in this **Section 6.12**, the Owners shall have the right to make certain payments under protest and be entitled to alternative dispute resolution as provided in California Civil Code Sections 1354, 1366.3 and 1367.1 and any successor statutes or laws, as provided in **Section 16.2** hereof.

6.12.8 Payment of Assessments. Any payments under sums due under this Article shall first be applied to assessments owed, and only after assessments owed has been paid in full shall the payments be applied to the fees and costs of collections, attorney's fees, late charges or interest. If an Owner requests a receipt after payment of a delinquent assessment, the Association shall provide a receipt which sets forth the date of payment and the individual who received such payment.

6.12.9 Notice to Mortgagees of Right to Cure. If the Association files a Notice of Delinquent Assessment as provided above, it shall give notice of such filing to any Mortgagee which shall have given written notice to the Association of its desire to receive such notice. Such Mortgagee shall have the right, but not the obligation, both before, and for sixty (60) days after, notice of the recording of the Association's lien, to cure such defaults, including the payment of interest and other charges as provided herein; provided, however, that in any event such Mortgagee shall retain all of its rights provided in Article 14 whether or not such Mortgagee takes any action to cure.

6.13 SUBORDINATION OF LIEN TO MORTGAGES. When a Notice of Delinquent Assessment has been recorded, such assessment shall constitute a lien on such delinquent Owner's Condominium prior and superior to all other liens, except, (a) all taxes, (b) bonds, assessments and other levies which, by law, would be superior thereto, and (c) any Mortgage now or hereafter placed upon any Condominium subject to assessment. The sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure (excluding a transfer by a deed in lieu of foreclosure) of a Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from any assessments thereafter becoming due or from the lien of any subsequent assessment. Where the Mortgagee of a Mortgage or other purchaser of a Condominium obtains title to the same as a result of foreclosure (excluding a transfer by a deed in lieu of foreclosure), such acquiror of title, his or her successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Condominium that became due prior to the acquisition of title to such Condominium by such acquiror, except for a share of such charges or assessments resulting from a reallocation of such charges or assessments which are made against all Condominiums.

6.14 NO OFFSETS. All assessments shall be payable in the amounts specified by the particular assessment and no offsets against such amount shall be permitted for any reasons, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

6.15 PERSONAL LIABILITY OF OWNER. No Owner may exempt himself or herself from personal liability for assessments, nor any part thereof, levied by the Association, nor release the Condominium owned by him or her from the liens and charges hereof by waiver of the use and enjoyment of the Common Area or Association Property and facilities thereof, or by abandonment of such Owner's Condominium.

6.16 TRANSFER OF PROPERTY. After transfer or sale of property within the Project, the selling Owner or Owners shall not be liable for any assessment levied on such Owner or Owner's Condominium after the date of such transfer of ownership if written notice of

such transfer is delivered to the Association. The selling Owner shall still be responsible for all assessments and charges levied on his or her property prior to any such transfer.

6.17 FAILURE TO FIX ASSESSMENTS. The omission by the Board to fix the assessments hereunder before the expiration of any year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

6.18 PROPERTY EXEMPT FROM ASSESSMENTS. The Association Property shall be exempt from the assessments, charges and liens created herein.

6.19 RESERVE FUND. The Association shall maintain as a reserve fund a reserve account fund sufficient to pay for maintenance, repair and periodic replacement of the Common Area and Association Property Improvements that the Association is obligated to maintain.

6.20 INSPECTION OF BOOKS AND RECORDS. Upon request, any Owner shall be entitled to inspect the books, records and financial statements of the Association, the Governing Documents and any amendments thereto during normal business hours or under other reasonable circumstances.

ARTICLE VII USE RESTRICTIONS

7.1 PROHIBITED USES. No use or operation shall be made, conducted or permitted on or with respect to all or any part of the Project, which use or operation violates applicable laws, regulations, or ordinances, or the provisions of this Declaration. In addition to the foregoing, no Condominium or any part of the Project shall be used for an activity or purpose considered by the Association to pose a safety hazard or health risk within the Project, or to negatively affect the quiet enjoyment of any Owner within the Project. If any Owner is proposing to use its Unit for a purpose that requires a variance, Conditional Use Permit, or other similar approval from the applicable governmental authorities, prior to applying for such variance, Conditional Use Permit, or other similar permit, such Owner shall be required to obtain the consent of the Association for such use. Notwithstanding anything contained herein to the contrary, each Owner acknowledges that certain Units and the appurtenant Common Areas may be used for retail and/or restaurant uses, in addition to office, research and development, telecommunications and warehouse uses. As such, each Owner acknowledges that there are many foreseeable events where the retail or restaurant uses could adversely affect each other commercial uses. Examples of such conflicts include, but are not limited to: additional foot and vehicular traffic, late-night and after-hours access to the Property by non-office patrons, and increased odors, noise, and vibration related to the foregoing. The limitations on activities and rights of each Owner are subject to the mixed-use nature of the Property, and, as such, no Owner may maintain any action at law or equity against Declarant where the interference of the Owner's use arises from the reasonable use of the Units or appurtenant Common Areas for retail or restaurant.

7.1.1 Prohibited Uses. Neither a Condominium or any part of the Project shall be used for the following purposes:

(a) Use or storage of any noxious, hazardous, toxic, caustic, explosive or corrosive fuel, gas or other substance other than allowed by law;

(b) Use or storage of any fire, explosion or other damaging or dangerous hazard, including the storage or sale of explosives or fireworks;

(c) Any motorized vehicle repair shop;

(d) Any indecent or pornographic filming uses, massage parlor, adult bookstore, peepshow store, or any other similar store or club; and any business devoted to sale of articles and merchandise normally used or associated with illegal or unlawful activities, including, without limitation, the sale of paraphernalia used in connection with marijuana, cocaine or other controlled drugs or substances;

(e) Maintaining or keeping of any animals, except for ADA assistive guide, signal or service animals" consistent with the Rules and Regulations and applicable law.

(f) Any dry cleaning facility or store, except that a "drop off" for dry cleaning shall be permitted so long as the actual dry cleaning is conducted at a site outside the Project; and

(g) Any use that will create a parking demand over and above that provided for herein, as determined by the Board in its sole and absolute discretion.

7.2 RENTAL OF CONDOMINIUMS. An Owner shall be entitled to rent the Owner's Condominium subject to the restrictions contained in this Declaration. Any rental or leasing agreement shall be in writing, shall provide that the lease or rental is subject to the Governing Documents and shall provide that any failure to comply with any provision of this Declaration or the Governing Documents shall be a default under the terms of the lease agreement. A copy of this Declaration shall be made available to each tenant or lessee by the Owner so renting or leasing. The Owners shall, at all times, be responsible for their tenant's or lessee's compliance with all of the provisions of this Declaration pursuant to the occupancy and use of the Condominium. A lessee shall have no obligation to the Association to pay assessments imposed by the Association nor shall any lessee have any voting rights in the Association. All Owners who rent their Condominiums shall submit names and contact numbers for their tenants to the management company for the Project.

7.3 SIGNS. No signs or other advertising device whatsoever, including without limitation, commercial, political and similar signs, shall be erected or maintained within the Project except:

7.3.1 such signs as may be required by legal proceedings;

7.3.2 identification and other signs placed or displayed by Owners or tenants of Condominiums on or in such Condominium in accordance with the sign criteria for the Project

set forth in the Architectural Guidelines, including, but not limited to, the Sign Regulation Worksheet and according to City of San Diego codes and regulations;

7.3.3 signs used by Declarant for the purpose of marketing and selling Condominiums;

7.3.4 signs already approved and installed in the Project as of the date of recordation of this Declaration; and

7.3.5 for each Condominium, one (1) sign advertising the Condominium for sale or lease that complies with the following requirements, subject to Civil Code Sections 712 and 713:

(a) the sign is not larger than eighteen inches (18") by thirty inches (30") in size;

(b) the sign is in compliance with the Architectural Guidelines or is otherwise authorized by the Board; and

(c) the sign is not displayed in the Common Area or Association Property.

So long as Declarant owns any interest in the Project, all identification and other signs for Condominiums (and any changes thereto) referenced above are subject to the prior written approval of Declarant. All costs associated with the design, installation, permitting, maintenance and removal of said signage shall be paid by Owner. Said signage shall be mutually agreed upon between Owner and Declarant or Association if Declarant has sold every Unit in accordance to City of San Diego codes and regulations. No signs shall be placed, erected, maintained or painted by Owner at any place upon the Premises or the Property, except with Declarant or Association's prior written approval, which approval shall not be unreasonably withheld or delayed.

7.4 INSIDE AND OUTSIDE INSTALLATIONS. No Alteration, other than as may be constructed by Declarant so long as Declarant owns any portion of the Project, shall be commenced without the prior written approvals required under **Article 9** of this Declaration. Nothing shall be done in or to any Condominium which will or may tend to impair the structural integrity of any other attached Condominium or other Improvement in the Property or which would structurally alter any such building except as otherwise expressly provided herein. In addition to the foregoing, all improvements installed or constructed by an Owner within the Project must be completed in accordance with applicable laws, including, but not limited to, the laws, regulations and ordinances of the City.

7.5 NO MECHANICS' LIENS. No Owner shall cause or permit any mechanic's lien to be filed against any portion of the Project for labor or materials alleged to have been furnished or delivered to the Project or for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner an Enforcement Assessment for such cost of discharge.

7.6 OUTSIDE STORAGE. No Owner shall use any Association Property or exterior Common Area for storage purposes.

7.7 EXTERIOR LIGHTING. Any exterior electrical, gas or other artificial lighting installed on any Unit shall be positioned, screened, or otherwise directed or situated and of such controlled focus and intensity so as not to unreasonably disturb the occupants of property adjacent to the Property. Further rules regarding exterior lighting may be promulgated by the Board.

7.8 DRAINAGE. There shall be no interference with the established drainage pattern over the Property, unless an adequate alternative provision is made for proper drainage with the prior written approval of the Board. For the purpose hereof, “established” drainage is defined as the drainage shown on the grading and drainage plan approved by the City or that which is shown on any plans approved by the Board. No Owner shall dispose of any Hazardous Materials in any drains. If such Owner fails to maintain such drainage and, as a result, imminent danger or damage to person or property may result to the other Owners, then the Association shall have the right of access onto such area for the purpose of clearing debris and other material so as to not impede the flow of water. This right of access shall be exercised only for the purpose of preventing damage to persons and property and the entering party shall use reasonable care so as to not cause any damage to such areas. The Owner shall reimburse the Association for any costs and expenses incurred in clearing such debris pursuant to **Section 4.3.2** of this Declaration.

7.9 STORAGE AND OTHER RESTRICTIONS FOR BALCONY. No Owner shall use any Exclusive Use Balcony Area for storage purposes. Unless installed by Declarant, all plants kept in the Exclusive Use Balcony Areas shall be kept in pots or planters which do not allow water to drain outside of such pot or planter, and no vegetation shall be permitted to extend beyond the railings, walls and/or other boundaries of the Exclusive Use Balcony Areas, except as approved by the Board. The Board may require approval of any potted plants. No Owner shall change or alter the surface of any Exclusive Use Balcony Areas without the consent of the Board.

7.10 ANTENNAE AND SATELLITE DISHES. Except for Antennas installed in Special Benefit Areas pursuant to Section 3.5 hereof, no Owner shall install any antenna, satellite dish, or other over-the-air receiving device (“Antenna”) (i) on any real property which such Owner is not entitled to exclusively use or control, as provided in Title 47 U.S.C. §§ 1 et seq., 47 CFR § 1.4000 and any other applicable laws, rules and decisions promulgated with respect thereto and any successor statutes or laws (“collectively “Antenna Laws”), (ii) in a particular location if, in the Board’s opinion, the installation, location or maintenance of such Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Board, or (iii) that is of a size larger than is permitted under the Antenna Laws. If an Owner is entitled to install an Antenna under the foregoing requirements, such Owner shall provide the Board with written notice that such Owner has installed or is about to install the Antenna. If an Owner desires to install an Antenna, other than as described in (i) through (iii) above, such Owner may do so only upon the prior approval of the Board pursuant to Article 9, or as otherwise specified herein and in accordance with all Rules and Regulations of the Association. The Board shall not impose or enforce any restrictions upon Antennae installed pursuant to this Section 7.10 that are inconsistent with the Antenna Laws. Notwithstanding the

foregoing, neither Declarant nor the Association shall have the right to require the removal of any Antenna that already exists at the Project as of the date of recordation of this Declaration, or that are installed by Declarant or its Invitees after the date hereof. The provisions of this Section shall not apply to the Declarant, but the Declarant shall be obligated at all times to comply with any federal, state, or local laws or ordinances or regulations relating to any Antenna.

7.11 PARKING SPACES AND ASSIGNED GENERATOR AREAS. 7.11.1

Parking Ratios. There shall be maintained at all times within the Project, not less than the number of parking spaces required by applicable laws, regulations and ordinances (“Governmental Requirements”). Each Owner shall have the right to use 2.71 parking spaces per 1,000 Square Feet of floor area, rounded to the nearest thousand (“Parking Allocation”) (e.g. if a Unit is 10,000 Square Feet, the Owner of such Unit shall have the right to use 27 parking spaces), subject to the provisions of Section 7.11.2 below. If at any time, the Association observes or is notified that Owners and their Invitees are having difficulty finding the an adequate number of parking spaces to suit their needs, and the Association determines that certain Owners are using more than their allocable share of parking spaces, the Association shall have the right to institute a parking system which regulates the usage of the parking on an Owner by Owner basis.

7.11.2 Assigned Generator Areas. Declarant shall, so long as Declarant owns any portion of the Property, and thereafter the Association, shall have the sole right to assign to Owners an irrevocable license and right to use certain parking spaces for the purpose of installing, operating, maintaining and repairing Generating Equipment (“Assigned Generator Areas”), along with a non-exclusive easement across the Common Area from such Owner’s Unit to the Assigned Generator Area. Declarant shall, upon assigning any parking spaces to an Owner, designate such assignment in the records of the Association. Upon such assignment, such Owner shall have the exclusive right to the use of such Assigned Generator Area during the term of such Owner’s ownership, subject to the rights of the Declarant and Association set forth herein. Upon conveyance of a Condominium by an Owner, such rights shall terminate and the right of use shall return to the Association. If an Owner obtains rights to an Assigned Generator Area, the number of parking spaces used to accommodate such Assigned Generator Area shall be deducted from such Owner’s Parking Allocation. To the extent not referenced in the Condominium Plan, the location of such Assigned Generator Area shall be approved by the Association in its reasonable discretion, provided, however, no such Assigned Generator Areas may be maintained in the Common Area of the Project that faces the public entrances to the Units (i.e., the interior parking areas). Once the Declarant no longer owns any portion of the Property, any Owner requesting an Assigned Generator Area shall follow the procedures set forth in **Article 9** for the installation of any generator and associated Generating Equipment, and the Association may assign to an Owner the right to use an Assigned Generator Area; provided, however, in no event shall the Board deny approval of the installation of any Generating Equipment proposed by an Owner if such installation (a) does not adversely affect the circulation within the parking area of the Project, (b) does not interfere with the operations of another Owner, and (c) does not materially and adversely affect the appearance of the Project. Upon the removal of any Generating Equipment, the responsible Owner shall restore the parking spaces to the same condition they were in prior to such installation. Notwithstanding the foregoing, all Owners with Generating Equipment installed at the Property as of the date of recordation of this

Declaration shall be automatically deemed to have such a license and shall have their Parking Allocation modified as set forth in this Section. Owner shall be solely responsible for the costs of any installation, maintenance, or repairs to the Assigned Generator Area or the easement over the Common Area, including, without limitation, all costs to trench under, landscape or repave any portion of the affected Common Area. In no circumstance shall any piping, conduit or wiring visually appear in the Common Area except for the Assigned Generator Area and along the external walls of the Building in which the Owner's Unit is located.

7.11.3 General Requirements. There shall be no parking in the Project that obstructs free traffic flow, constitutes a nuisance, violates the Rules and Regulations, or otherwise creates a safety hazard. No maintenance, repair, restoration, or construction of any vehicle shall be conducted on the Property. Subject to the rights of Declarant to control the parking spaces which have not been assigned by Declarant, the Board may establish additional regulations regarding parking areas not assigned to Condominiums, including designated "parking," "guest parking" and "no parking" areas. The Board may take all actions necessary to enforce all parking and vehicle use regulations for the Property, including removing violating vehicles from the Project pursuant to California Vehicle Code Section 22658.2 or other applicable laws. If the Board fails to enforce any of the parking or vehicle use regulations, the County may enforce such regulations. No vehicle shall be parked in any parking space if such vehicle does not completely and clearly fit between the painted parking lines designated for parking space or otherwise physically fit wholly within the designated space or any other portion of the parking areas in the Project designed for ingress and egress of vehicles.

7.12 OFFENSIVE CONDUCT; NUISANCES. No noxious or offensive activities, shall be conducted within the Project. Nothing shall be done on or within the Project that may be or may become a nuisance to the occupants of the Project. No odorous matters shall be emitted upon or about the Project in such quantity as to be readily detectable outside the physical boundaries of the space within which such odor was generated.

7.13 TOXIC OR NOXIOUS MATTER. No person shall discharge into the Project's sewer system, storm drain or any toxic or noxious matter in such concentrations as to be detrimental to or endanger the public health, safety, welfare, violate any law, subject any Owner to liability under state and federal law for any clean-up or cause injury or damage to neighboring property or business elsewhere on the Project.

7.14 AIR POLLUTION. No air pollutants or contaminants sufficient to create a nuisance shall be discharged, and no processes which by their nature are likely to cause air pollution shall be undertaken or permitted unless there is available an adequate, economically feasible method of controlling the omission or contaminates, and such controls are applied by the Board.

7.15 ENVIRONMENTAL MATTERS. 7.15.1 Duties of Owners. No Owner shall generate, use, store, transport, or handle Hazardous Materials within the Property or otherwise permit the presence of any Hazardous Materials on, under, or about the Property or transport any Hazardous Material to or from the Property, unless such Hazardous Materials are generated, used, stored, transported, or handled in the ordinary course of business operations and in strict compliance with all Environmental Laws, and has been approved by the Association. Disposal,

dumping or releasing Hazardous Materials or wastes within the Property is strictly forbidden. No Owner shall install, operate or maintain any underground storage tanks or similar device on or about its Unit.

Each Owner with respect to its Unit, shall immediately notify the other Owners and the Association by providing a copy of the following with respect to such Owner's Unit: (i) any notice of violation or potential or alleged violation of any laws, ordinances or regulations which the Owner shall have received from any third party or governmental agency concerning the use, storage, release and/or disposal of Hazardous Materials; (ii) any and all inquiry, investigation, enforcement, cleanup, removal or other third party or governmental or regulatory actions instituted or threatened relating to the Property; (iii) all claims made or threatened by any other Owner relating to any Hazardous Materials; and (vi) any release of Hazardous Materials on or about the Property which such Owner knows of or reasonably believes may have occurred.

7.15.2 Specific Substances. No Owner shall introduce, or permit any of its Invitees to introduce, Hazardous Materials into any portion of the Project unless such Hazardous Materials are generated, used, stored, transported, or handled in the ordinary course of business operations, and such introduction of Hazardous Materials has been approved by the Association.

7.15.3 Cleanup of Hazardous Materials. In the event Hazardous Materials are released within the Project in violation of these provisions or any Environmental Laws and such release occurred as a direct or indirect result of an Owner's or its Invitees' use, handling, storage or transportation of such Hazardous Materials, such Owner and/or its Invitee shall be jointly and individually responsible and shall be liable for the prompt cleanup and remediation of any resulting contamination and will indemnify, protect, defend and hold harmless the Declarant, Association, the other Owners, and any management company from all Claims suffered by or incurred by such parties, except to the extent such release was caused by the negligence or willful misconduct of another party.

7.16 STRUCTURAL ALTERATIONS. Except as permitted under **Article 9** of the Declaration, no structural alterations to the interior of or Common Area surrounding any Unit shall be made, and no plumbing, electrical or other work which would result in the penetration of the unfinished surfaces of the ceilings, walls or floors shall be performed, by any Owner without the prior written consent of the Board, and, if required under **Article 9**, the Declarant.

7.17 COMPLIANCE WITH LAWS, ETC. Nothing shall be done or kept in any Unit or in the Common Area or the Association Property that might increase the rate of, or cause the cancellation of, insurance for the Project, or any portion of the Project. No Owner shall permit anything to be done or kept in his or her Condominium that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal body, including any laws, ordinances or statutes pertaining to the use or storage of any hazardous, contaminated or toxic materials. No Owner shall allow furniture, furnishings, or other personalty belonging to such Owner to remain within any portion of the Common Area or the Association Property except as may otherwise be permitted by the Board or the Rules and Regulations, if any. Window tinting and coverings shall be subject to the approval of the Board.

7.18 TRASH DISPOSAL. Trash, garbage or other waste shall be kept only in sanitary containers. No Owner shall permit or cause any trash or refuse to be kept on any portion of the Project other than in the receptacles customarily used for it, which, shall be located only in places specifically designated for such purpose in the Rules and Regulations, if any.

7.19 INDEMNIFICATION. Each Owner shall be liable to the remaining Owners and the Association for any damage to the Common Area and the Association Property that may be sustained by reason of the negligence or willful misconduct of that Owner, or the Owner's Invitees, but only to the extent that any such damage is not covered by insurance proceeds received by the Association. Each Owner, by acceptance of his or her deed, agrees for such Owner and for the Owner's Invitees, to indemnify each and every other Owner and the Association, and to hold each Owner and the Association harmless from, and to defend such other Owner and the Association against, any claim of any person for personal injury or property damage caused by the negligence or willful misconduct of such Owner, unless the injury or damage occurred by reason of the negligence or willful misconduct of any other Owner or the Association. Upon demand by the Association, each Owner shall be responsible for the payment of any deductible amount payable under the Association's insurance policy as a result of any claims arising as a result of the negligent or willful misconduct of such Owner or the Owner's Invitees.

7.20 COMPLIANCE WITH REQUIREMENTS REGARDING PROJECT STORM WATER POLLUTION. Water that enters a storm drain flows directly, without any treatment, to waterways, creeks, streams, rivers, lakes and/or oceans. Accordingly, various Federal, State and City laws, regulations, policies and ordinances prohibit discharging anything other than natural rain water into storm drainage systems. No Owner, nor the Association, shall discharge any toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, detergents, pet waste, and other such materials and pollutants into the storm drain system. The disposal of such pollutants and materials into a storm drain system may result in significant penalties and fines and such Owner may be responsible for any activities by Owner's contractors (e.g., painters, etc.) who dispose of such pollutants from an Owner's Unit into a storm drain system.

ARTICLE VIII IMPROVEMENTS

8.1 MAINTENANCE OBLIGATIONS OF OWNERS.

8.1.1 Owners' Responsibilities. Subject to any provisions of the Governing Documents, each Owner shall maintain, repair and replace in a first-class condition the following:

(a) All portions of such Owner's Unit, including, without limitation, the interior surfaces of the Unit, as well as any Special Equipment located in a Special Benefits Area and/or Generating Equipment located in an Assigned Generator Area owned by an Owner and/or its Invitees; provided however, that Owners shall be required to use contractors pre-approved by the Association for the maintenance of any roof mounted equipment;

(b) The Utility Facilities servicing his or her Unit and located either within or outside the Unit, so long as those systems are used exclusively by such Owner and not in common, including, without limitation, the HVAC unit on the roof of the Building; provided however, that Owners shall be required to use contractors pre-approved by the Association for the maintenance of roof mounted HVAC equipment, Antennas or other equipment existing as of the date of recordation of this Declaration;

(c) Windows enclosing an Owner's Unit, frames and tracks of glass doors and windows, if any; and

(d) Doors enclosing an Owner's Unit.

8.2 EXCLUSIVE USE BALCONY AREAS. Each Owner shall be responsible for cleaning the interior surfaces of its Exclusive Use Balcony Area, if any, excluding any railing surrounding such areas. The Association shall be responsible for maintaining, repairing and replacing the interior surfaces of the Exclusive Use Balcony Areas and any railings enclosing an Exclusive Use Balcony Area.

8.3 FAILURE TO MAINTAIN. If an Owner fails to maintain the Owner's Unit and items as provided above or make repairs thereto in such manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof and protect the value thereof, the Board shall give written notice to such Owner, stating with particularity the work of maintenance or repair which the Board finds to be required and requesting that the same be carried out within a period of thirty (30) days from the giving of such notice. If the Owner fails to carry out such maintenance or repair within the period specified by the notice, the Board shall cause such work to be completed and shall assess the cost thereof to such Owner as an Enforcement Assessment in accordance with the procedures set forth in this Declaration. If any Owner damages the roof or roof membrane of the Building in which such Owner's Unit or portion of a Special Benefit Area is located, whether during the maintenance of such Owner's roof-mounted HVAC or other equipment or otherwise, such Owner shall be responsible for the cost of any roof repairs required as a result of such damage.

8.4 MAINTENANCE OBLIGATIONS OF ASSOCIATION.8.4.1 Maintenance of Common Area and Association Property. Except for the maintenance responsibilities of Owners described in **Section 8.1**, the Association shall be responsible for the general clean-up, maintenance, repair, and replacement of all Common Area (including the Special Benefit Areas) and Association Property. The Association shall provide for all necessary maintenance services and cause all acts to be done which may be necessary or proper to assure the maintenance of the Common Area and Association Property in first-class condition, including without limitation, any fuel modification measures required by the applicable governmental authorities. The Association's maintenance, repair and replacement obligations shall include without limitation, the following:

(a) the landscaping, irrigation systems, hardscape and drainage within the Association Property and Common Areas;

(b) the gang mail boxes, trash enclosures, exterior lighting and monument sign within the Association Property;

(c) exterior walls, roofs, foundations, bearing walls, and structural components of the Buildings, subject to the obligations of any Owners to perform maintenance obligations as provided in **Section 8.1**; and

(d) all Utility Facilities that serve more than one Unit (whether located within the Units, in the Common Area or outside the Buildings) which are not maintained by a public entity, utility company or improvement district.

8.4.2 Damage by Owners. Notwithstanding the provisions of **Section 8.4.1**, if an Owner or Owner's Invitees causes damage to any portions of the Project which are otherwise the obligation of the Association to maintain, the Owner shall be responsible for reimbursing the Association for all costs of repairing such damage and the Association may levy an Enforcement Assessment.

8.5 FUTURE CONSTRUCTION. Nothing in this Declaration shall limit the right of Declarant to construct Improvements to the Common Area and Association Property and to Condominiums owned by Declarant or to alter them or to construct additional Improvements as Declarant deems advisable before completion of the marketing and sale of the entire Project.

8.6 WATER METERS. The water and sewer service for the Project is provided by the City or applicable utility company ("Service Provider"). There are three public water meters for the Project, all of which meter the water used for both irrigation and water usage of the Buildings situated within the Project. The Service Provider will then prepare a bill based upon overall water usage within the Project. The Association will be responsible for the payment of this bill to Service Provider, and each Owner will be responsible for paying its Allocable Share of such water bill to the Association as a part of Common Expenses.

8.6.1 Submeters. The Board, in its discretion, shall have the right to install individual submeters on each Building that measure water usage for each of the individual Units within a Building. If the Board elects to install submeters, in order to calculate the share attributable to each Unit, for water, sewer and other charges imposed by the Service Provider, the Association shall have the right to enter into a contract with a water metering service company ("Metering Company"). The Metering Company will be responsible for reading the individual submeters, allocating the water, sewer and other charges imposed by the Service Provider for each Building to the individual Units and preparing the individual bills for delivery to each Owner. Additionally, the Metering Company will impose a service charge for their services which will be charged to each Owner. The Metering Company will provide to the Association a statement of all amounts received from the Owners on a regular basis.

8.6.2 Payment of Water and Sewer Bills. Each Owner will be responsible for paying directly to the Association or Metering Company, if any, such Owner's share of water, sewer and other charges imposed by the Service Provider and the service charge to the Metering Company, if any. If an Owner fails to pay any amounts when due, such Owner will be responsible for any penalties or delinquent amounts levied by the Service Provider and the

Metering Company, if any. Additionally, the Association shall have the right to cure any failure by an Owner (“Defaulting Owner”) to pay the amounts due to the Service Provider. If the Association elects to cure such default, then the defaulting Owner will be responsible for reimbursing the Association. If the Defaulting Owner fails to reimburse the Association, the Association will be entitled to impose an Enforcement Assessment as provided under this Declaration, may shut off water service to the Defaulting Owner’s Unit or may pursue any other remedies as provided under this Declaration. Each Owner shall also have the obligation to maintain, repair and replace the submeter providing service to such Owner’s Unit, if any. If an Owner fails to maintain such water meters, the Association shall be entitled to maintain, repair and replace the water meter and charge the cost thereof to the Owner as an Enforcement Assessment or pursue any other remedies as provided under this Declaration.

ARTICLE IX ARCHITECTURAL REVIEW

9.1 **SCOPE.** No Alterations of any kind whatsoever (including, without limitation, the extension of gas service lines to a Unit) shall be commenced until complete plans and specifications showing the location, nature, kind, shape, height and materials, including the color and any other requirements set forth in the Architectural Guidelines (“Plans and Specifications”), have been submitted to and approved in writing by the Board in accordance with the procedures set forth in the Architectural Guidelines. The Board shall not approve any Plans and Specifications without first submitting such Plans and Specifications for review and comment to an architect, landscape architect, engineer or other consultants as deemed appropriate in the determination of the Board based on the nature of the proposed Alterations (collectively, the “Outside Consultant”), which Outside Consultant is duly qualified and licensed in the State of California and has no current financial or ownership interest in the Project. The choice of the Board as to the selection of the Outside Consultant shall be deemed to be final. All fees, costs and expenses associated with retaining the Outside Consultant shall be borne by the submitting Owner as provided in **Section 9.8** hereof. Notwithstanding the foregoing, the reconstruction of a Unit or other Improvements that were originally constructed by Declarant or approved by the Board under this Article, shall not require such submittal, so long as such Improvements are constructed in accordance with the original process and specifications and in a manner otherwise consistent with this Article. In the discretion of the Board, inspections of such Improvements in accordance with **Section 9.5** hereof may be performed to ensure compliance with the original plans and specifications. In the event of a non-compliance with such plans and specifications, the Board shall have all of the rights to require correction of such work as provided in the Architectural Guidelines.

9.2 **ARCHITECTURAL GUIDELINES.** The Board may, from time to time and in accordance with Civil Code Section 1357.120 et seq., adopt, amend and repeal, by unanimous vote, rules and regulations to be known as “Architectural Guidelines.” The Architectural Guidelines shall interpret and implement the provisions hereof by setting forth the standards and procedures for architectural review and guidelines for architectural design of Alterations, placement of Alterations, color schemes, exterior finishes and materials and similar features which are recommended for use in the Project; provided, however, that the Architectural Guidelines shall not detract from or conflict with the standards required by this Declaration.

9.3 DUTIES AND POWERS OF BOARD FOR ARCHITECTURAL REVIEW. Any Owner proposing to construct Improvements shall first apply to the Board for approval by submission of Plans and Specifications and any other materials required by the Board. The decision of the Board shall be made in good faith, in accordance with any applicable Architectural Guidelines and consistent with any governing law. The Board shall notify the Owner of its approval or disapproval of the proposed Improvements in writing within 30 days of receipt of the Owner's application. If a proposed change is disapproved, the written decision shall include explanation of why the proposed change is disapproved within 30 days of disapproval. The Owner shall be entitled to reconsideration of the decision by the Board at any open meeting of the Board, unless the initial decision was made at an open meeting of the Board. If the Board fails to approve or disapprove any such Plans and Specifications within thirty (30) days after all documents and information requested by the Board have been received by it, the Owner requesting said approval may submit a written notice to the Board advising the same of its failure to act. If the Board fails to approve or disapprove any such Plans and Specifications within fifteen (15) days after the receipt of said notice from such Owner, the Plans and Specifications shall be deemed approved.

9.4 INSPECTION AND CORRECTION OF WORK. The Board or its duly authorized representative may enter into any Unit, from time to time, as provided below during the course of or after the construction or installation of any Alterations for the purpose of inspecting such construction and/or installation to determine whether it was performed in substantial compliance with the approved Plans and Specifications. If the Board determines that such construction and/or installation is not being done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner of the Unit of such non-compliance not more than thirty (30) days after the inspection specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance. The Board may not enter onto a Unit without obtaining the prior permission of the Owner or occupant of such Unit; provided, however, that such prior permission shall not be unreasonably withheld and shall be given for entry by the Board during the daylight hours within twenty-four (24) hours of the request for entry. The terms of this Section 9.4 shall likewise apply to construction or installations within the Special Benefit Areas and the Assigned Generator Areas.

9.4.1 Non-Compliance. If, upon the expiration of thirty (30) days from the date of such notification, the Owner shall have failed to remedy such non-compliance, the Board after affording the Owner Notice and Hearing, shall determine whether there is a non-compliance, and if so, the nature thereof and the estimated cost of correcting or removing the same. If non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than thirty (30) days from the date of the Board ruling. If the Owner does not comply with the Board ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying Improvement or remedy the non-compliance and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy an Enforcement Assessment against such Owner for reimbursement.

9.4.2 Failure to Notify. If for any reason the Board fails to notify the Owner of any non-compliance within ninety (90) days after receipt of said notice of completion from the

Owner, the Improvement shall be deemed to be in accordance with said approved Plans and Specifications.

9.5 GOVERNMENT REGULATIONS. If there is any conflict between the requirements or actions of the Board and the mandatory regulations or ordinances of any governmental entity relating to the Property, the government regulation or ordinance, to the extent that such regulations and ordinances are more restrictive, shall control, and the Board shall modify its requirements or actions to conform to the government regulation or ordinance; provided, however, that if the governmental rules or regulations are less restrictive, the provisions of this Declaration shall nonetheless apply. The application by an Owner for review and approval by the Board of any Plans and Specifications or other submittals by such Owner shall in no way be deemed to be satisfaction of compliance with any applicable statute or law, or governmental rule or regulation or public utility requirement (hereinafter collectively referred to as “Additional Requirements”); provided, however, if the additional requirements are less restrictive than the provisions of this Declaration, the provisions of this Declaration shall nonetheless apply. Although the Association has the right to require evidence of City approval of the Alterations as a condition to review of the final Plans and Specifications, nothing contained herein shall impose on the Association the duty to obtain evidence of approval by the City of any Alterations as a condition to issuance of final approval, nor shall any liability be imposed on the Association as a result of the failure of the Association to request evidence of City approval.

9.6 DILIGENCE IN CONSTRUCTION. Upon final approval by the Board of any Plans and Specifications, the Owners shall promptly commence construction and diligently pursue the same to completion.

9.7 FEE FOR REVIEW. The Board shall have the right to retain the Outside Consultants, and establish a fee for the review and approval of Plans and Specifications that must be submitted to the Board pursuant to the provisions of this Article. The Board shall have the right to hire any engineer or other consultant, the opinion of which the Board deems necessary in connection with its review of any plans submitted by any Owner, and such Owner shall be liable for payment of such engineer’s and/or consultant’s fee.

9.8 COMPENSATION. The Board shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder, unless the Association retains a professional architect, engineer or designer as a member of the Board for the purpose of providing professional services, in which event reasonable compensation for such member shall be approved by the Board.

9.9 INTERPRETATION AND APPEAL. All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Board, and its decision shall be final, binding and conclusive on all of the parties affected.

9.10 WAIVER. The approval by the Board of any Plans and Specifications for any work done or proposed, or for any other matter requiring the approval of the Board under this

Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

9.11 ESTOPPEL CERTIFICATE. Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall deliver and/or record an estoppel certificate, executed by a majority of its members, certifying (with respect to any Unit of said Owner) that as of the date thereof, either: (a) all Alterations made and other work completed by said Owner comply with this Declaration, or (b) such Alterations or work do not so comply, in which event the certificate shall also identify the non-complying Alterations or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in said Unit through him, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through them.

9.12 LIABILITY. Neither the Board nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of the Project or any property within the Project; or (d) the execution and filing of an estoppel certificate pursuant to **Section 9.12**, whether or not the facts therein are correct, provided, however, that such Board member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing, the Board, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Board.

9.13 NON-APPLICABILITY TO DECLARANT. The provisions of this Article shall not apply to any Improvements installed by the Declarant, and the Board shall not have any rights of review or approval with respect thereto.

9.14 GOVERNMENT REQUIREMENTS. The application to and the review and approval by the Board of any proposals, plans or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the respective Owner.

9.15 AMENDMENTS. Notwithstanding the Article hereof entitled "Amendments," no amendment, verification or rescission of this Article may be made prior to the conveyance by Declarant, or its successor, of the last Unit in the Project without the (i) written consent of Declarant, and the (ii) recording of such consent in the Office of the County Recorder. Such written consent shall not be required after the conveyance by Declarant (or its successors) of all the Units in the Project.

9.16 VARIANCES. The Board may authorize variances from compliance with any of the architectural provisions of this Declaration. Such variances must be evidenced in writing and must be signed by at least two (2) members of the Board. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be

deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Unit and the particular provision hereof covered by the variance, nor shall it affect in anyway the Owner's obligation to comply with all governmental laws and regulations affecting its use of the Unit, including, but not limited to, zoning ordinances or other requirements imposed by the City or any other governmental authority.

ARTICLE X DEVELOPMENT RIGHTS

10.1 LIMITATIONS OF RESTRICTIONS. In order that the marketing and sale, rental and other disposition of the Units to establish a first class light industrial condominium project may be completed, nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this Article.

10.2 ACCESS. Declarant, its contractors and subcontractors shall have the right to obtain access over and across the Common Area and Association Property of the Project, or do within any Unit owned by it, whatever is reasonably necessary or advisable in connection with the marketing, sale and maintenance of the Project. Declarant, its contractors and subcontractors shall have the right to erect, construct and maintain on the Common Area and the Association Property of the Project, or within any Unit owned by it, such structures or Improvements, including, but not limited to, sales offices and signs, as may be reasonably necessary for the conduct of its business to market and convey the Units by sale, lease or otherwise, as determined by Declarant in its sole discretion.

10.3 SIZE AND APPEARANCE OF PROJECT. So long as Declarant owns any Unit in the Property, Declarant shall not be prevented from changing the exterior appearance of Common Area and the Association Property structures, the landscaping or any other matter directly or indirectly connected with the Project in any manner deemed desirable by Declarant, if Declarant obtains governmental consents required by law.

10.4 MARKETING RIGHTS. Subject to the limitations of this Declaration, Declarant shall have the right to: (i) maintain sales offices, storage areas and related facilities in any unsold Units or Common Area and the Association Property within the Project as are necessary or reasonable, in the opinion of Declarant, for the sale or leasing of the Units; (ii) make reasonable use of the Common Area and the Association Property and facilities for the marketing of Units (including without limitation, granting rights of ingress and egress over the Association Property and the Common Areas to prospective purchasers and tenants in connection with such marketing activities; (iii) post signs, flags and banners in connection with its marketing; and (iv) conduct its business of disposing of Units by sale, lease or otherwise.

10.5 TITLE RIGHTS. The rights of Declarant under this Declaration may be assigned to any successor(s) by an express assignment in a recorded instrument, including without limitation, a deed, option or lease. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations and rights-of-way to itself, to utility companies, to the City, to the County, to the State, or to

others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

10.6 AMENDMENT. The provisions of this Article may not be amended without the consent of Declarant until all of the Units in the Project owned by Declarant have been conveyed.

10.7 POWER OF ATTORNEY. Each Owner of a Condominium in the Project, by accepting a deed to a Condominium, shall be deemed to have irrevocably appointed Declarant, for so long as Declarant owns all or any portion of the Property, as his or her Attorney-in-Fact, for himself or herself and each of his or her Mortgagees, optionees, grantees, licensees, trustees, receivers, lessee, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a Power of Attorney coupled with an interest to Declarant as his or her Attorney-in-Fact to prepare, execute, acknowledge and record any Condominium Plan or amendment to the Condominium Plan for all or any portion of the Property regardless of whether Declarant owns any interest in the property which is the subject of such Condominium Plan or amendment to such Condominium Plan. However, nothing set forth herein shall be deemed or construed as an agreement by Declarant that any Owner shall be entitled to any participation in, or discretion over, the preparation and recordation of a Condominium Plan or amendment to a Condominium Plan for all or any portion of the Property. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the Power of Attorney described in this Section.

10.8 SUPPLEMENTARY DECLARATION AND SUPPLEMENTARY CONDOMINIUM PLANS. So long as Declarant owns any portion of the Property, Supplementary Declarations and Supplementary Condominium Plans may be recorded by Declarant, without the consent of any Owner, for any of the purposes for which a Supplementary Condominium Plan or a Supplementary Declaration may be recorded.

ARTICLE XI INSURANCE

11.1 LIABILITY INSURANCE. The Association shall obtain and maintain commercial general liability insurance insuring the Association, the Board, any manager, the Declarant and the Owners and occupants of Condominiums and their Invitees against any liability incident to the ownership or use of the Common Area and the Association Property and the performance by the Association of its duties under this Declaration. Such policy shall include, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than Three Million Dollars (\$3,000,000) and shall be at all times in conformance with the requirements of Section 1365.9 of the California Civil Code. Such insurance shall cover all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall, to the extent available, include coverage against water damage liability, property of others and any other liability or risk customarily covered with respect to projects similar in construction, location, and use.

11.2 PROPERTY INSURANCE. The Association shall keep (i) any Improvements within the Common Area and the Association Property to be maintained by the Association insured against loss by fire and the risks covered by a “Standard All-Risk of Loss or Perils” insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement value thereof (except that there may be lower dollar limits for specified items as is customarily provided in property insurance policies), and (ii) all personalty owned by the Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for Improvements in the Common Area and the Association Property (excluding Units) and personalty owned by the Association shall be payable to the Association. In the event of any loss, damage or destruction to the Common Area and the Association Property, the Association shall cause the same to be replaced, repaired or rebuilt in accordance with the provisions of this Declaration.

11.2.1 Description of Policy Coverages. The policy shall cover the following real and personal property:

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

(b) Landscaping. Lawn, trees, shrubs and plants located in the Common Area and the Association Property.

11.2.2 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.

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

11.2.4 Endorsements. The policy shall contain the following endorsements or their equivalents: agreed amount, boiler and machinery (to the extent applicable), inflation guard, ordinance or law, and replacement cost, and such other endorsements as the Board in its discretion shall elect.

11.2.5 Waiver of Subrogation. Except as provided in **Section 7.19** of this Declaration, the Association waives all rights of subrogation between the Association and the Owners and their Invitees. All insurance policies obtained by the Association shall include a waiver of subrogation rights against any Owner and their Invitees; provided that a failure or inability of the Association to obtain such a waiver shall not defeat or impair the waiver of subrogation rights between the Association and the Owners and their Invitees set forth herein. Insurance proceeds for Improvements in the Common Area and Association Property and personalty owned by the Association shall be payable to the Association.

11.3 ADDITIONAL INSUREDS. The Association's liability policy shall name as insured the Association, the Owners, the Declarant, as long as Declarant is the Owner of any Condominium and/or has any rights under **Article 9** of this Declaration, the management company of the Association, if requested by the Association, and may contain a loss payable endorsement in favor of the Trustee (as defined below). As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against the Association, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

11.4 INDIVIDUAL INSURANCE. Each Owner shall maintain (i) property insurance against losses to personal property located within the Unit, and/or upon such portion of the Special Benefit Areas as is being utilized by such Owner, and/or upon such Owner's Assigned Generator Area, and to any upgrades or Improvements located within the Unit, and (ii) liability insurance against any liability resulting from the use or occupancy of the Owner's Unit, such Owner's portion of the Special Benefit Area and/or Assigned Generator Area, if any, issued in the form of a California Condominium Owners policy of insurance typically issued to Owners in attached condominium communities with minimum limits of liability of Two Million Dollars (\$2,000,000). Such liability insurance shall cover all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include, to the extent available, coverage against water damage liability, property of others and any other liability or risks customarily covered by individual liability insurance. The Association shall have the right to require an Owner to provide evidence of such insurance coverage, and in such case, the Owner shall provide a certificate evidencing the insurance coverage from an insurer qualified to do business in the state of California within fifteen (15) days after request by the Association. Such liability insurance policy shall name the Association as an additional insured. The Association's insurance policies will not provide coverage against any of the foregoing. All Owners hereby waive all rights of subrogation against the Association, and any insurance maintained by an Owner must contain a waiver of subrogation rights by the insurer as to the Association provided, however, that a failure or inability of an Owner to obtain such a waiver shall not defeat or impair the waiver of subrogation rights between the Owners and the Association set forth herein. No Owner shall separately insure any property covered by the Association's property insurance policy as described 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.

11.5 FIDELITY BOND. The Association shall maintain a fidelity bond in an amount equal to at least the estimated maximum of funds, including reserves, in the custody of the Association or a management agent at any given time during the term of the fidelity bond; provided, however, that the bond shall not be less than a sum equal to three (3) months aggregate of the Regular Assessments on all Units plus reserve funds of the annual assessments naming the Association as obligee and insuring against loss by reason of the acts of the Board, officers and employees of the Association, and any management agent and its employees, whether or not such persons are compensated for their services.

11.6 WORKER'S COMPENSATION INSURANCE. The Association shall maintain worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.

11.7 OFFICERS AND DIRECTORS OMISSIONS INSURANCE. The Association shall maintain a policy insuring the Association's officers and directors against liability for their negligent acts or omissions while acting their capacity as officers and directors. The limits of such insurance shall be not less than Three Million Dollars (\$3,000,000) for all claims arising out of a single occurrence.

11.8 OTHER INSURANCE. The Association shall maintain other types of insurance as the Board determines to be necessary to fully protect the interests of the Owners.

11.9 COPIES OF POLICIES. Copies of all such insurance policies of the Association (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by Owners at reasonable times. All such insurance policies shall (i) provide that they shall not be cancelable or substantially modified by the insurer without first giving at least thirty (30) days' prior notice in writing to the Association, and (ii) contain a waiver of subrogation by the insurer(s) against the Association, Board and Owners. In addition to the foregoing, the Association shall provide such information regarding the insurance of the Association as may be required by applicable law or under the Bylaws.

11.10 REVIEW OF INSURANCE. The Board shall review the adequacy of all insurance maintained by the Association at least once every year. The review shall include a replacement cost appraisal of all insurable Association Property Improvements without respect to depreciation. The Board shall adjust and modify the policies to provide coverage and protection that is customarily carried by and reasonably available to prudent owners of similar property in the area in which the Project is situated.

11.11 BOARD'S AUTHORITY TO REVISE INSURANCE COVERAGE. Subject to the provisions of **Section 11.1** and the requirements regarding insurance set forth in the Bylaws, the Board shall have the power and right to deviate from the insurance requirements contained in this **Article 11** in any manner that the Board, in its reasonable business 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 11**, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain any insurance required hereunder because the insurance is no longer available, or, if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums.

11.12 ADJUSTMENT OF LOSSES. The Board is appointed attorney-in-fact by each Owner, to negotiate and agree on the value and extent of any loss under any policy carried by the Association pursuant to **Sections 11.1** and **11.2**. The Board is granted full 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.

11.13 DISTRIBUTION TO MORTGAGEES. Any Mortgagee has the option to apply insurance proceeds payable directly to an Owner on account of a Condominium as provided in this Declaration in reduction of the obligation secured by the Mortgage of such Mortgagee.

ARTICLE XII DESTRUCTION OF IMPROVEMENTS AND CONDEMNATION

12.1 RESTORATION DEFINED. As used in this **Article 12**, the term “restore” shall mean repairing, rebuilding or reconstructing damaged Improvements to substantially the same condition and appearance in which it existed prior to fire or other casualty damage.

12.2 INSURED CASUALTY. If any Improvement required to be maintained by the Association is damaged or destroyed from a risk covered by the insurance required to be maintained by the Association, then the Association shall, to the extent permitted under existing laws, restore the Improvement to the same condition as it was in immediately prior to the damage or destruction. 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 12.5**. Notwithstanding the foregoing, if the damage was caused by the negligence or willful misconduct of an Owner or such Owner’s Invitees, the Association shall have the right to pursue such Owner to collect any amounts due from such Owner pursuant to the provisions of **Section 7.19** of this Declaration.

12.3 RESTORATION PROCEEDS. Sufficient Proceeds. The costs of restoration of the damaged Improvement shall be paid first from any insurance proceeds paid to the Association under existing insurance policies. 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. If the insurance proceeds are insufficient to restore the damaged Improvement, the Board shall then add to the 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 against all Owners 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.

12.3.2 Insufficient Proceeds. 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 Subsection (a) below; and second to use a plan of alternative reconstruction pursuant to Subsection (b) below. If the Members do not approve such actions, then the entire building of which the damaged Improvement is a part shall be sold pursuant to Subsection (c) below.

(a) Additional Special Assessment. If the total funds available to restore the damaged Improvement 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”). If the amount of the Additional Special Assessment approved by the Members, and the amounts available pursuant to **Section 12.3.1** 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 Subsection (b).

(b) 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 12.3.2** and Subsection (a) above (“Alternative Reconstruction”). All proposals shall be presented to the Owners. If two-thirds of the voting power of the Owners whose Units 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 Subsection (c) shall apply.

(c) Sale of Building. If the damaged Improvement is part of a Building (“Damaged Building”), the damage renders one or more of the Condominiums uninhabitable, and the Improvements will not be restored in accordance with the provisions of Subsections (a) and (b) above, the Board, as the attorney-in-fact for each Owner of a Condominium in the Damaged Building, shall be empowered to sell the Damaged Building, including all Units therein, in their then present condition, on terms to be determined by the Board, provided that the Board receives adequate assurances that the purchaser shall, and has the financial capability to: (1) restore the Damaged Building (either by renovation or removal and rebuilding), (ii) remove the Damaged Building (including foundations), grade the Project, and appropriately landscape or otherwise improve the Project, or (iii) 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 12** and the provisions of the Declaration. In lieu of selling the Damaged Building to a third Person, the Association may purchase the Building 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 Building) approve of the purchase;

(ii) the purchase price is the fair market value of the Damaged Building 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 Building;

(iv) the Association has an adequate source of funds to repair, renovate or rebuild all or a portion of the Damaged Building and/or to remove and appropriately landscape the remaining portions of the Project. 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.

(d) Distribution of Proceeds. The proceeds from the sale, together with the insurance proceeds received and any reserve funds allocated to the Damaged Building, after deducting therefrom the Association's sale expenses, including commissions, title and recording fees, and legal costs, shall be distributed among the Owners of Condominiums in the Damaged Building 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 Building is removed and not restored so that the new building contains the same number of Condominiums as the removed building, the Board shall take appropriate steps to adjust the property interests of the remaining Owners and to effect such amendments as may be necessary to the Declaration, the Condominium Plan and the Map to reflect the revised property interests and other related changes.

12.4 REBUILDING CONTRACT. If there is a determination to restore, the Board or its authorized representative shall obtain bids from at least two (2) 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 insurance proceeds 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 return the Project to substantially the same condition and appearance in which it existed prior to the damage or destruction.

12.5 INSURANCE TRUSTEE. All property insurance proceeds payable to the Association under the policy described in **Section 12.2**, subject to the rights of Mortgagees under **Article 14**, 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 project 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.

12.6 AUTHORITY TO EFFECT CHANGES. If any building or portion thereof containing Condominiums is damaged or destroyed or in need of renovation or rehabilitation and the building is repaired or reconstructed, the Building may be repaired or reconstructed in a manner that alters the boundaries of the Units or Common Area and Association Property provided the following conditions are satisfied.

(i) the alteration has been approved by the Board and by Members holding a majority of the total Voting Power of the Association;

(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 the Building;

(iii) the alteration does not materially change the location of any Unit or reduce the size of any Unit without the consent of the Unit Owner;

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

(v) the Condominium Plan is amended to reflect the alteration to the Units or Common Area and Association Property.

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 and Association Property as authorized above, including, but not limited to, the execution, delivery and recordation of any Condominium Plan amendments, deeds or other instruments.

12.7 MINOR REPAIR AND RECONSTRUCTION. The Board shall have the duty to repair and reconstruct Improvements, without the consent of Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed five (5%) percent of the annual budgeted gross expenses of the Association. The Board is expressly empowered to levy a Reconstruction Assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable, such assessment to be levied as described above (but without the consent or approval of Members, despite any contrary provisions in this Declaration).

12.8 DAMAGE OR DESTRUCTION TO A UNIT. If there is damage or destruction to any Unit, the Owner thereof shall, at its own cost and expense (to the extent not covered by the Association's insurance), perform interior repair and restoration which shall be completed as promptly as practical and in a lawful and workmanlike manner, and, to the extent required under **Article 9** and the Architectural Guidelines, in accordance with plans approved by the Board as provided in **Article 9** herein.

12.9 CONDEMNATION OF COMMON AREA. If any portion of the Common Area is taken by condemnation, eminent domain or any proceeding in lieu thereof, then the Owners whose use of such Common Area is affected by such condemnation or eminent domain proceeding, and their Mortgagees as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds would be distributed pursuant to the provisions above; provided, however, that should it be determined to repair or rebuild any portion of the Common Area, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in this Article for repairing damaged or

destroyed portions of the Common Area. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in this Article for determining whether to rebuild or repair following damage or destruction.

12.10 CONDEMNATION OF ASSOCIATION PROPERTY. If any portion of the Association Property is taken by condemnation, eminent domain or any proceeding in lieu thereof, then the award or consideration for such taking shall be paid to and belong to the Association.

12.11 CONDEMNATION OF A UNIT. In the event of any taking of a Condominium, the Owner (and such Owner's Mortgagees as their interests may appear) of the Condominium shall be entitled to receive the award for such taking and after acceptance thereof such Owner and such Owner's Mortgagee shall be divested of all further interest in the Condominium and membership in the Association if such Owner shall vacate such Owner's Unit as a result of such taking. In such event, said Owner shall grant his remaining interest in the Common Area appurtenant to the Unit so taken, if any, to the other Owners owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

ARTICLE XIII PARTITION AND SEVERABILITY OF INTERESTS

13.1 PARTITION. Except as set forth below, there shall be no judicial partition of the Common Area, or any part thereof, for the term of the Project, nor shall Declarant, any Owner, or any other person acquiring any interest in any Condominium in the Project seek any such judicial partition. The undivided interest in the Common Area described above may not be altered or changed as long as the prohibition against severability of interests in a Condominium remains in effect as provided in this Declaration. Notwithstanding the foregoing, nothing in this Declaration shall prevent partition or division of interest between joint or common owners of any Condominium.

13.2 POWER OF ATTORNEY. Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Project, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Project may be had under California Civil Code Section 1359 or any successor statute or law. The power of attorney shall:

13.2.1 Be binding on all Owners, whether they assume the obligations under this Declaration or not;

13.2.2 Be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of seventy-five percent (75%) of the Owners and seventy-five percent (75%) of all Mortgagees; and

13.2.3 Be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of

attorney is properly exercisable under the authority of this Declaration. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

13.3 PROHIBITION AGAINST SEVERANCE. The interest of each Owner in the use and benefit of the Common Area and Association Property shall be appurtenant to the Unit owned by the Owner. No Unit shall be conveyed by the Owner separately from the interest in the Common Area or the right to use the Association Property for the benefit of such Owner. Any conveyance of any Unit shall automatically transfer the interest in the Common Area, and the Owner's right to use the Association Property without the necessity of express reference in the instrument of conveyance. An Owner shall not be entitled to sever such Owner's Condominium from such Owner's membership in the Association. None of the component interests in a Condominium can be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to such Owner's Unit over the Common Area and Association Property, including, but not limited to the appurtenant right to use a portion of a Special Benefit Area, from such Owner's Condominium, and any attempt to do so shall be void. It is intended hereby to restrict severability pursuant to California Civil Code Section 1358 or any successor statute or law.

13.4 CONVEYANCES. After the initial sales of the Condominiums, any conveyance of a Condominium by an Owner shall be presumed to convey the entire Condominium. However, nothing contained in this Section shall preclude the Owner of any Condominium from creating an estate for life or years, cotenancy or joint tenancy in the ownership of the Condominium with any other person or persons.

ARTICLE XIV RIGHTS OF MORTGAGEES

14.1 MORTGAGEE'S OPPORTUNITY TO CURE. In addition to the other rights of Mortgagees set forth in this Declaration, during the continuance of any Mortgage and until such time as the lien of any Mortgage has been extinguished, the Mortgagee shall have the rights set forth below.

14.1.1 Payments by Mortgagees. Any Mortgagee shall have the right, but not the obligation, and without payment of any penalty, to pay all of the amounts due hereunder, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any act or thing required of the applicable Owner hereunder; and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent a default under this Declaration by an Owner of the Condominium encumbered by such Mortgagee's Mortgage. All payments so made and all things so done and performed by a Mortgagee shall be effective to prevent a default under this Declaration as the same would have been if made, done and performed by the defaulting Owner instead of by the Mortgagee.

14.1.2 Notice to Mortgagees. At the written request of a Mortgagee, the Association and each Owner shall mail or deliver to such Mortgagee a duplicate copy of any and all notices which the Association or each Owner may from time to time give to or serve upon

another Owner pursuant to the provisions of this Declaration and such copy shall be mailed or delivered to each Mortgagee simultaneously with and in the same manner as the mailing or delivery of the same to the other Owner.

14.1.3 Application of Charges to Mortgagees. Each Mortgagee who obtains title pursuant to its remedies under the Mortgage and any purchaser at a foreclosure sale (but excluding a deed in lieu of foreclosure), shall take title to the Condominium free and clear of any claims for unpaid payments, assessments and charges, and liens therefor, which accrued prior to such acquisition of title. Except as provided in this **Article 14**, any such sale shall extinguish such liens for payments, assessments and liens accrued prior to such acquisition of title, but the purchaser or Mortgagee who so acquires title shall be liable for payments and impositions accruing after the date of such sale. Following any such sale, the Association shall seek payment of all unpaid payments, assessments and charges accruing prior to such acquisition of title solely from the defaulting Owner as provided in this Declaration.

14.2 LIMITATION OF ENFORCEMENT AGAINST MORTGAGEE. No violation of this Declaration by, or enforcement of this Declaration against, an Owner shall impair, defeat or render invalid, the lien of any Mortgage, but this Declaration shall be enforceable against an Owner whose title is acquired by foreclosure, trustee's sale, voluntary conveyance, assumption or otherwise.

14.3 DAMAGE OR DESTRUCTION. Every Mortgagee who has requested the Association or an Owner to provide written notice with respect to (a) any substantial damage to or destruction of Condominiums or Improvements and (b) any Condemnation proceeding involving, or any proposed acquisition by a condemning authority of, Condominiums or Improvements or any portion thereof, shall be entitled to timely written notice from the Association or an Owner, as applicable.

14.4 INSURANCE AND CONDEMNATION PROCEEDS. No provision of this Declaration shall be construed to give any Owner or any other Person priority over the rights of any Mortgagee with respect to the distribution of insurance proceeds or proceeds of losses to or a Condemnation of the Condominiums or Improvements encumbered by such Mortgagee's Mortgage.

ARTICLE XV AMENDMENTS

15.1 AMENDMENT BEFORE THE CLOSE OF FIRST SALE. Before the close of the first sale of a Unit to a purchaser other than Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record (if required pursuant to such Mortgagee's loan documents) of an instrument amending or revoking the Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder.

15.2 AMENDMENTS AFTER THE CLOSE OF FIRST SALE. Except as may otherwise be stated in this Declaration, after the close of the first sale of a Unit in the Project to

an Owner other than Declarant, this Declaration may be amended at any time and from time to time with the vote or approval by written ballot of at least fifty-one percent (51%) of the voting power of the Class A Members of the Association, and, so long as Declarant owns any Unit in the Project, with the consent of Declarant. After Declarant no longer owns any interest in the Project, the Declaration may be amended at any time and from time to time, provided that the vote or approval by written ballot of at least fifty-one percent (51%) of the total Voting Power of the Association has been obtained. Such amendment shall become effective upon the recording of a Certificate of Amendment signed and acknowledged by the President or Vice President of the Association and the Secretary or Assistant Secretary of the Association certifying that such votes or approval by written ballot have been obtained. For the purposes of recording such instrument, the President or Vice-President and Secretary or Assistant Secretary of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording said amendment with the Office of the County Recorder.

15.3 CONTROLLING PROVISIONS. Each present and future Owner hereby waives the provisions of Section 1355.5 of the California Civil Code and agrees that the provisions of this Section regarding amendments shall be controlling on each Owner. The Owners acknowledge that, due to the limited number of Owners of Units, the fact that each of the Owners are sophisticated commercial owners, and that each Owner has specific voting rights on the Board, the Owners do not need the benefit of Civil Code Section 1355.5 relating to amendments.

ARTICLE XVI ENFORCEMENT

16.1 TERM. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or any Member, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by sixty-seven percent (67%) of the then Members has been recorded, at least one (1) year prior to the end of any such period in the manner required for a conveyance of real property, in which it is agreed that this Declaration shall terminate at the end of the then applicable term.

16.2 ENFORCEMENT AND NONWAIVER 16.2.1 Rights of Enforcement of Governing Documents. The Association or any Owner shall have a right of action against any Owner, and any Owner shall have a right of action against the Association, to enforce by proceedings at law or in equity, all covenants, conditions, and restrictions, now or hereafter imposed by the provisions of the Governing Documents or any amendment thereto, including the right to prevent the violation of such covenants, conditions or reservations and the right to recover damages or other dues for such violation, except that Owners shall not have any right of enforcement concerning Assessment liens. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Rules and Regulations, if any, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure

of the Association, Declarant or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

16.2.2 Procedure for Enforcement. Notwithstanding anything to the contrary set forth in **Section 16.2.1**, in enforcing any action under the Governing Documents for injunctive relief, declaratory relief and/or monetary damages (excluding actions in Small Claims Court), the parties shall comply with the provisions of California Civil Code Section 1354, 1363.801 et seq., 1368.3 et seq. and 1369.510, et seq. and any successor statutes or laws. The Board shall annually provide to the Members a summary of the provisions of California Civil Code Section 1354 1363.810 et seq. and any successor statutes or laws, which shall include the language required and shall be delivered in the manner provided in Civil Code Section 1365. The exception for disputes related to Association assessments set forth in Section 1369.520(d) shall not apply to disputes between a Member and the Association regarding assessments imposed by the Association, if the Member chooses to pay in full the Association all of the assessments as specified in California Civil Code Section 1366.3 and any successor statutes or laws.

16.3 NOTICE OF ACTIONS AGAINST DECLARANT. The Association shall comply with the provisions of California Civil Code Section 1368.4 and any successor statutes or laws, prior to the filing of any civil action by the Association against the Declarant or other developer of the Project for alleged damage to the Common Area or the Association Property or other property within the Project that the Association is obligated to maintain or repair, or alleged damage to any other portion of the Project that arises out of, or is integrally related to, such damage to the Common Area or the Association Property or other property within the Project that the Association is obligated to maintain or repair. Such notice shall specify all of the matters set forth in Section 1368.4 and any successor statutes or laws.

16.4 ALTERNATIVE DISPUTE RESOLUTION. The purpose of this **Section 16.4** is to provide an expedited means of resolving any claims, disputes and disagreements which may arise between an Owner and the Association and/or Declarant after the close of escrow or other conveyance of any portion of the Property by Declarant concerning the Property, that are not resolved pursuant to any applicable statutory dispute resolution procedures (individually referenced to herein as “Dispute” and collectively as “Disputes”). Initially, Declarant will attempt to resolve any Dispute asserted by an Owner or the Association of which it is given notice. If the Dispute cannot be resolved between the parties in this manner, it will be decided through the arbitration procedure as set forth below. Alternatively, Declarant, an Owner or the Association may elect to resolve such Disputes through a small claims court proceeding. **THIS PROCESS INVOLVES WAIVER OF THE RIGHT TO A JURY TRIAL. BY EXECUTING THIS DECLARATION AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, RESPECTIVELY, DECLARANT, EACH OWNER AND THE ASSOCIATION, AGREE TO BE BOUND BY THE PROVISIONS OF THIS SECTION 16.4.**

16.4.1 Right to Inspect and Right to Corrective Action. Any person with a Dispute (“Claimant”) shall notify Declarant in writing of the Dispute, which writing shall describe the nature of such claim and any proposed remedy (“Claim Notice”). Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60)

days, the Declarant and the Claimant(s) shall meet at a mutually-acceptable place within or near the Project to discuss the Dispute. At such meeting or at such other mutually agreeable time, the Declarant (and any applicable Declarant Parties) and their respective representatives shall have full access to the property that is subject to the Dispute and shall have the right to conduct inspections and testing in a manner deemed appropriate by Declarant, which rights shall continue until such time as the Dispute is resolved as provided in this **Section 16.4**. The parties to the Dispute shall negotiate in good faith in an attempt to resolve the Dispute. If the Declarant elects to take any corrective action, the Declarant and its representatives and agents shall be provided full access to the Project that is subject to the Dispute to take and complete corrective action.

16.4.2 Mediation. Subject to the provisions of **Section 16.4.3(h)** below, and except for actions in small claims court or Disputes that have already been mediated, Owner, Association and Declarant agree to submit any and all disputes to non-binding mediation before commencing arbitration. The cost of mediation shall be divided equally between the parties to the mediation.

16.4.3 Arbitration.

(a) Agreement to Arbitrate. The Association, each Owner and Declarant shall resolve any Dispute not resolved as provided above exclusively through binding arbitration in the county in which the Property is located. This arbitration provision shall apply to Disputes of any kind or nature regardless of when the Dispute first arose or the nature of the relief sought.

(b) Waiver of Trial by Judge or Jury. By agreeing to resolve all Disputes through binding arbitration, the Association, each Owner and Declarant each give up the right to have their respective claims and defenses decided by a judge or a jury. All claims and Disputes shall instead be decided by the arbitrator.

(c) Rules Applicable to All Cases. The arbitration will be conducted by Judicial Arbitration and Mediation Services (“JAMS”) in accordance with the rules of JAMS in effect as of the initiation of the arbitration (“JAMS Rules”), as supplemented by this Declaration. If JAMS is no longer in existence at the time of such Dispute, the arbitration shall be conducted by any other entity offering arbitration services that is mutually acceptable to the parties. The following supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between the rules set forth below and the JAMS Rules.

(d) Qualifications of Arbitrators. The arbitrator shall be neutral and impartial and either a retired judge or a member or former member of the California State Bar with at least 15 years experience as a practicing lawyer.

(e) Appointment of Arbitrator. The arbitrator to preside over the Dispute shall be selected in accordance with the JAMS Rules, but no later than sixty (60) days after a notice of claim is filed.

(f) Expenses. All fees charged by JAMS and the arbitrator shall be advanced by the Declarant, or by the Association if the Declarant no longer owns any Units in the Project. If the Declarant (or Association as applicable) is the prevailing party in the

arbitration, the arbitrator may, in his or her discretion and only to the extent permitted by law and the JAMS Minimum Standards of Procedural Fairness, direct such other party(ies) to the arbitration to reimburse the Declarant/Association for such party's/parties' pro rata share of the JAMS fee and arbitrator's fee advanced by the Declarant/Association. The non-prevailing party shall pay the attorney's fees and costs in connection with the arbitration incurred by all parties to such arbitration.

(g) Venue. The venue of the arbitration shall be in the County where the Project is located unless the parties agree in writing to another location.

(h) Preliminary Procedures. If state or federal law requires the Association or an Owner or Declarant to take steps or procedures before commencing an action in court, then the Owner or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05 or 1375.1.

(i) Participation by Other Parties. The Association, an Owner and Declarant, to the extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration.

(j) Rules of Law. The arbitrator must follow California substantive law (including statutes of limitations) but strict conformity with the rules of evidence is not required, except that the arbitrator shall apply applicable law relating to privilege and work product. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.

(k) Attorneys' Fees and Costs. Each party shall bear its own attorneys' fees and costs (including expert witness costs) in the arbitration.

16.4.4 Additional Rules Applicable To Certain Cases. In any arbitration in which a claim of Owner, the Association or Declarant exceeds \$250,000 in value, the following additional rules will supplement the JAMS Rules and govern in the event of a conflict between the following rules and the rules set forth above, the JAMS Rules, or both.

(a) Qualifications of Arbitrator. In addition to the requirements of **Section 16.4.3(d)** above, the arbitrator shall be a retired judge of the California Superior Court, a California Court of Appeal, or the California Supreme Court.

(b) Rules of Law. The California Evidence Code shall apply.

(c) Written Decision. Within thirty (30) days after the hearing is closed, the arbitrator must issue a written decision. If either Owner or Declarant requests it, the arbitrator must issue a reasoned award.

(d) Additional Discovery Rights: In addition to the discovery rights provided for in the JAMS Comprehensive Arbitration Rules, the parties will have the following discovery rights:

(i) Inspection, Examination and/or Test. The right to a reasonable inspection, examination and/or test of any site, defect, personal injury or property damage relevant to any claim;

(ii) Deposition of Opposing Party. The right to take one deposition of each opposing party for up to four hours. The deposition of a person designated by an entity or organization as most knowledgeable, or an individual officer or employee of an entity or organization, shall count as the deposition of a party which is not a natural person.

(iii) Deposition of Expert Witnesses. The right to take the deposition of each expert witness designated by an opposing party for up to 4 hours.

(iv) Additional Depositions. The arbitrator shall have discretion to allow additional depositions and longer depositions upon a showing of good cause.

16.4.5 Procedure for Appeal of Certain Cases. In any arbitration in which a claim or arbitration award of Owner or Declarant exceeds \$500,000 in value, Owner and Declarant hereby adopt and agree to the JAMS Optional Appeal Procedure. The following additional rules will supplement the JAMS Optional Appeal Procedure and govern in the event of a conflict between the following rules and the JAMS Optional Appeal Procedure.

(a) Right of Appeal. There shall be no right to appeal unless the oral evidence received by the arbitrator was preserved in a manner such that it can be converted to an accurate and reliable written transcript.

(b) Appellate Panel. An appeal shall be decided by one (1) neutral appeal arbitrator unless either party, within the time permitted for the appointment of the appeal arbitrator, elects to have the appeal decided by a panel of three (3) appeal arbitrators. Any party who elects to have an appeal decided by a panel of three (3) appeal arbitrators agrees to be solely responsible for the cost of having two (2) additional appeal arbitrators. The sole appeal arbitrator, or at least one member of any panel of three (3) arbitrators, shall have prior experience as a member of an appellate panel of the California Court of Appeal.

(c) Issues on Appeal. The only issues that may be considered on appeal are: (1) the award of money was excessive; (2) the award of money was insufficient; (3) the arbitrator awarded non-monetary relief that was inappropriate; (4) a party who received non-monetary relief should have received other or additional relief. A majority of the appeal arbitrators may affirm the arbitration award or make any alternative award they find to be just, but they must not reject the arbitrator's decisions (a) that a particular party is entitled to relief of some nature or amount or (b) that a particular party is responsible to provide relief of some nature or amount.

(d) Expenses and Costs on Appeal. The fees charged by JAMS and the appeal arbitrator(s) shall be advanced by the Declarant, except as provided in Section **16.4.5(b)** above. The party who files the appeal must, at its sole expense, provide JAMS and all non-appealing parties with a certified copy of the hearing transcript, and must provide JAMS with copies of all documentary evidence and all other tangible evidence received by the arbitrator. If more than one party appeals, the appealing parties must share equally the cost of

the transcript and copies of all other documentary and tangible evidence received by the arbitrator. The appeal arbitrators may, within thirty (30) days of the decision, award costs of the nature provided in the Federal Rules of Appellate Procedure. If the Declarant is the prevailing party on appeal, the appeal arbitrator(s) may, in his, her or their discretion and only to the extent permitted by law and JAMS Minimum Standards Of Procedural Fairness, include the non-prevailing party(ies) pro rata share of the JAMS fee and arbitrator's fee advanced by the Declarant in the award of costs on appeal.

(e) New Evidence. The appeal arbitrators must not receive new evidence. The appeal arbitrators must make their decision based only on the evidence that was presented to the arbitrator, except that the appeal arbitrators may visit any site involved in the Dispute.

16.4.6 Federal Arbitration Act. Because many of the materials and products incorporated into the Units are manufactured in other states, the development and conveyance of the Property evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1, et seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions of this Agreement.

16.4.7 Agreement to Arbitration and Waiver of Jury Trial.

A. ARBITRATION OF DISPUTES. BY EXECUTING THIS DECLARATION, DECLARANT, AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER AND THE ASSOCIATION AGREE TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND OWNER AND DECLARANT ARE GIVING UP ANY RIGHTS DECLARANT, OWNER AND THE ASSOCIATION MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. DECLARANT, OWNER AND ASSOCIATION ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 16.4. IF DECLARANT, ANY OWNER OR THE ASSOCIATION REFUSED TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT.

B. WAIVER OF JURY TRIAL. IN THE EVENT THE FOREGOING ARBITRATION PROVISION IS HELD NOT TO APPLY OR IS HELD INVALID, VOID OR UNENFORCEABLE IN ITS ENTIRETY FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. THE JUDGE IN SUCH COURT OF COMPETENT JURISDICTION SHALL HAVE THE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES AND AWARD COMPENSATORY DAMAGES. DECLARANT, BY EXECUTING THIS DECLARATION AND EACH OWNER AND

THE ASSOCIATION BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT, ANY OWNER, THE ASSOCIATION OR THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

I/WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES TO BINDING ARBITRATION.

16.4.8 Final and Binding Award. The decision of the arbitrator or, if an appeal is heard, the decision of the appeal arbitrators, shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in the county in which the Property is located, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.

16.4.9 Severability. In addition to and without limiting the effect of any general severability provisions of this Declaration, if the arbitrator or any court determines that any provision of this **Section 16.4** is unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this **Section 16.4** shall be conducted under the remaining enforceable terms of this **Section 16.4**.

16.4.10 Application of Award. Any proceeds awarded to the Association arising from any Dispute by settlement, award or otherwise shall be applied in accordance with the provisions of **Section 4.4.9** of this Declaration.

ARTICLE XVII GENERAL PROVISIONS

17.1 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.

17.2 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 of it shall not invalidate any other provisions.

17.3 CUMULATIVE REMEDIES. Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver.

17.4 VIOLATIONS AS NUISANCE. Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies herein set forth, may be abated or enjoined by any Owner, any member of the Board, the manager of the Project, or the Association.

17.5 NO RACIAL RESTRICTION. No Owner shall execute or cause to be recorded any instrument which imposes a restriction upon the sale, leasing or occupancy of his Unit on the basis of race, sex, color or creed.

17.6 ACCESS TO BOOKS. Declarant may, at any reasonable time and upon reasonable notice to the Board or manager of the Project, at his or her own expense, cause an audit or inspection to be made of the books and financial records of the Association.

17.7 LIBERAL CONSTRUCTION. The provisions of this Declaration shall be liberally construed to effectuate its purpose. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision thereafter.

17.8 ESTOPPEL CERTIFICATE. Each Owner and the Association hereby covenant that, within thirty (30) days of any written request of any other Owner, it will issue to such requesting Owner, or to any Mortgagee or to a bona fide purchaser under an agreement of sale or similar document, an estoppel certificate stating as of the date of such certificate whether the Owner or the Association to whom the request has been directed knows: (a) of any default under the Declaration or any separate agreement thereto (that affects such Owner's obligations set forth in the Declaration), and if there are known defaults, specifying the nature thereof; (b) whether, to its knowledge, the Declaration has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); and (c) that, to its knowledge, the Declaration is in full force and effect. Such statements shall act as a waiver of any claim by an Owner (but not by its Mortgagee) furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent that the claim is asserted against a bona fide purchaser under an agreement of sale or similar document or against any Mortgagee for value, without knowledge of facts contrary to those contained in the statement and who has acted in reasonable reliance upon the statement. However, such statement shall in no event subject the Owner furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Owner to disclose correct or relevant information.

17.9 NOTIFICATION OF SALE OF CONDOMINIUM. Concurrently with the consummation of the sale of any Condominium under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferee shall notify the Board in writing of such sale. Such notification shall set forth the name of the transferee and his or her Mortgagee and transferor, the common address of the Condominium purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board or the manager of the Project, shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Board. Notices shall be deemed received forty-eight (48) hours after mailing if mailed to the transferee, or to his or her transferor if the Board has received no notice of transfer as above provided, by certified mail return receipt requested, at the mailing address above specified.

17.10 NUMBER, GENDER. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

17.11 EXHIBITS. All exhibits referred to in this Declaration are attached to this Declaration and incorporated by reference.

17.12 BINDING EFFECT. This Declaration shall inure to the benefit of and be binding on the successors and assigns of the Declarant, and the heirs, personal representatives, grantees, tenants, successors and assigns of the Owners.

17.13 AS-IS CONDITION; WAIVER OF WARRANTIES. Each Owner and the Association agrees to accept the Property and the related interests in an “as is/where is,” “with all faults” condition without representation of any sort or nature with respect to the quality of construction or the condition of the Units, the Common Area or the Association Property. By the acceptance of a deed, each Owner and the Association accepts all defects, if any, whether known or unknown, presently existing or that may arise in the future. EACH OWNER AND THE ASSOCIATION ACKNOWLEDGE AND AGREE THAT DECLARANT MAKES, AND SHALL MAKE, NO WARRANTY CONCERNING THE PROPERTY, THE IMPROVEMENTS THEREON OR ANY UNIT, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR OF MERCHANTABILITY, VALUE, QUALITY OR CONDITION. DECLARANT DOES NOT WARRANT THAT ANY UNIT, THE COMMON AREA OR THE ASSOCIATION PROPERTY INCLUDING, WITHOUT LIMITATION, ALL IMPROVEMENTS LOCATED THEREIN, COMPLY WITH ANY PARTICULAR BUILDING CODE, ORDINANCE, REGULATION OR SIMILAR PROVISION OF LAW. Declarant has not made any oral or written statement, representation or warranty as to the suitability or fitness of the Unit or the Project either for the conduct of Owner or its invitee's business or for any particular use or purpose, including, without limitation, whether Owner's intended use of the Unit is in compliance with current zoning. Further, any change in use of the Unit (whether or not allowed by the current zoning) may entail costs of a substantial nature including without limitation requiring structural changes and/or the addition of a fire sprinkler system to the Unit, Common Area or Project under applicable building and safety codes. Should Owner's specific use of the Unit result in the need for modifications or alterations to any portion of the Unit, Common Area or Project in order to comply with the ADA or other applicable laws, then Owner shall be responsible for the cost of such modifications or additions.

17.14 RELEASE. By the acceptance of a deed, each Owner, on behalf of himself and the Association, releases Declarant from all claims, rights, demands, damages, liabilities, causes of action, costs, losses, expenses, attorneys' fees, expert witness fees and other fees, interest, and all other obligations (“Claims”) arising out of or related in any manner to the applicable Unit, the Property, the Project, the Common Areas (and including any Special Benefit Areas and Assigned Generator Areas) and the Association Property, including, without limitation, any Claims arising out of or related to (i) the original construction of the Project, (ii) latent or patent defects within the Project, and (iii) the condition of the Project at the time of acceptance of such deed; provided, however, such release shall not apply to Declarant's knowing, willful and intentional misconduct. By the acceptance of a deed, (a) each Owner acknowledges that the above release includes Claims that the Owner does not know or suspect to exist, and (b) agrees to release Declarant from any and all claims, and has waived all rights under California Civil Code Section 1542, which provides that:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

17.15 EASEMENTS RESERVED AND GRANTED. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in the first deed by Declarant to any Condominium.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date set forth on the first page hereof.

DECLARANT:

KM COMPLEX, L.P., a California limited partnership

By: Kearny Mesa Complex, LLC, its General Partner

By: _____

Name: Robert Mashaal

Title: Manager

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2006 before me, _____, personally appeared Robert Mashaal personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name(s) are/is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, 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 _____ (SEAL)

SUBORDINATION AGREEMENT

The undersigned, as holder of the beneficial interest in that certain Deed of Trust dated October 2, 2000 and recorded in the Office of the County Recorder of San Diego County on October 10, 2000 as File/Page No. 2000-0543100, which Deed of Trust encumbers all or a portion of the real property covered by the Declaration of Covenants, Conditions and Restrictions for Kearny Mesa Complex ("Declaration"), does hereby intentionally and unconditionally subordinate the lien of said Deed of Trust to (a) the foregoing Declaration, (b) any Supplementary Declaration which is recorded pursuant to the Declaration, and (c) any amendment or restatement of the Declaration or any Supplementary Declaration.

Dated: _____

Union Bank of California, N.A.

By: _____
Name: _____
Title: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 200__ before me, _____, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name(s) are/is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, 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 _____ (SEAL)

EXHIBIT "A" - LEGAL DESCRIPTION OF THE PROPERTY

PARCEL 5 OF KEARNY MESA COMPLEX, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 7144, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 22, 1971.

EXHIBIT “B” - SPECIAL BENEFIT AREA

1. The entire rooftop of each of the following buildings: (a) 8909 and 8911 Complex Drive, (b) 8913 Complex Drive, (c) 8915 – 8939 Complex Drive, and (d) 8941 – 8993 Complex Drive, all in San Diego, California; and
2. Such portions of the Building of each of the following buildings as may be used to install and maintain (i) permitted equipment and (ii) conduits running from the Common Areas of the Project, through the walls and/or roofs of such Building to individual Units: (a) 8909 and 8911 Complex Drive, (b) 8913 Complex Drive, (c) 8915 – 8939 Complex Drive, and (d) 8941 – 8993 Complex Drive, all in San Diego, California.

All references to addresses above are based on addresses in current use as of the date of this Declaration

SCHEDULE 2.2

ALLOCABLE SHARES