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**AMENDED AND RESTATED
DECLARATION ESTABLISHING
COVENANTS, CONDITIONS AND RESTRICTIONS
AND GRANTS OF EASEMENTS
FOR
OCEAN TERRACE PROFESSIONAL CENTER
Oceanside, California**

NOTICE: ARTICLE XXVIII OF THIS DECLARATION REQUIRES THAT ANY DISPUTES BETWEEN DECLARANT AND AN OWNER BE RESOLVED BY MANDATORY ARBITRATION. ARTICLE XXVIII ALSO CONTAINS A WAIVER OF JURY TRIAL WITH RESPECT TO ANY SUCH DISPUTES.

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EXHIBIT(S):

- "A" - Square Footage Assessment Percentage
- "B" - Square Footage and Voting Power

SUBORDINATION AGREEMENT(S)

**AMENDED AND RESTATED
DECLARATION ESTABLISHING
COVENANTS, CONDITIONS AND RESTRICTIONS
AND GRANTS OF EASEMENTS
For
Ocean Terrace Professional Center**

This Amended and Restated Declaration Establishing Covenants, Conditions and Restrictions and Grants of Easements for Ocean Terrace Professional Center ("**Declaration**") is made as of February ____, 2008 by OTPC, LLC, a California limited liability company ("**Declarant**"), with reference to the following:

Recitals

A. **The Property.** Declarant owns that certain real property located in the City of Oceanside, County of San Diego, State of California, more particularly described as:

Parcels 1 through 11, inclusive, of PARCEL MAP NO. 20379, filed in the Office of the County Recorder of San Diego County, California, on October 18, 2007, as corrected by Certificate of Correction filed in the Office of the County Recorder of San Diego County, California, on January 11, 2008 as Document No. 2008-0013017 ("**Final Map**")

("Property"). Reference in this Declaration to "**Ocean Terrace Professional Center**" refers to the project to be developed on the Property.

B. **Original Declaration.** This Declaration amends, restates and replaces in its entirety that certain Declaration Establishing Covenants, Conditions and Restrictions and Grants of Easements for Ocean Terrace Professional Center which was recorded October 18, 2007 with the Office of the County Recorder of San Diego County, California, as Document No. 2007-0669235.

C. **Ocean Terrace Professional Center Project.** Declarant intends to establish Ocean Terrace Professional Center as a commercial/office "Condominium" and "Planned Development" common interest development project ("**Project**") under the provisions of California CIVIL CODE Sections 1351(f) and 1351(k), respectively.

D. **Condominiums and Lots.** Declarant plans to construct two (2) types of Units on portions of the Property. One type of Unit will be an attached Condominium, as that term is defined below, and forty (40) of which are permitted to be constructed on the Property pursuant to current land use approvals. Each Condominium shall be a separate interest in space as defined in California CIVIL CODE Section 1351(l)(2), shall have the dimensions shown and described as such on the Condominium Plan, and shall be located within or shall comprise a building containing multiple attached Condominiums. Of those Condominiums, Declarant plans to construct Type I Condominiums and Type II Condominiums, as those terms are defined below. Type I Condominiums are planned for Parcels 1 and 2 of the Final Map and shall have separate interests located within the building(s) to be constructed thereon; the building(s) will be owned and maintained by the Association (defined below). Type II Condominiums are planned for Parcel 7 of the Final Map and shall have separate interests comprising the building to be constructed thereon; the building will be owned and maintained by the Owner(s) (defined below) of the Type II Condominiums. The other type of Unit will be a Lot, as that term is defined below, and seven (7) of which are planned to be constructed on the Property. Each Lot shall be a separate interest as defined in California CIVIL CODE Section 1351(l)(3), shall have the dimensions shown and described as such on the Final Map, and shall include a single building. There is no guarantee that the type and number of Units will be developed as planned. Declarant reserves the right during the development of the Project to change the size and type of the Units to be built in the Project.

E. **Association.** Declarant has formed the Ocean Terrace Property Owners Association, a California nonprofit mutual benefit corporation ("**Association**"). Each Unit shall have appurtenant to it a membership in the Association. The Association shall be the management body for the Project and shall own the Association Property.

F. **Association Property.** Declarant intends to transfer to the Association as Association Property the General Association Property and the Limited Association Property, as both of those terms are defined below.

G. **Cost Center Provisions.** This Declaration includes provisions which provide for expenses and reserves of certain amenities or services which exclusively benefit the Type I Condominiums to be assessed against only the Owners of the Type I Condominiums. It is currently planned that there will be a Cost Center for each of Building A to be constructed on Parcel 1 and Building B to be constructed on Parcel 2, of the Final Map.

H. **No Representation of Completion.** Declarant makes no representation that all of the Condominiums, the Lots or the Association Property planned for the Project will in fact be completed, regardless whether the same are shown on the Condominium Plan or the Final Map.

I. **Notice of Mandatory and Binding Alternative Dispute Resolution Provisions.** **ARTICLE XXVIII** OF THIS DECLARATION REQUIRES THAT ANY DISPUTES BETWEEN DECLARANT AND AN OWNER BE RESOLVED BY MANDATORY ARBITRATION. **ARTICLE XXVIII** ALSO CONTAINS A WAIVER OF JURY TRIAL WITH RESPECT TO ANY SUCH DISPUTES.

J. **Interpretation of Declaration.** In preparing this Declaration the law firm of HECHT SOLBERG ROBINSON GOLDBERG & BAGLEY LLP represented Declarant and not any Owner or the Association. For interpretation of this Declaration or for advice concerning it, an Owner or the Association should contact their own legal advisor.

K. **Common Plan of Restrictions; Binding on Future Owners.** Declarant wishes to subject the Property to certain covenants, conditions and restrictions in accordance with a common plan for the benefit of Declarant and any and all present and future owners of the Property.

NOW, THEREFORE, Declarant hereby certifies, declares and establishes the following general plan for the protection and benefit of the Property, and hereby fixes the following protective covenants, conditions and restrictions upon each and every ownership interest in the Property, under and pursuant to which covenants, conditions and restrictions each ownership interest in the Property shall be hereafter held, used, occupied, leased, sold, encumbered, conveyed and transferred. Each and all of the covenants, conditions and restrictions set forth in this Declaration are for the purpose of protecting the value and desirability of and shall (i) inure to the benefit of all of the Property, and (ii) run with and be binding upon and pass with the Property and each and every ownership interest therein and each and every occupancy interest therein meeting all of the requirements of Section 1468, Section 1469 and Section 1470 of the California CIVIL CODE.

ARTICLE I
DEFINITIONS

In addition to any other terms defined in this Declaration, the following definitions shall apply unless otherwise indicated:

Section 1.1 "Application" – Any plans, specifications and other documentation required to be submitted to the Committee pursuant to the provisions of **ARTICLE VIII**.

Section 1.2 "Architect" – A Person holding a certificate to practice architecture in the State of California under authority of Division 3, Chapter 3 of the California BUSINESS & PROFESSIONS CODE or any successor legislation thereto.

Section 1.3 "Articles" – The Articles of Incorporation of the Association, as they may be amended from time to time.

Section 1.4 "Assessment Percentage" – The Assessment Percentage payable by an Owner of a Unit for common expenses, to be calculated pursuant to **Exhibit "A"**.

Section 1.5 "Association" – Ocean Terrace Property Owners Association, a California nonprofit mutual benefit corporation.

Section 1.6 "Association Property" - A portion of the Property to be conveyed to the Association either as (i) General Association Property or (ii) Limited Association Property.

Section 1.7 "Board" – The Board of Directors of the Association.

Section 1.8 "Bylaws" – The Bylaws of the Association, as they may be amended from time to time.

Section 1.9 "City" – The City of Oceanside, California, a municipal corporation.

Section 1.10 "Committee" – The Architectural Review Committee created pursuant to ARTICLE VI.

Section 1.11 "Common Area" – Either the Type I Common Area or the Type II Common Area.

Section 1.12 "Condominium" - Either a Type I Condominium or a Type II Condominium.

Section 1.13 "Condominium Plan" – A Condominium Plan recorded or to be recorded pursuant to California CIVIL CODE Section 1351(e) covering Parcels 1, 2 and 7 of the Final Map. The Condominium Plan shall be deemed a separate Condominium Plan as to Parcels 1 and 2 and as to Parcel 7, which, for purposes of convenience, may be combined as one recorded instrument. The Condominium Plan covering Parcels 1 and 2 and the Condominium Plan covering Parcel 7 may be amended by a document signed and acknowledged solely by the then Owners of Parcels 1 and 2 and of Parcel 7, respectively, and by their respective Mortgagees.

Section 1.14 "Cost Center" – The process whereby the expenses and reasonable reserves for replacement of certain amenities or services are separately accounted for and assessed against some, but not all of the Units. The Project could have two (2) Cost Centers:

(a) **"Building A Cost Center"** - shall mean and refer to a Cost Center applicable to all Type I Condominiums located within Building A to be constructed on Parcel 1 of the Final Map; and

(b) **"Building B Cost Center"** - shall mean and refer to a Cost Center applicable to all Type I Condominiums located within Building B to be constructed on Parcel 2 of the Final Map.

Section 1.15 "Cost Center Assessments"– An additional component of the Association's regular assessments or special assessments against the Type I Condominiums for payment of the Cost Center Expenses. Reference to **"regular assessments"** or **"special assessments"** in this Declaration shall also refer to the Cost Center Assessments with respect to the Type I Condominiums. There may be two types of Cost Center Assessments:

- (a) Cost Center Assessments for the Building A Cost Center; and
- (b) Cost Center Assessments for the Building B Cost Center.

Section 1.16 "Cost Center Expenses" – The expenses and reasonable reserves for replacement of the following items applicable to the following two (2) Cost Centers:

(a) **"Building A Cost Center Expenses** - shall mean and refer to the costs applicable to Building A to be constructed on Parcel 1 of the Final Map for (i) electrical, gas, sewer and water utility services to the Limited Exclusive Use Area; (ii) alarm and pay phones located within the Limited Exclusive Use Area; (iii) janitorial services and supplies for the Limited Exclusive Use Area; (iv) window cleaning for the Limited Association Property; (v) carpet and floor cleaning for the Limited Exclusive Use Area; (vi) utilities and reasonable reserves for repair and maintenance of the HVAC system for the Limited Exclusive Use Area; (vii) utilities and reasonable reserves for the repair and maintenance of all elevators; (viii) utilities and reasonable reserves for the repair and maintenance of the fire protection and life safety system; (ix) utilities and reasonable reserves for the repair, maintenance and monitoring of the fire alarm and sprinkler system; (x) utilities and reasonable reserves for the repair and maintenance of the security system; (xi) utilities and reasonable reserves for the repair and maintenance of the lighting system for the Limited Exclusive Use Area; (xii) reasonable reserves for the repair and maintenance of the roof; (xiii) repair and maintenance of other interior building components; and (xiv) property insurance.

(b) **"Building B Cost Center Expenses** - shall mean and refer to the costs applicable to Building B to be constructed on Parcel 2 of the Final Map for (i) electrical, gas, sewer and water utility services to the Limited Exclusive Use Area; (ii) alarm and pay phones located within the Limited Exclusive Use Area; (iii) janitorial services and supplies for the Limited Exclusive Use Area; (iv) window cleaning for the Limited Association Property; (v) carpet and floor cleaning for the Limited Exclusive Use Area; (vi) utilities and reasonable reserves for repair and maintenance of the HVAC system for the Limited Exclusive Use Area; (vii) utilities and reasonable reserves for the repair and maintenance of all elevators; (viii) utilities and reasonable reserves for the repair and maintenance of the fire protection and life safety system; (ix) utilities and reasonable reserves for the repair, maintenance and monitoring of the fire alarm and sprinkler system; (x) utilities and reasonable reserves for the repair and maintenance of the security system; (xi) utilities and reasonable reserves for the repair and maintenance of the lighting system for the Limited Exclusive Use Area; (xii) reasonable reserves for the repair and maintenance of the roof; (xiii) repair and maintenance of other interior building components; and (xiv) property insurance.

Section 1.17 "Declarant" – OTPC, LLC, a California limited liability company ("**OTPC, LLC**") and its successor-in-interest (defined below). As used in this definition, a "**successor-in-interest**" of OTPC, LLC shall mean a Person which, through a purchase or acquisition of stock or partnership interest(s), membership interest(s), amalgamation, consolidation, reorganization, dissolution, merger or similar transaction (as opposed to a purchase, transfer or conveyance of one or more Units), becomes vested with the rights and assumes the obligations of OTPC, LLC, as "Declarant", pursuant to this Declaration, and any subsequent successor-in-interest of such Person. "Declarant" shall also mean the transferee from OTPC, LLC or its successor-in-interest of one (1) or more of the Units comprising the Property, provided OTPC, LLC or its successor-in-interest assigns to such transferee the rights of "Declarant", and such transferee assumes the obligations of "Declarant", under this Declaration; any such assignment and assumption of the rights and obligations of "Declarant" shall be in writing and signed by OTPC, LLC or its successor-in-interest and the transferee in recordable form and shall be recorded by the transferee in the Office of the County Recorder of San Diego County, California.

Section 1.18 "Declaration" – This Declaration Establishing Covenants, Conditions and Restrictions and Grants of Easements for Ocean Terrace Professional Center, as amended from time to time.

Section 1.19 "Design Guidelines" – The Ocean Terrace Professional Center Design Guidelines and any other guidelines, rules and regulations which shall be prepared and issued from time to time (and which may be amended from time to time) by the Committee created pursuant to **ARTICLE VI** for the purpose of assisting Owners in preparing plans and specifications for improvements and other plans, specifications and other materials (including designs for signs and the like) which are subject to review by the Committee pursuant to this Declaration.

Section 1.20 "Exclusive Use Area" - Those portions of the Limited Association Property to which an exclusive right to use is granted to an Owner of a Condominium as shown and described on the Condominium Plan or granted pursuant to **Section 11.1**. The Condominium Plan may show the minimum square footage area of one or more Exclusive Use Areas but not show the actual dimensions of the Exclusive Use Area except by reference to Project improvements.

Section 1.21 "First Purchaser" - Anyone other than a successive Declarant who purchases a Unit from Declarant.

Section 1.22 "General Association Property" - All real property, easements and licenses owned by the Association from time to time and located on Lot 11 of the Final Map. The General Association Property is for the common use and enjoyment of the Owners and/or maintenance by the Association. It is intended that the General Association Property shall include, but not limited to, the common parking, driveway, walkway and landscaped areas and any pipes, wires or other utility installations located therein which are not owned and maintained by a governmental entity or public utility. Television cable and related CATV equipment and other communication equipment may be owned by the cable supplier or another third party. The General Association Property may include off-site maintenance easements and licenses which are transferred to the Association.

Section 1.23 "Indemnitee" – The parties described as "Indemnitee" in Section 8.8.

Section 1.24 "Limited Association Property" - All real property, easements and licenses owned by the Association from time to time and located on Parcels 1 and 2 of the Final Map that is for the common use and enjoyment only of the Owners of the Type I Condominiums and/or maintenance by the Association. Upon conveyance to the Association, the Limited Association Property in Parcels 1 and 2 of the Final Map will include the remainder of Parcels 1 and 2 of the Final Map after excluding all the Type I Condominium Separate Interests and Type I Common Area therein. It is also intended that the Limited Association Property shall include, but not limited to, the roof, vents, foundations, overhangs, columns and other appurtenances of a building regardless of whether any such items lie outside the boundary lines shown on the Condominium Plan. In interpreting deeds and plans, the then existing physical boundaries of a building whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or 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. Any pipes, wires or other utility installations which connect to and are utilized by more than one Type I Condominium Separate Interest but which are not owned and maintained by a governmental entity or public utility will also be Limited Association Property. Television cable and related CATV equipment and other communication equipment may be owned by the cable supplier or another third party.

Section 1.25 "Limited Exclusive Use Area" - Those portions of the Limited Association Property shown and described on the Condominium Plan to which a limited exclusive right to use is or may be granted to certain Owners of the Type I Condominiums. The Limited Exclusive Use Area shown on the Condominium Plan as a part of Building A to be constructed on Parcel 1 of the Final Map is appurtenant to each of the Type I Condominium Separate Interests located within said Building A. The Limited Exclusive Use Area shown on the Condominium Plan as a part of Building B to be constructed on Parcel 2 of the Final Map is to each of the Type I Condominium Separate Interests located within said Building B.

Section 1.26 "Lot" - Any plot of land within the Project shown as a separate lot on the Final Map and upon which a single building is constructed thereon. For purposes of this Declaration, reference to a "Lot" or "Lots" shall mean and refer to Lots 3 through 6, inclusive, and 8 through 10, inclusive, of the Final Map.

Section 1.27 "Member" – An Owner entitled to membership in the Association as provided in this Declaration.

Section 1.28 "Mortgage" – A mortgage or deed of trust which encumbers a Unit.

Section 1.29 "Mortgagee" – A mortgagee or a beneficiary under a Mortgage which encumbers a Unit.

Section 1.30 "Occupant" – Any Person from time to time entitled by right of ownership or under any lease or sublease to use and occupy any portion of a Unit within the Property.

Section 1.31 "Owner" – Any Person (including Declarant) who from time to time holds fee title to any Unit within the Property, excluding those having such interest merely as security for the performance of an obligation. Notwithstanding the foregoing sentence, in the event of a sale/leaseback transaction of the type described in **Section 23.1**, the Seller/Lessee under such sale/leaseback transaction shall be deemed to be the "Owner" of such Unit for the purposes of this Declaration so long as it retains the powers and obligations conferred and imposed by this Declaration as provided in **Section 23.1**.

Section 1.32 "Person" – An individual, partnership, firm, association, corporation, trust, governmental agency, administrative tribunal or any other form of business or legal entity.

Section 1.33 "Project" - Ocean Terrace Professional Center or the Property.

Section 1.34 "Property" – All the real property located in the City of Oceanside, County of San Diego, State of California, more particularly described in **Recital A**.

Section 1.35 "Review Fee" – The filing and review fee accompanying an Application pursuant to **Section 8.2**.

Section 1.36 "Signage Guidelines" – The Ocean Terrace Professional Center Signage Guidelines and any other guidelines, rules and regulations which shall be prepared and issued from time to time (and which may be amended from time to time) by the Committee created pursuant to **ARTICLE VI** for the purpose of regulating the installation and maintenance of signs within the Project.

Section 1.37 "Type I Common Area" – The airspace above the highest vertical improvements planned for Parcels 1 and 2 of the Final Map, as shown on the Condominium Plan. The horizontal limits of the Type I Common Area are the same as the horizontal limits of Parcels 1 and 2 of the Final Map. The lower elevation of the Type I Common Area is a plane 100 feet above the highest finished floor elevation of a Type I Condominium Separate Interest on Parcels 1 and 2 of the Final Map as shown on the Condominium Plan. The Type I Common Area has no upper limit. The Owners of Type I Condominiums within Parcels 1 and 2 of the Final Map shall receive an equal undivided ownership interest in the Type I Common Area, with the undivided interest of each such Owner being equal to the reciprocal of the number of Type I Condominiums within both Parcels 1 and 2 of the Final Map.

Section 1.38 "Type II Common Area" – The remainder of Parcel 7 of the Final Map after excluding all the Type II Condominium Separate Interests. The Owners of Type II Condominiums within Parcel 7 of the Final Map shall receive an equal undivided ownership interest in the Type II Common Area, with the undivided interest of each such Owner being equal to the reciprocal of the number of Type II Condominiums within Parcel 7 of the Final Map.

Section 1.39 "Type I Condominium"- A fee simple estate in the Project, which shall consist of:

- (a) A Type I Condominium Separate Interest;
- (b) The exclusive right to use and occupy any Exclusive Use Area which the Condominium Plan shows as being appurtenant to the Type I Condominium Separate Interest, if any, or which is granted pursuant to **Section 11.1**;
- (c) An undivided interest as a tenant in common to the Type I Common Area; and
- (d) Easements over the General Association Property and the Limited Association Property which has been conveyed to the Association, subject to the Association's rules, regulations and procedures.

For purposes of this Declaration, reference to a "**Type I Condominium**" or "**Type I Condominiums**" shall mean and refer to a Condominium or Condominium to be constructed on Parcels 1 and 2 of the Final Map.

Section 1.40 "Type II Condominium"- A fee simple estate in the Project, which shall consist of:

- (a) A Type II Condominium Separate Interest;
- (b) An undivided interest as a tenant in common to the Type II Common Area; and
- (c) Easements over the General Association Property which has been conveyed to the Association, subject to the Association's rules, regulations and procedures.

For purposes of this Declaration, reference to a "**Type II Condominium**" or "**Type II Condominiums**" shall mean and refer to a Condominium or Condominium to be constructed on Parcel 7 of the Final Map.

Section 1.41 "Type I Condominium Separate Interest" – A separate interest in space as defined in California CIVIL CODE Section 1351(f) and as shown and described as such on the Condominium Plan for Parcels 1 and 2 of the Final Map. The following are Limited Association Property and not a part of any Type I Condominium Separate Interest: Bearing walls, columns, floors, roofs, foundations, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located in the Type I Condominium Separate Interest and such items as are exclusively used by an Owner of a Type I Condominium Separate Interest and not in common. An example of such exception shall be any heating, air conditioning and refrigeration system ("**HVAC**") to be located on the roofs that are currently planned to exclusively serve an individual Type I Condominium Separate Interest and to not be used in common. Each Type I Condominium Separate Interest shall include any door or window within a perimeter wall, the interior undecorated surfaces of bearing walls and perimeter walls, floors and ceilings and the outlets of all utility installations in the Type I Condominium Separate Interest. In interpreting deeds and plans, the then existing physical boundaries of a Type I Condominium, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or 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.

Section 1.42 "Type II Condominium Separate Interest" – A separate interest in space as defined in California CIVIL CODE Section 1351(f) and as shown and described as such on the Condominium Plan for Parcel 7 of the Final Map. A Type II Condominium Separate Interest may include bearing walls, columns, floors, roofs, foundations, pumps and other central services, pipes, ducts, flues,

chutes, conduits, wires and other utility installations. In interpreting deeds and plans, the then existing physical boundaries of a Type II Condominium, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or 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.

Section 1.43 "Unit" - A portion of the Property to be conveyed to an Owner either as (i) a Condominium or (ii) a Lot.

Section 1.44 "Voting Power" – The proportionate voting power of the Owner of a Unit, to be calculated pursuant to **Exhibit "B"**.

ARTICLE II **PROPERTY RIGHTS IN ASSOCIATION PROPERTY AND COMMON AREA**

Section 2.1 **Title to Association Property.**

(a) Declarant covenants for itself, its successors and assigns, that Declarant will convey to the Association the General Association Property within the Property free and clear of all encumbrances and liens, except non-delinquent taxes, easements, dedications, covenants, conditions and reservations then of record, including those set forth in this Declaration, after the conveyance of the last Unit in the Project to a First Purchaser.

(b) Declarant covenants for itself, its successors and assigns, that Declarant will convey to the Association the Limited Association Property within the Property free and clear of all encumbrances and liens, except non-delinquent taxes, easements, dedications, covenants, conditions and reservations then of record, including those set forth in this Declaration, prior to the conveyance of the first Type I Condominium in the Project to a First Purchaser.

Section 2.2 **Owners' Easements of Enjoyment.**

(a) Subject to the limitations set forth in this Declaration, every Owner of a Unit shall have a right and easement (i) of enjoyment and use of the General Association Property, (iii) of ingress and egress to and from the General Association Property, (iv) of reasonable access to such Owner's Unit over and through the General Association Property, and (v) of reasonable use of any private utilities (such as sewer, water, telecommunications, electric and gas, if any) within the General Association Property that service such Owner's Unit. These rights shall be appurtenant to and shall pass with the title of each Unit.

(b) Subject to the limitations set forth in this Declaration, every Owner of a Type I Condominium shall have a right and easement (i) of support of such Owner's Condominium by the Association, (ii) of enjoyment and use of the Limited Association Property, (iii) of ingress and egress to and from the Limited Association Property, (iv) of reasonable access to such Owner's Condominium over and through the Limited Association Property, and (v) of reasonable use of any private utilities (such as sewer, water, telecommunications, electric and gas, if any) within the Limited Association Property that service such Owner's Condominium. These rights and a Type I Condominium Owner's undivided interest in the Type I Common Area shall be appurtenant to and shall pass with the title of each Type I Condominium.

(c) A Type II Condominium Owner's undivided interest in the Type II Common Area shall be appurtenant to and shall pass with the title of each Type I Condominium.

(d) The rights of Owners to the Association Property are subject to the following provisions:

(i) The Board shall have the right to make rules and regulations relating to the operation and use of the Association Property. The Association shall have no right to restrict reasonable access or utilities to a Unit by the Persons who have the right to possession of the Unit.

(ii) The Board shall have the right to suspend the voting rights of an Owner as set forth in the Bylaws.

(iii) Subject to the restrictions stated in California CORPORATIONS CODE Section 8724, the Board shall have the right to transfer less than substantially all of the Association Property. It is specifically intended that the Board have the right to cooperate with Declarant and any Owner in adjusting the boundaries between the Association Property and other portions of the Project or to adjust the boundaries of the Property with another property owner.

(iv) The Association, acting through the Board, shall have the sole and exclusive right to operate, maintain and control the Association Property except as otherwise stated in this Declaration.

(v) The right of the Board to grant easements, licenses and permits over the Association Property pursuant to **ARTICLE XI**.

(vi) The Board, in accordance with the Articles and the Bylaws, shall have the right to borrow money for the purpose of improving the Association Property and to hypothecate any or all real or personal property owned by the Association.

(vii) Declarant shall have the right to construct and market Units within the Property, including the following rights:

(A) Declarant and its sales agents, employees and independent contractors shall have the right to the non-exclusive use of the Association Property for the purposes of maintaining sales offices, parking, signs and flags reasonably necessary to market the Units in the Property. Declarant shall have the right, during its marketing of the Property, to control those hours in which Declarant, its agents, contractors and potential buyers have access to the Property. These rights of Declarant may be exercised only until close of escrow to First Purchasers of all Units planned for the Property.

(B) Declarant shall also have a non-exclusive easement over the Association Property to provide access and utilities thereto for the purpose of constructing, marketing and utilizing portions of the Property owned by Declarant.

(C) Declarant shall have the other rights of Declarant under this Declaration.

The use of the Association Property by Declarant and its agents shall not unreasonably interfere with the use thereof by the Class A Members of the Association. Declarant shall repair any portion of the Association Property which may be damaged by Declarant. No amendment may be made to this **Section 2.2(d)(vii)** without the written consent of Declarant.

Section 2.3 Delegation of Use. Subject to the restrictions stated in this Declaration, any Owner may delegate, in accordance with the Bylaws and the rules and regulations of the Board, the Owner's right of enjoyment to the Association Property and facilities to the Occupants of such Owner's Unit. Each Owner shall be responsible to the Association for any damage to the Association Property caused by such Owner or persons to whom Association Property rights have been delegated.

Section 2.4 Power of Attorney to Correct Errors. The Association is hereby given a power of attorney to act on behalf of the Owners and their Mortgagees to correct errors in the Condominium Plan by executing on behalf of the affected Owners of Condominiums and their Mortgagees an amendment to the Condominium Plan and an instrument to effect any conveyances or partial reconveyances necessary to correct such errors. The power hereby given to the Association is limited as follows:

(a) The power may be exercised only to correct errors in a Condominium Plan as evidenced by a written statement which describes the error(s) and which is signed by the engineer who prepared the Condominium Plan or by Declarant. The power hereby given may not be utilized for any other purpose.

(b) The power may not be exercised on behalf of an Owner or his or her Mortgagee if the Owner's Condominium would be reduced in size by reason of the correction.

The power hereby given is coupled with an interest and may not be revoked by an Owner but may be revoked by a Mortgagee. Any such revocation by a Mortgagee shall be by means of its signed statement of revocation recorded with the Office of the County Recorder of San Diego County.

ARTICLE III **MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

Section 3.1 Membership. Every Owner of a Unit which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to ownership of any Unit subject to assessment, and membership shall not be separated from such ownership or transferred, pledged or alienated in any way, except that an Owner, upon giving written notice to the Association, may grant to a lessee of the Owner's entire Unit pursuant to a lease the term of which exceeds ten (10) years, a power coupled with an interest to act as the Owner's agent in all matters relating to the Association; any such power shall automatically terminate when the lessee's tenancy ends for any reason. Any attempt to transfer a membership in violation of this Section shall be void and shall not be reflected in the books and records of the Association.

Section 3.2 Voting Rights. The Association shall have two (2) classes of voting membership:

(a) **Class A.** Class A Members shall be all Owners, except Declarant. The Owner of each Unit shall have the Voting Power to be calculated pursuant to **Exhibit "B"**. When more than one (1) Person holds an ownership interest in any Unit, all such Persons shall be jointly considered a single Class A Member. The Voting Power for such Unit shall be exercised as they among themselves determine, and the authorized voter shall be designated in writing signed by a majority of the co-owners.

(b) **Class B.** The Class B Member shall be Declarant. Declarant's Voting Power shall be five (5) times the Voting Power calculated pursuant to **Exhibit "B"** for each Unit owned by Declarant. The Class B Member shall be entitled to appoint the "Class B Elected Directors" in accordance with Article V of the Bylaws. The Class B membership shall automatically expire after the conveyance of all the Units in the Project to First Purchasers.

The votes of Class A Members and Class B Member shall be combined and counted together; the combined total votes shall be the total voting power of the Association.

Section 3.3 Commencement of Voting Rights. Except with respect to Class B membership, voting rights shall not commence with respect to a Unit until the Association's regular assessments have commenced against the Unit.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

Section 4.1 Creation of Lien and Personal Obligation for Assessments. Declarant, for each Unit owned within the Property, hereby covenants and agrees, and each Owner of a Unit by acceptance of a deed therefor, whether or not so expressed in such deed, is deemed to covenant and agree, to pay to the Association: (a) regular assessments or charges, which shall include an adequate reserve fund, for the periodic maintenance, repair and replacement of the Association Property; and (b) special assessments, such assessments to be established and collected as provided in this Declaration. Regular assessments shall include the Cost Center Assessments for the Type I Condominiums. The regular and special assessments, together with interest, costs and reasonable attorney's fees, except as stated in **Section 4.4**, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each such assessment is made, the lien to be effective upon recordation of a notice of delinquent assessment. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time the assessment fell due. The personal obligation for delinquent assessment shall not pass to such Owner's successors in title unless expressly assumed by them; however, the assessment shall remain a lien on the Unit.

Section 4.2 Purpose of Assessments. The assessments levied by the Association shall be used to enhance, maintain and protect the desirability, attractiveness and safety of the Property and for the improvement and maintenance of the Association Property, to pay the costs of the Association in performing its activities, and to reimburse the Association for the costs incurred in bringing an Owner into compliance with this Declaration, the Articles, the Bylaws and the rules and regulations adopted by the Board. The regular assessment shall be determined at least annually by the Board to meet the expenses of the Association, including the establishment of reserve accounts, based upon the annual budget adopted by the Board pursuant to the Bylaws. A special assessment is an assessment the Board, in its discretion, determines necessary if the Association's available funds are or will become inadequate to meet the estimated expenses of the Association for a fiscal year. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board determines appropriate. In addition, a special assessment against a particular Owner only may be levied by the Board as set forth in **Section 4.4**.

Section 4.3 Regular and Special Assessments; Notice of Increase in Assessments. The Board shall levy regular and special assessments sufficient to perform the obligations of the Association as provided in this Declaration and the Bylaws. The Association shall provide notice to the Owners by first-class United States Mail, postage prepaid, of any increase in regular or special assessments, which notice shall be given not less than thirty (30) days nor more than sixty (60) days before the increased assessment becomes due. Further, any increase in regular assessments shall comply with California CIVIL CODE Section 1366 to the extent applicable to commercial common interest projects.

Section 4.4 Individual Special Assessments. The Association may also impose a special assessment against any Owner to reimburse the Association for costs incurred in bringing the Owner and the Owner's Unit into compliance with the provisions of this Declaration, the Articles, the Bylaws and the rules and regulations of the Association, or as a penalty imposed as a disciplinary measure for failure of an Owner or Occupant of such Owner's Unit to comply with such provisions. Such special assessment may be imposed upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements of California CORPORATIONS CODE Section 7341 and California CIVIL CODE Section 1363(h), as set forth in the Bylaws. The Board shall meet in executive session if requested by the Owner being disciplined and the Owner shall be entitled to attend the executive session. Except to the extent such special assessment is to reimburse the Association for the cost of collecting assessments, the special assessment shall not constitute a lien on the Owner's Unit and shall be assessed only against the Owner who is or was in non-compliance. The Association shall have lien rights with respect to charges imposed against an Owner which are reasonable late payment fees for delinquent assessments, interest and other charges to reimburse the Association for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments.

Section 4.5 Schedule of Monetary Penalties. If the Association adopts a policy of imposing any monetary penalty, including any fee, on any Owner for violation of this Declaration or the rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of an Owner, the Board shall adopt and distribute to each Owner, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with the authorization for Owner discipline set forth in this Declaration and the Bylaws. The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the Owners pursuant to this Section.

Section 4.6 Variable Rate of Regular Assessments. The amount of the regular assessments levied against a Unit shall differ (*i.e.*, will vary) in accordance with the Assessment Percentage to be calculated pursuant to **Exhibit "A"**. The regular assessment amount for a Unit shall be determined by multiplying the total amount to be assessed by the Assessment Percentage for the Unit to be calculated pursuant to **Exhibit "A"**. Regular assessments shall be collected on a quarterly basis or other periodic basis as determined by the Board.

Section 4.7 Cost Center Assessments. In addition to other components of the regular and special assessments, the assessments levied against the Type I Condominiums shall include the applicable Cost Center Assessments. The Cost Center Assessments component of the regular assessments levied by the Association against the Type I Condominiums shall be used exclusively for the Cost Center Expenses, and the Cost Center Expenses shall be included only in the Cost Center Assessments.

Section 4.8 Special Assessments for Cost Center Expenses. Special assessments may also be levied against the Type I Condominiums when they are directly related to the Cost Center Expenses. Such special assessments shall be levied on the basis set forth in **Section 4.7**.

Section 4.9 Cost Center Accounting. The Association shall provide separate accounting for Cost Center Assessment funds which are collected and expended. The Association shall also provide for the reserve study and the annual review and disclosure of the reserves applicable to the Limited Association Property included within the applicable Cost Center Expenses.

Section 4.10 Rate of Special Assessments for Repairs. Any special assessment to raise funds for the rebuilding or major repair of a portion of the structural General Association Property shall be levied against each Unit in the Project. Such special assessments shall be levied upon the basis of the ratio of the square footage of the gross floor area of the Unit to be assessed to the total square footage of the aggregate gross floor area of all of the Units to be assessed.

Any special assessment to raise funds for the rebuilding or major repair of a portion of the structural Limited Association Property shall be levied against each Type I Condominium in the Project. Such special assessments shall be levied upon the basis of the ratio of the square footage of the gross floor area of the Type I Condominium to be assessed to the total square footage of the aggregate gross floor area of all of the Type I Condominiums to be assessed.

Section 4.11 Rate of Other Special Assessments. Except as otherwise stated in this **ARTICLE IV**, special assessments shall be assessed in the same manner as regular assessments.

Section 4.12 Date of Commencement of Regular Assessments; Due Dates. The regular assessments shall commence as to all Units in the Project on the first day of the month following the conveyance of the first Unit to a First Purchaser. Notwithstanding the foregoing, the Association shall have the right (but not the obligation) to commence such regular assessments on a date later than the aforementioned, which date shall be determined by the Board at its discretion; provided further, however, that regular assessments shall commence as to all Units no later than the first day of the month following the conveyance of all Units to First Purchasers. The first regular assessment for a Unit shall be adjusted according to the number of months and any partial month (prorated on the basis of a 30-day month) remaining in the calendar year. The Board shall fix the amount of the regular assessment against each

Unit at least thirty (30) days in advance of each regular assessment period. Written notice of the regular assessment shall be sent to every Owner subject thereto. The due dates for the regular assessment shall be established by the Board.

Section 4.13 Effect of Non-Payment of Assessments; Remedies of Association.

(a) Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Unit from the time the assessment is due. Any assessment not paid within thirty (30) days after the due date, including reasonable fees and costs of collection and reasonable attorneys' fees, shall bear interest from thirty (30) days following the due date at the rate that is the lesser of (i) twelve percent (12%) per annum, or (ii) two percentage points per annum over the reference rate of Bank of America, N.T.& S.A. (or such other major national bank as may be designated by the Board if Bank of America ceases to exist) in effect on the due date, but not greater than the maximum rate (if any) per annum allowed by law. The Association may bring an action at law against the Owner personally obligated to pay the assessment, and in addition thereto, or in lieu thereof, may foreclose the lien against the Unit, as provided in California CIVIL CODE Section 1367.1(d). To that end a power of sale is hereby conferred upon the Association. The Association, acting on behalf of the Owners, shall have the power to bid for the delinquent Owner's Unit at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien. **THE ASSOCIATION SHALL COMPLY WITH ALL APPLICABLE STATUTORY REQUIREMENTS IN EXERCISING ITS REMEDIES, INCLUDING SECTIONS 2924, 2924(B), 2924(C), 1367, 1367.1 AND 1367.4 OF THE CALIFORNIA CIVIL CODE, AND ALL OTHER APPLICABLE STATUTES.**

(b) Any assessment not paid within thirty (30) days after the due date shall be delinquent. The amount of any such delinquent assessment plus costs of collection, late charges, penalties, interest and attorneys' fees, shall be and become a lien upon the Unit when the Association causes to be recorded in the Office of the County Recorder of San Diego County, California, a Notice of Delinquent Assessment, which shall state the amount of such delinquent assessment and such other charges thereon as may be authorized by this Declaration, a description of the Unit against which the same has been assessed, the name of the record owner of the Unit and, in order for the lien to be foreclosed by non-judicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment shall be signed by the person designated by the Association for that purpose or, if no one is designated, by the President of the Association. Upon payment of the delinquent assessment and charges in connection with which the Notice of Delinquent Assessment has been recorded, or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof.

Section 4.14 Subordination of the Lien to First Mortgages. The lien of assessment pursuant to this Declaration shall be subordinate to the lien of any first Mortgage upon any Unit, and the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage or other purchaser of a Unit obtains title to the same as a result of foreclosure, such acquirer of title, its successors and assigns, shall not be liable for the share of assessments chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer, except for a share of such charges or assessments resulting from a reallocation of such charges or assessments which are made against all Units.

Section 4.15 Estoppel Certificate. The Association shall furnish or cause an appropriate officer to furnish, within fifteen (15) business days after written request therefor by any Owner, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid. A properly signed certificate of the Association with respect to the status of assessments on a Unit is binding upon the Association as of the date of its issuance.

Section 4.16 Taxation of Association. In the event that any taxes are assessed against the Association Property or the personal property of the Association, rather than against the individual Units, the taxes shall be added to the regular assessments and, if necessary, a special assessment may be levied against the applicable Units 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.

Section 4.17 Payment of Assessments by Declarant. Except as specifically stated otherwise in this **ARTICLE IV**, Declarant shall pay all assessments levied by the Association against any Unit owned by Declarant at the same time, in the same manner and in the same amount as any other Owner.

Section 4.18 Sub-metering of Water. It is currently intended the domestic water will be supplied to the Units through master water meters installed within the Project and that water and sewer services will be billed to the Association based on readings from the master meters. However, each Owner will be obligated to reimburse the Association in the amounts reasonably billed by the Association, or its contracting company, for the cost of the water and sewer services supplied to the Owner's Unit based on the reading from the sub-meter which monitors water consumption from the Owner's Unit. In billing each Owner, the Association or its contractor shall utilize water consumption information from the sub-meters and the billing information which is provided by the supplier of water and sewer services. Should the supplier of such services charge penalties for excessive water consumption or should the supplier otherwise charge different rates for different levels of consumption, the Association may in any reasonable manner utilize such information in its allocation and determination of reimbursement amounts pursuant to this Section.

The Association shall have the right to enter into an agreement with a private water metering service to (a) read the sub-meters, (b) prepare and send the bills and (c) collect sums billed to each Owner on behalf of the Association. Alternatively, the Association may itself do any such billing activities for its reimbursement of amounts applicable to each Unit. In no event shall the charge for reimbursement for water or sewer services be considered to be a part of the regular assessments. The reimbursement amounts so billed (whether billed by the Association or a private water metering service) shall be the personal obligation of the persons who owned the Unit during the period of time the water being billed for was supplied to the Unit. The charges for water or sewer services shall not constitute a lien on the Owner's Unit. No Owner shall interfere with the reading of such sub-meters nor in any manner change or disconnect such sub-meters. The Association is hereby granted an easement for it or its agents and contractors to read, repair, realign or replace such sub-meters, wherever located.

The Association shall have the right to require each Owner to establish an impound account with the Association or with the private water meter reading service in order to provide a deposit from which the Owner's water bill can be paid. The amount of such impound account shall be the Board's good faith estimate of the sums to be billed to the Owner for six (6) months' service; however, the Board shall have the right to require an Owner to increase the deposit up to a sum reasonably determined by the Board in the event the Board reasonably determines the increased deposit would be prudent given the Owner's past payment history.

No Owner shall modify, repair or alter a sub-meter. The Association shall be responsible to contract for appropriate re-certification of the sub-meters. The Association shall also contract for any needed repair of a sub-meter, but the Owner of the sub-meter which is repaired shall reimburse the Association for its reasonably incurred costs of repair.

Section 4.19 Uncompleted Facilities and Budget Items Related to Occupancy. The Board may (but shall have no obligation to) exclude from Association regular assessments the following items:

- (a) Those portions of budgeted assessments which are for the purpose of defraying expenses and reserves directly attributable to the existence of improvements to be maintained by the Association but which are not complete at the time of the assessment. Any such exemption

from assessments shall be in effect only until completion of the improvements, which may be evidenced by recordation of a notice of completion for the same.

(b) Prior to close of escrow or occupancy of all the Units, appropriate portions of those budgeted line items that increase as occupancy increases. Any such exemption from assessments shall be in effect only until (i) close of escrow of all the Units or (ii) occupancy of all the Units, whichever occurs first.

Section 4.20 Code Sections Subject to Change. This **ARTICLE IV** relies on provisions of California statutory law which have been revised frequently. The Board is cautioned to have its legal consultant carefully review statutes in effect as of the date any notices or other actions are taken pursuant to this **ARTICLE IV**.

Section 4.21 Personal Liability of Owner. No Owner may exempt itself from personal liability for assessments, nor any part thereof, levied by the Association, nor release the Unit it owns from the liens and charges of assessments pursuant to this Declaration, by waiving the use and enjoyment of the Association Property and facilities thereof, or by abandonment of its Unit.

ARTICLE V **POWERS AND DUTIES OF ASSOCIATION**

The Association shall have those powers and duties set forth in the Bylaws.

ARTICLE VI **ARCHITECTURAL REVIEW COMMITTEE**

Declarant hereby creates an architectural review committee ("**Committee**"), which shall be organized as follows:

Section 6.1 Committee Composition. The Committee shall be comprised of from one (1) or three (3) Persons; however, the number of members may be increased by resolution of the Board. Members of the Committee need not be Owners. The Association is specifically authorized to reasonably compensate a professional property manager, architect, or similar professional Person for service as a member of the Committee.

Section 6.2 Alternate Members. There shall also be two (2) alternate members, either of whom may be designated by the Committee to act as a substitute for any member of the Committee in the event of such member's unavailability or disability.

Section 6.3 Appointment. So long as Declarant owns a Unit, Declarant shall have the right to appoint all members and alternate members of the Committee. After Declarant has conveyed all of the Units to First Purchasers, the Board shall have the right to appoint all members and alternate members of the Committee.

Section 6.4 Removal. The right to remove any member or alternate member of the Committee shall be and is hereby vested solely in Declarant, for so long as Declarant owns a Unit, and shall vest in the Board after Declarant has conveyed all of the Units to First Purchasers.

Section 6.5 Terms of Office. The term of all Committee members appointed shall be one (1) year. Any new member appointed to replace a member who has resigned or has been removed shall serve such member's unexpired term. Members whose terms have expired may be reappointed.

Section 6.6 Resignations; Vacancies. Any member of the Committee may, at any time, resign from the Committee upon written notice to the Board.

Section 6.7 Duties and Appeals. It shall be the duty of the Committee to perform the functions required of it pursuant to this Declaration; to consider and act upon each Application which is submitted to it pursuant to the terms of the Declaration; to enforce the Design Guidelines; to enforce the Signage Guidelines; and to perform all other duties delegated to it by the Board or imposed upon it by this Declaration. So long as Declarant owns a Unit, all decisions of the Committee shall be final. After Declarant has conveyed all of the Units to First Purchasers, any Owner may appeal any decision of the Committee to the Board.

Section 6.8 Meetings. The Committee shall meet as often as it, in its sole, absolute and unfettered discretion, considers necessary or proper to perform properly its duties and obligations pursuant to this Declaration. The Committee shall keep written records of all actions the Committee takes.

Section 6.9 Exercise of Rights. Exercise of the Board's right of appointment and removal, as set forth in this Declaration, shall be evidenced by the Board's recording among the Committee's regular records a declaration identifying each new Committee member appointed and each member replaced or removed from the Committee.

Section 6.10 Variances and Special Permits.

(a) **Variances.** The Committee is hereby authorized and empowered to grant reasonable variances from the provisions of this Declaration, or any portion hereof, in order to overcome practical difficulties and to prevent unnecessary hardship in the application of the provisions contained herein. The Committee shall have no obligation to grant variances, and the Committee shall not grant a variance which would in its reasonable judgment materially injure any of the Units or the Association Property in the Property.

(b) **Specially Permitted Operations and Uses.** The Committee is also authorized and empowered to specially permit operations or uses which are neither specifically authorized nor specifically prohibited by this Declaration. In considering whether to specially permit an operation or use in a specific case, the Committee shall take into consideration the effect of such operations or uses on other property subject to this Declaration and upon the Occupants and upon the adequacy of the off-street parking available within the Project. Any such approval or disapproval shall be in writing.

(c) **Compliance with Laws.** No variance or special permit granted by the Committee shall excuse the Owner seeking the variance or special permit from obtaining all required governmental approvals and otherwise conforming with all applicable laws, ordinances, rules and regulations of any governmental agency or political entity having jurisdiction over the Property.

ARTICLE VII
USE RESTRICTIONS

Section 7.1 General. The Units shall be used, if at all, for commercial/office purposes of the type typically found in first-class integrated mixed use professional centers located in the San Diego County, California, area. All work to be done or installed or constructed within a Unit, and all operations in the Unit, shall conform to every applicable requirement of law or duly constituted governmental authority having jurisdiction, including, but not limited to, requirements pertaining to health, welfare or safety of employees and the public, and shall be consistent with the terms and provisions of this Declaration, the Design Guidelines and the Signage Guidelines. Every Occupant shall conduct its activities in conformity with all applicable laws, ordinances, rules and regulations of each governmental authority having jurisdiction, and in such a manner as not to constitute a nuisance or create unreasonable interference with other Occupants and their customers and business invitees.

Section 7.2 Prohibited Operations and Uses. No use or operation will be made, conducted or permitted on or with respect to all or any part of any Unit which is obnoxious to, or out of harmony with

the development or operation of the business conducted within any other Units or on other sites in the general vicinity of the Property. Included among the uses or operations which are prohibited because of their obvious detrimental effect on the general appearance of the Units and their conflict with the reasonable standards of appearance and maintenance required by Declarant and the Board, are uses or operations which produce, or are accompanied by the following characteristics:

- (a) Any public or private nuisance;
- (b) Any vibration, noise, sound or disturbance that is objectionable due to intermittence, beat, frequency, shrillness or loudness;
- (c) Except lighting of the Association Property, any lighting which is not shielded and confined within Unit boundaries;
- (d) Any air or water pollution in violation of applicable laws, ordinances, rules, regulations or permits;
- (e) Any emission of odorous, noxious, caustic or corrosive matter or gas, whether toxic or non-toxic;
- (f) Any unusual litter, dust, dirt or debris, except as generated during construction of Improvements;
- (g) Any unusual firing, explosion or other damaging or dangerous hazard, including, but not limited to, storage, display or sale of explosives or fireworks;
- (h) Any franchise motel, hotel, or other short term transient occupancy facility;
- (i) Any apartments, multi-family housing, low-income or other subsidized housing;
- (j) Any mobile home or trailer court, labor camp, junk yard, stock yard, distillation of bones, or raising, storing, slaughtering or disposing of animals of any kind;
- (k) Any drilling for, excavation, refining or removal of earth materials, oil, gas, hydrocarbon substance, water, geothermal steam or any other subsurface substance of any nature whatsoever, except as part of normal grading operations in connection with construction of approved Improvements;
- (l) Any dumping, disposal, incineration or reduction of garbage or reuse of the same, other than handling or reducing such garbage in a reasonably clean and sanitary manner;
- (m) Any auction, public sale or other auction house operation conducted outdoors;
- (n) Any commercial excavation of building or construction materials; and
- (o) Any smelting of iron, tin, zinc or other metals or ores.

The foregoing list is intended to be descriptive and is not intended to be inclusive.

Section 7.3 Use Not to Impair Insurance. No Unit shall be occupied, improved or used for any purpose or in any manner which shall cause such Unit or any Unit to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any such policy or policies representing such insurance to be cancelled or suspended, or the company issuing the same to refuse renewal thereof or to increase the premium therefor.

Section 7.4 Decorating by Owner. Without having to obtain the approval of the Committee pursuant to **ARTICLE VIII**, each Owner shall have the right, at the Owner's sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim and perimeter walls of the Owner's Unit, and the surfaces of the bearing walls and partitions located within the Unit. Such Owner shall have the right to substitute new finished interior surfaces in place of those existing on the ceiling, floors, walls and doors of his or her Unit. Windows shall be covered only by drapes, curtains, shutters and shades, and shall not be painted or covered by aluminum foil, paper, or similar materials. Each Owner shall have the obligation to keep in good repair all items mentioned in this Section.

Section 7.5 Open Space. Portions of the General Association Property may have sensitive plant species (e.g., Coastal Sage Scrub) located thereon. Any removal or disturbance of such sensitive habitat shall be prohibited.

ARTICLE VIII **REGULATION OF IMPROVEMENTS**

Section 8.1 Approval of Application Required. Except as expressly provided in **Section 7.4**, no improvement to a Unit shall be constructed, reconstructed, rebuilt, erected, placed, altered, maintained or permitted to remain in the Unit (a) unless the improvement conforms with all applicable federal, state and local laws, ordinances, rules and regulations; and (b) until plans, specifications and other documentation for such improvement ("**Application**") have been submitted to and approved in writing by the Committee. Each Application, including all exhibits and supporting materials and documentation, must be submitted in duplicate.

Section 8.2 Filing Fee. As a means of defraying its costs and expenses, the Committee may institute and require that a reasonable filing and review fee ("**Review Fee**") accompany an Application. The initial schedule of Review Fees is set forth in the following schedule:

- (a) If an Application is prepared by an Architect, the Review Fee shall be Two Hundred Fifty Dollars (\$250) per Unit.
- (b) In all other cases, the Review Fee shall be Five Hundred Dollars (\$500) per Unit.
- (c) If an Application is resubmitted, the Committee may require an additional Review Fee in an amount not to exceed One Hundred Dollars (\$100) for each resubmission.
- (d) The schedule of Review Fees may be modified from time to time by the Committee to reflect increased costs and expenses or changed circumstances, such as, but not limited to, inflation.

Section 8.3 Basis for Approval. The Committee shall have the right to disapprove an Application submitted to it in the event any part of the Application: (a) is not in accordance with this Declaration, the Design Guidelines or the Signage Guidelines (or all); or (b) is incomplete; or (c) is not in compliance with the applicable governmental approvals and regulations for the Property; or (d) any combination of the foregoing. The Committee shall not unreasonably withhold its approval of an Application submitted to it, but may condition its approval on the satisfaction of one or more conditions set forth in writing. In this regard, the Committee may base its approval or disapproval on criteria which may include, but are not limited to, the following: (i) the location and dimensions of the improvements within the Unit; (ii) the adequacy of the off-street parking available within the Project if the improvements may change the intensity and type of use of the Unit; (iii) effect of the added square footage of proposed improvements on the permitted square footage of gross floor area for the Project, as set forth in the conditions of approval for the Final Map; and (iv) conformity of the Application to the purpose and general plan and intent of this Declaration. Notwithstanding approval by the Committee, no Application shall be deemed approved unless it provides for safety or any other control as set forth by local, state, federal or

other governmental agencies. Upon approval, the Committee shall furnish, a letter from the Committee confirming that the Application has been approved.

Section 8.4 Result of Inaction. The Committee shall approve or disapprove an Application within thirty (30) days after receipt ("**Initial Review Period**"). Notwithstanding anything to the contrary in this **ARTICLE VIII**, if the Committee fails to approve or disapprove an Application within the Initial Review Period, then it shall be conclusively presumed that the Committee has disapproved the Application. If a matter is not approved by the Committee during the Initial Review Period, the Owner may resubmit the matter to the Committee. If after the second submittal the Committee fails to mail its approval of the Application or a letter rejecting the proposed improvement or alteration or describing modifications necessary for approval with regard to any matter submitted to it hereunder within forty-five (45) days after submission of all materials required by the Committee to be submitted to it in connection with such second submittal, it shall be conclusively presumed that the Committee has approved the specific matters as to which approval was sought in the submission.

Section 8.5 Proceeding With Work. Upon the Committee's approval of an Application pursuant to this **ARTICLE VIII**, the Owner to whom the approval is granted and delivered, shall, as soon as practicable, satisfy all conditions thereof (if any) and diligently proceed with the commencement and completion of all approved construction, refinishing and alterations so that no improvement remains in a partly-finished condition any longer than reasonably necessary for completion thereof. In addition, each Owner shall cause all work to be as non-disruptive as practicable to the Property and the guests, invitees, tenants, employees and Owners who use the Property. Each Owner shall disrupt traffic flow and parking as little as possible during construction and shall clean up daily any construction debris to the extent reasonably practicable. In all cases, work shall be commenced within six (6) months following the date of such approval, except such time period shall be extended for so long as such commencement is rendered impossible or would result in great hardship due to action of the elements, fire or other casualty, war, acts of terrorism, riot, labor dispute, inability to procure or general shortage of labor or material in the normal channels of trade, delay in transportation, delay in inspections, governmental action or moratorium or any other cause beyond the reasonable control of the Owner so obligated, whether similar or dissimilar to the foregoing, financial inability excepted. If work is not commenced within one (1) year following the date of such approval (as such period may be extended for delays beyond the reasonable control of the Owner pursuant to the preceding sentence), then the approval given pursuant to this **ARTICLE VIII** shall be deemed revoked; provided, however, upon written request made prior to the expiration of said one (1) year period, the Committee may, in its sole, absolute and unfettered discretion, extend the time for commencing work.

Section 8.6 Completion of Work. Construction, refinishing or alteration of any improvements previously approved under this **ARTICLE VIII** shall be completed within one (1) year following the date of such approval, except such time period shall be extended for so long as such completion is rendered impossible or would result in great hardship due to action of the elements, fire or other casualty, war, acts of terrorism, riot, labor dispute, inability to procure or general shortage of labor or material in the normal channels of trade, delay in transportation, delay in inspections, governmental action or moratorium or any other cause beyond the reasonable control of the Owner so obligated, whether similar or dissimilar to the foregoing, financial inability excepted. Failure to comply with this **Section 8.6** shall constitute a breach of this Declaration and subject the defaulting Owner or Owners to all enforcement procedures set forth in this Declaration or any other remedies provided by law or in equity.

Section 8.7 Estoppel Certificate. The Committee shall deliver to any Owner an estoppel certificate within fifteen (15) business days following receipt of a written request therefor. If the Committee does not have an as-built drawings of the improvements to the Owner's Unit in its files, then any such request shall be accompanied by such as-built drawings. The estoppel certificate shall certify that as of the date of the certificate (a) all improvements made or work done on or within the Owner's Unit comply with this Declaration, or (b) such improvements or work does not so comply, in which event the certificate shall identify the non-complying improvements or work and shall set forth the cause or causes for such non-compliance. Any lessee, purchaser or encumbrancer in good faith for value shall be entitled to rely

on the certificate with respect to the matters set forth therein, such matters being conclusive as between the Committee and all such subsequent parties in interest.

Section 8.8 Indemnity and Limitation of Liability. Neither Declarant, the Association, the Board nor the Committee, nor any member of the Board or the Committee, nor any agents, employees or contractors of Declarant, the Association, the Board or the Committee (individually or collectively, "**Indemnitee**") shall be liable for any liability, damage, loss, cost, expense or prejudice suffered, incurred or claimed by any Owner who submits an Application or by any other Person (including any other Owner). Each Owner who submits an Application shall forever hold each and every Indemnitee harmless for any liability, damage, loss, cost, expense or prejudice suffered, incurred or claimed by such Owner, and shall forever indemnify, defend, protect and hold each Indemnitee harmless for any liability, damage, loss, cost, expense or prejudice suffered, incurred or claimed by any other Person (including any other Owner), arising from, out of or in connection with (i) any defects in any plans, drawings, specifications or other documentation submitted in any Application, revised or approved in accordance with this Declaration, or for any structural or other defects in any work done according to such plans, drawings, specifications or other documentation; (ii) the approval or disapproval of any Application, whether or not defective; (iii) the construction or performance of any work, whether or not constructed or performed pursuant to an approved Application; or (iv) any combination of the foregoing.

Section 8.9 Limitations on Improvements. All limitations contained in this Declaration supplement the controls established by applicable zoning, building, fire and other governmental ordinances, codes, rules and regulations; and of the foregoing, the more restrictive shall apply.

(a) **No Impairment of Structures.** No Owner shall make any change to such Owner's Unit which would adversely affect the structural integrity of the building in which that Unit is located.

(b) **Signs.** No sign, billboard or other advertising which is visible from a public street shall be erected, placed or maintained within the Property without written approval by the Committee, which may be withheld in its sole, absolute and unfettered discretion.

(c) **Parking Areas.** The Committee shall have the authority to disapprove any Application for the construction of any improvement to a Unit if the off-street parking available within the Project becomes inadequate due to a change in the intensity and type of use of the Unit that arises from that improvement being constructed.

(d) **Exterior Lighting.** Exterior lighting shall conform to the Design Guidelines and shall not be of such intensity, size, color or location as to be a nuisance to Owners or the public. Exterior lighting within the Project shall be adjusted and shaded so as to not fall onto adjacent properties.

(e) **Utility Lines and Antennas.** No sewer, drainage or utility lines, cables or wires or other devices for the communication or transmission of electric current, power or signals (including, but not limited to, telephone, television, microwave or radio signals) shall be constructed, placed or maintained anywhere in or upon any portion of the Association Property unless the prior written consent of the Committee is obtained. However, in considering whether to consent to an antenna or to impose requirements on such consent, the Committee shall not violate any applicable law or regulation, including, but not limited to, any law of the State of California or applicable regulations of the Federal Communications Commission.

(f) **No Owner Modification to Association Property.** Except as otherwise specifically provided in this Declaration, no Owner shall have the right to alter, paint, decorate, remodel, landscape or adorn any part of the Association Property or any other portion of the Project which is subject to Association maintenance, without the prior written consent of the Committee.

(g) Other Prohibited Modifications. No Owner of a Type I Condominium (other than Declarant) shall cause any penetration, cutting or other modifications to any doors that provide entrance to such Owner's Condominium, windows, window frames or the building exterior plaster walls, perimeter or bearing walls, ceilings or floors, without the prior written consent of the Committee.

Section 8.10 Article Not Applicable to Declarant. The provisions of this **ARTICLE VIII** shall not apply to Declarant's constructing any improvements on the Property; and neither the Board nor the Committee shall have any authority or right to approve or disapprove any construction undertaken by Declarant.

ARTICLE IX **OPERATIONS GENERALLY**

Section 9.1 **Parking Areas.**

(a) No commercial truck is permitted to be parked on any portion of the Association Property unless hidden from view from other portions of the Property and from public streets by attractive visual barriers. Notwithstanding the immediately preceding sentence, commercial trucks may park for the purpose of loading and unloading; provided, however, reasonable restrictions concerning permitted times for parking, loading and unloading commercial trucks, which may be applicable to one or more Units, may be adopted by the Board. "**Commercial truck**" for purposes of this **Section 9.1(a)** includes any service, delivery, refrigerated, box, landscaping/utility, bucket, derrick, rack, stake body, refuse, cement, platform/flatbed, low boy and logger trucks.

(b) No charge of any kind shall ever be made for ingress to, egress from or parking in the Property, unless ordered by governmental authority. If so ordered, to the extent permitted by law, any such charge shall not be collected from customers and invitees but shall be prorated among the Owners and paid by them as an Association assessment. If the governmental authority does not permit such a treatment of the charge, but instead requires that it be collected from customers or invitees, the Association shall cause such charge to be collected and shall cause the amount received, less collection expenses, to be credited against assessments.

Section 9.2 Storage and Loading Areas. Subject to Board approval, which may be withheld in its sole, absolute and unfettered discretion:

(a) No materials, supplies or equipment, including any trucks, shall be stored in any portion of the Association Property, except on a temporary basis behind an approved visual barrier which screens such areas from the view of other portions of the Property and public streets.

(b) The Board shall have the right to designate hours for loading and unloading at the loading area and the rules reasonably necessary to minimize the visual and noise effects thereof.

Section 9.3 Removal of Trash; Trash Drop Off Locations. All rubbish, trash or garbage shall be regularly removed from each Unit and shall not be allowed to accumulate in the Project. Certain portions of the Association Property may be designated as trash drop off locations by the Board. The Board may adopt rules and regulations regarding the trash drop off and pick-up policies, and each Owner shall comply with such regulations and policies. Disposal of Hazardous Materials (defined below) shall be subject to **Section 9.5**.

Section 9.4 Inspection. The Association, Declarant and their authorized representatives may from time to time, after three (3) days prior written notice to the Owner, at any reasonable hours, enter

upon and inspect any Unit, or any portion thereof, to ascertain compliance with this Declaration, but without obligation so to do or liability therefor.

Section 9.5 Hazardous Materials. Each Owner covenants to do as follows:

(a) At all times and in all respects comply with all federal, state and local laws, ordinances and regulations, including, but not limited to, the Federal Water Pollution Control Act (33 U.S.C. Section 1251, *et seq.*), Resource Conservation & Recovery Act (42 U.S.C. Section 6901, *et seq.*), Safe Drinking Water Act (42 U.S.C. Section 3000f, *et seq.*), Toxic Substances Control Act (15 U.S.C. Section 2601, *et seq.*), the Clean Air Act (42 U.S.C. Section 7401, *et seq.*), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, *et seq.*), California HEALTH & SAFETY CODE (Section 25100, *et seq.*; Section 39000, *et seq.*), California Safe Drinking Water & Toxic Enforcement Act of 1986 (California HEALTH & SAFETY CODE Section 25249.5, *et seq.*), California WATER CODE (Section 13000, *et seq.*), and other comparable state and federal laws, currently in force or enacted in the future ("**Hazardous Materials Laws**"), relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" under any such laws, ordinances or regulations (collectively, "**Hazardous Materials**").

(b) At its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses, and other governmental and regulatory approvals required for its or its Occupants' use of the Property, including, without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving the Property. Except as discharged into the sanitary sewer in strict accordance and conformity with all applicable Hazardous Materials Laws, no Person shall cause any Hazardous Materials removed from the Property to be removed and transported except solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes. Each Owner, Occupant and user shall in all respects handle, treat, deal with and manage any and all Hazardous Materials in, on, under or about the Property in total conformity with all applicable Hazardous Materials Laws and prudent industry practices regarding management of such Hazardous Materials. Upon transfer of possession of a Unit or leased premises, such transferor shall cause all Hazardous Materials to be removed from the Unit or leased premises and transferred and transported for use, storage or disposal in accordance with and compliance with all applicable Hazardous Materials Laws.

(c) Each Owner shall immediately notify the Association in writing of: (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any Hazardous Materials Laws; (ii) any claim made or threatened by any person against the Owner, the Owner's Unit relating to damage, contribution, cost recovery compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and (iii) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials in or removed from the Owner's Unit, including any complaints, notices, warnings or asserted violations in connection therewith. Each Owner shall also supply to the Association as promptly as possible, and in any event within five (5) business days after such Owner first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations, relating in any way to the Owner's Unit or the Owner's use thereof. Upon the request of any Owner, the Association shall provide such Owner with copies of any notices, reports or other information received by the Association pursuant to this subsection.

(d) Each Owner shall indemnify, defend, protect, and hold the Association, each other Owner and each other Owner's partners, employees, agents, attorneys, successors and assigns, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses (including attorneys' fees), for death of or injury to any person or damage to

any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by (i) the presence in, on, under or about the Property or the Owner's Unit caused by the Owner, or discharge by the Owner in or from the Property or the Owner's Unit, of any Hazardous Materials, or (ii) the Owner's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials to, in, on, under, about or from the Owner's Unit, or (iii) the Owner's failure to comply with any Hazardous Materials Law. Owner's obligations under this **Section 9.5(d)** shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Property or any building thereon, or the preparation and implementation of any closure, remedial action or other required plans in connection therewith. For purpose of this **Section 9.5**, any acts or omissions of Owner or Owner's lessee or by employees, agents, assignees, sublessees, contractors or subcontractors of Owner or Owner's lessee or others acting for or on behalf of Owner or Owner's lessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Owner.

Section 9.6 **Water Quality Protection.**

(a) To protect the quality of our nation's waters, a number of federal, state and local laws, ordinances, rules, regulations and orders prohibit the discharge of anything other than natural rain water into storm drain systems, including gutters and streets that drain into storm drains. These governmental requirements include the Clean Water Act, the National Pollution Discharge Elimination System, orders and permits of the State Water Resources Control Board and the Regional Water Quality Control Board, the ordinances and regulations of the City and County of San Diego, any Storm Water Pollution Prevention Plan covering the Project, and any Operations and Maintenance Plan prepared for the Project and approved by the City. Each Owner shall comply with all such governmental requirements.

(b) Most discharges of anything other than natural rain water into storm drain systems are unlawful and may result in significant penalties and fines. No Owners shall discharge or permit to be discharged (for example by a contractor working for the Owner) any of the following into any gutter, storm drain or storm water conveyance system: Toxic or hazardous chemicals, hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives, fertilizers, lawn clippings, yard waste, detergents, pet waste, or other similar materials or pollutants. Mobile car detailing shall not be permitted within the Project.

(c) Each Owner shall comply with and cause its contractors to comply with all federal, state and City requirements, and the requirements of any other applicable governmental agency regarding the use, storage and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers and other such chemicals. Owners should consult with the City, other governmental authorities, and their refuse hauler regarding the proper disposal of any toxic or hazardous materials.

(d) Each Owner shall ensure that any landscaping and construction materials brought into the Project by the Owner or the Owner's contractors shall be properly contained to prevent spillage into any street, gutter or storm drain system. Should a spillage occur, the Owners shall (or cause the contractor responsible for the spill to) sweep the spilled material and place it in a container; it shall not be washed into any storm water curb drain inlet.

(e) Each Owner shall indemnify, protect, defend and hold Declarant harmless from any and all claims, liability, actions, penalties or damages (including attorney's fees, experts' fees and costs of suit) arising from or attributable to the Owner's failure to comply with the requirements of this **Section 9.6**.

Section 9.7 Payment of Taxes.

(a) Each Owner shall pay or cause to be paid prior to delinquency the real estate taxes and assessments levied against its Unit.

(b) In the event a Unit is not segregated for tax purposes from the other Units within the building in which such Unit is located, each Owner shall pay its pro rata share of the taxes and assessments of a tax bill which includes all or a portion of its Unit based on a fraction, the numerator of which is the square footage of the floor area of the Unit to the extent covered by the tax bill, and the denominator of which is the total square footage of the Units within the building in which such Unit is located that is included within the total tax bill.

(c) An Owner shall have the right, at its own cost and expense, and in its own name, to contest or protest or seek to have reviewed, reduced, equalized or abated any real property tax or other special tax or assessment levied upon its Unit by first paying such tax or assessment and thereafter filing a claim for refund or pursuing such other remedy as may then be available under and in accordance with California law. The Owners who are not parties to the proceeding for refund (or other applicable proceeding) shall join with the protesting Owner and sign any and all documents, applications, petitions, instruments or complaints necessary for any such proceeding; provided, however, that any such proceeding shall be carried on by the protesting Owner at its sole cost and expense, and that upon final determination of any such proceeding, the protesting Owner shall pay the taxes for which it is responsible pursuant to this Section as they are finally determined and all penalties, interest, costs and expense which may thereupon be due or have resulted therefrom. The Owner making such contest shall indemnify, protect and defend, and hold harmless the other Owners from and against any liability, loss, cost, damage, injury or expense arising out of or relating to such proceeding, but no Owner shall be charged with responsibility as a result of any such proceeding for any increased taxes allegedly resulting therefrom or as a result thereof.

(d) Each Owner recognizes and acknowledges that there may be changes in the current real property tax system and that there may be imposed new forms of taxes, assessments, charges, levies or fees, or there may be an increase in certain existing taxes, assessments, charges, levies or fees placed on, or levied in connection with the ownership, leasing, occupancy or operation of the Owner's Unit(s). All such new or increased taxes, assessments, charges, levies or fees which are imposed or increased as a result of or arising out of any changes in the structure of the current real property tax system or any limitations on the real property taxes which can be assessed on real property, including, but not limited to, any and all taxes, assessments, charges, levies and fees assessed or imposed due to the Owner's leasing the Owner's Unit(s) to one or more Occupants (including any surcharge on the income directly derived by the Owner from any such leases) or for the purpose of funding special assessment districts previously funded by real property taxes, shall also be included within the meaning of "real estate taxes and assessments" as used in this Declaration.

Section 9.8 Governmental Requirements. The Project and its use are subject to the jurisdiction of the City and the ordinances, regulations and permits issued by the City, including the conditions to approval of the Final Map. Each Owner shall at all times comply with each governmental ordinance, regulation or permit that is applicable to such Owner's Unit, and the Association shall at all times comply with each governmental ordinance, regulation or permit that is applicable to the Association Property.

ARTICLE X
ASSOCIATION PROPERTY

Section 10.1 Use of Limited Exclusive Use Areas. Each Owner or Occupant of a Type I Condominium and his or her guests shall be entitled to use the Limited Exclusive Use Area appurtenant to such Condominium, subject to the rules and regulations of the Board.

Section 10.2 Use of Association Property. Except as otherwise provided in this Declaration, the Association Property shall be improved and used only for the following purposes:

- (a) Affording vehicular passage and pedestrian movement within the Project, including access to the Units;
- (b) Beautification of the Project through landscaping and such other means as the Board shall deem appropriate;
- (c) Parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board by such persons, upon such terms and conditions as may from time to time be determined by the Board; the rules and regulations of the Board may be enforced by the Board, which shall have the right and power to remove vehicles from the Project at the cost of the vehicle owner and to levy monetary penalties as provided in this Declaration; the Board shall not allow parking on any private street except in parking bay areas designed therefore and no parking of recreational vehicles, trailers or boats shall be permitted within any portion of the Project.
- (d) By Declarant for marketing and refurbishing activities; and
- (e) Those additional purposes which may be allowed by the Board or as provided in this Declaration.

No Owner shall use or interfere with use of the Association Property in any manner which shall increase the Association's cost of insurance or which shall result in cancellation of insurance or making insurance unavailable.

Section 10.3 Owners Liable for Damage. Each Owner shall be legally liable to the Association for all damages to the Association Property, including but not limited to, the buildings and landscaping caused by such Owner, such Owner's guests (or other licensees) or any Occupant of such Owner's Unit as such liability may be determined under California law. Each Owner shall be responsible for compliance with the provisions of this Declaration, the Bylaws and rules and regulations of the Board by such Owner's licensees and Occupants of such Owner's Unit. An Owner shall be responsible to reimburse the Association should the Owner's actions or failure to perform his or her obligations hereunder cause any increase in the Association's insurance premiums.

Section 10.4 Reimbursement. Each Owner shall reimburse the Association for those costs incurred which result from the Unit Occupants' excessive or neglectful use of a Unit or any portion of the Association Property.

Section 10.5 HVAC Equipment. Each Owner shall have the right of reasonable access for ingress and egress to and from such Owner's Unit and portions of the Association Property for purposes of maintaining, repairing and replacing the HVAC equipment that may be located on the roof of the building in which the Unit is located and that exclusively serves that Unit and is not used in common. Where the Association may be reasonably concerned that damage could result to the Association Property as a result of entrance for the maintenance, repairs or replacements. The Association shall at its discretion either contract for the appropriate maintenance, repair or replacement of such equipment or require the Owner do so, in which event the Owner shall utilize only a contractor that has been approved by the Association and the Owner indemnifies the Association for any damage to the Association Property or any other costs or obligations incurred by such work. In the event the Association contracts for maintenance, repair or replacement of HVAC equipment that exclusively serves a Unit, the Owner of that Unit shall reimburse the Association for its costs so incurred.

ARTICLE XI
ADDITIONAL EASEMENTS AND LICENSES

Section 11.1 Exclusive Use Easement and Licenses-General Association Property.

Subject to the provisions of California CIVIL CODE Section 1363.07, the Board shall have the right to grant exclusive use easements and licenses to Owners over, under, upon and across portions of the General Association Property. The Board's grant of an exclusive use easement to Owners shall require an affirmative vote of Owners (including Declarant) that represent at least fifty-one percent (51%) of the total voting power of the Association. However, no such Owner consent or approval shall be required if the grant of the exclusive use easement falls under one or more of the enumerated exceptions to the Owner voting requirements set forth in California CIVIL CODE Sections 1363.07(a)(1) through (a)(3), inclusive. Further, no such exclusive use easement or boundary adjustment shall interfere with or violate any open space easement or other restrictive easement dedicated to the City. Any election or proceeding to obtain the consent or approval of the Owners shall be subject to and comply with the provisions of the Common Interest Development Open Meeting Act, as set forth in California CIVIL CODE Sections 1363.03 through 1363.09, inclusive, and any election rules adopted by the Board in conformance therewith.

Section 11.2 Exclusive Use Easement and Licenses-Limited Association Property.

Subject to the provisions of California CIVIL CODE Section 1363.07, the Board shall have the right to grant exclusive use easements and licenses to Owners over, under, upon and across portions of the Limited Association Property. The Board's grant of an exclusive use easement to Owners shall require an affirmative vote of Owners (including Declarant) that represent at least fifty-one percent (51%) of the total voting power of all of the Owners of Type I Condominiums in the Project. However, no such Owner consent or approval shall be required if the grant of the exclusive use easement falls under one or more of the enumerated exceptions to the Owner voting requirements set forth in California CIVIL CODE Sections 1363.07(a)(1) through (a)(3), inclusive. Further, no such exclusive use easement or boundary adjustment shall interfere with or violate any open space easement or other restrictive easement dedicated to the City. Any election or proceeding to obtain the consent or approval of the Owners shall be subject to and comply with the provisions of the Common Interest Development Open Meeting Act, as set forth in California CIVIL CODE Sections 1363.03 through 1363.09, inclusive, and any election rules adopted by the Board in conformance therewith.

Section 11.3 Easements, Licenses and Permits. The Board shall have the right to grant or dedicate to third parties permits, licenses (which may be irrevocable), and easements over the Association Property for utilities, roads and other purposes necessary for the proper operation of the Project; and the Board shall have the right to convey portions of the Association Property to others in connection with a boundary adjustment requested by an adjacent property owner or public entity.

ARTICLE XII
MAINTENANCE OF UNITS

Section 12.1 Maintenance by Type I Condominium Owners. Each Owner of a Type I Condominium shall maintain, repair and replace (or cause to be maintained, repaired and replaced) the following:

- (a) The windows and the interior surfaces of doors enclosing the Type I Condominium Separate Interest, including the vinyl or metal frames, tracks and exterior screens of glass doors and windows.
- (b) The interior of the Condominium and all equipment whether "built-in" or freestanding within the Condominium.
- (c) The HVAC equipment for such Owner's Condominium in good working condition and repair.

(d) Except as stated elsewhere in this Declaration, the plumbing, electrical, cable television, water heating systems and other systems servicing the Owner's Condominium and located either within or without the outside perimeter of the exterior walls, floors and ceilings thereof, so long as those systems are used exclusively by such Owner and not in common. Declarant hereby reserves an easement to allow such systems to be located within the Limited Association Property in those locations where installed by Declarant. No Owner may damage or otherwise interfere with the proper operation of any sprinkler head that may be located within such Owner's Condominium.

Each Type I Condominium Owner shall also adopt and maintain such standards of property maintenance, appearance and housekeeping as are necessary or appropriate to keep and maintain the foregoing in first-class condition, repair and appearance.

Section 12.2 Maintenance by Type II Condominium Owners. Subject to **ARTICLE XIV**, each Owner of a Type II Condominium shall maintain, repair and replace (or cause to be maintained, repaired and replaced) the following:

(a) All portions of such Owner's Type II Condominium Separate Interest, including, but not limited to, the interior and exterior and the portions of the roof and foundation of the building comprising the Owner's Type II Condominium Separate Interest.

(b) The interior of the Condominium and all equipment whether "built-in" or freestanding within the Condominium.

(c) The HVAC equipment for such Owner's Condominium in good working condition and repair.

(d) Except as stated elsewhere in this Declaration, the plumbing, electrical, cable television, water heating systems and other systems servicing the Owner's Condominium and located either within or without the outside perimeter of the exterior walls, floors and ceilings thereof, so long as those systems are used exclusively by such Owner and not in common. No Owner may damage or otherwise interfere with the proper operation of any sprinkler head that may be located within such Owner's Condominium.

(e) The Type II Common Area, including all flatwork (e.g., paved walkways) located within the Type II Common Area.

Each Type II Condominium Owner shall also adopt and maintain such standards of property maintenance, appearance and housekeeping as are necessary or appropriate to keep and maintain the foregoing in first-class condition, repair and appearance.

Section 12.3 Maintenance by Lot Owners. Each Owner of Lot shall maintain, repair and replace (or caused to be maintained, repaired and replaced) the following:

(a) All portions of such Owner's Lot, including, but not limited to, the interior and exterior, roof and foundation of the building located thereon.

(b) All flatwork (e.g., paved walkways) located within such Owner's Lot.

(c) Except as stated elsewhere in this Declaration, the plumbing, electrical, cable television, water heating systems and other systems servicing such Owner's Lot and located either within or without the outside perimeter of the Lot, so long as those systems are used exclusively by such Owner and not in common. Declarant hereby reserves an easement to allow such systems to be located within the General Association Property in those locations where installed by Declarant.

Each Lot Owner shall also adopt and maintain such standards of property maintenance, appearance and housekeeping as are necessary or appropriate to keep and maintain the foregoing in first-class condition, repair and appearance.

Section 12.4 Failure to Maintain. If an Owner fails to maintain such Owner's Unit so as to violate **Section 12.1**, **Section 12.2** or **Section 12.3** and such failure continues for a period of fifteen (15) days after written notice to the Owner (or if such failure cannot reasonably be cured within such fifteen (15) day period, such longer period as determined by Declarant and/or the Association, provided such cure is diligently commenced and pursued to completion), then the Association, after approval by vote of the Board, shall have the right, through its agents, contractors and employees, to cause such repair, maintenance or restoration to the Unit. The cost of such repair, maintenance or restoration shall be added to and become a part of the assessment to which such Unit is subject. There is hereby created an easement in favor of the Association to enter into the Unit which is subject to assessment to provide maintenance pursuant to this Section. So long as Declarant owns a Unit, Declarant shall have the right, but no obligation, to exercise the rights of the Association under this Section.

Section 12.5 Closure. At the request of the Association, the Owner of each Unit shall, following the permanent closure or cessation of any business operation which is expected to continue for any extended period of time: (a) board up or otherwise enclose the windows and entrances of such Owner's Unit or portion thereof previously occupied by such business operation in a reasonably attractive manner; and (b) unless prevented from so doing by the terms and conditions of a lease to an Occupant, thereafter diligently seek to sell or relet the vacant premises to another Owner or Occupant whose business operation conforms to the requirements of this Declaration.

ARTICLE XIII **MAINTENANCE OF ASSOCIATION PROPERTY**

Section 13.1 Maintenance by Association. Except as stated elsewhere in this Declaration, upon completion of construction of the Association Property and from and after the date of transfer of the Association Property to the Association, the Association shall manage, maintain, repair and replace (or cause to be managed, maintained, repaired and replaced) the Association Property and all improvements thereon in good repair and appearance, including, but not limited to, contracting for and paying costs of or related to (i) utility services provided to the Association Property, including, but not limited to, electrical, gas, sewer and water (if applicable); (ii) alarm and pay phone services; (iii) janitorial services and supplies; (iv) window cleaning for the Limited Association Property; (v) carpet and floor cleaning for the Limited Association Property; (vi) the HVAC systems for the Limited Association Property; (vii) the elevators located within the Limited Association Property; (viii) the fire protection and life safety system; (ix) fire alarm and sprinkler system; (x) security system for the Limited Association Property; (xi) lighting system; (xii) the roof portion of the Limited Association Property; (xiii) electrical lines, gas lines (if applicable), storm drains, pipes, water lines and sanitary sewers which serve the Association Property or which are within the Association Property; (xiv) detention basins, vortex systems and other stormwater retention facilities for the Property; (xv) landscaping and sprinkler systems; (xvi) hiring and supervising private security, if deemed necessary by the Board; (xvii) the insurance **ARTICLE XX** of this Declaration requires; (xviii) any open space areas and down-sloped areas visible from a collector-level or above roadway; and (xix) all other items of maintenance, repair or replacement that may be needed from time to time to maintain the Association Property properly. The Association shall have the right to enter into any Unit as may be necessary to exercise any right or perform any obligation it may have pursuant to this Declaration. Any damage caused to a Unit by entry of the Association shall be repaired by the Association at its expense.

Section 13.2 Fire Sprinklers. The Association shall comply with any applicable City requirements for regular testing and inspection of fire prevention and fire sprinkler systems, if any, including, but not limited to, visual inspections within the Units. Some or all of the buildings may be equipped with fire sprinkler systems. The Association's maintenance obligations respecting any such systems shall include conducting periodic pressure testing of such systems in accordance with industry

standards. An Owner shall allow the Association to enter the Unit upon reasonable notice in order to inspect any sprinkler heads that are located within the Unit.

Section 13.3 Wood-Destroying Pests. The Association shall be responsible for the repair and maintenance of the Association Property occasioned by the presence of wood-destroying pests or organisms; provided, however, it shall be the responsibility of each Owner to maintain and repair any improvements which may have been added by such Owner to the Owner's Unit. The Association may cause the temporary, summary removal of any Occupant of the Project for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms. The costs of temporary relocation during the repair and maintenance by the Association shall be borne by the affected Owners and not the Association.

The Association shall give notice of the need to temporarily vacate a Unit to the Occupants and to the Owner, not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the Occupants will be responsible for their own accommodations during the temporary relocation. Notice by the Association shall be deemed complete upon either: (i) personal delivery of a copy of the notice to the Occupants, and sending a copy of the notice to the Owner, if different than the Occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association; or (ii) by sending a copy of the notice to the Occupants at the address and a copy of the notice to the Owner, if different than the Occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association.

Section 13.4 Property Management Company. Nothing in this **ARTICLE XIII** or in this Declaration shall preclude or be interpreted as precluding the Association from retaining a "managing agent" within the meaning of California CIVIL CODE Section 1363.1, as it may be amended or replaced from time to time. In the event the Association so retains such a "managing agent", then the "managing agent" and the Association shall make all arrangements necessary or proper to ensure that funds accepted or received by the "managing agent" and belonging to the Association are deposited and handled in compliance with California CIVIL CODE Section 1363.2, as it may be amended or replaced from time to time. The Association is specifically authorized to employ an affiliate of Declarant as property manager for the Association.

ARTICLE XIV **ADDITIONAL REQUIREMENTS FOR TYPE II CONDOMINIUMS**

Section 14.1 Common Systems; Generally. The Type II Condominiums planned for Parcel 7 of the Final Map are attached Condominiums where the state of maintenance and repair of certain components of each Type II Condominium Separate Interest may likely have a material effect on the other Type II Condominium Separate Interest ("**Common Systems**"). The Common Systems include (i) the common roof systems; (ii) the common foundation systems; and (iii) the exterior surfaces of walls (*i.e.*, the stucco, wood trim and painting of exterior surfaces).

Section 14.2 Common Systems; Repair, Maintenance and Replacement. Each Owner of a Type II Condominium shall have the right to effect repair, maintenance or replacement of portions of the Common Systems affecting such Owner's Type II Condominium Separate Interest. The cost of reasonable repair, maintenance and replacement of the Common Systems shall be shared by the Owners of the Type II Condominiums in accordance with the procedures described in **Section 18.1(c)**. Notwithstanding anything to the contrary contained herein, each Owner of a Type II Condominium shall have the sole obligation to repair, maintain and replace: (i) the interior surfaces of the Common Systems within such Owner's Type II Condominium Separate Interest, and with respect to exterior walls, the framing thereof; (ii) any plumbing, electrical or other utilities which service only the Owner's Type II Condominium Separate Interest regardless of whether the plumbing, electrical or other utilities are located within the Common Systems; and (iii) any damage caused to the Common Systems by such Owner or the guests, invitees, tenants, employees of such Owner.

If the cost of the repair, maintenance or replacement is to be shared by the Owners of the Type II Condominiums in accordance with the procedures described in **Section 18.1(c)**, the Owner of the Type II Condominium initiating the repair, maintenance or replacement of the Common Systems, or portion thereof, shall (i) provide at least fifteen (15) days' written notice to the Owner of the other Type II Condominium of the intended repair, maintenance or replacement and the estimated cost thereof as set forth in a bid for the work; and (ii) provide the other Owner with any opportunity to obtain separate bids for the work to be completed. Unless all Owners of the Type II Condominiums agree otherwise, the licensed and insured contractor with the lowest bid shall be used for the work.

In the event of an emergency situation, an Owner of a Type II Condominium may effect the repair, maintenance or replacement of the Common System, or portion thereof, without the above-described notice and bid requirements. An "**emergency situation**" shall mean (i) a situation when a repair, maintenance or replacement is immediately necessary to protect either Type II Condominiums from immediate further and substantial damage; or (ii) a situation which materially and detrimentally affects the health, welfare or safety of the Occupants of either Type II Condominiums.

Section 14.3 Change to Exteriors.

(a) Painting. Subject to the Design Guidelines, all portions of the exterior of the building consisting of the Type II Condominiums shall be repainted at the same time and in the same color.

(b) Replacement of Roof. An Owner of a Type II Condominium shall not replace any portion of the roof of such Owner's Type II Condominium Separate Interest unless the entire roof system component of the Common Systems is replaced at the same time and with the same materials. The costs of replacing the roof system component of the Common Systems shall be shared by the Owners of the Type II Condominiums in accordance with the procedures described in **Section 18.1(c)**.

Section 14.4 Easements.

(a) Encroachment Easements. Declarant hereby reserves to each Owner of a Type II Condominium, easements, appurtenant to each Type II Condominium Separate Interest, over, under, upon and across the adjoining Type II Condominium Separate Interest for the purpose of accommodating any encroachments due to engineering errors, errors in original construction, settlement or shifting of any portions of the building, or any other cause. There shall be valid easements for the maintenance of such encroachments as long as they shall exist, and the rights and obligations of the Owners shall not be altered in any way by such encroachments, settlement or shifting; provided, however, that an easement is not reserved hereby for any encroachment due to the willful misconduct of the other Owner.

(b) Repair, Maintenance and Replacement Easements. Declarant hereby reserves to each Owner of a Type II Condominium, easements, appurtenant to each Type II Condominium Separate Interest, over, under, upon and across the adjoining Type II Condominium Separate Interest for purposes of providing: (i) access, only to the extent necessary, for repair, maintenance and replacement of the Owner's Type II Condominium Separate Interest, including any Common Systems; and (ii) support of the Common Systems.

(c) Drainage Easements. Declarant hereby reserves to each Owner of a Type II Condominium, an easement, appurtenant to each Type II Condominium Separate Interest, over, upon and across the portion of the roof system component of the Common Systems on the adjoining Type II Condominium Separate Interest, for the purposes of providing drainage and the flow of water.

ARTICLE XV
TERMINATION OF LEGAL STATUS,
SEPARATION OF INTERESTS AND PARTITION PROHIBITED

Section 15.1 No Termination of Legal Status. Except as provided by statute, any action to terminate the legal status of the Project after substantial destruction or condemnation of the Project occurs must be approved by (i) at least sixty-seven percent (67%) of the total voting power of the Association and (ii) first Mortgagees who represent at least fifty-one percent (51%) of the votes of Units that are subject to Mortgages. Termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Project must be approved by (i) at least sixty-seven percent (67%) of the total voting power of the Association and (ii) first Mortgagees who represent at least sixty-seven percent (67%) of the votes of Units that are subject to Mortgages.

Section 15.2 No Separation of Interests. No Owner of a Condominium may sell, assign or convey any portion of his or her Condominium separate or apart from the entire Condominium. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of any portion of his or her Condominium separate or apart from the entire Condominium shall be void.

Section 15.3 No Partition.

(a) **Type I Condominiums.** The Type I Common Area of the Project shall remain undivided with no judicial partition thereof except:

(i) With the approval, after substantial destruction or condemnation of the Project occurs, of at least sixty-seven percent (67%) of the voting power of the Association residing in Members who are Owners of Type I Condominiums and approval by first Mortgagees who represent at least fifty-one percent (51%) of the Type I Condominiums that are subject to Mortgages; or

(ii) With the approval, for reasons other than substantial destruction or condemnation of the Project, of at least sixty-seven percent (67%) of the voting power of the Association residing in Members who are Owners of Type I Condominiums and approval by first Mortgagees who represent at least sixty-seven percent (67%) of the Type I Condominiums that are subject to Mortgages; or

(iii) As allowed by California law, including California CIVIL CODE Section 1359, as the same may be amended from time to time.

(b) **Type II Condominiums.** The Type II Common Area of the Project shall remain undivided with no judicial partition thereof except:

(i) With the approval, after substantial destruction or condemnation of the Project occurs, of at least sixty-seven percent (67%) of the voting power of the Association residing in Members who are Owners of Type II Condominiums and approval by first Mortgagees who represent at least fifty-one percent (51%) of the Type II Condominiums that are subject to Mortgages; or

(ii) With the approval, for reasons other than substantial destruction or condemnation of the Project, of at least sixty-seven percent (67%) of the voting power of the Association residing in Members who are Owners of Type II Condominiums and approval by first Mortgagees who represent at least sixty-seven percent (67%) of the Type II Condominiums that are subject to Mortgages; or

(iii) As allowed by California law, including California CIVIL CODE Section 1359, as the same may be amended from time to time.

A Mortgagee who receives a written request to give such approvals who does not deliver or mail the requesting party a negative response within sixty (60) days shall be deemed to have given such approval provided such written request was delivered by certified mail or registered mail with "return receipt" requested.

Nothing in this Section shall be deemed to prohibit partition of a co-tenancy in a Condominium.

Section 15.4 Power of Attorney. The Association is hereby granted an irrevocable power of attorney to sell the Project for the benefit of all the Owners thereof when partition of the Owners' interests in the Project may be had pursuant to this **ARTICLE XV**. The power of attorney herein granted may be exercised upon the vote or written consent of Owners who own at least fifty percent (50%) of the Units in the Project. Such power of attorney may be exercised by any two (2) Members of the Board who are hereby authorized to record a certificate of exercise in the Office of the County Recorder of San Diego County, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

ARTICLE XVI
DAMAGE, DESTRUCTION AND CONDEMNATION OF
GENERAL ASSOCIATION PROPERTY

Section 16.1 Damage or Destruction.

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

(i) The cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all the improvements, the available insurance proceeds together with applicable reserve funds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstructions, and three-fourths ($\frac{3}{4}$) of the total voting power of the Association residing in Members and their first Mortgagees (based upon one vote for each first Mortgage held by a Mortgagee) vote against such repair and reconstruction; or

(ii) Available insurance proceeds together with applicable reserve funds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board, a special assessment fails to receive the requisite approval (if such approval is required) as provided herein, and the Board 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) The following procedures shall be employed for disposition of insurance proceeds and guidance in reconstruction:

(i) If the cost to repair or reconstruct does not exceed the Threshold Value (defined below), the Board shall thereupon contract to repair and rebuild the damaged portions of the General Association Property in accordance with the conditions existing immediately prior to damage (modified at the discretion of the Board to comply with building codes and construction standards in effect at the time of the rebuilding) and the funds held in the insurance trust fund and applicable reserve funds shall be used for that purpose. If the insurance proceeds together with applicable reserve funds are insufficient to pay all of the costs of repairing or rebuilding, the Owners of the Units affected shall pay for the portion of the insufficiency attributed to their Units by the Board and the Board

shall levy a special assessment on all Units to make up any deficiency attributed to the General Association Property. The special assessment shall be subject to the provisions of this Declaration governing membership approval of special assessments and shall be levied pursuant to **Section 4.10** for purposes of raising funds for the rebuilding or repair and to make up any deficiency between the total insurance proceeds, applicable reserves and the contract price for such repair and rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Association to be used for such rebuilding.

(ii) If the cost to repair or reconstruct does exceed the Threshold Value, then:

(A) All insurance proceeds and funds borrowed by the Association, if any, shall be paid to a bank, trust company or other entity designated by the Board ("**insurance trustee**") to be held for the benefit of the Owners and their Mortgagees, as their respective interests may appear. The funds shall be disbursed according to standard construction loan procedures. The Board, on behalf of the Association and of the Owners, hereby is authorized to enter into an insurance trust agreement with such insurance trustee, consistent with this Declaration, relating to its powers, duties and compensation.

(B) The Board shall obtain firm bids from two (2) or more responsible contractors to rebuild the General Association Property in accordance with the conditions existing immediately prior to damage and destruction (modified at the direction of the Board to comply with building codes and construction standards in effect at the time of the rebuilding). The Board may also obtain an estimate from the insurance carrier of the scope of work included within the amount of the insurance coverage. To be considered, any contractor's bid shall include the premium payable for performance, labor and material payment bonds from a reputable bonding company.

(C) The Board shall, as soon as reasonably possible after receipt of such contractors' bids or insurance estimate, call a special meeting of the Owners to consider such bids or insurance estimate.

(D) At such meeting, the Owners may elect to reject all such bids or estimates and, thus, not to rebuild. A vote in excess of seventy-five percent (75%) of each class of Association Members shall be required to reject all bids or estimates; provided, however, that a vote in excess of fifty percent (50%) shall be sufficient to reject any bid or estimate that exceeds insurance proceeds for such reconstruction, repair or rebuilding by a sum that is equal to or greater than two hundred percent (200%) of the Threshold Value. Failure of the Owners to reject all bids and estimates shall authorize the Board to accept the unrejected bid it considers most favorable; provided, however, that if acceptance of any such bid would require the levy of a special assessment, such acceptance shall only be granted following membership approval of such special assessment, as required by this Declaration. If such membership approval is not obtained, the bid shall be deemed to have been rejected.

(E) If the Owners vote to not repair or rebuild the General Association Property, then each Owner (and the Owner's Mortgagee(s) as their respective interests shall then appear) shall be entitled to receive that portion of insurance proceeds equal to the proportion of the decrease in fair market value of the Owner's Unit as compared to the aggregate decrease in fair market values of all the Units in the Project caused by such damage or destruction. The decreases in fair market value shall be determined by two MAI (Member

Appraisal Institute of the American Institute of Real Estate Appraisers) appraisers selected by the Board and hired by and at the expense of the Association. If the two appraisers are unable to agree on the decreases in fair market value of each Unit, then the two appraisers shall select a third appraiser. The decreases in the market value of the respective Units shall then be the average of the three values submitted by each of the appraisers. If the two appraisers are unable to agree on a third appraiser, then the third shall be appointed by the presiding Judge of the Superior Court of the State of California for the County of San Diego.

(F) If a bid or estimate is accepted, the Board shall levy a special assessment to make up any deficiency between the total insurance proceeds or insurance work and the cost for such repairs or rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of Mortgages, shall be paid to the insurance trustee to be used for such rebuilding. The special assessment shall be levied pursuant to **Section 4.10** for purposes of raising funds for the rebuilding or repair and to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding.

For purposes of this **Section 16.1(b)**, the "**Threshold Value**" shall initially be Fifty Thousand Dollars (\$50,000). The Threshold Value shall be increased on the first day of each year, beginning on the first January 1 following the date of recordation of this Declaration, by the amount of any increase in the United States Department of Labor Consumer Price Index All Urban Consumers, Base 1982-84 = 100 (CPI-U) for Los Angeles–Riverside–Orange County, California, as published by the U.S. Department of Labor's Bureau of Labor Statistics ("**Index**"). If the Index is no longer published, another index generally recognized as authoritative shall be substituted by Board.

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

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

Section 16.2 Condemnation. If any portion of the General Association Property is taken by condemnation, eminent domain or any proceeding in lieu thereof, then all the Owners, and their Mortgagees as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds would be distributed pursuant to **Section 16.1**; provided, however, that should it be determined to repair or rebuild any portion of the General Association Property, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in this **ARTICLE XVI** for repairing damaged or destroyed portions of the General Association Property. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in this **ARTICLE XVI** for determining whether to rebuild or repair following damage or destruction.

ARTICLE XVII **DAMAGE, DESTRUCTION AND CONDEMNATION OF** **LIMITED ASSOCIATION PROPERTY**

Section 17.1 Damage or Destruction.

(a) If any portion of the Limited Association Property is damaged or destroyed by fire or other casualty, then the improvements shall be rebuilt or repaired substantially the same as the

improvements existed prior to the fire or other casualty, subject to local building codes and other applicable governmental regulations, unless either of the following occurs:

(i) The cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all the improvements, the available insurance proceeds together with applicable reserve funds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstructions, and three-fourths ($\frac{3}{4}$) of the voting power of the Association residing in Members who are Owners of Type I Condominiums and their first Mortgagees (based upon one vote for each first Mortgage held by a Mortgagee) vote against such repair and reconstruction; or

(ii) Available insurance proceeds together with applicable reserve funds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board, a special assessment fails to receive the requisite approval (if such approval is required) as provided herein, and the Board 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) The following procedures shall be employed for disposition of insurance proceeds and guidance in reconstruction:

(i) If the cost to repair or reconstruct does not exceed the Threshold Value (defined below), the Board shall thereupon contract to repair and rebuild the damaged portions of the Limited Association Property in accordance with the conditions existing immediately prior to damage (modified at the discretion of the Board to comply with building codes and construction standards in effect at the time of the rebuilding) and the funds held in the insurance trust fund and applicable reserve funds shall be used for that purpose. If the insurance proceeds together with applicable reserve funds are insufficient to pay all of the costs of repairing or rebuilding, the Owners of the Type I Condominiums affected shall pay for the portion of the insufficiency attributed to their Condominiums by the Board and the Board shall levy a special assessment on all Type I Condominiums to make up any deficiency attributed to the Limited Association Property. The special assessment shall be subject to the provisions of this Declaration governing membership approval of special assessments and shall be levied pursuant to **Section 4.10** for purposes of raising funds for the rebuilding or repair and to make up any deficiency between the total insurance proceeds, applicable reserves and the contract price for such repair and rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Association to be used for such rebuilding.

(ii) If the cost to repair or reconstruct does exceed the Threshold Value, then:

(A) All insurance proceeds and funds borrowed by the Association, if any, shall be paid to an insurance trustee to be held for the benefit of the Owners of the Type I Condominiums and their Mortgagees, as their respective interests may appear. The funds shall be disbursed according to standard construction loan procedures. The Board, on behalf of the Association and of the Owners of the Type I Condominiums, hereby is authorized to enter into an insurance trust agreement with such insurance trustee, consistent with this Declaration, relating to its powers, duties and compensation.

(B) The Board shall obtain firm bids from two (2) or more responsible contractors to rebuild the Limited Association Property in accordance with the conditions existing immediately prior to damage and destruction (modified at the

direction of the Board to comply with building codes and construction standards in effect at the time of the rebuilding). The Board may also obtain an estimate from the insurance carrier of the scope of work included within the amount of the insurance coverage. To be considered, any contractor's bid shall include the premium payable for performance, labor and material payment bonds from a reputable bonding company.

(C) The Board shall, as soon as reasonably possible after receipt of such contractors' bids or insurance estimate, call a special meeting of the Owners of the Type I Condominiums to consider such bids or insurance estimate.

(D) At such meeting, the Owners of the Type I Condominiums may elect to reject all such bids or estimates and, thus, not to rebuild. A vote in excess of seventy-five percent (75%) of each class of Association Members who are Owners of Type I Condominiums shall be required to reject all bids or estimates; provided, however, that a vote in excess of fifty percent (50%) shall be sufficient to reject any bid or estimate that exceeds insurance proceeds for such reconstruction, repair or rebuilding by a sum that is equal to or greater than two hundred percent (200%) of the Threshold Value. Failure of the Owners of the Type I Condominiums to reject all bids and estimates shall authorize the Board to accept the unrejected bid it considers most favorable; provided, however, that if acceptance of any such bid would require the levy of a special assessment, such acceptance shall only be granted following membership approval of such special assessment, as required by this Declaration. If such membership approval is not obtained, the bid shall be deemed to have been rejected.

(E) If the Owners of the Type I Condominiums vote to not repair or rebuild the Limited Association Property, then each Owner of a Type I Condominium (and such Owner's Mortgagee(s) as their respective interests shall then appear) shall be entitled to receive that portion of insurance proceeds equal to the proportion of the decrease in fair market value of the Owner's Condominium as compared to the aggregate decrease in fair market values of all the Type I Condominiums in the Project caused by such damage or destruction. The decreases in fair market value shall be determined by two MAI (Member Appraisal Institute of the American Institute of Real Estate Appraisers) appraisers selected by the Board and hired by and at the expense of the Association. If the two appraisers are unable to agree on the decreases in fair market value of each Type I Condominium, then the two appraisers shall select a third appraiser. The decreases in the market value of the respective Condominiums shall then be the average of the three values submitted by each of the appraisers. If the two appraisers are unable to agree on a third appraiser, then the third shall be appointed by the presiding Judge of the Superior Court of the State of California for the County of San Diego.

(F) If a bid or estimate is accepted, the Board shall levy a special assessment to make up any deficiency between the total insurance proceeds or insurance work and the cost for such repairs or rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of Mortgages, shall be paid to the insurance trustee to be used for such rebuilding. The special assessment shall be levied pursuant to **Section 4.10** for purposes of raising funds for the rebuilding or repair and to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding.

For purposes of this **Section 17.1(b)**, the "**Threshold Value**" shall initially be Fifty Thousand Dollars (\$50,000). The Threshold Value shall be increased on the first day of each year, beginning on the

first January 1 following the date of recordation of this Declaration, by the amount of any increase in the Index. If the Index is no longer published, another index generally recognized as authoritative shall be substituted by Board.

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

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

Section 17.2 Condemnation. If any portion of the Limited Association Property is taken by condemnation, eminent domain or any proceeding in lieu thereof, then all the Owners of the Type I Condominiums, and their Mortgagees as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds would be distributed pursuant to **Section 17.1**; provided, however, that should it be determined to repair or rebuild any portion of the Limited Association Property, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in this **ARTICLE XVI** for repairing damaged or destroyed portions of the Limited Association Property. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in this **ARTICLE XVI** for determining whether to rebuild or repair following damage or destruction.

ARTICLE XVIII
DAMAGE, DESTRUCTION AND CONDEMNATION OF
PARCEL 7

Section 18.1 Damage or Destruction. If any portion of Parcel 7 of the Final Map is damaged or destroyed by fire or other casualty, then the improvements shall be rebuilt or repaired substantially the same as the improvements existed prior to the fire or other casualty, subject to the Design Guidelines, local building codes and other applicable governmental regulations:

(a) Any rebuilding or repair of any damage or destruction to portions of Parcel 7 of the Final Map other than the Type II Common Area and the Common Systems shall be made by and at the individual expense of the Owner as to the portion of Parcel 7 of the Final Map consisting of the Type II Condominium Separate Interest owned by such Owner; this provision does not prevent the Owner from requiring contribution from the other Owner of the Type II Condominium Separate Interest pursuant to any rule of law regarding liability for negligence or willful acts or omissions.

(b) Any rebuilding or repair of any damage or destruction to the portion of Parcel 7 of the Final Map consisting of the Type II Common Area shall be made by the Owners of the Type II Condominiums, the cost thereof to be allocated between such Owners upon the basis of each such Owner's percentage interest in the Type II Common Area.

(c) Any rebuilding or repair of any damage or destruction to the Common Systems shall be made by the Owners of the Type II Condominiums, the cost thereof to be allocated between such Owners as follows:

(i) In the event the entire Common System is rebuilt or repaired, the cost thereof shall be allocated between the Owners of the Type II Condominiums upon the basis of the ratio of the square footage of the portion of the Common System which is

part of each Owner's Type II Condominium to the total square footage of the Common System covering all the Type II Condominiums.

(ii) In the event only a portion of the Common System is rebuilt or repaired ("**Damaged Portion**"), the cost thereof shall be allocated between the Owners of the Type II Condominiums upon the basis of the ratio of the square footage of the Damaged Portion which is part of each Owner's Type II Condominium to the total square footage of the Damaged Portion.

(d) In the event only one of the Type II Condominium Separate Interests is damaged or destroyed and rebuilding or repair does not commence within sixty (60) days of the casualty ("**Destroyed Condominium**"), the Owner of the Destroyed Condominium shall immediately undertake steps to: (i) abate any unsightly or dangerous conditions on the affected portions of Parcel 7 of the Final Map; (ii) restore the affected portions of Parcel 7 to a clean and attractive condition; and (iii) pay for the restoration of the remaining portions of the Common Systems to ensure that they are and remain functional for the other Type II Condominium(s) and in conformance with the Design Guidelines. If at a later date the Destroyed Condominium is to be rebuilt and repaired, the Owner of such Destroyed Condominium may, subject to the Design Guidelines, local building codes and other applicable governmental regulations, reattach the roof, foundation and exterior wall surface components of such Owner's Type II Condominium to the Common System. Upon reattachment, those components shall be deemed a part of the Common System.

(e) Nothing contained in this **Section 18.1** prevents an Owner from requiring contribution from the other Owners pursuant to any rule of law regarding liability for negligence or willful acts or omissions.

Section 18.2 Condemnation. If any portion of Parcel 7 of the Final Map is taken by condemnation, eminent domain or any proceeding in lieu thereof, then the Owners of the Type II Condominiums and the Owner's Mortgagee as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking.

ARTICLE XIX **DAMAGE, DESTRUCTION AND CONDEMNATION OF** **LOTS**

Section 19.1 Damage or Destruction. If any portion of a Lot is damaged or destroyed by fire or other casualty, then the improvements shall be rebuilt or repaired substantially the same as the improvements existed prior to the fire or other casualty, subject to the Design Guidelines, local building codes and other applicable governmental regulations.

Section 19.2 Condemnation. If any portion of a Lot is taken by condemnation, eminent domain or any proceeding in lieu thereof, then the Owner of the Lot and the Owner's Mortgagee as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking.

ARTICLE XX **INSURANCE AND INDEMNITY**

Section 20.1 Indemnity By Owners. Each Owner shall indemnify, protect, defend and hold the Association and the other Owners harmless from and against all claims, expenses, liabilities, loss, damage and costs, including any actions or proceedings in connection therewith and including reasonable attorneys' fees, incurred in connection with, arising from, due to or as a result of the death of or any accident, injury, loss or damage, howsoever caused, to any Person or loss or damage to the property of any Person as shall occur in the indemnifying Owner's Unit, except (i) claims resulting from the negligence or willful act or omission of (a) the Association or the indemnified Owner, whichever is

applicable; (b) any Occupant of the indemnified Owner's Unit (including such Occupant's agents, servants and employees); or (c) the agent, servants or employees of such indemnified Owner, wherever such negligence or willful act or omission may occur, or (ii) to the extent such Owner's existing insurance insures against the matters covered by the indemnity in this Section.

Section 20.2 Owner's Insurance. Each Owner shall at all times during the term of this Declaration maintain or cause to be maintained property insurance against losses to personal property within such Owner's Unit and to any upgraded improvements located within such Owner's Unit and liability insurance insuring against any liability resulting from actions or inactions within such Owner's Unit in such amounts as such Owner reasonably deems appropriate. Each policy of insurance obtained under this **Section 20.2** shall name the Association as an additional insured. Each Owner hereby waives all rights of subrogation against the Association and the insurance maintained by each Owner must contain a waiver of subrogation rights by the insurer as to the Association; provided, however, the failure of an Owner to obtain such waiver from his or her insurer shall not defeat or impair the waiver of subrogation between the Owner and the Association. Any insurance obtained by an Owner pursuant to this **Section 20.2** shall be issued by an insurance company with a Best's rating of A:VII or better, or its equivalent if not rated by The A.M. Best Company. The provisions of **Section 20.3** shall apply to the insurance coverage required to be obtained under this **Section 20.2**. Each Owner shall be responsible to pay any deductible amount for any loss to his or her Unit.

Further, any insurance obtained by an Owner of a Type II Condominium pursuant to this **Section 20.2** shall include glass coverage and extended coverage endorsement for one hundred percent (100%) of the current replacement cost of all of the improvements located within (i) such Owner's Type II Condominium Separate Interest and (ii) in the Type II Common Area, excluding land, foundations, excavations and other items that are usually excluded from insurance coverage.

Further, any insurance obtained by an Owner of a Lot pursuant to this **Section 20.2** shall include glass coverage and extended coverage endorsement for one hundred percent (100%) of the current replacement cost of all of the improvements located on the Lot, excluding land, foundations, excavations and other items that are usually excluded from insurance coverage.

Upon reasonable request by the Association, an Owner shall provide to the Association a copy of a certificate of insurance issued by the Owner's insurance carrier for each policy of insurance obtained by such Owner under this **Section 20.2**. Further, upon reasonable request by an Owner of a Type II Condominium to the other Owner of a Type II Condominium, such other Owner shall provide to the requesting Owner a copy of a certificate of insurance issued by the other Owner's insurance carrier of each policy of insurance obtained by such other Owner under this **Section 20.2**.

Section 20.3 Changes in Insurance. During the term of this Declaration the insurance industry may change, among other things, the scope of coverage afforded by the various policies of insurance named in this Declaration or the nomenclature by which the scope of coverages contemplated under the various policies of insurance named in this Declaration are known in the insurance industry. In the event of such or similar change, it is the intent of this Declaration and the obligation of the Owners and the Association at all times during the term of this Declaration to maintain the scope of insurance coverage afforded at the date of this Declaration by the forms of the various policies of insurance named in this Declaration, to the extent that maintaining same is reasonably, commercially practicable, regardless of the nomenclature by which such scope of coverages may be or become known in the insurance industry.

Section 20.4 Association's Insurance. As part of its obligation to maintain the Association Property, the Association shall at all times maintain in force and effect commercial or comprehensive general liability insurance insuring the Association and, as additional insureds, all Owners and Occupants under leases who now or hereafter own or hold any Unit or any leasehold estate or other interest therein as their respective interests may appear (provided that the Association is given prior written notice of such interest), against claims for bodily injury, personal injury, death or property damage occurring in, upon or about the Association Property. Such insurance shall be written with an insurer licensed to do

business in the State of California. All such insurance shall be primary coverage, endorsed to name as additional insureds all Owners and Occupants under leases of which the Association has been notified in writing, and shall not require that any other insurance be called upon to contribute to a loss under such coverage, and shall have liability limits of not less than Two Million Dollars (\$2,000,000) combined single limit coverage for bodily injury, personal injury, death or property damage arising out of any single occurrence, which amount shall be reviewed annually and changed to reflect the current practice in mixed use business centers in San Diego County, California which are of a similar size and which have a similar mix of occupants. Such insurance shall include blanket contractual liability. The Association shall cause certificates of insurance to be issued by the insurer to each of the Owners and Occupants of whom the Association has been notified in writing, certifying that such insurance is in full force and effect and shall not be canceled or materially amended without thirty (30) days prior written notice thereof to each of such Owners and Occupants. In addition, the Association shall obtain and maintain in force and effect a master fire insurance policy with glass coverage and extended coverage endorsement for one hundred percent (100%) of the current replacement cost of all of the Association Property improvements within the Project, excluding land, foundations, excavations and other items that are usually excluded from insurance coverage. The maximum deductible amount shall be the lesser of \$10,000 or one percent (1%) of the policy face amount. "**Improvements**" means and refers to the Association Property together with those standard appliances and improvements located within the Units provided by Declarant to the First Purchasers and does not include items not provided by Declarant or upgraded items. Such policy shall contain the following endorsements for a commercially reasonable premium:

(a) An Inflation Guard Endorsement, when it can be obtained.

(b) A construction code endorsement, if there is a construction code provision that would require changes to undamaged portions of the building(s) even when only part of a building is destroyed by an insured hazard (typical endorsements include Demolition Cost Endorsements, Contingent Liability From Operation of Building Laws Endorsement and Increased Cost of Construction Endorsement).

(c) A Special Condominium Endorsement which states the policy shall provide that any insurance trust agreement will be recognized; the right of subrogation against Owners will be waived; the insurance will not be prejudiced by any acts or omissions of Owners that are not under the control of the Association; and the policy will be primary, even if an Owner has other insurance that covers the same loss.

Any insurance required pursuant to this Declaration shall be issued by an insurance company with a Best's rating of A:VII or better, or its equivalent if The A.M. Best Company does not rate the company. The provisions of **Section 20.3** shall apply to all insurance coverage required to be obtained under this **Section 20.4**.

Section 20.5 Additional Insurance. The Association is authorized to obtain and maintain in force the following additional policies of insurance:

(a) Insurance in an amount to be determined by the Board, but in any event not less than One Million Dollars (\$1,000,000), on behalf of (i) each director, (ii) each member of the Committee and (iii) such other committee members and officers as the Board in its discretion deems appropriate, for liability asserted against or incurred by such director, committee member or officer in such capacity or arising out of such status, regardless whether the Association would have the power to indemnify such Director, committee member or officer against such liability under applicable law;

(b) Workers' Compensation Insurance, to the extent required by law, covering any employee or uninsured contractor of the Association; and

(c) Such other insurance as the Board shall deem necessary or expedient to carry out the functions of the Association as set forth in this Declaration, the Articles and the Bylaws.

Section 20.6 Insurance Premiums and Deductibles. Insurance Premiums for the master policy and other insurance obtained by the Association (other than the cost of endorsements which cover only particular Owners) for the General Association Property shall be a common expense to be included in the regular assessments levied by the Association against all Owners of the Units in the Project. Insurance Premiums for the master policy and other insurance obtained by the Association (other than the cost of endorsements which cover only particular Owners) for the Limited Association Property shall be a Cost Center Expense to be included in the Cost Center Assessments levied by the Association against all Owners of the Type I Condominiums in the Project.

Section 20.7 Review. The Board shall periodically review the coverage provided by the insurance policies obtained and maintained by the Association, and, to the extent that increased coverage is available and at the Board's discretion, shall increase such coverage in light of inflation, increased risk and similar factors.

Section 20.8 Self-Insurance. The Board may from time to time consider and in its sole discretion approve or reject requests by Owners to satisfy the requirements of **Section 20.2** through a program of self-insurance. The Board may request such information and apply such standards as it deems necessary or appropriate to assure that any such self-insurance program meets the intent and standards of **Section 20.2**.

ARTICLE XXI **ENFORCEMENT AND REMEDIES**

Section 21.1 Right to Cure. To the extent not previously addressed in this Declaration, if any Owner defaults in the full, faithful and punctual performance of any obligation required under this Declaration, and if, at the end of thirty (30) days after written notice from any other Owner or the Association stating with particularity the nature and the extent of such default, the defaulting Owner has failed to cure such default or if a diligent effort is not then being made to cure such default, then any other Owner or the Association shall, in addition to all other remedies it may have at law or in equity, have the right to perform such obligation on behalf of such defaulting Owner and be reimbursed by such defaulting Owner for the cost thereof, together with interest thereon (from the date of the curing Owner's payment) at the rate of the lesser of (i) twelve percent (12%) per annum, or (ii) two percentage points per annum over the reference rate of Bank of America, N.T. & S.A. (or such other major national bank as may be designated by the Board if Bank of America ceases to exist) in effect on the due date, but not greater than the maximum rate (if any) per annum allowed by law. Any such claim for reimbursement, together with interest as aforesaid, shall be a secured right and a lien therefor may attach to the Unit(s) owned by the defaulting Owner.

Section 21.2 Legal and Equitable Relief. Each Owner and the Association shall have the right to prosecute any proceedings at law or in equity against any other Owner, Occupant or any other Person violating or attempting to violate or default in the performance of any of the provisions contained in this Declaration to prevent such Owner, Occupant or other Person from violating or attempting to violate or default in the performance of any of the provisions of this Declaration and to recover damages for any such violation or default. All of the remedies permitted or available under this Declaration, at law or in equity, shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

Section 21.3 Claim of Lien. The lien for which **Section 21.1** provides shall become effective upon the recording of a Notice of Claim of Lien in the Office of the County Recorder of San Diego County, California, signed and certified, stating the amount due, the name of the defaulting Owner and the legal description of the Unit owned by such defaulting Owner. Such lien, when recorded against the Unit described in said Notice of Claim of Lien, shall be prior and superior to any right, title, interest, lien or claim which may be acquired or attaches to such Unit after the date of recording of such Notice of Claim of Lien. Such lien shall be for the use and benefit of the Owner or the Association filing same and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

Section 21.4 Waiver. The failure of any Owner or the Association to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter, and neither any Owner nor the Association shall have any liability for such failure of such Owner or the Association to enforce any provision of this Declaration.

Section 21.5 Injunctive Relief. In the event of any violation or threatened violation by any Owner or Occupant of any portion of the Property of any of the terms, covenants, conditions and obligations of this Declaration, in addition to the other remedies for which this Declaration provides, any or all of the Owners shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

Section 21.6 Breach Shall Not Permit Termination. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have under this Declaration by reason of any breach of this Declaration. Any breach of any of the covenants, conditions or restrictions set forth in this Declaration, however, shall not defeat or render invalid the lien of any Mortgage made in good faith and for value, but such covenants, conditions or restrictions shall be binding upon and be effective against such Owner of any of said property or any portion thereof whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

Section 21.7 Litigation Expenses. Except as otherwise stated in this Declaration, if any Owner or the Association brings an action against any other Owner or Occupant by reason of a breach or alleged violation of any covenant, term or obligation of this Declaration, or for the enforcement of any provision of this Declaration or otherwise arising out of this Declaration, the prevailing party in such action shall be entitled to its cost of suit and reasonable attorneys' fees, which shall be made part of any judgment rendered in such action.

Section 21.8 Use of Awards; Reserves. Any monetary sums awarded to the Association with respect to an alleged Association Property defect must be used by the Association to the extent necessary to repair or replace the Association Property. Remaining sums, if any, may be used by the Association to pay its legal fees incurred and other costs of dispute resolution. The Association shall not utilize its reserve funds to pay costs of litigation or other dispute resolution or legal fees therefor.

ARTICLE XXII **ASSIGNMENT**

Section 22.1 General. The rights, powers, duties and obligations conferred upon Owners pursuant to this Declaration shall not at any time be transferred or assigned by any Owner, except (a) in the case of the rights, powers, duties and obligations of Declarant, by Declarant pursuant to the definition of "Declarant" set forth in **ARTICLE I**; or (b) in the case of any other Owner, through a transfer of the Owner's interest in its Unit in the manner provided in **Section 22.2**.

Section 22.2 Sale By Owner. Upon the sale, transfer, conveyance or assignment by any Owner of its right, title and interest in its Unit, the following shall apply:

(a) **Notice.** The transferring Owner shall give written notice of the sale, transfer, conveyance or assignment to the Association, including the legal name and address of the transferee, concurrently with recording the instrument effecting the same.

(b) **Transferee's Statement.** Prior to the effective date of the transfer, the transferee shall sign and deliver to the Association a written statement which contains the name and address of the transferee and the signed agreement of the transferee to be bound by this Declaration and to perform all obligations of the transferor under this Declaration with respect to the transferred Unit. Failure to deliver any such written statement shall not affect the running of any covenants in this Declaration with the land, nor shall any such failure negate, modify or

otherwise affect liability of any Owner or transferee pursuant to this Declaration, but such failure shall constitute a default of this Declaration by the transferee.

(c) Release of Owner. Upon the assumption by the transferee under **Section 22.2(b)**, the transferring Owner shall be released from all obligations of this Declaration as of the effective date of the transfer; provided that with respect to the period before the effective date of the transfer, such Owner is not in default in the performance of any duties or obligations arising under this Declaration or in the payment of any amounts due and payable under this Declaration.

(d) Liability of Transferee. In no event shall any transferee of any Owner be liable for any default of the transferring Owner under this Declaration which occurred prior to the effective date of the transfer; provided, however, nothing contained in this Section shall affect the existence, priority, validity or enforceability of any lien placed upon the transferred Unit or portion thereof pursuant to **ARTICLE XXI**.

ARTICLE XXIII **OWNERSHIP OF UNITS**

Section 23.1 Sale/Leaseback. If any Owner of a Unit conveys fee title to its Unit(s) and a new interest, in the form of a leasehold or similar possessory interest, is acquired by such transferring party concurrently with conveyance of fee title to such Unit, then, unless within three (3) days following such conveyance the Person to whom such conveyance has been made notifies the Association and Declarant in writing to the contrary, such transferring party shall be deemed to have retained all of the rights, powers and obligations of the Owner of such Unit, to the exclusion of the Person to whom such conveyance has been made; provided, however, upon termination or assignment of such leasehold or other possessory interest, the rights, powers and obligations theretofore retained by such transferring party shall terminate and thereupon vest completely and irrevocably in the Person then holding fee title to such Unit. This **ARTICLE XXIII** shall likewise apply to any transferee of such an Owner who so conveys but retains a lease for a term of ten (10) years or more and who occupies the Unit.

Section 23.2 Multiple Ownership. In the event any Owner transfers or conveys its interest in its Unit or any portion of its Unit or interest in its Unit in such a manner as to vest ownership of the Unit in more than one Person, then the Persons owning all of such interest in such Unit shall be jointly considered a single Owner and such Persons shall designate one of their number to act on behalf of all such Persons in the performance of the provisions of this Declaration. Any such designation shall be in writing, duly executed and acknowledged by each such Person; shall be served upon the Association in accordance with the notice provisions of **ARTICLE XXIV**; shall contain a certificate that a copy thereof has been so served; and shall be recorded in the Office of the County Recorder of San Diego County, California. In the absence of any such written designation, the acts of the Owner whose interest is so divided with respect to the performance of the provisions of this Declaration shall be binding upon all of the Persons then owning any interest in such Unit until such time as the written designation is properly served as provided in this **ARTICLE XXIII**. The exercise or performance of any rights, powers or obligations of an Owner under this Declaration by the Person designated to represent such Persons shall be binding upon all Persons having an interest or right in such Unit. So long as such designation remains in effect, all Persons having an interest or right in such Unit shall act only through such designated Person and the Association and the other Owners and Occupants shall have the right to deal exclusively with and rely solely upon the acts or omissions of such designated Person in the performance of the provisions of this Declaration. Any Person designated under this **ARTICLE XXIII** may be removed by the Persons so designating, in accordance with any procedure agreed between them, provided that written notice of such removal and designation of a new Person to act on their behalf under this Declaration is given and made in the manner specified in this **ARTICLE XXIII**; and in the absence of any such notice and designation, the previous designation shall continue in effect and the acts of the Person previously designated with respect to the performance of the provisions of this Declaration shall be binding upon all such Persons until such time as the written notice and new designation is properly served as provided in this **ARTICLE XXIII**. Any Person designated pursuant to the provisions of this **ARTICLE XXIII** shall be the agent of each of its principals, hereby irrevocably appointed for such purposes, upon whom service of any

process, writ, summons, order or other mandate of any nature of any court in any action, suit or proceeding arising out of this Declaration may be made, and service upon such designated Person shall constitute due and proper service of any such matter upon each of its principals, provided a copy of such matter is also mailed to such principals at the last address of such principals known to the sender. Notwithstanding anything to the contrary contained in this Declaration, the designation of a Person to act on behalf of other Persons as provided in this **ARTICLE XXIII** shall not for any purpose relieve any such Persons from the obligations or liabilities created by or arising from this Declaration.

ARTICLE XXIV
APPROVAL OF OWNERS AND NOTICES

All notices, demands or requests for consent or approval of any kind which the Association or any Owner or Occupant is required or desires to give or make upon the Association shall (i) be in writing; (ii) specify the Section of this Declaration which requires or authorizes that such notice be given or requires that such consent or approval be obtained; and (iii) be given or made (subject to the right of the Association or any Owner or Occupant to designate a different address by giving notice of such change in the manner provided in this Section) by personal delivery, private express courier, or by United States registered or certified mail, return receipt requested, postage prepaid, addressed, in the case of Declarant, as follows:

Declarant:

OTPC, LLC
c/o McMahon Development Group
500 Stevens Avenue, Suite 200
Solana Beach, California 92075
Attention: Project Coordinator

Association:

Ocean Terrace Property Owners Association
c/o McMahon Development Group
500 Stevens Avenue, Suite 200
Solana Beach, California 92075
Attention: Secretary

When given in the manner prescribed in this Section, all notices, demands or requests for consent or approval shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or the date on which delivery is refused by the addressee.

ARTICLE XXV
MODIFICATION PROVISION

Other than a termination or extension of this Declaration which shall be governed by **ARTICLE XXIX**, this Declaration may not be modified in any respect whatsoever, or rescinded, in whole or in part, except by written instrument duly recorded in the Office of the County Recorder of San Diego County, after first being duly signed and acknowledged by (i) Declarant, for so long as Declarant owns a Unit or is the beneficiary under a deed of trust encumbering a Unit, and (ii) the Owners (including Declarant) of Units constituting at least fifty-one percent (51%) of the total Voting Power of the Association. A copy of the final approved amendment shall be transmitted to the City within thirty (30) days for the official record if the proposed amendment affects the City.

ARTICLE XXVI
NOT A PUBLIC DEDICATION

Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the benefit of the general public or for any public purposes whatsoever, it being the intent of Declarant that this Declaration shall be strictly limited to and for the purposes expressed in this Declaration. The right of the public or any Person to make any use whatsoever of the Property or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission and subject to control of the Owners.

ARTICLE XXVII
DEVELOPMENT BY DECLARANT

Section 27.1 Planned Development. Declarant intends, but is not obligated, to complete the Project and Declarant shall have the right to construct the Units and to complete improvements allowed by the City to be completed within the Property.

Section 27.2 Reservation of Rights to Complete Project. Declarant shall also have a nonexclusive right of access, ingress and egress across the Project as may be reasonably necessary or convenient for purposes of completing the construction and sale of the Property.

Section 27.3 Right of Declarant to Redesign Project. Declarant reserves the right in its sole discretion, but subject to any necessary City approvals, to redesign any portion of the Project other than the Units or Association Property which have been conveyed by Declarant to others. The redesign may alter the boundaries of any improvement, adjust the location of the buildings and the Association Property, change the elevation and appearance of improvements, and change the location of the amenities.

Section 27.4 Amendment to Condominium Plan; Power of Attorney. Until such time as a Condominium has been transferred, Declarant, as the owner of the portion of the Property covered by the Condominium Plan, shall have the right to amend the Condominium Plan only by a document signed and acknowledged by Declarant. The Association, each Owner and each Mortgagee hereby grants a special power of attorney to Declarant to so amend the Condominium Plan. Each Mortgagee and each Owner of a Condominium by accepting a Mortgage or deed to a Condominium, shall be deemed to have constituted and irrevocably appointed Declarant as his attorney in fact, for himself and each of his optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, to so amend the Condominium Plan. This power of attorney is coupled with an interest and irrevocable. Anything herein stated to the contrary, the holder of a mortgage that encumbers the portion of the Property covered by the amendment must also sign such amendment to the Condominium Plan.

Section 27.5 Additional Powers of Attorney. Each Mortgagee of a Mortgage and each Owner of a Unit, by accepting a Mortgage or deed to a Unit, shall be deemed to have constituted and irrevocably appointed Declarant as his attorney in fact, for himself and each of his optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a power of attorney coupled with an interest to Declarant as his attorney in fact to effect the redesign of all or any portion of the Project in accordance with the limitations and requirements set forth in this **ARTICLE XXVII**; and further:

- (a) To prepare, execute, acknowledge and record any map or record of survey required or permitted by the provisions of the Subdivision Map Act of the State of California in effect on the date of the recording of this Declaration and as thereafter enacted or amended, and any ordinances, rules and regulations of applicable governmental entities and authorities having jurisdiction over the Project in effect on the date of the recording of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in

connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations.

(b) To prepare, execute, acknowledge and record any amendment to the Condominium Plan for the Project, including, without limitation, any amendments necessary to cause the Condominium Plan to conform with the improvements as actually built, which may be required or permitted by the laws of the State of California in effect on the date of the recording of this Declaration as thereafter enacted or amended, and any ordinances, rules and regulations of any applicable governmental entities and authorities having jurisdiction over the Project in effect on the date of the recording of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations.

(c) To prepare, execute, acknowledge and file for approval any application for zoning or setback changes or variance or special use permits or any other permits or reports required or permitted by statutes, ordinances and regulations applicable to the Project in effect on the date of the recording of this Declaration as thereafter enacted or amended, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations.

(d) To prepare, execute, acknowledge and file for approval any registration or application for any permit, approval, exemption, ruling or entitlement, which registration or application is required or permitted pursuant to any law or regulation in effect as of the date of the recording of this Declaration and as hereafter enacted or amended by any federal, state and local governmental entities and authorities, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any such governmental body and by any such laws and regulations; to appear before any such governmental bodies and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations; and do all other things now or hereafter permitted or required by any such governmental body and any such laws and regulations.

(e) To prepare, execute, acknowledge and record any deeds, waivers, releases, reconveyances or other documentation which may be permitted or required to clear title to any Unit in the Project.

(f) To do any and all things necessary or desirable under the circumstances to effect and accomplish the purposes of this **ARTICLE XXVII**.

Section 27.6 Indemnification of Owners on Exercise of Power of Attorney. Declarant shall indemnify and hold each Owner free and harmless from all liabilities, including attorney's fees, which are incurred as a direct result of the execution by Declarant of any improvement agreements or bonds, or both, in connection with the exercise by Declarant of the power of attorney set forth in **Section 27.5**.

Section 27.7 Limitation on Amendment. This **ARTICLE XXVII** may not be amended without the written approval of Declarant attached to the instrument of amendment.

ARTICLE XXVIII
CONSTRUCTION DISPUTES

Section 28.1 Definitions. For purposes of this Article, the following terms shall have the following meanings:

- (a) "**Claimant**" shall mean and refer to any party (including any Owner or the Association) who initiates a claim against a Development Party.
- (b) "**Development Party**" shall mean and refer to Declarant or any director, officer, partner, employee, subcontractor or agent of Declarant.
- (c) "**Dispute**" shall mean and refer to a dispute or disagreement between a Claimant and a Development Party concerning the Project.

Section 28.2 Agreement to Method of Resolving Disputes; Waiver of Right to Jury Trial. DECLARANT, THE ASSOCIATION AND EACH OWNER (COLLECTIVELY THE "**PARTIES**") AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS ARTICLE TO RESOLVE ALL DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES COVERED IN THIS ARTICLE IN ANY OTHER MANNER. THE PARTIES ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS ARTICLE, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JUDGE OR JURY, PURSUANT TO THE FEDERAL ARBITRATION ACT.

Section 28.3 Agreement to Arbitrate. The Parties agree to resolve all Disputes that may arise between a Claimant and a Development Party exclusively through binding arbitration in the county in which the Project is located. This arbitration provision shall apply to Disputes of any kind or nature regardless of when the Dispute first arose or the nature of the relief sought; provided, however, the Parties may elect to resolve such Disputes through a small claims court proceeding.

Section 28.4 No Trial by Judge or Jury. By agreeing to resolve all Disputes through binding arbitration, the Parties each give up the right to have their respective claims and defenses decided by a judge or a jury. Instead all claims and disputes will be decided by the Arbitrator.

Section 28.5 Rules Applicable to All Cases. The arbitration will be conducted in accordance with the commercial arbitration rules of the American Arbitration Association ("**AAA Rules**") then applicable to the claims presented, as supplemented by this Article. The following supplemental rules shall apply to all arbitration proceedings respecting Disputes and shall govern in the event of a conflict between the rules set forth below and the AAA Rules.

- (a) **Qualifications of Arbitrators.** The arbitrator shall be neutral and impartial and either a retired judge or a member or former member of the California State Bar with at least fifteen (15) years experience as a practicing lawyer.
- (b) **Appointment of Arbitrator.** The arbitrator to preside over the Dispute shall be selected in accordance with the AAA Rules, but no later than sixty (60) days after a notice of claim is filed.
- (c) **Expenses.** All fees charged by the arbitrator shall be advanced by the Development Party. If the Development Party is the prevailing party in the arbitration, the arbitrator may, in his or her discretion and only to the extent permitted by law, direct the Claimant to reimburse the Development Party all or part of the arbitrator's fee advanced by such Development Party.
- (d) **Preliminary Procedures.** If state or federal law requires the Parties to take steps or procedures before commencing an action in court, then the Parties must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example,

nothing contained herein shall be deemed a waiver or limitation of the provisions of California CIVIL CODE Section 1368.4.

(e) Participation by Other Parties. A Claimant and a Development Party, to the extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration.

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

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

Section 28.6 Additional Rules Applicable to Certain Cases. In any arbitration in which a claim of a Claimant or a Development Party exceeds \$250,000 in value, the following additional rules will supplement the AAA Rules and govern in the event of a conflict between the following rules and the rules set forth above, the AAA Rules, or both.

(a) Qualifications of Arbitrator. In addition to the requirements of **Section 28.5(a)**, the arbitrator shall be a retired judge of the California Superior Court, a California Court of Appeal, or the California Supreme Court.

(b) Rules of Law. The California EVIDENCE CODE shall apply.

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

Section 28.7 Federal Arbitration Act. The Parties acknowledge that because many of the materials and products incorporated into a Unit are manufactured in other states, the purchase of a Unit evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. Sections 1, et seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions in this Article.

Section 28.8 AGREEMENT TO ARBITRATE DISPUTES AND WAIVER OF JURY TRIAL. THE PARTIES AGREE TO HAVE ANY DISPUTES DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND THE PARTIES ARE GIVING UP ANY RIGHTS A PARTY MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. FURTHERMORE, THE PARTIES ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ARTICLE. IF A PARTY REFUSES TO SUBMIT TO ARBITRATION, A PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT.

Section 28.9 Final and Binding Award. The decision of the arbitrator shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in the county in which the Project is located, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.

Section 28.10 Severability. If the arbitrator or any court determines that any provision of this Article is unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this Article shall be conducted under the remaining enforceable terms of this Article.

Section 28.11 Application; Conflicts. This Article shall apply only with respect to Disputes in which either: (a) Declarant or any director, officer, partner, employee, subcontractor or agent of Declarant is a party, or (b) the Association or any director, officer, partner, employee, subcontractor or agent of the Association is a party. In the event of a conflict between this Article and any other alternative dispute resolution procedures, this Article shall prevail.

Section 28.12 No Amendment Without Declarant's Consent. No amendment may be made to this Article without the written consent of Declarant.

Section 28.13 Arbitration In Purchase Agreements. The limitation of **Section 28.3** to certain controversies, claims or disputes shall not be deemed to supersede any written agreement (e.g., purchase agreement) between Declarant and an Owner which may provide for the arbitration of additional controversies, claims or disputes.

ARTICLE XXIX **TERM OF DECLARATION**

This Declaration shall continue for a period of fifty (50) years and thereafter year to year, unless, before the expiration of the term (as it may be so extended), this Declaration is terminated or extended by written instrument duly signed and acknowledged by the Owners, and such instrument is recorded in the Office of the County Recorder of San Diego County, California. This Declaration shall terminate upon the expiration of the term following such recordation, provided that the easements granted herein shall survive such termination unless otherwise specified herein.

ARTICLE XXX **MISCELLANEOUS**

Section 30.1 Severability. If any provision of this Declaration is held by a court of competent jurisdiction to be invalid, the invalidity of such provision shall not affect the validity of the remaining provisions of this Declaration, and all remaining provisions shall continue unimpaired, in full force and effect.

Section 30.2 Interpretation. Captions and Section headings, where used in this Declaration, are for convenience of reference only, are not intended to be a part of this Declaration and in no way define, limit, amplify, change, alter or describe the scope or intent of the particular paragraphs to which they refer. For the purpose of this Declaration, the neuter gender includes the feminine or masculine and the singular number includes the plural.

Section 30.3 Reciprocal Covenants to Run with the Land. This Declaration is made for the direct, mutual and reciprocal benefit of each and every Unit; shall create mutual, equitable servitudes upon each Unit in favor of every other Unit; shall create reciprocal rights and obligations between and among the respective Owners during their respective periods of ownership and privity of contract and estate between and among all grantees of each Unit, their respective heirs, successors and assigns; and shall, with respect to the Owner of each Unit, its heirs, successors and assigns during their respective periods of ownership, operate as covenants running with the land, for the benefit of all other Units.

IN WITNESS WHEREOF, Declarant has signed and made this Declaration as of the date first above written.

"Declarant"

OTPC, LLC, a California limited liability company

By: MCMAHON DEVELOPMENT GROUP, LLC, a California limited liability company, its Manager

By: _____
Ronald D. McMahon, its Manager

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____
(here insert name and title of the officer), personally appeared _____

_____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT "A"

Square Footage and Assessment Percentage

Building No. ¹	Total Square Footage Per Building ²	Assessment Percentage Per Building ³
A	23,400	23.17%
B	28,600	28.32%
C	7,000	6.93%
D	7,000	6.93%
E	7,000	6.93%
F	5,500	5.44%
G	4,000	3.96%
H	10,500	10.40%
I	4,000	3.96%
J	4,000	3.96%
Total:	101,000	100%

¹ These numbers correspond to the number of each of the buildings located on Parcels 1 through 10, inclusive, of the Final Map.

² These square footage figures correspond to the total rentable (*i.e.*, gross) square footage gross floor area of the buildings.

³ If a building contains one (1) or more Condominiums, the Assessment Percentage specified for such building in the table above shall be allocated to each such Condominium based on the rentable (*i.e.*, gross) square footage of such Condominium in relation to the total rentable (*i.e.*, gross) square footage of all of the Condominiums in the building in which such Condominium is located. By way of illustration only, if Building No. A contains a total of two (2) Condominiums that are each 11,700 rentable square feet, then the Assessment Percentage for each such Condominium is 11.585%.

EXHIBIT "B"

Square Footage and Voting Power

Building No. ⁴	Total Square Footage Per Building ⁵	Voting Power Per Building ⁶
A	23,400	23
B	28,600	29
C	7,000	7
D	7,000	7
E	7,000	7
F	5,500	5
G	4,000	4
H	10,500	10
I	4,000	4
J	4,000	4
Total:	101,000	100

⁴ These numbers correspond to the number of each of the buildings located on Parcels 1 through 10, inclusive, of the Final Map.

⁵ These square footage figures correspond to the total rentable (*i.e.*, gross) square footage gross floor area of the buildings.

⁶ If a building contains one (1) or more Condominiums, the Voting Power specified for such building in the table above shall be allocated to each such Condominium based on the rentable (*i.e.*, gross) square footage of such Condominium in relation to the total rentable (*i.e.*, gross) square footage of all of the Condominiums in the building in which such Condominium is located. By way of illustration only, if Building No. A contains two (2) Condominiums that are each 11,700 rentable square feet, then the Voting Power allocated to each such Condominium is 11.5. For each Unit owned by Declarant in the Project, Declarant shall have five (5) times the Class A Voting Power specified above or calculated for each such Unit.

SUBORDINATION AGREEMENT

The undersigned, as Beneficiary under that certain deed of trust recorded on January 17, 2007 as Document No. 2007-0033081, in the Office of the County Recorder of San Diego County, California ("**Deed of Trust**"), which Deed of Trust was made by OTPC, LLC, a California limited liability company, in favor of Commonwealth Land Title Company, as Trustee, and City National Bank, a National Banking Association, as Beneficiary, hereby declares that the lien and charge of said Deed of Trust are and shall be subordinate and inferior to the Amended And Restated Declaration Establishing Covenants, Conditions And Restrictions And Grants Of Easements For Ocean Terrace Professional Center to which this Subordination Agreement is attached.

Dated: _____, 200__

CITY NATIONAL BANK, a National Banking Association

By: _____
Its: _____

By: _____
Its: _____

STATE OF CALIFORNIA)
)ss.
COUNTY OF _____)

On _____, before me, _____
(here insert name and title of the officer)

personally appeared _____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)