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DRAFT FOR REVIEW PURPOSES

**DECLARATION OF COVENANTS AND RESTRICTIONS
ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP
FOR VINEYARD HILLS COMMERCIAL CONDOMINIUMS**

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**DECLARATION OF COVENANTS AND RESTRICTIONS
ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP
FOR VINEYARD HILLS COMMERCIAL CONDOMINIUMS**

PRELIMINARY DRAFT FOR REVIEW PURPOSES

THIS DECLARATION, made on the date hereinafter set forth, by, Triad Campus IV, LLC, a California limited liability company ("Declarant") is made with reference to the following facts:

A. Declarant is the owner of a certain tract of land (the "Property") located in the City of Livermore ("City"), County of Alameda, State of California, more particularly shown and described on the Parcel Map entitled "PARCEL MAP 9350, SUBDIVISION 06-022 " filed for record in the Office of the Recorder of Alameda, California, on _____, 2007 in Book ____ of Maps, pages ____ - ____ (the "Map").

B. The Declarant plans to develop the Property as commercial/industrial and medical/professional office Condominiums consisting of the Units, as separate interests under California Civil Code section 1351(f), and the Common Areas, as described in this Declaration and on the Condominium Plan for the Project. The development shall be referred to as the "Project" as defined in Section **1.38**. The Project is to be developed with five (5) commercial buildings.

C. "Master Declaration" shall mean The Triad Park Declaration of Covenants, Conditions and Restrictions originally filed of record in the Official Records of Alameda County ("Official Records") on September 29, 1987, as Document No. 87-266895, as amended from time to time (collectively the "Master Declaration").

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

**ARTICLE 1.
DEFINITIONS**

1.1. "Architectural Control Committee" is defined in Section **7.13**.

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

1.3. "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the Project which is to be paid by each Owner as determined by the Association, and shall include Regular Assessments, Special Assessments and Cost Reimbursement Assessments.

1.4. "Assessment Lien" is defined in Section **4.12.C**.

1.5. "Association" shall mean and refer to **VINEYARD HILLS COMMERCIAL CONDOMINIUM OWNERS ASSOCIATION**, a California nonprofit mutual benefit corporation, the Members of which shall be the Owners of Condominiums in the Project.

1.6. "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

1.7. "Building" shall be the area shown as "BUILDING" on the Condominium Plan.

1.8. "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

1.9. "City" shall mean and refer to the City of Livermore, State of California.

1.10. "Common Area" shall mean and refer to all of the Property within the Project with the exception of the Units, including, without limitation: all of the land within the Project; parking and driveway areas; landscaped and open space areas; project monuments and identification signs; exterior sprinklers and sprinkler pipes; garbage collection facilities; Utility Facilities; and the improvements upon that land, including the Buildings, but excluding the airspace and portions of a Building that are included within any Unit.

1.11. "Common Expenses" means and includes the actual and estimated expenses of operating, maintaining, repairing or replacing the Common Area and those portions of the Units that are to be maintained, repaired or replaced by the Association under this Declaration, the costs and expenses of operating and managing the Association and maintaining insurance as required to be obtained the Association under this Declaration, and any reasonable reserve for such purposes as found and determined by the Board and all sums designated Common Expenses by or pursuant to the Project Documents. Common Expenses shall also include the actual and estimated expenses of periodic maintenance and testing of all built-in fire protection devices, sprinkler systems, or equipment, the costs of water service to the Common Area and the Units. Common Expenses shall include the Project's share of any **Master Assessments under the Master Declaration**.

1.12. "Common Interest" means the proportionate undivided interest in the Common Area that is a part of each Condominium as set forth in this Declaration.

1.13. "Condominium" shall mean an estate in real property as defined in California Civil Code §§783 and 1351(f), consisting of a separate interest in a Unit and an undivided interest in the Common Area and other rights appurtenant to the Unit as set forth in this Declaration.

1.14. "Condominium Plan" shall mean the recorded three-dimensional plan of the Condominiums built or to be built within the Project that identifies the Common Area and each Unit as a separate interest pursuant to Civil Code §1351, which Condominium Plan was recorded on _____, 200_, Document No. _____ in the Official Records of Alameda County.

1.15. "Cost Reimbursement Assessment" shall mean an Assessment levied by the Association to a Condominium for reimbursement of costs incurred by the Association for specific services provided by the Association for that Condominium, such as water, garbage collection, or other such services.

1.16. "County" shall mean Alameda County, California.

1.17. "Declarant" shall mean and refer to Triad Campus IV, LLC, a California limited liability company, its successors and assigns.

1.18. "Declaration" shall mean this Declaration of Covenants and Restrictions, as amended or supplemented from time to time.

1.19. "Dividing Wall" shall mean and refer to a partition wall that exists centered upon an interior Unit boundary line between adjacent Condominiums under separate ownership.

1.20. "Exclusive Use Common Area" shall mean and refer to those portions of the Common Areas, if any, set aside for exclusive use of an Owner, pursuant to Section 2.2.C, and shall constitute "exclusive use common area" within the meaning of the California Civil Code § 1351(i).

1.21. "First Lender" shall mean any Person, entity, bank, savings and loan association, insurance company, or financial institution holding a recorded First Mortgage on any Condominium.

1.22. "First Mortgage" shall mean and refer to any recorded Mortgage made in good faith and for value on a Condominium with first priority over other Mortgages thereon.

1.23. "Foreclosure" shall mean the legal process by which a Condominium owned by an Owner who is in default under a Mortgage is sold pursuant to California Civil Code section 2924a et seq. or sale by the Court pursuant to California Code of Civil Procedure section 725a et seq. and any other applicable Laws, or a conveyance by an Owner to a Mortgagee in lieu of foreclosure.

1.24. "Hazardous Material(s)" shall mean any substance or material that is described as a toxic or hazardous substance, waste or material or a pollutant or contaminant or infectious waste, or words of similar import, including, but not limited to, asbestos, petroleum or petroleum products (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), polychlorinated biphenyls, urea formaldehyde, radon gas and radioactive matter, under all federal, state and local laws, ordinances, rules and regulations in force and in effect, at any time during the term of this Declaration, in any way relating to or regulating environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq. ("CERCLA"), the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., the Clean Water Act, 33 U.S.C. § 1251, et seq., the Hazardous Substance Account Act, California Health and Safety Code § 25300, et seq., the Hazardous Waste Control Law, California Health and Safety Code § 25100, et seq., the Medical Waste Management Act, California Health and Safety Code § 25015, et seq., and the Porter-Cologne Water Quality Control Act, California Water Code § 13000, et seq.

1.25. "Map" shall mean and refer to that Map, described above in **Recital Clause A**.

1.26. "Master Association" shall mean THE TRIAD PARK OWNER'S ASSOCIATION, a California non-profit mutual benefit association.

1.27. "Master Assessments" shall mean assessments, if any, levied against the Project as set forth and defined in the Master Declaration.

1.28. "Master Declaration" shall mean The Triad Park Declaration of Covenants, Conditions and Restrictions described in Recital Clause C of this Declaration, and any amendments thereto.

1.29. "Member" shall mean and refer to a Person entitled to membership in the Association as provided herein.

1.30. "Mortgage" shall mean a mortgage, deed of trust, assignment of rents, issues and profits or other proper instrument (including, without limitation, those instruments and estates created by sublease or assignment) given as security for the repayment of a loan or other financing which encumbers a Condominium, made in good faith and for value.

1.31. "Mortgagee" shall include a holder or a beneficiary of a Mortgage.

1.32. "Mortgagor" shall mean a Person who encumbers his Condominium with a Mortgage, and shall include the trustor of a deed of trust.

1.33. "Notice of Delinquent Assessment" shall mean a notice of delinquent assessment filed by the Association for a delinquent Assessment pursuant to Section **4.12.C**.

1.34. "Official Records" shall mean the Official Records of Alameda County, State of California.

1.35. "Owner" or "Owners" shall mean and refer to the record holder or holders of title, if more than one, of a Condominium in the Project. This shall include any Person having a fee simple title to any Condominium, but shall exclude Persons having any interest merely as security for the performance of an obligation. If a Condominium is sold under a contract of sale and the contract is recorded, the purchaser under the contract of sale, rather than the fee owner, shall be considered the "Owner" from and after the date the Association receives written notice of the recorded contract.

1.36. "Parking Space" means that portion of the Common Area shown and described on the Condominium Plan as an individually numbered space designated with the letter "P".

1.37. "Person" means a natural person, corporation, partnership, limited liability company, trustee, or other legal entity.

1.38. "Project" shall mean and refer to the Property shown on the Map, including all structures and improvements erected or to be erected thereon.

1.39. "Project Documents" shall mean this Declaration, as amended from time to time, the exhibits, if any, attached thereto, together with the other basic documents used to create and govern the Project, including the Articles, the Bylaws, and the Condominium Plan (but excluding the Rules).

1.40. "Property" means and includes the real property described in Recital A above, and all improvements erected thereon.

1.41. "Regular Assessments" shall mean Regular Assessment determined and levied pursuant to Section **4.3.A** of this Declaration.

1.42. "Rules" shall mean the rules of the Association adopted by the Board pursuant to Section **5.2.D**.

1.43. "Special Assessments" shall mean an Assessment levied by the Association pursuant to Section **4.3.B**.

1.44. "Unit" shall mean and refer to the element of the Condominium, as defined in Section **2.2.A**, which is not owned in common with the Owners of other Condominiums in the Project. Each Unit is identified by the word "UNIT" followed by a separate number on the Condominium Plan.

1.45. "Utility Facilities" are defined in Section **6.1**.

ARTICLE 2. DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS

2.1. Description of Project: The Project will consist of up to thirty-six (36) Units within five (5) Buildings and the Common Area. Reference is made to the Condominium Plan for further details.

2.2. Division of Property: The Property is divided as follows:

A. Units: The term "Unit" shall mean those portions of the Subject Property shown on the Condominium Plan as individually numbered parcels preceded by the word "UNIT". Each of the Units consists of the space and improvements bounded by and contained within the interior unfinished surfaces of the exterior perimeter walls and where for a particular Unit, an interior perimeter Dividing Wall separates two adjoining Units, the boundary of the Units with respect to said interior perimeter Dividing Wall shall be the center of the studs of such Dividing Wall. The sheet rock and other components of such Dividing Wall located interior of the studs shall be owned by the Unit Owner and constitute part of the Unit. The horizontal and vertical dimensions of all Units are shown on the Condominium Plan: with the upper elevation being to the interior, unfinished surface of the roof and roof supporting structure and the lower elevation being to the interior, unfinished surface of the floor slab. Each Unit includes the airspace encompassed within the boundaries described. Notwithstanding the foregoing, the Association, and not the Owner of the Unit shall be responsible for maintenance, repair and replacement of the following elements of the Building, whether located within the Unit or within the Common Area: The roof and the roof membrane; the floor slab; except for finishes on interior surfaces, any portion of the Building which exists for structural purposes, including, without limitation, load bearing walls, support beams and columns; floor systems, stairways; ventilation shafts; ducts for heating and cooling purposes, flues, chases, shafts and wells containing utility conduits or pipes, or which provide access to any portion of the utility systems. The following elements of the Building shall be part of the Unit: the windows, window frames, doors and door frames; flooring installed over the floor slab; sheet rock, paneling, paint or other finishes on the perimeter walls; all interior walls other than load bearing walls.

(1) Joining or Separating Condominiums: Two (2) or more Units that are owned by the same Owner and that are horizontally contiguous may be combined for the use the Owner of such contiguous Units. Dividing Walls may be eliminated between such Units or may be removed by the Owner of such contiguous Units, subject to all applicable building and fire codes of the City and only after obtaining the written approval of the Board. The Owner of two (2) or more Units, which are contiguous, may, with the consent of the Board (which consent shall not be withheld unreasonably), construct, at its expense, and in accordance with detailed plans approved by said Board, means of access (such as a doorway or hallway between two (2) horizontally contiguous Units), between the Units. The Owner of contiguous Units who has connected them in

such manner shall have an easement for ingress, egress and passage through that portion of the Common Area of the Building where a Dividing Wall has been eliminated or removed or which has been pierced in the process of constructing the means of access. The easement shall exist only for so long as the connected Units continue to be owned by the same Owner. If and when the Owner of such connected Units sells, transfers or conveys any one (1) of the Units, prior to the recordation of the deed or instrument of transfer, the Dividing Walls between the Units that are being separated shall be installed or replaced on the boundary line for the Units as shown on the Condominium Plan and the means of access between the adjoining Units that are being conveyed in separate ownership shall be sealed off, with the Dividing Walls or other portion of the Common Area that was eliminated, removed or pierced at the Owner's expense, constructed or reconstructed to provide for a Dividing Wall at the boundary line of the Unit or Units that are no longer under the same ownership. Such Dividing Wall shall be designed and installed in a manner that is consistent with Dividing Walls that were originally installed by the Declarant within the Project. Upon completion of such Dividing Wall, or elimination of access through a Dividing Wall, the easement over the Common Areas that existed during the period that the Units were joined shall automatically terminate. No load bearing walls shall be removed or altered and no "Utility Facilities" (as that term is defined in Section 6.1) that service any Units other than those being combined shall be removed, altered, or damaged in the course of such construction. No modifications to any portion of the Common Area shall be made which affect the structural integrity of the Project or impair any other Owner's reasonable use of such Common Area, or the utilities that may be located therein, or the value of the Project. All costs and expenses of such modifications and subsequent restoration of the modifications shall be borne by the Owner of the Units so joined. After approval of the proposed modifications by the Board or the Architectural Control Committee, and prior to commencement of work, the Owner making such modifications shall post a bond or bonds in an amount acceptable to the Board or the Architectural Control Committee to protect the Association and the Project against liens and to insure completion of the work, and provide the Association with written notice as to commencement of the work, to enable the Association to file a Notice of Non-responsibility. In the process of joining Units, an Owner shall have such reasonable access to other Units as may be required to accomplish the modifications approved by the Board or the Architectural Control Committee. Such modifications shall not, however, change the status of Condominiums, which shall continue to be treated legally as separate Condominiums, each entitled to one (1) vote, and each shall be required to pay its separate Assessment. In the event common ownership of joined Units is for any reason terminated, Common Areas which have been altered shall be immediately restored to their original design and status. The heating, plumbing, wiring, cables, conduits, pipes, ducts, flues, chutes, and other utilities or service equipment which is or may be located within Dividing Walls, and which serves more than one (1) Unit, shall be owned by all Owners as common property in undivided interests, wherever said equipment is located or relocated from time to time. No combined Units may be sold or leased unless all of the units so combined are sold or leased to the same Person or entity, or the combined Units are reconstructed as separate and independent Units as shown on the Condominium Plan at the sole cost and expense of the Owner(s) thereof.

(2) Encroachments: Each Condominium is subject to such encroachments as are contained in the Building, whether the same now exist or may be later caused or created in any manner referred to in Section 9.5. In interpreting deeds and Condominium Plans, the then existing physical boundaries of a Unit or of a Unit that has been 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 on a Condominium Plan, regardless of settling or lateral movement of the Building and regardless of minor variance between boundaries shown on the plan or deed, and those of the Building. Each Condominium shall have appurtenant to it nonexclusive easements for ingress, egress and support through the Common Area.

B. Common Area: The entire Property except for the Units constitutes and shall be referred to herein as the "Common Area", and includes, without limitation, all of the improvements and elements described in Section 1.10 and all of the improvements of and within each Building except the Units. The Common Area shall include, no matter where located all conduits, pipes, common utility room, plumbing, wires and other utility installations (except the outlets thereof when located within the Unit, and except utility installations and facilities that service only one Unit and that are located within that Unit), required to provide power, light, telephone, gas, water, sewerage, and drainage; built-in fire detection, protection and prevention devices and equipment and sprinkler pipes.

Each Owner shall have, as appurtenant to its Unit, an undivided interest in the Common Area. The percentage interest of such Common Area undivided interest for Unit is set forth in Exhibit "B" attached hereto and incorporated by reference herein. The ownership of each Condominium shall include a Unit and such undivided interest in the Common Area.

Each Unit shall have appurtenant to it nonexclusive easements for ingress and egress and support through the Common Area. Each Owner may use the Common Areas in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of any other Owners, subject to the rights of Owners in any Exclusive Use Common Area appurtenant to that Owner's Condominium. The undivided common interest in Common Area appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all the Owners affected, as expressed in an amended Declaration. Each Owner may use the Common Areas in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of any other Owners, subject to the rights of Owners in any Exclusive Use Common Area appurtenant to that Owner's Condominium. The rights and obligations for maintenance and repair of Dividing Walls shall be governed by Section 7.22 of this Declaration.

C. Exclusive Use Common Areas: Those portions of the Common Area referred to as "Exclusive Use Common Areas" are hereby set aside and allocated, appurtenant to the Condominium to which it is assigned or attached, as "Exclusive Use Common Area" under section 1351(i) of the Civil Code, for the exclusive use of the Owner of the Condominium to which they are assigned or attached, including:

(1) Those Parking Spaces which are designated on the deed which grants the Unit from the Declarant to the Unit Owner as Exclusive Use Common Area, or as provided in such other deed or instrument from the Declarant, the Association or another Owner granting a Parking Space to an Owner as Exclusive Use Common Area for the exclusive use of that Unit.

(2) The heating and air conditioning equipment serving a Unit is part of the Unit, belongs to the Owner of that Unit, and, subject to the provisions of section 7.4, maintenance, repair or replacement of such systems, shall be maintained, repaired and replaced by the Owner. The space occupied by the air conditioning equipment, wherever located, shall be restricted to the exclusive use of the Owner whose air conditioner occupies such space.

Except as described herein, no other portion of the Common Area shall be Exclusive Use Common Area, except as may be agreed to by the Board and ratified by a vote of the majority of the Members.

D. Unassigned Parking: In addition to the Parking Spaces assigned to Condominiums as Exclusive Use Common Areas, there may be certain unassigned Parking Spaces. The Declarant shall have sole authority and responsibility for the assignment of all

unassigned Parking Spaces until such time as the Declarant no longer holds title to any Unit in the Project, or until such earlier time when Declarant assigns by a written document such right to the Association. Until and unless assigned, unassigned Parking Spaces may be used by all Owners, their tenants and guests, pursuant to Rules adopted by the Board. Parking Spaces shall be used for parking of permitted vehicles only and not for the permanent parking or storage of boats, trailers or non-mobile vehicles of any description. The Board may establish Rules from time to time for the parking of vehicles.

E. No Separate Conveyance of Undivided Interests: Subject to Section 2.4, the interests described in Sections 2.2.A through 2.2.C, are hereby established, are to be conveyed with the respective Condominiums as indicated above, and cannot be changed except as herein set forth. Declarant, its successors, assigns and grantees covenant and agree that the interests in the Common Areas and the respective Units conveyed therewith, shall not be separated or separately conveyed, and such interests shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

F. Limited Rights to Transfer Parking Space: The assignment, either reciprocal or unilateral, of the right to the exclusive use of an Exclusive Use Common Area Parking Space, from one Owner to another or between two or more Unit Owners, is authorized, provided that the approval of the Declarant, as long as the Declarant owns at least one Unit in the Project, and the Board is first obtained, that each Unit has no less than the amount of parking required for its use, and that the transfer or exchange of such exclusive use is evidenced by a recorded document.

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

A. The nonexclusive rights of each Owner of a Unit for ingress, egress and support through the Common Areas, subject to the rights of each Owner in the Exclusive Use Common Area, as provided in Section 2.2.C and the nonexclusive rights of each Owner of a Unit for ingress, egress and support through the Common Areas as provided in Section 2.2.B, subject to the rights of each Owner in the Exclusive Use Common Area.

B. The right of the Association agents or employees to enter any Unit to cure any violation of this Declaration or the Bylaws, provided that the Owner has received notice and a hearing as required by the Bylaws (except in the case of an emergency) and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association.

C. The access rights of the Association to maintain, repair or replace improvements or property located in the Common Area as described in Section 5.2.E.

D. The rights of the Owners, the Association, and the Declarant to install, maintain, repair or replace utilities as described in Article 6.

E. The rights of each Owner of a Unit, as dominant tenement, a non-exclusive easement over, across and upon any adjacent Unit, as servient tenement, for construction, maintenance and repair of any party wall constructed or installed separating or to separate said Units.

F. The encroachment easements described in Section 9.5.

G. The rights of the Declarant during the construction period as described in Section 9.7.

H. The rights of Owners to make improvements or alterations authorized by Civil Code § 1360(a)(2), subject to the provisions of Section 7.13 to the extent applicable.

I. Any rights of access under the Master Declaration.

2.4. Partition Prohibited: The Common Areas shall remain undivided as set forth above. Except as provided by California Civil Code §1359, no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Condominium owned by two (2) or more Persons and division of the sale proceeds is not prohibited hereby but partition of title to a single condominium is prohibited.

2.5. Reciprocal Easements for Support: There are hereby reserved and granted to the Association for the benefit of the Owners and occupants of the Condominiums in each Building nonexclusive easements for support over the Common Area and those portions of the improvements of the Building that provide structural support to Units.

2.6. All Easements Part of Common Plan: Whenever any easements are reserved or created or are to be reserved or created in this Declaration, except for easements for Exclusive Use Common Area, such easements shall constitute equitable servitudes for the mutual benefit of all property in the Project, even if only certain Units are specifically mentioned as subject to or benefiting from a particular easement.

ARTICLE 3.

ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

3.1. Association to Manage Common Areas: The management of the Project, including the Common Area and those portions of the Units for which responsibility is given to the Association under this Declaration, shall be vested in the Association in accordance with this Declaration and the Bylaws. The Owners of all the Condominiums covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration, the Articles, and Bylaws of the Association.

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

3.3. Transferred Membership: Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale of the Condominium to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of a Foreclosure of such Condominium. On any transfer of title to an Owner's Condominium, including a transfer on the death of an Owner, membership passes automatically with title to the transferee. A Mortgagee does not have membership rights until it obtains title to the Condominium by Foreclosure. Any attempt to make a prohibited transfer is void. No Member may resign his or her membership. On notice of a transfer, the Association shall record the transfer on its books.

3.4. Membership. Members of the Association shall be all Owners of Units. When more than one (1) Person holds an interest in any Condominium, all such Persons shall be Members.

3.5. Membership Classes and Voting Rights: The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant and shall be entitled to the one (1) vote for each Unit owned. 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 votes than an Owner is entitled cast be cast with respect to any Condominium.

Class B. The Class B Member shall be the Declarant and shall be entitled to vote as follows: Voting shall be the same as for Class A memberships, except that the Class B Member may triple its votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the Declarant owns less than two (2) Units in the Project; or
- (b) on the tenth (10th) anniversary date of close of escrow (recording of deed), of the sale of the first Condominium in the Project.

Each class of Members shall be entitled to vote on all matters under this Declaration that specifies that a matter is subject to the vote or consent of the Members. Except for election of Directors or as otherwise may be provided in the Bylaws as to Member voting, any action by the Association which must have the approval of the Members before being undertaken shall require the vote or written assent of a majority of each class of membership during the time that there are two (2) outstanding classes of membership. Voting rights attributable to Condominiums shall not vest until assessments against the Condominiums have been levied by the Association. Where this Declaration states a vote requires the vote of a "majority of the Members" as long as there are two (2) classes of Members, such "majority of the Members" shall mean and required the vote of a majority of both classes of the Members. A vote of the "total voting power of the Association" shall mean a vote of the required percentage of each class of Members as long as there are two (2) classes of Members.

**ARTICLE 4.
ASSESSMENTS AND LIENS**

4.1. Creation of the Lien and Personal Obligation of Assessments: The Declarant and each Owner by acceptance of a deed for a Condominium, whether or not it shall be so expressed in such deed, covenants and agrees: (1) to pay Regular Assessments, Special Assessments and Cost Reimbursement Assessments to the Association, and (2) to allow the Association to enforce any Assessment Lien established hereunder by non-judicial proceedings under a power of sale or by any other means authorized by law. The Regular Assessments, Special Assessments, and Cost Reimbursement Assessments together with interest, late charges, collection costs and reasonable attorneys' fees, shall be a charge on the Condominium and shall be a continuing lien upon the condominium against which each such Assessment is made, the lien to become effective upon recordation of a Notice of Delinquent Assessment. Each such Assessment, together with interest, late charges, collection 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. The personal obligation for delinquent Assessments shall not pass to its successors in title unless expressly assumed by them. No Owner shall be exempt from liability for payment of Assessments by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of the Owner's Condominium.

4.2. Purpose of Assessments: The Assessments levied by the Association shall be used exclusively to promote the economic interests, health, safety, and welfare of all the Owners and to enable the Association to perform its obligations hereunder.

4.3. Assessments:

A. Regular Assessments: The Board shall annually establish and levy Regular Assessments in an amount that the Board estimates will be sufficient to raise the funds needed to adequately cover the Common Expenses and perform the duties and obligations of the Association during each fiscal year, including any Master Assessments or other costs or expenses allocated to the Association under the Master Declaration. The annual Regular Assessments shall be payable monthly, pursuant to Section 4.8, unless the Board determines otherwise. The annual Regular Assessment shall include a portion for reserves as set forth in Section 4.6.

B. Special Assessments: The Board, at any time, may levy a Special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate. Special Assessments shall be allocated among the Units in the same manner as Regular Assessments, provided that any Special Assessments against Owners to raise funds for the repair, replacement or addition of that portion of the Common Area shall be assessed only to the Units in that Building based on the ratio of the square footage of the floor area of each Unit in the Building to be assessed to the total square footage of floor area of all the Units in the Building that are to be assessed.

C. Cost Reimbursement Assessments: The Board may levy a Cost Reimbursement Assessment in order to reimburse the Association for the actual costs or portion of the actual costs of providing specific services to Condominiums in the Project, including water service, garbage services and similar services. For water service, the Association shall allocate and assess the Cost Reimbursement Assessment to the Condominiums based on relative use of the service by the Owners as determined from readings of submeters within the Project. Cost Reimbursement Assessments for other services shall be calculated by the Board in such manner as the Board determines to be reasonable. The Board may levy a Cost Reimbursement Assessment

against a Member to reimburse the Association for costs incurred in bringing the Member and its Unit into compliance with the provisions of the Project Documents.

4.4. Restrictions on Increases in Regular Assessments or Special Assessments: The Board may not impose an annual Regular Assessment on any Condominium which is more than twenty percent (20%) greater than the annual Regular Assessment for the immediate preceding fiscal year or levy a Special Assessment to defray the cost of any action or undertaking on behalf of the Association which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the vote or written assent of the Members casting a majority of the votes at a meeting of the Association at which a quorum is present. For purposes of this Section 4.4, a "quorum" means more than fifty percent (50%) of the Members of the Association. Any meeting of the Association for purposes of complying with this Section 4.4 shall be conducted in accordance with Chapter 5 (commencing with § 7510) of Part 3, Division 2 of Title 1 of the California Corporations Code and § 7613 of the California Corporations Code. The Board may increase annual Regular Assessments by up to twenty percent (20%) over the annual Regular Assessment for the immediate preceding fiscal year only if the Board has complied with the provisions of California Civil Code § 1365(a) or has obtained the approval of such increase by the Members in the manner set forth above in this Section 4.4.

Notwithstanding the foregoing, the Board, without membership approval, may increase Regular Assessments or levy Special Assessments necessary for an emergency situation. For purposes of this Section, an emergency situation is one of the following:

- (1) an extraordinary expense required by an order of a court,
- (2) an extraordinary expense necessary to repair or maintain the Property or any part of it for which the Association is responsible where a threat to safety on the Property is discovered, or
- (3) an extraordinary expense necessary to repair or maintain the Property or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget, provided, however that prior to the imposition or collection of the Assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process and the resolution shall be distributed to the Members with the notice of the Assessment.

This Section 4.4 incorporates the statutory requirements of California Civil Code § 1366. If this section of the California Civil Code is amended in any manner, this Section 4.4 automatically shall be amended in the same manner without the necessity of amending this Declaration.

4.5. Notice and Quorum for Any Action Authorized Under Section 4.4: Any action authorized under Section 4.4, which requires a vote of the membership, shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than seventy-two (72) hours nor more than ninety (90) days in advance of the meeting specifying the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken. The action may also be taken without a meeting pursuant to the provisions of California Corporations Code §7513.

4.6. Reserves for Replacement: As part of the Regular Assessments for maintenance authorized above, the Board of Directors shall annually fix the amount to be contributed pro rata by each Member to reserve funds that the Board in its discretion considers appropriate and prudent for

the purpose of defraying, in whole or in part, the cost or estimated cost of any future reconstruction, repair or replacement of improvements that the Association is obligated to maintain and repair, including fixtures and personal property related thereto. Such determination shall be made after consideration of the need for additional funds and of the Association's capital position, after taking into consideration the effects of State and Federal tax laws and regulations on the Owners and the Association for such reserves. Reserve funds shall be deposited in a separate bank account and the signatures of at least two (2) persons who shall either be members of the Board or one officer who is not a member of the Board and a member of the Board shall be required to withdraw monies from the reserve account. Reserve funds may not be expended for any purpose other than repairing, replacing or adding to the major improvements or fixtures that the Association is obligated to maintain without the consent of Owners holding a majority of the voting power either at a duly held meeting or by written ballot.

4.7. Division of Assessments: Except as provided in Section 4.3, both Regular Assessments and Special Assessments shall be charged to and divided among the Condominiums as set forth in Exhibit "A". Such Assessments shall be allocated and assessed to each Unit based upon the square foot of each Unit divided by the total square footage of the Units within the Project, with such allocation to be recomputed when additional Units are added to the Project by Annexation. Cost Reimbursement Assessments shall be allocated as determined under Section 4.3.C.

4.8. Date of Commencement of Annual Assessment: Due Dates: Regular Assessments shall commence as to all Condominiums in the Project thirty (30) days after written notice from the Association that Assessments are to commence. Declarant shall have the right to postpone commencement of Assessments or portions thereof for up to twelve (12) months from such date of conveyance of a Condominium to a party who is not the Declarant ("Assessment Postponement Period") for Common Expense items in the Project budget that are either provided, performed or maintained by the Declarant or its contractors during such Assessment Postponement Period or which Common Expense items are not incurred or payable during such Assessment Postponement Period. During any such Assessment Postponement Period Owners shall be obligated to pay the portion of Assessments that relate to costs, services or utilities that are provided by the Association specifically for the use and benefit of a particular Owner. Subsequent to the commencement of Assessments, the Board of Directors shall determine and fix the amount of the annual Regular Assessment against each Condominium and send written notice thereof to every Owner at least forty-five (45) days in advance of each annual Assessment period. The Board shall establish the due dates of Assessments. Unless the Board determines otherwise, Regular Assessments shall be payable in equal one twelfth (1/12th) monthly increments, due and payable on the first day of each month. Special Assessments shall be due and payable within thirty (30) days after notice to the Owners from the Association. Cost Reimbursement Assessments shall commence at the same time as Regular Assessments, shall be levied at such intervals as determined by the Board, and shall be due and payable within thirty (30) days after notice to the Owners from the Association.

4.9. Certificate of Payment: The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Condominium have been paid. Such a certificate shall be conclusive evidence of such payment.

4.10. Effect of Nonpayment of Assessments: Any Assessment not paid within fifteen (15) days after the due date shall bear interest at the rate of twelve percent (12%) per annum commencing thirty (30) days after the due date until paid, and shall incur a late payment penalty in the amount of ten per cent (10%) of the delinquent Assessment or \$10, whichever is greater.

4.11. Transfer of Unit by Sale or Foreclosure: Sale or transfer of any Condominium shall not affect the Assessment Lien. However, the sale of any Unit pursuant to Foreclosure of a First Mortgage shall extinguish such Assessment Lien (including attorney's fees, late charges, or interest levied in connection therewith) as to payments which became due prior to such sale or transfer (except for Assessment Liens recorded prior to the Mortgage). No sale or transfer shall relieve such Condominium from liability for any Assessments thereafter becoming due or from the Assessment Lien thereof.

Where the Mortgagee of a First Mortgage of record or other purchaser of a Condominium obtains title to the same as a result of Foreclosure of any such First Mortgage, such acquirer of title, its successor and assigns, shall not be liable for the share of Assessments chargeable to such Condominium that became due prior to the acquisition of title to such Condominium by such acquirer (except for Assessment Liens recorded prior to the Mortgage). No amendment of the preceding sentence may be made without the consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the Members of the Association are allocated. Such unpaid share of Assessments shall be deemed to be Common Expenses collectible from all of the Owners including such acquirer, its successors or assigns.

If a Condominium is transferred, the grantor shall remain liable to the Association for all unpaid Assessments against the Condominium through and including the date of the transfer. The grantee shall be entitled to a statement from the Association setting forth the amount of the unpaid Assessments against the Condominium to be transferred as of the date of the statement, and the Condominium shall not be subject to an Assessment Lien for unpaid Assessments in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any Assessments that become due after the date of the statement.

4.12. Priorities; Enforcement; Remedies: If an Owner fails to pay an Assessment when due, the Association has the right, and option, to bring legal action against the Owner to enforce collection of the unpaid and past due Assessment, or may impose an Assessment Lien on the Condominium owned by Owner pursuant to the provisions of Civil Code § 1367.1. Suit to recover a money judgment for unpaid Assessments and attorneys' fees, shall be maintainable without foreclosing or waiving the lien securing the same. The Association shall distribute the written notice described in subdivision (b) of Civil Code § 1365.1 entitled "Notice Assessments and Foreclosure" to each Member during the 60-day period immediately preceding the beginning of the Association's fiscal year.

A. Statement of Charges. At least thirty (30) days prior to the Association recording an Assessment Lien upon a Condominium pursuant to Civil Code § 1367.1(a), the Association shall notify the owner of record in writing by certified mail of the following:

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

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

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

(4) The right to request a meeting with the Board as provided by Civil Code §1367.1(c)(3), as provided in Section **4.12.B**, below.

(5) The right to dispute the assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program required in Article 5 (commencing with Section 1363.810) of Chapter 4 of Title 6 of the Civil Code.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 of Title 6 of the Civil Code before the Association may initiate foreclosure against the owner's separate interest, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

B. Right to Request Meeting. An Owner may dispute the debt noticed pursuant to Section **4.12.A**, above, pursuant to Article 5 (commencing with Section 1363.810) of Chapter 4 of Title 6 of the Civil Code and any procedures adopted by the Association by submitting to the Board a written explanation of the reasons for his or her dispute. The Board shall respond in writing to the Owner within fifteen (15) days of the date of the postmark of the explanation, if the explanation is mailed within fifteen (15) days of the postmark of the notice of assessment noticed pursuant to Section **4.12.A**. The Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed pursuant to Section **4.12.A**, above. The Board shall provide the Owner the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner.

C. Notice of Delinquent Assessment. After compliance with the provisions of Civil Code § 1367.1(a), in accordance with the provisions of Civil Code § 1367.1(d), the Association may record a Notice of Delinquent Assessment and establish an Assessment Lien against the Condominium of the delinquent Owner prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage of record. The Notice of Delinquent Assessment shall state the amount of the Assessment, collection costs, attorneys' fees, late charges and interest, a description of the Condominium against which the Assessment and other sums are levied, the name of the record Owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any management agent retained by the Association and shall be mailed in the manner set forth in Civil Code § 2924b to all record owners of the Condominium no later than ten (10) days after recordation. Within twenty one (21) days after payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be recorded in the Office of the County Recorder in which the Notice of Delinquent Assessment is recorded a lien release or notice of rescission and provide the Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

D. Enforcement of Assessment Lien. Thirty (30) days following the recordation of the Notice of Delinquent Assessments, subject to the provisions of Civil Code § 1367.4, the Assessment Lien may be enforced in any manner permitted by law, including sale by

the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee substituted pursuant to California Civil Code § 2934(a). Any sale by the trustee shall be conducted in accordance with the provisions of §§ 2924, 2924b, 2924c, 2924f, 2924g, 2924h and 2924j of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, including any successor statutes thereto, or in any other manner permitted by law. The fees of a trustee may not exceed the amounts prescribed in Civil Code §§ 2924c and 2924d. Nothing in this Declaration shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay Assessments.

E. Association Rights on Foreclosure. The Association, acting on behalf of the Owners, shall have the power to bid for the Condominium at foreclosure sale, and to acquire and hold, lease, mortgage and convey the Condominium. During the period a Condominium is owned by the Association, following foreclosure: (1) no right to vote shall be exercised on behalf of the Condominium; (2) no Assessment shall be assessed or levied on the Condominium; and (3) each other Condominium shall be charged, in addition to its usual Assessment, its pro rata share of the Assessment that would have been charged to such Condominium had it not been acquired by the Association as a result of foreclosure. After acquiring title to the Condominium at foreclosure sale following notice and publication, the Association may execute, acknowledge and record a deed conveying title to the Condominium which deed shall be binding upon the Owners, successors, and all other parties.

F. Suspension of Voting Rights. The Board may temporarily suspend the voting rights of a Member who is in default in payment of any Assessment, after notice and hearing, as provided in the Bylaws.

G. Fines and Penalties. As long as such is required by Civil Code §1367.1(e), fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with this Declaration or the Rules, except for late payments, are not "Assessments," and are not enforceable by Assessment Lien, but are enforceable by court proceedings; provided, however, pursuant to Civil Code § 1367.1(d), monetary penalties imposed by the Association to reimburse the Association for costs incurred for repair of damage to Common Area or facilities for which the Owner, or guests or tenants of an Owner, were responsible may become the subject of a lien. In the event that Civil Code §1367.1(e) is amended to permit fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with this Declaration or the Rules to be enforceable by Assessment Lien, then this provision shall be deemed amended to conform to any such amendment of Civil Code §1367.1(e).

4.13. Unallocated Taxes: In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Condominiums, the taxes shall be included in the Assessments made under the provisions of Section 4.1 and, if necessary, a special Assessment may be levied against the Condominiums in an amount equal to the taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

4.14. No Offsets: All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including without limitation, as a result of a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

**ARTICLE 5.
DUTIES AND POWERS OF THE ASSOCIATION**

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

A. Maintenance: Until Regular Assessments are commenced pursuant to Section 4.8, or at such earlier time as Declarant determines, the Declarant shall undertake all maintenance responsibilities of the Association as otherwise provided herein. The Association shall maintain, repair, replace (when necessary), restore, operate and manage all of the Common Area, including the drive aisles, parking spaces, landscaping, hardscape, walkways and all other facilities, (including the Parking Spaces designated as Exclusive Use Common Area and Utility Facilities to the extent described in Section 6.3), the Buildings and other improvements, furnishings and equipment within the Common Area, and all property that may be acquired by the Association. The Association shall also maintain, repair and replace the following elements and facilities that are located within the Units, except for finishes on interior surfaces: all roofs, roof membranes, floor slabs, foundations, load bearing walls, columns, girders, ceiling joists, sub-floors, unfinished floors, any portion of the Building which exists for structural purposes, including, without limitation, load bearing walls, support beams and columns, ventilation shafts, ducts for heating and cooling purposes, flues, chases, shafts and wells containing utility conduits or pipes or which provide access to any portion of the utility systems. However, each Owner shall keep the Exclusive Use Common Area appurtenant to that Owner's Condominium in a neat and clean condition in accordance with Section 7.4.

(1) Maintenance shall, include without limitation, painting, maintaining, cleaning, repairing and replacing of all Common Areas, including cleaning of exterior glass surfaces, but excluding maintenance, repair and replacement of exterior entry doors, roll-up doors and windows. The Association shall provide for the cleaning of the exterior of the windows of the Project no less often than once during each calendar year.

(2) Maintenance by the Association shall include the maintenance, irrigation and replacement of landscaping in the Common Areas, maintenance of all fences and walls of the Project, including graffiti removal, and general clean up of the landscaped areas, open space areas, walkways, paved areas, private streets, driveways, drive aisles and parking lots..

(3) The Association shall undertake or cause to be undertaken as a Common Expense the following maintenance, repair and replacement of the Project's Common Area paving and hardscape areas and shall establish reasonable Reserves for such Common Expenses: (a) On a weekly basis, the hardscape, including the parking lots, shall be policed and all trash and landscaping clippings shall be removed from the Common Area; (b) the paved parking lots and sidewalks will be swept and blown to remove all foreign matter such as trash, debris and paper no less than once every other week; (c) on a monthly basis the paved areas of the parking lot shall be reviewed and repaired should any damage occur to the surface from traffic and/or weather; (d) approximately every 36 to 48 months the surface of the parking lot will be recoated with a sealer and the parking spaces will be re-striped (e) check all storm drains for excessive debris and clean when necessary; and (e) the parking lot surface material shall be replaced as required (every 10 to 12 years) to maintain a water free base material. Parking lot sweeping shall be limited to 7:00 a.m. to 7:00 p.m. weekdays.

(4) The Association shall be responsible for any maintenance obligations of and costs allocated to the Property under the Master Declaration.

(5) The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or omission of an Owner, or its guests, tenants or invitees. Any repairs arising out of or caused by the willful or negligent act of an Owner, or its guests, tenants or invitees, or the Owner's pets, shall be made by the responsible Owner, provided the Board approves the Person actually making the repairs and the method of repair. If the responsible Owner fails to take the necessary steps to make the repairs within a reasonable time under the circumstances, the Association shall make the repairs and charge the cost thereof to the responsible Owner as a Cost Reimbursement Assessment, which cost shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law) until paid in full. If an Owner disputes its responsibility for the repairs, the Owner shall be entitled to notice and a hearing as provided in the Bylaws before any charge may be imposed.

(6) The Association shall have the Common Area periodically inspected for termites and other pests and shall take appropriate corrective measures.

(7) In addition, the Association shall be responsible for providing the periodic maintenance and operational testing of the fire sprinklers and other protection devices, whether or not located within the Units, to be carried out by qualified personnel in accordance with manufacturer's specifications.

(8) **Inspection and Maintenance Guidelines:** The Board shall periodically inspect and shall maintain and operate the Common Area improvements in accordance with the inspection and maintenance guidelines for the Project delivered to the Association at the closing of the sale of the first Condominium to an Owner other than the Declarant. The Board, pursuant to those maintenance guidelines shall periodically inspect and maintain the Common Area improvements and landscaping, including, but not limited to, foundations, gutters, down-spouts, siding, trim, roofs, window caulking, utility equipment, sanitary sewer and storm drainage facilities maintained by the Association, streets, parking areas and the irrigation system. The Association shall cause inspections of all Common Area infrastructure to be routinely made. Roofs shall be inspected on a semi-annual basis. Other inspections shall be made at least yearly, and for appropriate items or events, more often. Inspections will include a review of all repair records since the previous inspection. The inspections shall be reported at the annual membership meeting and in writing, and shall include recommendations for cleaning, maintenance, repair, replacement, etc. (if any), as well as opinions of the costs. The reports shall address any noted deterioration that may require future attention. The reports may also recommend supplemental specialized investigations by qualified professionals (such as termite, mechanical, arborist, structural and other professional). The Association shall keep permanent records of all: complaints and potential problems, including description, date and by whom; reports, including inspections and recommendations; repairs, including description, location, date, by whom made and cost; plans, including construction drawings, subsequent modifications, and repair plans.

B. Insurance: The Association shall maintain such policy or policies of insurance as are required by Section 8.1 of this Declaration.

C. Discharge of Liens: The Association shall discharge by payment, if necessary, any lien against the Common Area, and charge the cost thereof to the Member or Members responsible for the existence of the lien (after notice and a hearing, as provided in the Bylaws).

D. Assessments: The Association shall fix, levy, collect and enforce Assessments as set forth in Article 4 hereof.

E. Payment of Expenses: The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the property of the Association.

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

A. Utility Service: The Association shall have the authority to obtain, for the benefit of all Units, water and electrical service for the Common Area. The Association shall pay as a Common Expense, the charges on any water or electrical meters serving the Project as a whole, and for water service to each Unit, which the Association shall assess to each Unit based upon submeters as a Cost Reimbursement Assessment. Each Owner shall provide and pay for its own heating, cooling, electrical and gas services, janitorial service and interior window cleaning service.

B. Easements: The Association shall have authority, with the approval of two-thirds (2/3) of the total voting power of the Association, to grant easements, where necessary for utilities, cable television, and sewer facilities over the Common Area to serve the common and open space areas and the Condominiums.

C. Manager: The Association shall engage a manager to assist the Board in the operation of the Project for a period of no less than two (2) years from the date of recordation of this Declaration. Thereafter, the Association may employ a manager and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association. However, the manager may not be delegated the responsibility to levy fines, impose discipline, hold hearings, file suit, or make capital expenditures.

D. Adoption of Rules: The Board may adopt reasonable Rules that are not inconsistent with this Declaration or the Master Declaration, which relate to the use of the Common Area and all facilities thereon, and the conduct of Owners and their tenants and guests with respect to the Property and other Owners.

E. Access: For the purpose of performing construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common, the Association's agents or employees shall have the right, after reasonable notice (not less than twenty-four (24) hours except in emergencies) to the Owner thereof, to enter any Unit or to enter any portion of the Common Area at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused thereby shall be repaired by the Board at the expense of the Association.

F. Assessments, Liens and Fines: The Association shall have the power to levy and collect Assessments in accordance with the provisions of Article 4 hereof. The Association may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation of any provision of the Project Documents. Penalties may include but are not limited to: fines, temporary suspension of voting rights, or other appropriate discipline, provided that the Member is given notice and a hearing as provided in the Bylaws before the imposition of any fine or disciplinary action.

G. Enforcement: The Association shall have the authority to enforce this Declaration as set forth in Article 9 of this Declaration.

H. Acquisition and Disposition of Property: The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of property shall be by document signed or approved by two-thirds (2/3) of the total voting power of the Association.

I. Loans: The Association shall have the power to borrow money, and only with the assent (by vote or written consent) of two-thirds (2/3) of the total voting power of the Association to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

J. Dedication: The Association shall have the power to dedicate all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication shall be effective unless an instrument has been signed by two-thirds (2/3) of the total voting power of the Association, agreeing to such dedication.

K. Contracts: The Association shall have the power to contract for goods and/or services for the discharge of its responsibilities, subject to any limitations of the Bylaws or elsewhere set forth in the Project Documents.

L. Delegation: The Association, the Board, and the officers of the Association shall have the power to delegate their authority and powers to committees, officers or employees of the Association, or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

(1) to make expenditures for capital additions or improvements chargeable against the reserve funds;

(2) to conduct hearings concerning compliance by an Owner or its tenant, lessee, guest or invitee with the Declaration, Bylaws or Rules;

(3) to make a decision to levy monetary fines, impose Cost Reimbursement Assessments against individual Condominiums, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline;

(4) to make a decision to levy annual or special Assessments; or

(5) to make a decision to bring suit, record a claim of lien or institute foreclosure proceedings for default in payment of Assessments.

M. Security: The Association shall have the power (but not the obligation) to contract for security service for the Common Area. Notwithstanding the foregoing, if the Association elects to provide any security services or systems, neither the Association nor the Board shall be deemed to have made any representation or warranty to any Owner, nor the tenants or invitees of any Owner, nor to any other Person using the facilities or Improvements within the Project regarding security or safety. Each Owner shall be responsible for the security and safety of Persons who occupy or use the Condominium owned by the respective Owner. The Association shall not be subject to any claims or liability in connection with the provision of any security service or security system, or the failure to provide any security service or security system, within any portion of the Project.

N. Appointment of Trustee: The Association, or the Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce Assessment Liens by sale as provided in Section 4.12 and in California Civil Code § 1367.1(d).

O. Litigation: The Board of Directors has authority to file a suit, or file a demand for arbitration, or incur attorney's fees or litigation costs, or enter into a contingent fee contract with an attorney, whether pursuant to Civil Code section 1368.3, or on behalf of members only after getting the vote at a duly noticed and properly held membership meeting, of two-thirds (2/3) of the Members other than Declarant. Amendment of this provision shall require the vote of two-thirds (2/3) of the members other than Declarant.

P. Other Powers: In addition to the powers contained herein, the Association may exercise the powers granted to a nonprofit mutual benefit corporation under California Corporations Code §7140.

5.3. Commencement of Association's Duties and Powers: Until the closing of sales of fifty percent (50%) of the Units in the Project to Persons other than the Declarant or affiliates of Declarant, or such earlier date as the Declarant may determine, all duties and powers of the Association as described herein, including all rights of consent and approval and the levying and collection of Assessments, shall be and remain the duties and powers of Declarant. From and after the closing of sales of fifty percent (50%) of the Units in the Project to Persons other than the Declarant or affiliates of Declarant, or such earlier date as the Declarant may determine by written notification to the Association, the Association shall assume all of such duties and powers of management and operation of the Association and the Declarant shall be relieved of any further liability for such duties and powers.

ARTICLE 6. UTILITIES

6.1. Owners' Rights and Duties: The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, water, drainage, electric, gas, telephone and other communications equipment, cables and lines (hereinafter referred to, collectively, as "Utility Facilities") shall be as follows:

A. Whenever Utility Facilities are installed within the Property, which Utility Facilities or any portion thereof lie in or upon Condominiums owned by other than the Owner of a Condominium served by the Utility Facilities, the Owners of any Condominium served by the Utility Facilities shall have the right of reasonable access for themselves or for utility companies to repair, replace and generally maintain the Utility Facilities as and when necessary. Repair, maintenance and replacement of such equipment located in the Common Area shall be the responsibility of the Owners using such equipment.

B. Whenever Utility Facilities are installed within the Property which Utility Facilities serve more than one (1) Condominium, the Owner of each Condominium served by the Utility Facilities shall be entitled to the use and enjoyment of such portions of the Utility Facilities as service its Condominium.

C. In the event of a dispute between Owners with respect to the repair, maintenance, or rebuilding of the Utility Facilities, or with respect to the sharing of the cost thereof, then, upon written request of one (1) of such Owners addressed to the Association, the matter shall be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrator(s) shall be final and conclusive on the parties.

D. Common Area utilities costs and utilities included on a master meter and billed to the Association shall be included in Assessments and shall be prorated as set forth in Section 4.7, unless the Board makes a special allocation of such costs as a Cost Reimbursement Assessment. If the Board believes that an Owner is using an excessive amount of any utility service that is not separately metered to the Units, the Board may assess the Unit Owner for the costs of the amount of such utility service that is greater than the average amount used by the other Unit Owners as a Cost Reimbursement Assessment. The Association may install or have installed separate meters or submeters to measure the usage of such utility service, and charge the costs of installation and operation of any such separate meter or submeter to the Unit which uses excessive amount of such utility service as a Cost Reimbursement Assessment.

6.2. Easements for Utilities and Maintenance: Easements over and under the Property for the installation, repair, and maintenance of electric, water, gas, telephone, other communications and data transmission, sanitary sewer lines and facilities, cable or master television antenna lines and drainage facilities, as shown on the Condominium Plan, and as may be hereafter required or needed to service the Property, are hereby reserved by Declarant and its successors and assigns, until the sale of the last Condominium in the Project, and thereafter by the Association, together with the right to grant and transfer the same. Said easements shall be in favor of Declarant, and its successors and assigns for the benefit of the Project, and for the benefit of the Association and each Unit Owner.

6.3. Association's Duties: The Association shall maintain all Utility Facilities providing services to the Common Area, except for those Utility Facilities maintained by utility companies, public, private, or municipal. The Association shall pay all charges for utilities supplied to the Common Area of the Project. The Association shall provide lighting for the Common Areas, including common entries, parking areas, and any common rooms in the Buildings. The Association shall not be liable for and Owner shall not be entitled to, any reduction of Association Assessments by reason of Association's failure to furnish any of the foregoing when such failure is caused by accident, breakage, repairs, strikes, lockout or other labor disturbances or labor disputes of any character, or by any other cause, similar or dissimilar, beyond the reasonable control of the Association. The Association shall not be liable for a loss of or injury to property, however occurring, through or in connection with or incidental to furnishing or its failure to furnish any utility services.

6.4. Unit Owner's Duties and Obligations: Each Unit shall have a separate meter for its electricity and gas (if any) servicing the Unit. The Owner shall be responsible for payment of all charges based on said meters. Each Owner shall maintain and repair the Utilities Facilities servicing only its Unit, except for those facilities or portions thereof maintained by utility companies or the City. Owners shall maintain the heating and air conditioning system (if any) servicing their respective Units, and all light fixtures and appliances therein, and pay all utility bills metered therefor.

6.5. Access Easements: The Association and its Members, subject to the Rules, shall have nonexclusive easements for ingress and egress over the portions of the Common Area containing open space, and parking and driveway areas for the purposes of installation, maintenance and replacement of Utility Facilities.

**ARTICLE 7.
USE AND OPERATING RESTRICTIONS**

In addition to all of the covenants contained herein, the use of the Property and each Condominium therein is subject to the following:

7.1. Condominium Use: The Units shall be used solely for commercial, office, industrial and warehouse purposes which are permitted under the zoning and conditional use permits of the City as are applicable to the Project at a particular time and as permitted under this Declaration and the Master Declaration. No Unit may be used for residential purposes. In addition, no Unit shall be used for any purpose which would, as of the date of commencement of such use, cause the total number of vehicle parking spaces within the Project to be less than that required by the Ordinances or Resolutions of the City. Each Owner shall be responsible for obtaining all permits and licenses required by law or local ordinance to establish and operate its business. It shall be the responsibility of each Owner to ascertain and comply in all material respects with the zoning, conditional use permits, Project plans and specifications and other restrictions approved or imposed by the City for the Unit and the Project, including any requirements that the City approve any change in the use of the Unit or the physical layout of the Unit, including the availability of adequate parking for such change in the use of the Unit or the physical layout of the Unit. The design and intended use of the second level for those Units with a second level is office use and the Owner's use shall comply with design load criteria for that use. **There shall be no additions to the second floor mezzanines of any Unit without prior approval of the City and the Board. [REVIEW]**

If required by the City, each Owner, or any tenant or other occupant of a Unit, shall provide an emergency access key to the front door of the Unit, which emergency access key shall be kept in a Knox box on the site controlled by the City Fire Department.

A. Notwithstanding the foregoing, whether or not permitted by zoning or use standards of the City, the following types of uses within or about a Unit shall be prohibited:

- (1) Food service or preparation, except as permitted under this Section;
- (2) Medical office or uses except as permitted under this Section;
- (3) Veterinary office;
- (4) Junk or salvage operations;
- (5) Auto, truck, marine or other vehicle repairs, painting or sales;
- (6) Retail;
- (7) Manufacturing, refining and/or storage of chemicals, petro-chemicals or of any radioactive materials;
- (8) Slaughterhouses, tanneries, rendering operations, barns, stables or dairy operations;
- (9) Paper manufacturing, foundries, metal machining shops, heavy industrial or manufacturing;
- (10) Oil drilling, mining, or quarrying operations;

(11) Any other use which will be offensive to other Owners or occupants of Units by reason of odor, fumes, dust, smoke, noise, electro-mechanical or electro-magnetic disturbances, radiation, pollution, risk of fire or explosion or any other nuisance within the Project or to surrounding property.

B. Restrictions on Conduct of Business. The permitted uses described in this Section 7.1 shall be conducted under the following conditions:

(1) **Noise.** No facility shall produce noise at such levels as will be offensive to Owners or occupants of adjoining Units or portions of the Property or to any Owner of a Unit or portion of the Property.

(2) **Vibration.** Equipment creating earthshaking or other vibrations shall be so located and mounted within the Unit as to eliminate vibration hazard or nuisance beyond the boundary lines of the Unit on which such equipment is situated.

(3) **Smoke.** No facility within any Unit shall discharge into the atmosphere any air contaminant producing a public nuisance or hazard.

(4) **Toxic or Noxious Matter.** No facility within any Unit shall discharge into the sewer system, storm drain or across the boundary lines of the Unit any toxic or noxious matter in such concentration as to be detrimental to or endanger the public health, safety or welfare or cause injury to or damage to surrounding property or business.

(5) **Odorous Matter.** No facility within any Unit shall emit offensive odorous matter or fumes in such quantity as to be readily detectable on any point along the boundary lines of the Unit.

(6) **Fire and Explosive Hazards.** Storage or utilization of combustible materials within any Unit shall be undertaken in a manner acceptable to the City and County and any other agency or body having jurisdiction of such matter. Use or storage of materials which produce flammable or explosive vapors or gases under ordinary weather conditions and temperatures shall not be permitted on any Unit except where required for emergency equipment or except where incidental to a principal operation of a permitted use hereunder, such as paint spraying, which use or storage of such materials shall be approved in writing by the City Building Inspector, Fire Department and any other agency or body having jurisdiction of such matter. The Owner of any such Unit where such materials are used or stored shall, at its cost, maintain insurance of a nature and in an amount and with insurance carriers acceptable to the Association, and shall annually deliver evidence thereof to the Association. Such Owner shall, in writing, indemnify and hold harmless the Association, the Property, the other Owners and the other Units from and against any and all losses, damages, claims, expenses, causes of action and liabilities arising out of or in connection with the storage or use of such combustible materials on any such Unit.

(7) **Glare or Heat.** Any operation conducted from a Unit producing intense glare or heat shall be performed within the enclosures of the Improvements within the Unit so as not to allow such glare or heat to emanate beyond the boundary lines of the Unit and so as not to create a public or private nuisance or hazard.

(8) **Air and Water Pollution.** No facility or operation on any Unit shall discharge into the air or water pollutants or contaminants sufficient to create or that might create a nuisance, and no operation on any Unit which by its nature is likely to cause air or water pollution

shall be undertaken or permitted on any Unit unless there is available an adequate method of controlling the emission of pollutants and contaminants and such controls are installed and applied at the cost of the Owner of such Unit prior to the operation of the business on the Unit. The Owner of such Unit equipped with such pollution and contaminant controls shall, at its cost, maintain insurance of a nature and in an amount and with insurance carriers acceptable to the Association, and shall annually, at least ten (10) days prior to the expiration of such insurance, deliver evidence thereof to the Association. Such Owner shall, in writing, indemnify and hold harmless the Association, the Property, the other Owners and the other Units from and against any and all losses, damages, claims, expenses, causes of action and liabilities arising out of or in connection with the operation of a business equipped with such pollution and contaminant controls.

(9) Storage. No merchandise, supplies, equipment, or other items of personal property shall be stored on any portion of the Common Area.

(10) Medical Offices and Related Uses. Medical offices and related uses (“Medical Use”) may be permitted within a Unit based upon the following criteria and conditions:

(a) The Medical Use must be permitted by zoning or use standards of the City;

(b) The Medical Use can only be located in a Unit in Building A or Building B of the Project;

(c) The Unit having such Medical Use shall have adequate parking and shall not materially adversely impact parking within the Project.

(d) No medical waste from a Medical Use shall be disposed of in the Common Area facilities, including any waste disposal facilities or the drains or sewers of the Project.

(11) Food service or food preparation. Food service or food preparation may be permitted within a Unit based upon the following criteria and conditions:

(a) The use for food service or preparation must be permitted by zoning or use standards of the City;

(b) The food service or food preparation use or activities must be approved in writing by the Declarant as long as the Declarant owns one or more Units in the Project;

(c) After such time as Declarant does not hold title to any Units in the Project, then any proposed food service, or food preparation uses, in a Unit proposed after such time must be approved in writing by the Board. Notwithstanding the foregoing provisions of subparagraph (c), if the Declarant has previously approved the use of a Unit for food service, or food preparation for a particular Unit, then the Unit may be used for such food service or food preparation use on the conditions imposed by the Declarant for such use, unless such use for food service or food preparation is in violation of the conditions imposed by Declarant for such use, or of any terms and provisions of this Declaration, or in violation of the zoning or use standards of the City;

(d) Any use of a Unit for food service, or food preparation, which has been approved by the Declarant, or by the Association as above provided, shall be operated in a manner which is not detrimental to the health and safety of the occupants of any other units in the Project, and in accordance with local health standards. The Unit Owner of any Unit which is undertaking food service, or food preparation, shall be responsible for any health problems which

emanate from such use, including, but not limited, to rodents, pests, insects, or other health and safety problems. The Unit Owner who is granted the right of use for food service or food preparation shall be required to indemnify the Declarant, the Association, the Board and the other Unit Owners for any claims arising from such use.

If either the Declarant, while the Declarant owns a Unit, or the Association determines that a Unit Owner or Unit occupant who has been given permission for food service, or food preparation, is violating the requirements herein stated, then the Declarant and/or the Association shall be entitled to give written notice to the Unit Owner, or the Unit occupant, with respect to such claims. The Board shall conduct a hearing, providing the Unit Owner with appropriate notice, and an opportunity to be heard, with respect to any such claims of violation. If the Unit Owner is found to be in violation, then the Unit Owner shall rectify the violation within thirty (30) days of the findings of the Board. If the Unit Owner fails to rectify the violation within said thirty (30) day period of time, after such hearing has been conducted, then the Board shall be entitled to issue a notice of discontinuation of use of the Unit for food service, or food preparation. If the Unit Owner does not rectify the violation within thirty (30) days after such subsequent notice, then the Unit Owner shall cease and desist all use of the Unit for food service, or food preparation. If the Unit Owner fails to so cease and desist in such food service, or food preparation, after such thirty (30) days, then the Declarant or the Association shall be entitled to seek injunctive relief. In any action brought by the Association, or by the Declarant with respect to the foregoing, the Association and/or the Declarant shall be entitled to reimbursement for any and all legal fees and costs, as well as a judgment with respect to the discontinuation of such food service, or food preparation use.

The approval of food service or food preparation use in one Unit by the Declarant or by the Board of the Association shall not mean or be deemed to mean that such food service or food preparation use is permitted in any other Unit in the Project. Any such use in any other Unit in the Project must be approved specifically for such other Unit by the Declarant, or the Association as herein provided.

7.2. Nuisances: No noxious, illegal, or seriously offensive activities shall be carried on upon any Condominium, or in any part of the Property, nor shall anything be done thereon which may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of the Owner's Condominium, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any Building, or which will endanger the lives or health of occupants.

7.3. Hazardous Materials: Subject to the remaining provisions of this paragraph, an Owner shall be entitled to use and store only those Hazardous Materials that are necessary for such Owner's business, provided that such usage and storage is in full compliance with all applicable local, state and federal statutes, orders, ordinances, rules and regulations (as interpreted by judicial and administrative decisions), and is used and handled exercising all due care in such activities. Each Owner shall give to the Association written notice of any spills, releases or discharges of Hazardous Materials within its Unit or in any Common Area of which said Owner has knowledge, regardless of whether or not such spill, release or discharge was caused by such Owner. Each Owner covenants to investigate, clean up and otherwise remediate any spill, release or discharge of Hazardous Materials caused by the acts or omissions of such Owner, or its agents, employees, representatives, invitees, licensees, tenants, customers or contractors at such Owner's sole cost and expense. Such investigation, clean up and remediation, if regarding the Common Area, shall be performed after such Owner has obtained the Association's written consent, which shall not be unreasonably withheld, provided, however, that such Owner shall be entitled to respond immediately to an emergency without first obtaining the Association's written consent. Each Owner shall indemnify, defend and hold the Association, the Declarant, and all other Owners harmless

from and against any and all claims, judgments, damages, penalties, fines, liabilities, losses, suits, administrative proceedings and costs (including, but not limited to, attorneys' and consultants' fees) arising from or related to the use, presence, transportation, storage, disposal, spill, release or discharge of hazardous materials within such Owner's Unit or in the Common Area if caused by the acts or omissions of such Owner, its agents, employees, representatives, invitees, licensees, tenants, customers or contractors. The foregoing is intended to constitute an indemnity agreement within the meaning of section 9607(e)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC 9607(e)(1)), but nothing in such section or the Act shall be deemed to vitiate or limit the obligations of each Owner hereunder. Each Owner shall obtain, maintain in force, and comply with any requirements for a permit required in connection with discharge of waste water or its placement into the sewer systems of the Project or the handling of Hazardous Materials requiring any such permit.

7.4. Owner's Right and Obligation to Maintain and Repair: Except for those portions of the Project which the Association is required to maintain and repair, each Owner shall, at his sole cost and expense, maintain and repair the Unit, keeping the same in good condition and in accordance with any maintenance guidelines for the Project.

Each Owner shall be responsible for and bear the cost of maintenance, repair and replacement of the following items within such Owner's Unit: interior surfaces of all perimeter walls, ceilings and floors (including carpeting, tile, wall paper, paint or other covering); the sheet rock and any other surfaces or finishes that are located within the Unit attached to a Dividing Wall; garbage disposals, ranges, refrigerators, dishwashers, washing machines, dryers, light fixtures, smoke detectors, and any and all other appliances of any nature whatsoever; heating, equipment servicing such Unit; interior doors, including all hardware on the doors; light bulbs; plumbing and other fixtures of any nature whatsoever; "built-in" features; and decorative features, and any furniture and furnishings. Owners shall maintain, repair and replace exterior entry doors, roll-up doors and windows that are part of their Unit or which serve their Unit.

Each Owner shall keep the Exclusive Use Common Area appurtenant to the Owner's Condominium in a clean and neat condition at all times.

Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, and doors bounding his Unit. Each Owner shall own and shall be responsible for the maintenance, repair and replacement of the heating, air conditioning and ventilating systems that service the Unit, including the condensers and other apparatus servicing such systems, whether located within the Unit or on the roof. The Owner shall have the right of limited access to the roof for undertaking any maintenance, repair or replacement of such systems or the components that service such systems, with the understanding that the Owner shall be responsible for any harm or damage that occurs to the roof or the Building occasioned by the use, maintenance, repair or replacement of such systems or the components that service such systems. Each Owner hereby agrees to indemnify and hold harmless the Association and all other Owners for any and all claims arising from such Owner or its agents and contractors accessing the roof or providing maintenance, repair or replacement of such systems. Although the roof structure, roof membrane and floor slab are included within the boundaries of the Unit, the Owner shall not maintain or repair such improvements, which are to be maintained and repaired by the Association. An Owner shall not penetrate or otherwise drill into the roof, roof membrane or floor slab without prior written permission of the Association.

An Owner shall be permitted to attach sheet rock, paneling or other finishes to interior side of perimeter walls and Dividing Walls of a Unit and to attach or install equipment or other items to the interior side of such perimeter walls or Dividing Walls, and make reasonable penetrations into

such walls for such purposes, provided that such attachment, installation or penetrations do not cause harm to the structural components of the Building.

Each Owner shall maintain the improvements within his Unit in accordance with any Maintenance Guidelines established by the Declarant. Each Owner shall retain any Maintenance Guidelines and take all appropriate actions to comply with and implement the Maintenance Guidelines. When an Owner transfers a Unit, the Owner shall deliver a complete copy of the Maintenance Guidelines to the transferee of the Unit on or before the date the Unit is transferred.

7.5. Parking Allocation Procedures: The Parking Spaces within the Project are designated on the Condominium Plan. The Declarant, at the time of the initial conveyance of a Unit to a purchaser from Declarant, shall convey and assign certain Parking Spaces as exclusive easements appurtenant to the Unit being conveyed as Exclusive Use Common Area. With respect to the amount of parking available or to be made available, within the Project, the Association and the Owners shall comply with the following procedures: **[REVIEW PARKING]**

A. As long as Declarant owns one Unit in the Project, Declarant shall have the right to assign any Parking Spaces that are not assigned by Declarant to any particular Unit for the exclusive use of any Unit.

B. The Association shall maintain on a regular on-going basis a Parking Plan with the computation of the Parking Spaces within the Project that are available for tenant or Owner use which Parking Plan indicates the allocation of those spaces to Owners or tenants and those remaining unallocated.

C. Prior to any Owner or tenant of an Owner undertaking any construction within a Unit which would require a building permit from the City, the Owner or tenant shall submit a copy of the building permit or other city approval to the Association which provides evidence that the proposed work will not cause adverse parking usage impact with respect to occupants of the Unit relative to square footage of the Unit as required by the requirements of the City for the Project.

D. If the applicant is unable to effect its proposed work because the results of such work would require parking in excess of that allocated to the particular Unit, the applicant, with the prior written consent of the Board, shall be entitled to acquire additional parking from excess parking capacity from another Owner in the Project by license or easement running for the duration of the applicant's use provided that such acquisition will not be inconsistent with the City parking ordinances or other requirements. Such additional spaces shall not include those spaces designated on the Condominium Plan as handicapped or visitor parking unless the City consents thereto. An applicant shall also be entitled to request that the Board consider as acceptable additional parking arrangements situated off the site of the Project provided that the City agrees to such offsite parking arrangements being acceptable.

E. The layout, number, and location of Parking Spaces shown on the Condominium Plan, and the allocation and assignment of Parking Spaces to particular Units, shall be subject to modifications and revisions by the Declarant, effected by the recordation of a modification of the Condominium Plan signed by the Declarant, to provide for corrections and revisions necessary for the Project, and its operations, as long as Declarant owns at least one Unit in the Project; provided however, that after the assignment of particular Parking Spaces to a Unit, any modification or revision of the Condominium Plan for Parking Spaces by Declarant may not reduce the number of Parking Spaces allocated and assigned to a Unit. After the time that Declarant does not own any Units in the Project, the Board, by a majority vote of the Board members, shall have the right to modify and amend the Condominium Plan in the manner herein stated for Parking Spaces, accomplished by the recordation of a modification of Condominium Plan

signed by the President of the Association certifying that a majority of the members of the Board have approved such modified or amended Condominium Plan.

7.6. Parking and Vehicle Restrictions: Vehicles of an Owner or its tenants, or the employees, customers or invitees of such an Owner or its tenants, shall be parked only within the Parking Spaces granted or assigned to that Owner and shall not be parked anywhere else in the Project. All Parking Spaces shall be used solely for the parking and storage of motor vehicles operated for personal or business transportation. No boat, trailer, camper, motorcycle, golf cart, mobile home, other recreational vehicle nor any dilapidated vehicle shall be parked or stored in any Parking Space. The Association may designate specific areas for the parking, loading and unloading of trucks. No vehicles that are excessively noisy, or exhaust polluting, as determined by the Board, shall be operated on the Property. No part of the Common Area shall be used for repair, construction or reconstruction of any vehicle, boat or any other item or thing except in an emergency. As long as applicable ordinances and laws are observed, the Board may cause the removal of any vehicle that is in violation of this Declaration. No vehicle loading or unloading shall occur which infringes upon or interferes with the rights of access or use of Units or parking spaces by Owners, tenants or customers of the Owners of such Units. The Parking Spaces may not conform exactly to the drawings on the Condominium Plan due to re-stripping of the spaces by the Board and any construction, reconstruction, repair, shifting, movement or natural settling of the Improvements. The existing physical boundaries of any Parking Space, so long as such space is substantially of the same size and in substantially the same location as shown on the Condominium Plan shall be presumed to be such boundaries, rather than specific site and location as described in such drawings.

A. Owners shall be entitled to exchange Parking Spaces granted or assigned to their respective Units, provided that (1) a reciprocal deed of assignment identifying the exchanged Parking Spaces, the exchanging Owners and the first Mortgagees of such exchanging Owners, and recorded; and (2), no such deed of assignment of Parking Spaces shall be effective if exchange would result in a reduction of the number of Parking Spaces to which such Owners were originally entitled. A copy of the recorded reciprocal assignment shall be delivered to the Board as soon as possible after recordation. The Association shall update the Parking Plan to reflect such changes. After the conveyance of all Units by Declarant to other Owners, any Parking Spaces which have not been granted as Exclusive Use Common Area appurtenant to a particular Unit after Declarant has sold and conveyed all Units in the Project to other Owners shall be held as unrestricted Common Area by the Association. The Association may permit such Parking Spaces to be used by the Owners as unassigned parking or the Association may assign such Parking Spaces on an exclusive or partially exclusive basis to particular Owners in such manner and for such terms and consideration as the Board deems reasonable.

B. Owners shall use their assigned Parking Spaces for parking of their vehicles so that unassigned Common Area parking will be available for guest parking. The Board may establish Rules from time to time for the parking of vehicles in the Common Areas.

A. 7.7. Vehicle Restrictions and Towing: The Association may install a sign at each vehicular entrance to the Project containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Project will be removed at the owner's expense. The sign shall be not be less than 17 x 22 inches in size with lettering not less than one (1) inch in height and shall contain such information as is required by law, including the telephone number of the local traffic law enforcement agency and the name and telephone number of each towing company that is a party to a written general towing authorization agreement with the Association. The sign may also indicate that a citation may also be issued for the violation. The Association shall enter into a written general towing authorization agreement with one or more towing companies as required by Vehicle Code section 22658.

The Association may cause the removal of any vehicle wrongfully parked on the Property, including a vehicle owned by an occupant. The provisions of this Section 7.7 are intended to comply with Vehicle Code section 22658 in effect as of January 1, 2007. If this Vehicle Code section is amended, revised or replaced, this provision automatically shall be amended to reflect such amendment, revision or replacement section. If Vehicle Code section 22658.2 is repealed and no successor section is enacted, then this provision shall remain in full force and effect to the extent legally permitted. Vehicle Code section 22658 may have been amended by the State Legislature since this Declaration was recorded, and the Board should confirm the current statutory requirements.

7.8. Signs: No signs shall be displayed to the public view on any Condominiums or any portion of the Property, except:

A. One (1) sign that identifies the occupant of the Unit that complies with the Standard Sign Program attached to this Declaration as Exhibit "C";

B. In addition, during the time a Unit is being offered for sale or lease, the Owner of a Unit may display one (1) "For Sale" or "For Rent" or "For Exchange" sign on the Unit, or in the Common Area adjacent to the Unit, that complies with guidelines established by the Board for the design, dimensions and location of such signs, and may also display within the Common Area one (1) sign advertising directions to the Owners' Condominium that is for sale, rent, or exchange, provided that the design, dimensions and location of such directional sign comply with guidelines established by the Board;

C. The Board may establish additional signage criteria in the Project Rules provided that such additional signage criteria may not be less restrictive than, or inconsistent with, the Independence Campus Commercial Center Standard Sign Program attached to this Declaration as Exhibit "C".

D. All exterior signage shall comply with any signage requirements stated in the Master Declaration.

7.9. Animals: Except as provided in this Declaration and permitted by the Rules, no animals of any kind shall be raised, bred, or kept in any Unit of the Project. Trained dogs used for assistance by visually impaired, hearing impaired or physically handicapped persons may be kept by an occupant or invitee of an Owner, when accompanied by the person that the trained dog assists. Owners, their tenants or other occupants of Units may keep no more than one (1) dog or one (1) cat within a Unit, and may keep a reasonable number of fish that are kept in aquariums, provided that no such dog, cat or fish, or any other animals, are kept, bred, or maintained for any commercial purposes. All such permitted animals shall be kept under reasonable control at all times. No animals shall be allowed in the Common Area except as may be permitted by Rules. No Owner shall allow its dog to enter the Common Area except on a leash. No dog may be kept in a Unit unless a responsible person is present in the Unit. After making a reasonable attempt to notify the Owner, the Association or any Owner may cause any animal found within the Common Area in violation of the Rules of the Board or this Declaration to be removed by the Association (or any Owner) to a pound or animal shelter under the jurisdiction of the City or the County by calling the appropriate authorities, whereupon the Owner may, upon payment of all expenses connected therewith, repossess the animal. Owners shall prevent their dogs from soiling any portion of the Common Area and shall promptly clean up any waste left by their dog. Owners shall be fully responsible for any damage caused by their animals. An Owner or other occupant of a Unit shall use reasonable efforts to prevent any animal within its Unit from making disturbing noises that can

be heard from any other Unit. An Owner in violation of this section may be deemed to be permitting, or causing a serious annoyance or nuisance to any other Owner. The Board, after notice and a hearing, may require the permanent removal of any animal that the Board determines to be a danger to the health and safety of any Owner, occupant of a Unit or invitees thereof, or otherwise to be a nuisance within the Project. The Board may find that an animal is a nuisance if the animal or its owner continues to violate the Rules regulating animals after receipt by the Owner of a written demand from the Board to comply with the Rules.

7.10. Garbage and Waste Disposal: Until removal to the dumpsters located within the Common Area, all rubbish, trash, recycling, garbage and other waste shall be stored within the individual Units in a sanitary and neat manner. Rubbish, trash, recycling, garbage and other waste shall be regularly removed from the Unit to the dumpsters located in the Common Area, and shall not be allowed to unreasonably accumulate within the Unit. All equipment for the storage or disposal of such waste materials shall be kept in a clean and sanitary condition. No equipment, garbage cans, or storage piles shall be kept on the outside of any Unit. No toxic or Hazardous Materials shall be disposed of within the Project by dumping in the dumpsters, in waste containers or down the drains, or otherwise. If, in the judgment of the Board, any Unit Owner or other occupant of a Unit is excessively using the trash and garbage facilities in the Common Area when compared to the average use all other Units in the Project, after notice to the Unit Owner, the Board may levy a Cost Reimbursement Assessment upon the Unit involved for the costs of such excess use. All use of Project dumpsters or other waste disposal devices shall be subject to the Rules. No carpeting, sheet metal or liquid waste shall be deposited in Project dumpsters or other waste disposal devices, and shall be removed from the Project by the Owner or occupant of a Unit independently of Project trash or garbage removal services. Owners whose business pertains to or generates any Hazardous Materials shall be responsible for the storage and disposal of such Hazardous Materials in accordance with all applicable laws, and compliance with the provisions of Section 7.3.

7.11. Radio and Television Antennas: Except as permitted under applicable laws, no Owner shall construct and/or use and operate its own external radio and/or television antenna or satellite dish, without the written consent of the Board. In considering whether to approve applications, the Board shall consider and give great weight, to the extent permitted under applicable laws, to considerations of safety of the installation, potential structural damage and potential for water leaks in the Project, aesthetics and uniformity of appearance, and use criteria similar to treatment for other devices in the same general area such as air conditioners, heat pumps, etc., that do not prevent or unreasonably delay installation or use of such antennas, unreasonably increase the cost of installation maintenance or use of such antennas, or preclude an acceptable quality of signal for such antenna.

7.12. Roof: Access to roofs shall be restricted to Persons authorized by the Board.

7.13. Architectural Control:

A. No alterations, renovations, additions, installations, or other changes to the exterior of the Project, or any portion thereof, nor any fence, wall, obstruction, outside or exterior wiring, balcony, screen, awning, improvement, addition, or structure of any kind to the exterior of the Project, shall be commenced, installed, erected, painted, repainted or maintained upon the Property by any Owner, nor shall there be any modification, alteration or removal of any such exterior improvements, until the same has been approved in writing by the Board, or by an Architectural Control Committee appointed by the Board.

B. Improvements or alterations made to the interior of a Unit are not subject to review or control by the Board or the Architectural Control Committee, provided that such interior improvements or alterations do not alter the exterior appearance of the Building, do not materially impair the structural integrity of the Building, do not damage or interfere with utility lines or other Utility Facilities which serve the Common Area or other Condominiums and comply with all applicable laws, codes and ordinances. Subject to the foregoing, Owners may install interior partitions to separate portions of a Unit without prior approval; provided, however that, any alterations which are intended to create additional office space in a Unit shall require the prior review and approval of the Board or Architectural Control Committee, so that impacts on parking within the Project can be evaluated by the Board or Architectural Control Committee, and additional parking assigned to the Unit, if necessary and available. Such partitions placed wholly within the boundaries of a Unit shall be part of the Unit. No changes shall be made to the structural elements of the Unit without approval by the Board or Architectural Control Committee.

C. Plans and specifications showing the nature, kind, shape, color, size, materials and location of any proposed improvements, or alterations requiring review hereunder shall be submitted to the Board or Architectural Control Committee in accordance with the Rules adopted by the Board or the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures.

D. The Board may establish an Architectural Control Committee. If the Board establishes an Architectural Control Committee, the Architectural Control Committee shall consist of three (3) members. Declarant may appoint all of the original members of the Committee and all replacements until ninety percent (90%) of all the Condominiums in the Project have been sold. Members appointed to the Architectural Control Committee by the Declarant need not be Members of the Association. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the successor shall be appointed by the Person which appointed such member until Declarant no longer has the right to appoint any members to the Architectural Control Committee, and thereafter the Board shall appoint such a successor. Neither the members of the Architectural Control Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto. In the event the Architectural Control Committee fails to approve or disapprove plans and specifications in writing within thirty (30) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with. Approval of plans by the Architectural Control Committee or the Board, shall in no way make the Architectural Control Committee or its members or the Board or its members responsible for or liable for the improvements built after approval of the plans and the Owner whose plans are approved shall defend, indemnify and hold the Architectural Control Committee and the Board, and the members thereof, harmless from any and all liability arising out of such approval.

E. Before commencement of any alteration or improvements approved by the Board or Architectural Control Committee, the Owner shall comply with all appropriate governmental laws and regulations and with any requirements of, or approvals required under, the Master Declaration. Approval by the Board or Architectural Control Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

F. Before an Owner commences or causes to be commenced any alteration or improvements within a Unit, whether or not such alteration or improvements requires approval by the Board or Architectural Control Committee, the Owner shall provide proof of insurance to the Association and name the Association as an additional insured on such insurance.

7.14. Window Treatments: All drapes, curtains, shutters, blinds or other window coverings that are visible from the street or Common Areas shall be white, off-white or colors, materials and patterns which are approved by the Board or the Architectural Control Committee.

7.15. Wall Penetrations/ Installation of Equipment: To avoid impairment of the sound attenuation and structural integrity of perimeter walls, there shall be no penetration of any of the perimeter walls of any Unit, including walls that divide Units without the prior written consent of the Board and the adjacent Unit Owner affected by any such penetration. All data processing, computer, graphic arts and printing facilities, business machines and equipment, kitchen equipment and all other mechanical equipment installed in any Unit shall be designed, installed, maintained and used by the Owner as to reduce insofar as possible the transmission level of noise, vibration, odors and other objectionable transmissions from such Unit to any other portion of the Project.

7.16. Right to Lease:

A. Any Owner who wishes to lease its Condominium must meet each and every one of the following requirements, and the lease will be subject to these requirements whether they are included within the lease or not:

- (1) all leases must be in writing;
- (2) no lease shall be for a period of less than thirty (30) days;
- (3) all leases shall be subject in all respects to provisions of the Declaration, the Bylaws, and all Rules;
- (4) all Owners who lease their Condominiums shall promptly notify the secretary of the Association or the Association Manager in writing of the names of the tenant or tenants occupying such Condominium and shall provide the secretary of the Association or the Association Manager with a complete copy of the lease; all Owners leasing their Condominium shall promptly notify the secretary of the Association or the Association Manager with the address and telephone number where such Owner can be reached;
- (5) any failure of the tenant to comply with the foregoing shall be a default under the lease, regardless of whether the lease so provides. In the event of any such default, the Owner immediately shall take all actions to cure the default including, if necessary, eviction of the tenant;
- (6) if any tenant of an Owner is in violation of the provisions of the Declaration, Bylaws, or Rules, the Association, may in the alternative, bring legal action against the

Owner and the tenant to enforce this Declaration and shall be entitled to recover all its costs, including court costs and reasonable attorneys' fees, and such costs shall be a continuing lien upon the Unit which shall bind the Unit.

B. The Association will give the tenant and the Owner notice in writing of the nature of the violation of the Rules, and twenty (20) days from the mailing of the notice in which to cure the violation before the Association may file an action under this Section.

C. By becoming a tenant, each tenant agrees to be bound by the Declaration, the Bylaws and the Rules, and recognizes and accepts the rights and power of the Association to enforce such Declaration, the Bylaws and the Rules as to the tenant for any violation by the tenant of the Declaration, the Bylaws, and the Rules.

7.17. Liability of Owners for Damage to Common Area: The Owner of each Condominium shall be liable to the Association for all damage to the Common Area or improvements to the extent described in Section **5.1.A**.

7.18. Deliveries, Loading and Storage: Loading and unloading of trucks and trailers shall be done in a manner so as to cause as little inconvenience as possible to users of other Units. The Association may establish reasonable Rules for such loading and unloading of vehicles. Deliveries shall be limited to the hours of 7:00 AM – 7:00 PM. No Owner or occupant of a Unit shall store, park, or otherwise keep anything on areas that are exterior to a Unit, except for motor vehicles parked in appropriate designated Parking Spaces in accordance with this Declaration and the Rules. When not being used for loading and unloading purposes, roll-up doors to Units shall be kept closed.

7.19. Use of Electricity: Use of electricity in each Unit shall not at any time exceed the capacity of any of the electrical conductors and equipment in or otherwise serving the Unit.

7.20. Overloading: No machinery, apparatus, appliance, equipment or other items or materials shall be located in any Unit or in the Common Area which will in any manner structurally overload a Building or in any manner vibrate, shake or otherwise damage any portion of any Building

7.21. Flags, Pennants, Banners, Etc.: Except as permitted by law, or as permitted under the Rules, there shall be no exhibiting, flying or hanging of any flags, pennants, banners, or any other such items from any area of the Project that would be visible from the Common Area, other Units or the perimeter streets that abut the Project.

7.22. Dividing Walls: Each interior Dividing Wall constructed or installed upon the boundary line dividing two (2) Units, each of which is designated on the Condominium Plan as separate Units, shall constitute a "party wall" and to the extent not inconsistent with this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to such Dividing Walls.

A. The costs of repair and maintenance of a Dividing Wall shall be shared equally by the adjacent Owners. If a Dividing Wall is destroyed or damaged by fire or other casualty, either adjacent Owner may restore it, and the other Unit Owner shall contribute to the cost of the restoration thereof; subject however, to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

B. The right of any Owner to contribution from another Owner under this Section 7.22 shall be covenant running with the land appurtenant to the Unit and shall pass to Owner's successor in title.

C. In the event of any dispute arising concerning a Dividing Wall, or under the provisions of this Section 7.22, such dispute shall be submitted in writing to the Board for its review, and the written decision of the Board shall be final and binding on the parties.

**ARTICLE 8.
INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION**

8.1. Insurance: The Association shall obtain and continue in effect the following policies of insurance:

A. Hazard Insurance. A policy of hazard insurance covering all of the real property and structural components of the Buildings and improvements located in the Common Area, all fixtures and building service equipment in the Common Area, other than Unit Owner heating and air conditioning systems, together with all of the personal property of the Association, which master policy of hazard insurance shall provide for "multi-peril" or "all-risk" coverage, including, as minimum protection, protection from loss or damage by fire or other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, wind, storm, water damage and other risks as are customarily covered with respect to projects similar in construction, location and use to the Project. Such policy shall include an "agreed amount endorsement" or "inflation guard endorsement", or an equivalent thereof, a "demolition endorsement", or equivalent thereof, and, if such is commercially reasonable to obtain, an "increased cost of construction endorsement" and a "contingent liability from operation of building laws endorsement", or its equivalent. Such policy shall be in such form and in amounts and from an insurance carrier satisfactory to the Board. In any event, the amount of such insurance shall be equal to the full replacement value, based upon contemporary replacement cost, of the property covered by the such insurance policy and written by an insurance company rated by Best's Key Rating Guide as "A" and "Class VI", or better, or an equivalent thereof, and licensed to provide such insurance in the State of California. The master policy shall be issued in the name of the Association for the use and benefit of the Owners, and all Mortgagees of Units as additional insured parties. All insurance shall contain waiver of subrogation as to the Association, officers, directors, and Members, and if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured.

B. Public Liability Insurance. Commercial general liability insurance, insuring the Association for liability for occurrences within the Common Areas, in an amount not less than two million dollars (\$2,000,000) per occurrence. The minimum limits on the liability insurance policy shall be two million dollars (\$2,000,000) combined single limit and shall include personal injury, bodily injury, property damage and liability for non-owned and hired automobiles. In addition the Association shall obtain and continue in effect additional umbrella coverage of two million dollars (\$2,000,000), or as an alternative may carry four million dollars (\$4,000,000) combined single limit primary policy. Such insurance shall include a "severability of interests" endorsement, which shall preclude insurance carriers from denying claims of an Owner because of the negligent acts of other Owners or the Association.

C. Fidelity Bond or Insurance. A fidelity bond or policy of insurance in the name of the Association as named beneficiary or insured, against dishonest acts covering officers, directors, agents and employees entrusted with, or permitted to, handle funds belonging to or to be administered by the Association, in an amount to be determined by the Board, but in no event less than a sum equal to one year's aggregate Assessments on all Units, plus reserve funds. An appropriate endorsement shall be added to such policy if necessary to cover persons who serve without compensation, if the bond or policy does not otherwise cover the acts of volunteers.

D. Workers' Compensation Insurance. Such policies of workers' compensation insurance as may be required from time to time under state law. The Association shall obtain a Certificate of Insurance naming it as an additional insured in regard to workers' compensation claims from any independent contractor who performs any service for the Association, if the receipt of such a certificate is practicable prior to commencement of work.

E. Officers' and Directors' Liability Insurance. Officers' and directors' liability insurance shall be carried by the Association to cover persons serving in such capacities (and to cover committee members, if such coverage is available at reasonable cost) minimum limit of \$1,000,000 per claim.

F. Association Administration of Insurance. Each Owner appoints the Association, or any insurance trustee to be designated by the Association, as attorney in fact for the purpose of purchasing and maintaining the Association's insurance, including: The collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability required for payment of insurance proceeds; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association or any insurance trustee shall be required to receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for owners and their first mortgage holders, as their interests may appear.

G. Association Insurance as Common Expense. Insurance premiums for the master policy shall be a Common Expense to be included in the monthly Assessments levied by the Association and the portion of such payment necessary for the insurance premiums may be held in a separate account of the Association and shall be used solely for the payment of the master insurance policy premiums as such premiums become due. Each buyer of a Condominium from Declarant shall pay the portion of the premium(s) attributable to its Condominium (prorated to the date of close of escrow) for the policy or policies purchased by Declarant for the Association.

H. Review of Insurance Policies. All insurance policies maintained by the Association shall be reviewed at least annually by the Board, in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs and replacement of the property which might be damaged or destroyed.

I. Individual Policies of Insurance.

(1) Each Unit Owner, and each tenant occupying a Unit, shall carry and maintain in force and effect, commercial general liability insurance covering damage to property or injury to persons or property of others in an amount of not less than \$1,000,000 combined single limit per occurrence. The Board can increase this minimum amount of liability insurance required of Unit Owners and other occupants of Units, if necessary to provide for adequate insurance coverage based upon the standards used in the community for such insurance at the time.

(2) In addition, each Unit Owner shall obtain and keep in full force and effect hazard or casualty insurance covering [a]improvements made within the Unit, including,

without limitation, all ceiling systems, floor coverings, wall coverings, light fixtures, interior plumbing and electrical systems, interior partitions and walls, cabinetry and other such interior finishes and improvements; [b] personal property within the Unit; and [c] all interior and exterior doors, windows and the heating and air conditioning systems servicing the Unit. Notwithstanding the foregoing, no Owner shall separately insure its Condominium, except for the Owner's improvement, the personal property therein and the heating and air conditioning systems for the Unit, against loss by fire or other hazard or casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance, and such Owner will be liable to the Association to the extent of any such diminution. All such insurance that is individually carried must contain a waiver of subrogation rights by the insurer as to other Owners, the Association, Declarant, and First Lenders.

8.2. Damage or Destruction of Improvements:

A. If Project improvements are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the Board or Architectural Control Committee, unless either of the following occurs: (1) The cost of repair or reconstruction (excluding the Owners' interior improvements) is more than fifty percent (50%) of the current replacement costs of all Project improvements (excluding Owners' interior improvements), available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction (excluding Owners' interior improvements), and three-fourths (3/4) of the total voting power of the Association residing in Members and their First Lenders vote against such repair and reconstruction; or (2) Available insurance proceeds are not sufficient to substantially repair or reconstruct the Project improvements [excluding Owners' interior improvements] within a reasonable time as determined by the Board, a Special Assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in Section 4.3.B, and the Board, without the requirement of approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

B. If Project improvements are to be repaired or reconstructed and the cost for repair or reconstruction is in excess of twenty-five percent (25%) of the current replacement cost of all the Common Area improvements, the Board shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the construction consultant, general contractor and architect certify within ten (10) days prior to any disbursement substantially the following:

(1) That all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

(2) That such disbursement request represents monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, subcontractors, materialmen, engineers, or other Persons (whose name and address shall be stated) who have rendered or furnished certain services or

materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of said Persons in respect thereof and stating the progress of the work up to the date of said certificate;

(3) That the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

(4) That no part of the cost of the services and materials described in the foregoing paragraph A has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

(5) That the amount held by the depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction.

C. If the cost of repair or reconstruction is less than twenty-five percent (25%) of the current replacement cost of all the Common Area improvements, the Board shall disburse the available funds for the repair and reconstruction under such procedures as the Board deems appropriate under the circumstances.

D. The repair or reconstruction shall commence no later than one hundred eighty (180) days after the date of such damage or destruction and shall be completed no later than one (1) year after commencement of reconstruction, subject to delays that are beyond the control of the party responsible for making the repairs. The Owner of the Unit that has been damaged or destroyed shall immediately take such steps as may be reasonably necessary to secure any hazardous condition and to screen any unsightly views resulting from the damage or destruction. Until such time as repairs or reconstruction have commenced, or during any time repairs or reconstruction is delayed, reasonable efforts shall be made to make the damaged areas safe and attractive. The Owners and the Association shall take all appropriate steps before repair or reconstruction is commenced or completed to erect necessary structures to preclude unauthorized access to areas being subjected to the repair and/or reconstruction and otherwise mitigate hazardous conditions within the Project.

E. If the improvements are not repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among all Owners and their respective Mortgagees in proportion to the respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Board, after first applying the proceeds to the cost of mitigating hazardous conditions on the Property, making provision for the continuance of public liability insurance to protect the interests of the Owners until the Property can be sold, and complying with all other applicable requirements of governmental agencies.

F. If the failure to repair or reconstruct results in a material alteration of the use of the Project from its use immediately preceding the damage or destruction as determined by the Board (a material alteration shall be conclusively presumed if repair or reconstruction costs exceed fifty percent (50%) of the current replacement costs of all Project improvements (excluding Owners' interior improvements)), the Project shall be sold in its entirety under such terms and conditions as the Board deems appropriate. If any Owner or First Lender disputes the Board's determination as to a material alteration, the dispute shall be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrator shall be conclusive and binding on all Owners and their mortgagees.

(1) If the Project is sold, the sales proceeds shall be distributed to all Owners and their respective Mortgagees in proportion to their respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by the independent appraisal procedure described above. For the purpose of accomplishing a sale under this Section **8.2**, each Owner grants to the Association an irrevocable power of attorney to sell the entire project for the benefit of the Owners, to terminate the Declaration and to dissolve the Association. In the event the Association fails to take the necessary steps to sell the entire Project as required hereunder within ninety (90) days following the date of a determination by the Board or arbitrator of a material alteration, or within one hundred eighty two (180) days following the date of damage or destruction if the Board has failed to make a determination as to a material alteration, any Owner may file a partition action as to the entire Project under California Civil Code §1359, or any successor statute, and the court shall order partition by sale of the entire Project and distribution of the sale proceeds as provided herein.

(2) Notwithstanding anything herein to the contrary, any Owner or group of Owners shall have a right of first refusal to match the terms and conditions of any offer made to the Association in the event of a sale of the Project under this Section **8.2**, provided this right is exercised within ten (10) days of receipt by the Owners of a notice from the Association containing the terms and conditions of any offer it has received. If the Owner or group of Owners subsequently default on their offer to purchase, they shall be liable to the other owners and their respective mortgagees for any damages resulting from the default. If more than one (1) Owner or group elects to exercise this right, the Board shall accept the offer that in its determination is the best offer.

8.3. Condemnation: The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area(s), or part thereof. In the event of a taking or acquisition of part or all of the Common Area(s) by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the Owners and their mortgagees as their interests may appear. In the event of an award for the taking of any Condominium in the project by eminent domain, the Owner of such Condominium shall be entitled to receive the award for such taking and after acceptance thereof it and its mortgagee shall be divested of all interest in the Project if such Owner shall vacate its Condominium as a result of such taking. The Owners shall rebuild or repair the Project unless the Owners of Condominiums, to which at least sixty-seven percent (67%) of the votes in the Association are allocated, elect to terminate the legal status of the Project as a condominium project. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project. In the event of a taking by eminent domain of any part of the Common Area, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Units are not valued separately by the condemning authority or by the court. Proceeds of condemnation shall be distributed among Owners of Condominiums and their respective mortgagees according to the relative values of the Condominiums affected by the condemnation, said values to be determined by the method provided in Section **8.2**.

If there is a substantial taking of the Project's Property (more than fifty percent (50%) of the Units or fifty percent (50%) of the Common Area), the Owners may terminate the legal status of the Project and, if necessary, bring a partition action under California Civil Code §1359 or any successor statute, on the election to terminate by the consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and the approval of First Lenders holding mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to First Lenders mortgages. The proceeds from the partition

sale shall be distributed to the Owners and their respective mortgagees in proportion to the fair market values of their Condominiums as determined under the method described in Section 8.2.

ARTICLE 9. GENERAL PROVISIONS

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

9.2. Invalidity of Any Provision: Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this Project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

9.3. Term: The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners of the Condominiums and the Declarant, as long as Declarant owns a Unit in the Project, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change the covenants and restrictions in whole or in part, or to terminate the same..

9.4. Amendments: After the close of escrow upon the sale of the first Condominium, except as provided in Section 9.7.E, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of the total voting power of the Association. Provided, however, that as long as the Declarant owns two (2) or more Units, any amendment to this Declaration shall require the written approval of the Declarant. Notwithstanding the foregoing, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a written instrument executed and acknowledged by the President or Vice President of the Association and recorded in the Official Records.

9.5. Encroachment Rights: If any portion of the Common Area encroaches on any Unit or any part thereof or any portion of a Unit encroaches on any Common Area due to engineering errors, errors or adjustments in original construction, reconstruction, repair, settlement, shifting, or movement of a Building, or any other cause, the owner of the encroachment shall have the right to maintain, repair or replace the encroachment, as long as it exists, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that no right shall be created in favor of an Owner or Owners if said encroachment occurred due to the intentional conduct of said Owner or Owners other than adjustments by Declarant in the original construction. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Condominiums or Common Area shall be permitted and that there shall be appropriate rights for the maintenance of said encroachments so long as they shall exist. In the event that an error in engineering, design or construction results in an encroachment of a Building into the Common Area, or into or onto an adjoining lot, or into a required setback area, a correcting modification may be made in Condominium Plan. Said modification shall be in the form of a certificate of correction and shall be

executed by Declarant (so long as Declarant is the sole owner of the property) and by Declarant's engineer. If the correction occurs after title to the Common Area has been conveyed to the Association, the Association shall also execute the certificate of correction. The Board of Directors may, by vote or written approval of a majority of the directors, authorize the execution of the certificate of correction.

9.6. Rights of First Lenders and Owners: No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise. Notwithstanding any provision in the Project Documents to the contrary, First Lenders shall have the following rights:

A. Copies of Project Documents: The Association shall make available to Owners and First Lenders, and to holders, insurers or guarantors of any First Mortgage, current copies of the Declaration, Bylaws, Articles or Rules and the books, records and financial statements of the Association. "Available" means available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances. The Board may impose a fee for providing the foregoing which may not exceed the reasonable cost to prepare and reproduce the requested documents.

B. Audited Statement: The holders of fifty-one percent (51%) or more of First Mortgages shall be entitled, upon written request, to have an audited financial statement for the immediately preceding fiscal year prepared at their expense if one is not otherwise available. Such statement shall be furnished within a reasonable time following such request.

C. Notice of Action: Upon written request to the Association, identifying the name and address of the First Lender, and the Condominium number or address, such First Lender will be entitled to timely written notice of: (1) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a First Mortgage held, insured, or guaranteed by such First Lender, as applicable; (2) Any default in performance of obligations under the Project Documents or delinquency in the payment of Assessments or charges owed by an Owner of a Condominium subject to a First Mortgage held, insured or guaranteed by such First Lender, which remains uncured for a period of sixty (60) days; (3) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (4) Any proposed action which would require the consent of a specified percentage of First Lenders as specified in Section **9.6.D**. The Association shall discharge its obligation to notify First Lenders by sending written notices required herein to such parties, at the address given on the current request for notice, in the manner prescribed by Section **9.10**.

D. Consent to Action:

(1) except as provided by statute or by other provision of the project documents in case of substantial destruction or condemnation of the Project, the consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated, shall be required to terminate the legal status of the Project as a condominium project.

(2) except as provided by statute in case of condemnation or substantial loss to the Condominiums and/or common elements of the Project, unless the holder(s) of at least two-thirds (2/3) of the First Mortgages (based upon one (1) vote for each First Mortgage owned), or Owners of the individual Condominiums have given their prior written approval, the Association and/or the Owners shall not be entitled to:

(a) by act or omission, seek to abandon or terminate the Project (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain);

(b) change the pro rata interest or obligations of any individual Condominium for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium in the Common Area;

(c) partition or subdivide any Condominium;

(d) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this clause);

(e) use hazard insurance proceeds for losses to any of the Property (whether to Condominiums or to Common Area) for other than the repair, replacement or reconstruction of such Property.

E. Reserves: Condominium Regular Assessments shall include an adequate reserve fund for maintenance, repairs, and replacement of those improvements which the Association is obligated to maintain that must be replaced on a periodic basis, and shall be payable through regular installments of the Regular Assessments rather than by Special Assessments.

F. Priority of Liens: Each holder of a First Mortgage on a Condominium who comes into possession of the Condominium by virtue of Foreclosure of the Mortgage, or any purchaser at a Foreclosure sale under a Mortgage, will take the Condominium free of any claims for unpaid Assessments and fees, late charges, fines or interest levied in connection therewith, against the Condominium which accrue prior to the time such holder or purchaser comes into possession of the Condominium, except for claims for a pro rata share of such Assessments or charges to all Project Condominiums including the mortgaged Condominium, and except for Assessment Liens recorded prior to the Mortgage.

G. Distribution of Insurance or Condemnation Proceeds: No provision of the Project Documents gives an Owner, or any other party, priority over any rights of First Mortgagees of Condominiums pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Condominium and/or common elements.

H. Restoration or Repair: Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by First Mortgage holders holding mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to First Mortgages.

9.7. Reserved Rights of Declarant and Limitation of Restrictions on

Declarant: Declarant is undertaking the work of construction of a commercial/industrial condominium project and incidental improvements upon the subject Property. The completion of that work and the sale, rental, and other disposal of the Condominiums is essential to the establishment and welfare of the Property as an office condominium community. In order that the work may be completed and the Property established as a fully occupied community as rapidly as possible, Declarant reserves the following rights and nothing in this Declaration shall be understood or construed to interfere or limit such rights:

A. Declarant, its contractors, subcontractors, agents and representatives shall have the right to undertake and perform within the Property, in the Common Area or any Condominium (except upon Units owned by others), whatever is reasonably necessary or advisable in connection with the completion of the work; or

B. Declarant, its contractors, subcontractors, agents and representatives shall have the right to erect, construct and maintain on the Property, the Common Area and the Condominiums (except upon Units owned by others), such structures as may be reasonable and necessary for the conduct of its business of completing the work and establishing the Property as an industrial/office development and disposing of the same as condominium units by sale, lease or otherwise; or

C. Declarant, its contractors, subcontractors, agents and representatives shall have the right to conduct on the Property, the Common Areas and the Condominiums (except upon Units owned by others) its business of completing the work and of establishing a plan of Condominium ownership and of disposing of the Property in Condominiums by sale, lease or otherwise (including use of one (1) or more Condominiums as a sales office); or

D. Declarant, its contractors, subcontractors, agents and representatives shall have the right to maintain such signs on the Property (except upon Units owned by others) as may be necessary for the sale, lease or disposition thereof.

E. Declarant hereby reserves the right to amend the Condominium Plan by the making and recording of a supplement Condominium Plan or Condominium Plans signed by the Declarant to revise the layout and description of Units that have not been sold and conveyed to Owners other than Declarant, including revisions or adjustments to the location of the Dividing Walls or perimeter walls of such Units as shown on the Condominium Plan to conform to the location of such walls as such walls for such Units that were actually constructed. Each Owner of a Unit, and any person or party that has any record title interest to a Unit that is subject to this Declaration, hereby grants to Declarant a special power of attorney to execute and record such a supplemental Condominium Plan or Condominium Plans for and on behalf of said Owner as may be necessary. Declarant also reserves the right to amend Exhibit "A" and Exhibit "B" of this Declaration as necessary to reflect any revisions to the square footage of such Units and such Units relative percentage interests for Assessments allocations and Percentage interest in Common Area.

The foregoing rights of Declarant shall terminate upon sale by Declarant of all of the Units in the Project, except if Declarant assigns such rights in writing to a successor who acquires more than two Units from Declarant, or earlier upon the recordation by Declarant of a document that specifically relinquishes such rights.

9.8. Termination of Any Responsibility of Declarant: In the event Declarant shall convey all of its right, title and interest in and to the Property to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

9.9. Owners' Compliance: Each Owner, tenant or occupant of a Condominium shall comply with the provisions of this Declaration, and (to the extent they are not in conflict with the Declaration) the Articles and Bylaws, and the decisions and resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action (1) to recover sums due, (2) for damages, (3) for injunctive relief, (4) for costs and attorneys fees, or (5) any combination of the foregoing. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Bylaws, shall be deemed to be binding on all Owners of Condominiums, their successors and assigns.

9.10. Notice: Any notice permitted or required by the Declaration or Bylaws may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered ninety-six (96) hours after a copy of the same has been deposited in the United States mail, first class or registered, postage prepaid, addressed to the Person to be notified at the current address given by such Person to the Secretary of the Board or addressed to the Condominium of such Person if no address has been given to the Secretary.

9.11. Tenant's Rights: A tenant lawfully in possession of a Condominium shall have the same right to use the Common Area as an Owner in possession of the Condominium would have and shall be subject to all of the provisions of the Project Documents and any Rules. No Owner shall, either directly or indirectly, forbid or restrict such use of the Common Area by such a tenant. All leases shall obligate tenants to comply with the Project Documents and with all Rules, and shall provide that any violation of the provisions thereof constitutes a default under the lease, and if not stated in any such lease, the lease shall be deemed by this provision to so provide the foregoing.

9.12. Alternative Dispute Resolution: The Board is authorized to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings. Prior to initiating the filing or prosecution of a civil action solely for declaratory relief or injunctive relief to enforce the Project Documents, or for declaratory relief or injunctive relief to enforce the Project Documents in conjunction with a claim for monetary damages not in excess of Five Thousand Dollars (\$5,000), the Board and every Owner shall endeavor to submit and resolve the matter to alternative dispute resolution in compliance with the provisions of the California Civil Code, as such sections may be amended, revised or superseded by subsequent legislation. The Board is authorized to consider diversion of the prosecution or defense of any civil action to alternative dispute resolution proceedings such as mediation, non-binding arbitration, or binding arbitration and is authorized to agree to participate and to participate fully and in good faith in the resolution of any civil action through any alternative dispute resolution proceedings, including, but not limited to, mediation, non-binding arbitration, and binding arbitration, and paying costs reasonably incurred by the Association on account of those alternative dispute resolution proceedings. The Board shall comply with the requirements of the California Civil Code by providing Members of the Association annually with a summary of the provisions of California Civil Code Section regarding dispute resolution processes applicable to the Association and its Members regarding enforcement of the governing documents.

9.13. No Waiver: Failure by the Association or by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles, Bylaws or Rules in any certain instance or on any particular occasion, shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition, or restriction.

9.14. Estoppel Certificates: Upon the written request of any Owner to the Association secretary, the secretary of the Association shall provide the Owner with a written certificate stating that, to the best of its actual knowledge, the Owner is not in violation of any of the provisions of this Declaration and the Board has not received written notice from any Owners stating that the Owner is in violation of this Declaration, or if there are any such violations or the Board has received such notices, setting forth in sufficient detail the nature of such violations. The certificate shall be delivered to the Owner no later than thirty (30) days after such request by an Owner. The Association may charge the Owner a reasonable fee to recover its costs in researching and preparing the certificate. Any prospective purchaser or mortgagee shall be entitled to rely on the information contained in the certificate; provided, however, that such reliance may not extend to any violations of this Declaration of which the Board does not have actual knowledge, or which have not been brought to its attention by written notice of an Owner. To the fullest extent permitted by law and provided the Board, the Association, any committee of the Association or Board, and any Members thereof, and any officers of the Association or Board, acted in good faith and consistent with what they reasonably believed to be within the scope of their authority and duties, then neither the Board, the Association, any committees of the Association or Association or Board shall be liable to the Owner requesting the certificate or any other Owner for any damage, loss, or prejudice suffered or claimed on account of the failure to supply such certificate or on the account of any information contained in the certificate being incomplete or inaccurate and said was actually unknown to any of the above entities or Persons.

9.15. Number; Gender: The singular and plural number and the masculine, feminine and neuter gender shall each include the other where the context requires.

9.16. Compliance with the City Conditions of Approval: It shall be the responsibility of each Owner and the Association to ensure that any changes or modifications to the Project or any Unit are in compliance with the original City conditions of approval of the Project, as may be amended from time to time, which are hereby incorporated herein as if set forth in full.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration this _____ day of _____, 200_.

Triad Campus IV, LLC,
a California limited liability company

By: _____

Its: _____

STATE OF CALIFORNIA

)

) **ss.**

COUNTY OF

)

On this ____ day of _____, 200_ , before me, _____, a notary public for the state, personally appeared _____, known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public, State of California

EXHIBIT A - ASSESSMENT ALLOCATIONS

[SAMPLE = INSERT REVISIONS PER FINAL BUILDING PLANS]

BUILDING A

Unit 101	1.7486%	Percentage Interest
Unit 102	1.6631%	Percentage Interest
Unit 103	1.6753%	Percentage Interest
Unit 104	1.6620%	Percentage Interest
Unit 105	1.6753%	Percentage Interest
Unit 106	1.6631%	Percentage Interest
Unit 107	1.7730%	Percentage Interest
Unit 108	1.5942%	Percentage Interest
Unit 109	1.6631%	Percentage Interest
Unit 110	1.6753%	Percentage Interest
Unit 111	1.6620%	Percentage Interest
Unit 112	1.6753%	Percentage Interest
Unit 113	1.6631%	Percentage Interest
Unit 114	1.7730%	Percentage Interest

BUILDING B

Unit 201	1.7486%	Percentage Interest
Unit 202	1.6631%	Percentage Interest
Unit 203	1.6753%	Percentage Interest
Unit 204	1.6620%	Percentage Interest
Unit 205	1.6753%	Percentage Interest
Unit 206	1.6631%	Percentage Interest
Unit 207	1.7730%	Percentage Interest
Unit 208	1.5942%	Percentage Interest
Unit 209	1.6631%	Percentage Interest
Unit 210	1.6753%	Percentage Interest
Unit 211	1.6620%	Percentage Interest
Unit 212	1.6753%	Percentage Interest
Unit 213	1.6631%	Percentage Interest
Unit 214	1.7730%	Percentage Interest

BUILDING C

Unit 301	2.2948%	Percentage Interest
Unit 302	1.5443%	Percentage Interest
Unit 303	3.5737%	Percentage Interest
Unit 304	3.6548%	Percentage Interest
Unit 305	3.5737%	Percentage Interest
Unit 306	3.6692%	Percentage Interest
Unit 307	3.5737%	Percentage Interest
Unit 308	3.5537%	Percentage Interest
Unit 309	3.4649%	Percentage Interest
Unit 310	2.2948%	Percentage Interest
Unit 311	1.5443%	Percentage Interest

BUILDING D

Unit 401	1.2423%	Percentage Interest
Unit 402	1.9928%	Percentage Interest
Unit 403	2.9609%	Percentage Interest
Unit 404	3.0564%	Percentage Interest
Unit 405	3.5438%	Percentage Interest
Unit 406	3.4749%	Percentage Interest
Unit 407	2.3026%	Percentage Interest
Unit 408	1.5521%	Percentage Interest

**EXHIBIT B
PERCENTAGE OF COMMON AREA**

[SAMPLE = INSERT REVISIONS PER FINAL BUILDING PLANS]

BUILDING A

Unit 101	1.7486%	Percentage Interest
Unit 102	1.6631%	Percentage Interest
Unit 103	1.6753%	Percentage Interest
Unit 104	1.6620%	Percentage Interest
Unit 105	1.6753%	Percentage Interest
Unit 106	1.6631%	Percentage Interest
Unit 107	1.7730%	Percentage Interest
Unit 108	1.5942%	Percentage Interest
Unit 109	1.6631%	Percentage Interest
Unit 110	1.6753%	Percentage Interest
Unit 111	1.6620%	Percentage Interest
Unit 112	1.6753%	Percentage Interest
Unit 113	1.6631%	Percentage Interest
Unit 114	1.7730%	Percentage Interest

BUILDING B

Unit 201	1.7486%	Percentage Interest
Unit 202	1.6631%	Percentage Interest
Unit 203	1.6753%	Percentage Interest
Unit 204	1.6620%	Percentage Interest
Unit 205	1.6753%	Percentage Interest
Unit 206	1.6631%	Percentage Interest
Unit 207	1.7730%	Percentage Interest
Unit 208	1.5942%	Percentage Interest
Unit 209	1.6631%	Percentage Interest
Unit 210	1.6753%	Percentage Interest
Unit 211	1.6620%	Percentage Interest
Unit 212	1.6753%	Percentage Interest
Unit 213	1.6631%	Percentage Interest
Unit 214	1.7730%	Percentage Interest

BUILDING C

Unit 301	2.2948%	Percentage Interest
Unit 302	1.5443%	Percentage Interest
Unit 303	3.5737%	Percentage Interest
Unit 304	3.6548%	Percentage Interest
Unit 305	3.5737%	Percentage Interest
Unit 306	3.6692%	Percentage Interest
Unit 307	3.5737%	Percentage Interest
Unit 308	3.5537%	Percentage Interest
Unit 309	3.4649%	Percentage Interest
Unit 310	2.2948%	Percentage Interest
Unit 311	1.5443%	Percentage Interest

BUILDING D

Unit 401	1.2423%	Percentage Interest
Unit 402	1.9928%	Percentage Interest
Unit 403	2.9609%	Percentage Interest
Unit 404	3.0564%	Percentage Interest
Unit 405	3.5438%	Percentage Interest
Unit 406	3.4749%	Percentage Interest
Unit 407	2.3026%	Percentage Interest

EXHIBIT C

• STANDARD SIGN PROGRAM •

INSERT DIAGRAM

• The below guidelines must be strictly followed •

Overall Sign Dimensions: 72" (horizontal) X 24" (vertical)

Materials: 3/16" thick aluminum panels with 1.5" bent back returns at all 4 edges.

Mounting: Signs are installed on the concrete building walls centered vertically between the 1st and 2nd floor windows and centered above the entrance doors. Panels are mounted using steel bolts set in epoxy. Panels are to stand off walls 3/4". See above drawing.

Bolts: Flat head silver colored bolts are used with washers and threaded nuts behind sign panel to fix sign panel in place. Size of the exposed bolt head is 2" in diameter, 1/2" thick. Bolt holes are drilled through panel 3" in from the vertical and horizontal sides, approximately 4" in from the corners. These stainless steel bolts are custom made and are available at the Independence Campus Commercial Center developer's office: (415) 381-1600.

Illumination: Signs are not to be illuminated.

Paint Finish: The panel surface is to be painted in satin acrylic polyurethane paint (no high gloss). Color to be chosen by property owner. Fluorescent and metal-flecked paints may not be used. Panels are to be painted in a single color. Edges are to be painted in the same color as the panel face. Paints should be durable, long-term finishes.

Graphics: Graphics (logo and text) grouping not to exceed 16" tall and 64" wide, and no graphics to be closer than 3" to a bolt head. Graphics to be cut out of acrylic or aluminum (3/8" minimum thickness) and painted with satin acrylic polyurethane to match the owner's preferred company colors. Fluorescent and metal-flecked paints may not be used. Lettering to be installed with pins and spacers – minimum spacer depth – 1/4". If additional small tag line is desired (such as on the above drawing), its maximum height of letters is to be 2". Small tag line to be in owner's preferred color and applied to panel face in high performance vinyl.

• STANDARD SIGN PROGRAM •

FRONT AND REAR ENTRY DOOR GRAPHICS

Permitted Graphics: Company name and logo may be applied to glass entry door in owner's company logo font style.

Grouping Dimensions: Entire grouping (including logo) not to exceed 12" in height and 22" in width.

Materials: White (only) surface-applied, high performance 3-M gloss vinyl.

Maximum Letter Height: 3"

Color: Only white color to be used on doors.

Location: Graphics centered horizontally. Entire grouping to be centered 60" from ground level.

OTHER

No Other Signage: No lettering or graphics are to be applied to other windows on 1st or 2nd floors. This includes side and rear building windows.

Color Selection: Owners are encouraged to be selective on their sign colors. Avoid extremely bright background colors to keep Independence Campus Commercial Center as professional looking as possible.

City Sign Permits: All cities require that owners obtain sign permits prior to installing signs. Independence Campus Commercial Center expects to obtain a general approval of this sign program so that all that will be required from each owner is specific approval of the color and design.

Long-Term Finishes: Only durable, long-term finishes should be used on signs. The best acrylic polyurethane finishes are expected to last 8 to 10 years. Signs with a south-facing exposure are expected to last about two years less.