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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR PROJECT 200

This Declaration of Covenants, Conditions, and Restrictions ("**Declaration**") for PROJECT 200 is made as of the [DAY] day of [MONTH], [YEAR] by PROJECT 200, LLC, a California LLC [qualified to do business in the State of CA] having an address at 1427 E 28th Street, Long Beach, CA 90814 ("**Declarant**").

RECITALS

WHEREAS, Declarant owns certain real property located in LOS ANGELES County, CA, described in the attached Exhibit [LETTER] (the "**Property**") except for portions that have been: (a) dedicated or conveyed to Governmental Entities (defined below) for public rights-of-way, drainage areas, or other public purposes; or (b) conveyed to other Persons (defined below) as identified on Exhibit [LETTER]. Declarant is developing the Property to be a high quality, multi-use business and retail community subject to the covenants, conditions, and restrictions set forth in this Declaration. By this Declaration, Declarant intends to establish a plan for the development, improvement, and use of the Property with architectural, landscaping, and maintenance controls.

WHEREAS, Declarant intends to create an entity to have and exercise the rights and duties and to perform the functions set forth in this Declaration which include, without limitation, maintaining certain portions of the Property, reviewing Plans (defined below) for Improvements (defined below) to be constructed on the Property, and assessing, collecting, and disbursing of assessments provided for herein on behalf of, and as agent for, the Owners (defined below).

NOW, THEREFORE, Declarant adopts, establishes, and imposes the following covenants, conditions, and restrictions on the Property and declares that the Property and all portions thereof are and shall be held, transferred, sold, conveyed, and occupied subject to such covenants, conditions, restrictions, easements, liens, and charges set forth herein, all of which shall be binding on all parties having any right, title, or interest in the Property or any part thereof.

ARTICLE I GENERAL

Section 1.01 Purposes. The purposes of this Declaration are: (a) to promote the orderly development and use of the Property; (b) to encourage the construction of quality-designed Improvements on the Property; (c) to restrict certain uses of the Property; (d) to provide for certain development and maintenance standards; and (e) to preserve the aesthetic appearance of the Property and Improvements constructed hereon.

Section 1.02 Defined Terms. For the purposes of this Declaration, the following words or phrases have the meanings as set forth below:

"Applicable Law" means any present or future law, statute, ordinance, regulation (including zoning ordinances and regulations), code, building code, judgment, injunction, arbitration award, order, rule, directive, proclamation, decree, common law, or other requirement, ordinary or extraordinary, foreseen or unforeseen, of the federal or any state or local governmental, or any political subdivision, arbitrator, department, commission, board, bureau, agency, or instrumentality thereof, or of any court or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction, or of any other public or quasi-public authority or group, having jurisdiction over the Property, and any reciprocal easement, covenant, restriction, or other agreement, restriction, or easement of record affecting the Property as of the date of this Declaration or thereafter.

"Assessments" has the meaning set forth in Section 4.01.

"Association" means PROJECT 200, a [nonprofit] corporation organized under the laws of the State of CA, its successors, and assigns.

"Association Documents" means all the documents relating to the creation, regulation, operation, and administration of the Association.

"Bad Acts" has the meaning set forth in Section 5.04(a).

"Board" or **"Board of Directors"** means the board of directors of the Association.

"Building Setback" has the meaning set forth in Section 7.03(a).

"City" means the City of COSTA MESA.

"Class A Members" has the meaning set forth in Section 3.03(a)

"Class B Member" has the meaning set forth in Section 3.03(b).

"Common Area" means all improved and unimproved areas owned by the Declarant made available for the general use, convenience, and enjoyment of the Owners and/or their customers, patrons, employees, and invitees (including, without limitation, all automobile parking areas and Structures (defined below), driveways, truck ways, loading docks and areas, parks, recreational areas, hike and bike trails, elevators, escalators, floors, ceilings, roofs, skylights, utility lines, windows, open or enclosed malls, food court seating areas, sidewalks, curbs, creeks, streams, waterways, water courses, drainage areas, detention/retention ponds, other ponds and lakes, floodplains, floodways, and landscaped areas, and such public transportation facilities and landscaped areas as are contiguous with and benefit the Property)[, which area is depicted on the Plan/Exhibit [LETTER]].

"Common Expenses" means any and all expenses incurred by or on behalf of the Association, as agent for the Owners, and any reasonable reserve for anticipated expenses, as reasonably determined by the Association, for: (a) the maintenance, repair, and operation of the Common Areas and the Common Facilities (defined below) for the provision of the Common Services (defined below) and; (b) performing in accordance with and as authorized in this Declaration. The maintenance, repair, and operation includes not only all labor and material

necessary to keep the Common Areas and the Common Facilities in good and neat appearance and in good operating condition, but also all parts and replacement materials necessary to keep such in good appearance and operating condition and shall include, but not be limited to, replacement trees, plants, and other vegetation, except that Common Expenses shall not include the replacement of trees or plants that die within one (1) year after the installation thereof by Declarant, the replacement of which shall be the responsibility of Declarant.

"Common Facilities" means: (a) all athletic fields and courts, jogging and bike trails, lighting, signage, entryway features, guard houses, ponds, water features (and related equipment), and landscaping, including plants, grass vines, ground cover, trees, shrubs, flowers, mulch, bulbs, rocks, landscape edging, water features, berms, lighting in landscaped areas, underground irrigation systems, and related landscape improvements and materials, installed in the Common Areas; (b) all equipment of any nature (including, but not limited to, vehicles) used by the Association in connection with the repair, maintenance, or operation of the Common Areas or in providing the Common Services; and (c) as approved by a Special Vote of the Class A Members (defined below), other equipment, Structures, and Improvements installed within the Common Areas.

"Common Services" means services provided by Declarant for the common benefit of the Owners or, on establishment of the Association, services provided for the common benefit of the Owners as directed by the Association as approved by a Special Vote of the Class A Member.

"Concept Plan Phase" has the meaning set forth in Section 6.03(c).

"Conversion Date" means the earlier of: (a) the date on which Declarant and all affiliates of Declarant own in the aggregate less than [NUMBER IN WORDS] percent ([NUMBER]%) of the acres comprising the Property, exclusive of Streets (defined below) and Common Areas; or (b) the date Declarant voluntarily terminates its Class B Member status by recording a written notice of such termination in the real property records of LOS ANGELES County, CA. For purposes of this definition, affiliates include any Person owned or controlled by Declarant, by any partner of Declarant, or by any Person owning or controlling any partner of Declarant.

"Conversion Year" has the meaning set forth in Section 4.02.

"County" means the County of LOS ANGELES.

"Declarant" has the meaning set forth in the Preamble, together with its successors and assigns, to whom rights and powers reserved herein to Declarant expressly are conveyed or assigned by operation of law.

"Declaration" means this Declaration of Covenants, Conditions, and Restrictions for PROJECT 200, and all amendments thereto filed for record in the office of the County Clerk of LOS ANGELES County, CA.

"Default Interest Rate" means the lesser of [NUMBER IN WORDS] percent ([NUMBER]%) *per annum* or the maximum allowable contract rate of interest under law then in effect in the State.

"Development Guidelines" means those guidelines adopted by the Board in accordance with Section 5.02(t) of this Declaration.

"DRB" has the meaning afforded same in Section 6.01 hereof.

"Effective Date" has the meaning set forth in Section 10.03(b).

"Environmental Laws" has the meaning set forth in Section 7.14(a).

"Final Plans Review" has the meaning set forth in Section 6.03(e).

"Front Yard Setbacks" means a Paving Setback (defined below) and a Building Setback (defined below) within which building is prohibited and consists of the distance from the right-of-way line of the Street contiguous to each Site (defined below).

"Governmental Entity" or **"Governmental Entities"** means the City, the County, the State (defined below), and any agency or department thereof and the United States of America and any agency or department thereof.

"Hazardous Substances" has the meaning set forth in Section 7.14(a).

"Improvement" or **"Improvements"** means any and all changes to the Property, from initial construction through later construction or maintenance, which are intended to be temporary or permanent in nature (other than changes made during a period of construction which will be removed when the period is complete), including, but not limited to, new Structures, changes to building exteriors and exterior roofs, parking areas, loading areas, vehicle circulation lanes and parking, exterior lighting, sculptures, sidewalks, fences, walls, railings, ramps, stairways, storage shelters, decks, awnings, Landscaping (defined below), poles, antennae, ponds, lakes, fountains, swimming pools, tennis or athletic courts, signs, any public or private utility lines, pipes, sewers, ducts, chutes, conduits, wires, grading, excavation, fill work, changes in exterior color or shape, glazing or reglazing of exterior windows, and any new exterior construction or exterior Improvement which may not be included in any of the foregoing. Improvements include both original improvements and all later changes and improvements, and include any installation, construction, remodeling, replacement, refinishing, addition, or alteration of any of the foregoing.

"Loss" or **"Losses"** has the meaning set forth in Section 5.04(b).

"Lot" or **"Lots"** means any parcel of land shown on any recorded map of the Property together with Improvements thereon, with the exception of the Common Area.

"Majority Vote of the Members" has the meaning set forth in Section 3.04.

"Member Owner" or **"Member Owners"** means each and every Owner, including Declarant, who qualifies for membership in the Association. Member Owner and Member Owners does not include any Non-Member Owner (defined below).

"Member in Good Standing" has the meaning set forth in Section 3.02.

"Members of the DRB" has the meaning set forth in Section 6.01.

"Non-Member Owner" or **"Non-Member Owners"** has the meaning set forth in Section 3.01.

"Notice of Unpaid Assessments" has the meaning set forth in Section 4.08.

"Owner" or **"Owners"** means one or more Persons (excluding the Association) who alone or collectively are the record owner of any parcel of land within the Property but excluding any Person who holds a lien in any parcel of land within the Property merely as security for the performance of an obligation. Owner or Owners includes every Non-Member Owner.

"Paving Setback" has the meaning set forth in Section 7.03(a).

"Person" or **"Persons"** means any individual, corporation, partnership, firm, trustee, or other legal entity, and all respective heirs, successor, and assigns.

"Plans" means any or all concept design plans, preliminary plans, and final plans for an Improvement proposed to be constructed or installed on a Site.

"Preliminary Plans Review" has the meaning set forth in Section 6.03(d).

"Property" has the meaning set forth in the Recitals. The term Property shall include such additional tracts that, from time to time, are subjected to the provisions of this Declaration and shall not include any tracts that, from time to time, are withdrawn as provided under this Declaration.

"Quorum" has the meaning set forth in Section 3.04.

"Regular Assessment" has the meaning set forth in Section 4.02.

"Restrictions" means all conditions, covenants, restrictions, easements, charges, liens, and other obligations created by or imposed on the Property or any Owner by this Declaration.

"Side and Rear Setbacks" means a Paving Setback and a Building Setback within which building is prohibited and consists of the distance from the boundary line of a Site where the side or rear of the Site is not abutting a Street.

"Site" means a boundary of a Lot owned by an Owner.

"Special Member Assessment" has the meaning set forth in Section 4.04.

"Special Purpose Assessment" has the meaning set forth in Section 4.03.

"Special Vote of the Class A Members" has the meaning set forth in Section 3.04.

"State" means the State of CA.

"Street" or "Streets" means any land located within an easement or a right-of-way in or adjacent to the Property now or at any time hereafter dedicated to any Governmental Entity for public use as a roadway for motor vehicles.

"Structure" or "Structures" means any object or thing the placement of which may affect the appearance of any Lot, including, but not limited to, any building, outbuildings, garage, porch, shed, deck, fence, curbing, paving, landscaping, or any other temporary or permanent Improvement to such Lot.

"Unpaved Right-of-Way" means medians in Streets and the portion of a Street between the outside edge of the Street pavement (or curbs if curbs are installed) and the right-of-way line of the Street.

Section 1.03 Property. The Property from and after the date hereof shall be held, conveyed, hypothecated, encumbered, leased, occupied, built on, or otherwise used, improved, or transferred, in whole or in part, subject to this Declaration, as same may be amended or supplemented from time to time or at any time. All Property and any right, title, or interest thereto shall be owned, held, leased, sold, and conveyed by Declarant, and any subsequent Owner, tenant, or other occupant subject to this Declaration and the Restrictions. Each Owner, tenant, or other occupant of any portion of the Property, by the acceptance of a deed, lease, or other conveyance or transfer of any interest in the Property or any portion thereof, shall be deemed to have covenanted and agreed to be bound by the provisions of this Declaration.

Section 1.04 Purpose of the Association. The Association shall have and exercise the rights and shall perform the functions of the Association for the benefit of, and as agent for, the Owners as set forth in this Declaration. After the Conversion Date, the Association shall be responsible for administering and enforcing the standards and controls set forth in this Declaration and shall perform its functions in accordance with this Declaration and Applicable Law.

ARTICLE II DESIGNATION OF LOTS, STREETS, AND ZONING

Section 2.01 Designation of Lots. Declarant shall have the right and power, but not the obligation, to subdivide all or any portion of the Property owned by Declarant, without the necessity of the joinder of any other Person, into subparcels or platted Lots. Declarant shall have the further right and power, but only with respect to portions of the Property owned by Declarant and without the necessity of the joinder of any other Person, to withdraw its designation of any part thereof as a Lot, to redesignate previously designated areas thereof as a Lot having different boundaries and configurations from those previously described and to divide or subdivide a Lot into one or more Lots. An Owner, other than Declarant, may create platted Lots on its Site or modify any existing platted Lots on its Site only with the prior written approval of such action by Declarant before the Conversion Date or by the Board after the Conversion Date.

Section 2.02 Designation of Streets. Declarant shall have the right and power, from time to time, to dedicate, designate, reserve, or convey fee simple title to, or grant easements for, Streets in portions of the Property owned by Declarant. The provisions of this Declaration shall

be subordinate to the rights of the City in such dedicated Streets. No Owner other than Declarant shall have the right to dedicate, designate, reserve, convey fee simple title, or grant easements for any Street on any portion of the Property owned by such Owner unless such action is approved in writing by Declarant before the Conversion Date or by the Board after the Conversion Date. This provision does not restrict any Owner from installing private roadways for its own use within its own Site in compliance with the provisions of this Declaration.

Section 2.03 Zoning. Declarant shall have the right and power, from time to time, to change the zoning of any portion of the Property owned by Declarant in such manner as Declarant deems appropriate for the overall development of the Property. No Owner other than Declarant shall apply for any change in zoning of any portion of the Property owned by such Owner unless such zoning change is approved in writing by Declarant before the Conversion Date or by the Board after the Conversion Date.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 3.01 Membership. Membership in the Association is appurtenant to, and cannot be separated from, ownership of a parcel in the Property by an Owner, other than a Non-Member Owner. A "**Non-Member Owner**" or "**Non-Member Owners**" means: (a) the City, which shall not be considered a Member Owner during the time that it owns Streets, public utility easements, drainage easements, or parcels used solely for a fire or police station or public park, unless the City agrees in writing to become a Member Owner; and (b) any public utility company, which shall not be considered a Member Owner during such time that it owns a utility easement or a parcel used solely for a utility substation, unless such utility company agrees in writing to become a Member Owner. Membership in the Association shall terminate automatically whenever a Member Owner stops being an Owner, except that such termination shall not release or relieve such Owner from any liability or obligation arising under this Declaration during its period of ownership. Any transfer of title to any parcel in the Property shall operate automatically to transfer (or, in cases of transfer by a Non-Member Owner, to vest) membership in the Association appurtenant to such parcel to the new Owner, unless such new Owner is a Non-Member Owner.

Section 3.02 Member in Good Standing. A Member Owner shall be a "**Member in Good Standing**" and eligible to vote if such Member Owner:

- (a) Has, at least ten (10) days before the taking of any vote by the Association, fully paid all Assessments (defined below) or other charges levied by the Association, as such Assessments of charges are provided for hereunder;
- (b) Does not have a Notice of Unpaid Assessments (defined below) filed by the Association against the parcel owned by such Member Owner; and
- (c) Has discharged all other obligations to the Association as may be required of a Member Owner hereunder or under the Association Documents.

The Board shall have sole authority for determining the good standing status of any Member Owner at any time and shall make such determination with respect to all Member Owners before the Association takes a vote on any matter. The Board shall have the right and authority, in its sole discretion, to waive the ten (10)-day prior payment requirement and require only that such payment be made at any time before such vote is taken if the Board determines, in its reasonable judgment, that extenuating circumstances exist which have prevented prior payment. Any Member Owner not conforming with the provisions of this Section 3.02 shall be declared by the Board not to be a Member in Good Standing and shall not be entitled to vote on matters before the Association until the Member Owner attains Member in Good Standing status as so declared by the Board.

Section 3.03 Classes of Voting Members. The Association shall have two (2) classes of voting membership:

(a) Class A. "**Class A Members**" shall be all Member Owners, including Declarant. Class A Members have one (1) vote for each acre in the Property (exclusive of Streets and Common Areas) owned by such Member Owners (rounded to the nearest 1/100th of an acre) as of the date of the notice of the meeting at which such vote will be cast. For the purpose of Section 3.03 and for any other reason that acreage or other area is necessary to be determined under this Declaration, the Board shall determine the acreage contained in the Property and the acreage or applicable area contained in specific parcels or portions thereof. If any parcel is owned by more than one (1) Member Owner, the number of votes attributable to such parcel shall be the same number of votes as if there were only one (1) Owner of such parcel, and the votes attributable to such parcel may be cast only if all the Owners owning such parcel, before the time of the vote in question, have delivered to the Association a written agreement about how such votes are to be cast or a written designation of one (1) of such Owners to cast the votes attributable to such parcel. Any Member Owner who is not an individual must designate a representative to act for such Member Owner in Association matters and to cast votes for such Member Owner, such designation to be made in writing to the Board. A Member Owner may delegate its right to vote to any tenant occupying its parcel provided such delegation is made in writing and is delivered to the Board.

(b) Class B. The only "**Class B Member**" shall be Declarant. The Class B Member has votes equal to one hundred and one percent (101%) of the aggregate of all votes eligible to be cast by Class A Members; provided, however, the Class B membership shall stop on the Conversion Date, and Declarant thereafter shall only be a Class A Member for so long as it owns any portion of the Property.

Section 3.04 Quorum, Voting, and Notices. Member Owners holding [NUMBER IN WORDS] percent ([NUMBER]%) of the aggregate votes entitled to be cast by Class A Members in Good Standing, represented at a meeting of the Member Owners in person or by a legitimate proxy in a form approved by the Board, shall constitute a quorum for voting on matters brought before the Member Owners at meetings called by the Board (a "**Quorum**"). The vote of Members in Good Standing (including all Class A Members and the Class B Member) holding, in the aggregate, a majority of the votes entitled to be cast by the Members in Good Standing present or voting by legitimate proxy at a called meeting at which a Quorum is present (the

"**Majority Vote of the Members**") shall be the act of the Member Owners. Notice requirements for all actions proposed to be taken by the Association which require a vote approval by the Member Owners shall be given as set forth in the Association Documents, as such may be amended from time to time. The term "**Special Vote of the Class A Members**" used herein, means, at the time such vote will be taken, the written consent of Declarant (until the Conversion Date) plus the vote of Class A Members in Good Standing (including Declarant) holding, in the aggregate [NUMBER IN WORDS] percent ([NUMBER]%) of the votes eligible to be cast by all Class A Members in Good Standing (including Declarant) present or voting by legitimate proxy at a called meeting at which a Quorum is present.

ARTICLE IV ASSESSMENTS

Section 4.01 Covenants for Assessments. Beginning in the year in which the Conversion Date occurs, each Owner of a parcel within the Property, by acceptance of a deed or other conveyance or transfer of legal title to the Property or any portion thereof, whether or not it shall be so expressed in any such deed, shall pay to the Association, or such other independent entity or agency which may be designated by the Association to receive such amounts, the following assessments (collectively, "**Assessments**"):

- (a) Regular Assessment as provided for in Section 4.02 below;
- (b) Special Purpose Assessment as provided for in Section 4.03 below; and
- (c) Special Member Assessment as provided in Section 4.04 below.

All Assessments shall remain the property of the Owner making such payment and shall be expended by the Association on behalf of all Owners only for the specified purposes provided in this Declaration. No profit, gain, or other benefit will be derived by the Association from the Assessments, but, instead, such funds shall be expended as agent for the Owners. All services contemplated to be paid from Assessments shall be obtained by the Association on behalf of the Owners. On termination of the Association, all Assessments held at that time by the Association shall be allocated and returned to the Owners in the same matter as votes are allocated among Class A Members as provided in Section 3.03(a) above.

Section 4.02 Regular Assessments. A "**Regular Assessment**" shall be determined, assessed, and expended on a recurring calendar year basis, which shall be the fiscal year of the Association; provided, however, a Regular Assessment may be assessed and expended for the partial year from the date of this Declaration through December 31 in the year in which the Conversion Date occurs ("**Conversion Year**"). A Regular Assessment shall be used for the payment of Common Expenses and other expenses incurred by the Association or the Board on behalf of the Owners as authorized in this Declaration (exclusive of the expenses referenced in Section 4.04 below). A Regular Assessment from the date of this Declaration through December 31 of the Conversion Year shall be set by the Board as the Board deems reasonably necessary to pay applicable expenses for such partial year. Thereafter, for the year following the Conversion Year and each year thereafter while this Declaration is in force, the Board shall set the amount of the Regular Assessment to be levied for the next calendar year; taking into consideration

Common Expenses for the then current year (annualized with respect to the Conversion Year expenses), expected increases in such expenses during the next year, a contingency amount (not exceeding five percent (5%) of the anticipated expenditures for such next year), and an optional reserve fund contribution (not exceeding three percent (3%) of the anticipated expenditures for such next year); provided, however, no reserve fund contribution amount shall be included in the Regular Assessment for any year in which the unused balance of the reserve fund equals or exceeds ten percent (10%) of the other anticipated expenditures for that year. The Regular Assessment for each other calendar year shall be set by the Board on or about November 1 of the preceding year or as soon thereafter as such determination reasonably can be made by the Board. The Regular Assessment shall be allocated among all Owners (including Declarant) in the same manner as votes are allocated among Class A Members as provided in Section 3.03(a) above, that is, the percentage of the aggregate Regular Assessment allocated to a particular parcel in the Property shall be a fraction with the numerator equal to the number of Class A Member votes allocable to such parcel and with the denominator equal to the aggregate number of votes for all Class A Members. Should any surplus exist at the end of any year, the Board shall reduce the amount required for the next year's Regular Assessment by an amount equal to such surplus.

Section 4.03 Special Purpose Assessment. The Board may, from time to time, levy for any calendar year beginning on or after January 1 of the year after the Conversion Year, applicable to that year (or initial partial year, if applicable) only, a "**Special Purpose Assessment**" for the purpose of paying any unanticipated expense that normally would have been paid out of a Regular Assessment which was not included in that year's budget for the Regular Assessment. Such a Special Purpose Assessment shall be allocated among Owners (including Declarant) in the same manner as the Regular Assessment is allocated among the Owners.

Section 4.04 Special Member Assessment. The Board may levy a "**Special Member Assessment**" on any Owner to the extent any directly related insurance proceeds paid to the Association are insufficient to pay all costs for:

- (a) Any damage or Loss (defined below) requiring maintenance, repairs, or replacement of Common Areas or Common Facilities, which damage or Loss has been reasonably determined by the Board to have been caused, either directly or indirectly, by the acts of such Owner, or its agent, employee, occupant, tenant, or visitor; or
- (b) Reimbursing the Association for any and all direct or indirect costs incurred by the Association for the maintenance, repair, or replacement of landscaping, signs, screening or decorative walls, surface parking areas, ponds, lakes, fountains, pools, exterior lighting or devices, sculptures, utilities, drainage systems, park and recreational facilities and equipment on such Owner's parcel or on the Unpaved Right-of-Way contiguous to such parcel, including, but not limited to, the removal of trash, litter, and abandoned items, that such Owner fails to repair, maintain, or replace as required by the provisions of this Declaration, provided such Owner fails to correct such deficiency within seven (7) days after written notice thereof is given to such Owner by the Board (or in cases where such deficiency cannot reasonably be corrected within seven (7) days, within a reasonable period of time necessary to correct such deficiency if the Owner

begins corrective work within such seven (7)-day period and thereafter proceeds diligently to complete such corrective work).

The provisions of this Section 4.04 apply also to each Non-Member Owner, and each Non-Member Owner is liable for any Special Member Assessment made against such Non-Member Owner, and, to the fullest extent permitted by Applicable Law, such Non-Member Owner's particular Site is subject to a lien to secure payment of such Special Member Assessment, all as provided in Section 4.06 and Section 4.07 below.

Section 4.05 Due Date of Assessment. The Regular Assessment provided for herein shall be payable annually within [NUMBER IN WORDS] ([NUMBER]) days after an invoice is delivered by the Association to an Owner; provided, however, the Board shall have the right to require payment of a Regular Assessment at other intervals if it deems appropriate (but with payment not required any earlier than [NUMBER IN WORDS] ([NUMBER]) days after delivery of an invoice therefor). The due date of any Assessment under Section 4.03 or Section 4.04 shall be fixed in the notice to the Owner or Owners providing for such Assessment but will not be sooner than thirty (30) days after the date such notice is delivered.

Section 4.06 Personal Obligation for Payment of Assessments. The Assessments provided for herein shall be the personal or corporate debt of the Owner of the portion of the Property with respect to which such Assessment is made. No Owner, for any reason, may exempt itself from liability for Assessments. If any Assessment or part thereof is not paid when due, the Owner or Owners of such property shall be obligated to pay interest on such unpaid Assessment from such due date at the Default Interest Rate together with all costs and expenses of collection thereof, including, but not limited to, reasonable attorneys' fees. The Board shall have the right to reject any partial payment of any Assessment and demand full payment thereof, or the Board may, in its sole discretion, elect to accept any such partial payment on account only, without in so doing waiving any rights established hereunder with respect to any remaining balance due. The obligation of any Owner to pay an Assessment with respect to a parcel made for any period of time that an Owner owns the parcel shall remain its personal or corporate obligation, as the case may be (notwithstanding any future sale or conveyance of its parcel), and shall not pass to unrelated third-party purchasers of such property or portion thereof unless expressly assumed by such purchaser. However, the lien for any unpaid Assessments shall be unaffected by any sale or assignment of full or partial ownership interest in such property affected thereby, or portion thereof, and shall continue in full force and effect. In the event of full or partial sale of an ownership interest in any portion of the Property, it shall be the obligation of the then Owner of such interest to disclose to any purchaser, assignee, title company designated to handle such transaction, financing entity, or other party to such sale any unpaid Assessments, such notice to be given in writing to all parties to the intended transaction at least [NUMBER IN WORDS] ([NUMBER]) days before the date on which such transaction will be consummated. A copy of such notice shall be sent to the Association at the same time. A former Owner shall not be liable for the Assessments made with respect to a parcel after it is no longer the Owner of such parcel.

Section 4.07 Assessment Lien. ALL SUMS ASSESSED IN THE MANNER PROVIDED FOR IN THIS ARTICLE IV, TOGETHER WITH INTEREST FROM SUCH DUE DATE AT THE DEFAULT INTEREST RATE AND THE COSTS OF COLLECTION, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ARE

SECURED BY A CONTINUING CONTRACTUAL LIEN AND CHARGE ON THE PROPERTY COVERED BY SUCH ASSESSMENT, WHICH SHALL BIND SUCH PROPERTY AND THE OWNER THEREOF AND ITS HEIRS, SUCCESSORS, DEVISEES, PERSONAL REPRESENTATIVES, AND ASSIGNEES. The aforesaid continuing contractual lien shall attach to the Property as of the date of the recording of this Declaration and shall be superior to all liens other than: (a) a deed of trust or mortgage constituting a lien on the land of an Owner; (b) any sale and leaseback agreement or lease and subleaseback agreement whereby an Owner sells and simultaneously acquires a possessory interest under a lease from or other agreement with such transferee; and (c) the lien securing real estate taxes; provided, however, the types of liens referenced in (a) and (b) above shall be inferior and subordinate to the lien securing the obligation to pay Assessments if the Association records a Notice of Unpaid Assessments before the date of such other lien. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. The exercise of such power shall be entirely discretionary with the Association. Except for a conveyance to a purchaser at a foreclosure sale pursuant to a lien to which the Assessment lien is subordinate as provided above, all parcels within the Property are conveyed to and accepted and held by the Owner thereof subject to any Assessment lien provided for in this Section 4.07.

Section 4.08 Notice of Unpaid Assessment. To evidence any unpaid Assessments, the Association may prepare a written notice of unpaid Assessments (the "**Notice of Unpaid Assessments**") setting forth the amount of the unpaid indebtedness, the Owner's name, and a property description. Such notice shall be signed by one of the officers of the Association and shall be recorded in the real property records of the County. The Association shall record an appropriate release of any recorded Notice of Unpaid Assessments when the amounts referenced have been paid in full.

Section 4.09 Foreclosures of Assessment Liens. AFTER RECORDING A NOTICE OF UNPAID ASSESSMENTS, THE LIEN FOR PAYMENT OF ASSESSMENTS MAY BE ENFORCED BY FORECLOSURE OF THE LIEN UPON THE DEFAULTING OWNER'S PROPERTY BY THE ASSOCIATION EITHER BY JUDICIAL OR NONJUDICIAL FORECLOSURE THROUGH A PUBLIC SALE IN LIKE MANNER AS A MORTGAGE OR DEED OF TRUST ON REAL PROPERTY IN ACCORDANCE WITH THE APPLICABLE LAW, AS SUCH MAY BE REVISED, AMENDED, SUPPLEMENTED, OR REPLACED FROM TIME TO TIME. The Association may also file suit against the Owner personally to obtain a judgment for unpaid Assessments. In any foreclosure proceeding, whether judicial or nonjudicial, or in any other suit against the Owner, the Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred by the Association. The Association shall have the right and power to purchase the Property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey, or otherwise deal with the same. On the written request of any mortgagee holding a lien on any part of the Property, the Association shall provide a copy of the Notice of Unpaid Assessments to said mortgagee.

Section 4.10 Certificate. Within twenty (20) days of the Association's receipt of a written request by an Owner, the Association shall furnish a certificate setting forth any unpaid Assessments owed by an Owner or that none are due and owing.

ARTICLE V
ASSOCIATION BOARD OF DIRECTORS

Section 5.01 Creation of Board. The Association shall be governed by the Board elected by a Majority Vote of the Members. The size and composition of the Board, its method of election, and its duties and authorities shall be as provided in the Association Documents and this Declaration, except that all members of the Board shall be Owners or employees, agents, or officers of Owners. The Board shall exist and function solely for the benefit of the Property, the Association, and the Members.

Section 5.02 Use of Assessment. Subject to the provisions of Section 7.01 below, the Board shall be responsible for setting, collecting, and disbursing Assessments. In general, the Board is empowered to cause the Association, among other things permitted herein or in the Association's governing documents, to take the following actions and to expend Assessment funds for the following purposes:

- (a) To pay Common Expenses;
- (b) If approved by a Special Vote of the Class A Members, to employ contractors to maintain and repair Streets and utilities, but only to the extent that the City (or other responsible Governmental Entity) or appropriate utility company fails to do so in a manner deemed appropriate in the judgment of the Board;
- (c) To employ independent consultants or independent contractors to manage daily operations of the Association; provided, however, neither the directors of the Association nor Members of the DRB (defined below) shall be paid any salary or other compensation for serving in such capacity;
- (d) To employ legal, accounting, engineering, architectural, and other independent professional services, including, but not limited to, any services needed for architectural review of any plans for the construction of Improvements on a Site;
- (e) To purchase a policy or policies of insurance insuring the Declarant, the Association, and the Board, and the DRB against any liability to the public or to the Owners (and/or visitors or occupants) incident to operation of the Association or the DRB;
- (f) To pay for materials, supplies, services, maintenance, repairs, alterations, insurance, and *ad valorem* and other taxes on Property owned by the Association or in which the Association has an interest;
- (g) To pay general and administrative expenses which, in the opinion of the Board, shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration, including, but not limited to, reasonable expenses of the DRB;

(h) To pay costs incurred in the exercise and performance by the Board or the Association of any of their authorities, duties, or rights set forth in or incidental to this Declaration;

(i) To agree or contract for: (i) insurance coverage for Common Areas and the Common Facilities; (ii) utility consumption and services matters necessary for the operation of the Common Areas and the Common Facilities and the provision and operation of the Common Services; (iii) maintenance, repair, and operation of Common Areas, the Unpaved Right-of-Way, and the Common Facilities; (iv) design, engineering, and other consultant contracts; and (v) goods and services;

(j) To determine the Common Services that should be obtained by the Association for the benefit of the Owners, subject to the approval of a Special Vote of the Class A Members;

(k) To designate Common Areas and Common Facilities not listed in Section 1.02, subject to the approval of a Special Vote of the Class A Members;

(l) To borrow funds to pay any costs of operation, secured by assignment or pledge of Assessments, as the Board may determine to be necessary and appropriate in accordance with this Declaration;

(m) To sue or to defend in any court of law on behalf of the Association, the DRB, the Board, or any Board member any matter related to or described in this Declaration;

(n) To make, or cause to be made, any tax returns, reports, or other filings required by federal, state, or local governmental authorities;

(o) To make available to each Owner within ninety (90) days after the end of any Association fiscal year a written annual report on financial affairs of the Association for the preceding year, and, on written request of Members in Good Standing holding two-thirds of the Class A Member votes eligible to be cast by all the Class A Members in Good Standing, to have such report audited by an independent certified public accountant selected by the Board, which audited report, if required, shall be completed and made available to each Owner as soon as practicable after a request is received by the Board; provided, however, before the Conversion Date, unless Declarant votes in favor of such audit, the cost shall be borne by all Class A Members other than Declarant, and the Association may require that such audit costs be paid in advance;

(p) To adjust the amount of, collect, and use any insurance proceeds to repair or replace any damaged or lost property or to reimburse Persons entitled to receive reimbursement for injury, damage, or Loss, and, if said insurance proceeds are insufficient to provide full reimbursement as may be required, the Board may act to collect funds through a Special Purpose Assessment or a Special Member Assessment, whichever is applicable;

(q) To promulgate Development Guidelines (the "**Development Guidelines**") to serve as a guide for Owners in the planning and construction of Improvements and as a guide for the DRB in reviewing and approving or disapproving plans and specifications for Improvements and to revise such from time to time as the Board, in its discretion, deems appropriate, with copies of revisions to be furnished to all Owners. The Development Guidelines shall not contain any provisions that: (i) conflict with the provisions of this Declaration; (ii) attempt to prohibit uses that comply with Section 7.01(a) below and are not prohibited by Section 7.02 below; or (iii) restrict or diminish rights of Owners as specifically provided in this Declaration;

(r) To enforce the provisions of this Declaration and the Development Guidelines and to enjoin actions or seek damages and/or remedial action from any Owner for violation of this Declaration or the Development Guidelines, which right shall include, but is not limited to, the right, but not the obligation, to enter onto any part of the Property to perform obligations of the Owner thereof who has failed to do so in accordance with the provisions of this Declaration or the Development Guidelines;

(s) To maintain books and records with respect to all aspects of the operations of the Association and to levy, collect, receive, administer, expend, and dispose of all Assessments and other funds held by the Association in accordance with sound accounting practices (that separately reflect all Association reserve funds), and to permit any Owner (or a Person designated by such Owner in writing) to inspect, copy, and audit the same on reasonable notice during normal business hours at an office of the Association or the Declarant located in LOS ANGELES County, CA;

(t) To appoint Members of the DRB as described in Section 6.01 below;

(u) To own fee simple title or an easement interest to the Common Areas and any other areas determined by the Board to be appropriate;

(v) To promulgate reasonable rules governing the use of the Common Areas, the Common Facilities, and the Common Services; and

(w) To have all the powers necessary or incidental as may be required to perform such other duties and functions as are necessary for prudent operation and management of the Association.

The Association shall have the right to perform such other functions, and to use Regular Assessment and Special Purpose Assessment funds to pay the cost thereof, to the extent that a Special Vote of the Class A Members approves such other functions and services. In addition to expending Regular Assessment and Special Purpose Assessment funds for the aforementioned purposes, the Board also is permitted to spend funds collected through a Special Member Assessment for those purposes set forth in Section 4.04.

Section 5.03 Affiliated Contracts. The Board, acting on behalf of the Association, shall have the full power and authority to contract with any Owner, including, without limitation, Declarant, for performance of services which the Association is obligated or authorized to obtain or provide, such contracts to be at competitive rates then prevailing for such services and on such

other terms and conditions, and for such consideration as the Board may deem advisable and in the best interest of the Association if the level of service received is consistent with that available from third parties.

Section 5.04 Limitation of Liability and Indemnification.

(a) **Limitation of Liability.** No Member Owner, Non-Member Owner, director, officer, or representative of the Association shall be personally liable for debts, expenses, losses, or liabilities of the Association. The Members of the DRB, the Board members, and the officers of the Association shall not be liable for any mistake of judgment, whether negligent or otherwise, except for their own individual gross negligence, willful misfeasance or malfeasance, misconduct, bad faith, intentional wrongful acts, and approval of actions that violate the provisions of Section 7.01(b) below or the Association Documents ("**Bad Acts**"). Such Members of the DRB, Board members, and officers of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association. The Association shall have the right to purchase and maintain, as a Common Expense, directors' and officers' liability insurance on behalf of any Member Owner who is or was a Board member or officer of the Association or DRB against any liability asserted against it and incurred by it in such capacity, or arising out of its status as such.

(b) **Indemnification.** The Association, as a Common Expense of the Association, shall indemnify, defend, save, and hold harmless such Board members and officers of the Association from any and all debts, expenses, losses, and liabilities [(including court costs and reasonable attorneys' fees incurred by or imposed in connection with such proceeding)] ("**Loss**" or "**Losses**") to others on account of any such contract or commitment (to the extent not covered by insurance proceeds). In addition, each Board member and each officer of the Association shall be indemnified, defended, saved, and held harmless by the Association, as a Common Expense of the Association, from any Loss to others (to the extent not covered by insurance proceeds) by reason of having served as such Board member or as such officer and against all Losses incurred at the time it was a Board member or officer, subject to any provisions regarding indemnity contained in the Association Documents, except in cases wherein the Loss or Losses arise from a proceeding in which such Board member or such officer is adjudicated guilty of Bad Acts (THIS INDEMNITY IS INTENDED TO AND DOES COVER LIABILITIES RESULTING FROM THE NEGLIGENCE OF THE BOARD MEMBERS OR THE OFFICERS OF THE ASSOCIATION). In the event of a settlement of any such proceeding, the indemnification provided hereby shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association. Any right to indemnification provided for herein shall not be exclusive of any other rights to which a Board member or officer, or former Board member or officer, may be entitled.

Section 5.05 Insurance. The Association shall carry and maintain, to the extent such coverage is reasonably available as determined by the Board, liability insurance with policy limits of at least \$1,000,000 covering occurrences in the Common Areas or as the result of the operation of Common Services or Common Facilities. At the Association's discretion, the

Association, acting through the Board, shall have the right to purchase, carry, and maintain in full force and effect (to the extent same is available): (a) property and general liability insurance covering any employees and any and all portions of the Common Areas, and any Improvements thereon or appurtenant thereto, and covering the Common Facilities and Common Services for the interest of the Association, the Board, employees, agents, or officers, and of all Member Owners, in such coverage and amounts and with such endorsements as shall be considered by the Board, in its sole discretion, to be reasonable; and (b) errors and omissions insurance for the Board, officers of the Association, and the DRB. The Board shall carry such insurance at such limits of coverage and with financially sound companies licensed to do business in the State as the Board deems appropriate. The Association shall use any net insurance proceeds for the purpose for which the insurance was intended, including, but not limited to, the repair and/or replacement of any damaged or lost property, whether real or personal. Any unused balance from the proceeds of insurance paid to the Association shall be retained by the Association for use in the payment of Common Expenses. Should insurance proceeds be insufficient to fully reimburse any Loss or damage, the Association may levy a Special Purpose Assessment or a Special Member Assessment, whichever is applicable, to cover such deficiency.

ARTICLE VI DEVELOPMENT REVIEW BOARD

Section 6.01 Creation of Development Review Board. The Association shall establish and maintain a Development Review Board (the "**DRB**") consisting of not fewer than three Persons appointed by the Board (the "**Members of the DRB**"). At least two (2) Members of the DRB shall be Owners or employees, agents, or officers of Owners. Until the Conversion Date, the appointment of the Members of the DRB must be approved by Declarant, and any or all Members of the DRB may be removed by Declarant with or without cause. [Before the Conversion Date, Declarant may require that it be appointed as the sole member of the DRB.] After the Conversion Date, the Board shall have the exclusive right and authority at any time, and from time to time thereafter, to create and fill vacancies on the DRB and to remove Members of the DRB with or without cause.

Section 6.02 Function of Development Review Board. A function of the DRB is to review and approve or disapprove plans and specifications for Improvements proposed to be installed or modified on portions of the Property. **NO IMPROVEMENTS SHALL BE ERECTED, CONSTRUCTED, PLACED, ALTERED, REMODELED, DEMOLISHED, OR PERMITTED TO REMAIN ON SUCH PORTION OF THE PROPERTY UNTIL PLANS AND SPECIFICATIONS, IN SUCH FORM AND DETAIL AS THE DRB MAY DEEM REASONABLY NECESSARY, SHALL HAVE BEEN SUBMITTED TO THE DRB AND APPROVED BY IT IN WRITING.** The Board, from time to time, may establish and revise a standard review fee which must be paid by an Owner at the time plans are submitted for review. The DRB shall have the authority to select and employ professional consultants to assist it in fulfilling its duties if the DRB determines that it does not have sufficient expertise or time to review any submitted plans, the cost of such consultants to be paid by the Owner of the Site for which plans and specifications have been submitted for approval, which cost shall be in addition to any review fee as referenced above. The process of reviewing and approving plans and specifications is one which of necessity requires that the DRB make subjective judgments on

items for which specific standards or guidelines are not expressly set forth in this Declaration or the Development Guidelines. The DRB is given full power and authority to make any such subjective judgments and to interpret the intent and provisions of this Declaration and the Development Guidelines in such manner and with such results as the DRB, in its sole discretion, may deem appropriate. In the absence of final adjudication by a court of competent jurisdiction that the DRB has abused its discretion, any action by the DRB shall be final and conclusive. While the Development Guidelines are intended as a general guide for development within the Property, the DRB shall have the right to grant variances from the Development Guidelines as it, in its sole but reasonable judgment, deems appropriate; provided, however, such variances may not be used to allow violations of this Declaration. The DRB shall have the sole discretion to determine whether plans and specifications submitted to it for approval are acceptable, and the DRB shall be entitled and empowered to enjoin or remove (or cause the Association to remove) any construction undertaken in accordance with plans and specifications that have not been approved in writing by the DRB. Improvements for which DRB approval is required are to be constructed per the Development Guidelines in existence as of the date the preliminary plans were submitted to the DRB for approval. Changes to the Development Guidelines shall not necessarily require changes in construction of plans previously approved or disapproved by the DRB. THE RIGHTS AND POWERS OF THE DRB UNDER THIS ARTICLE VI ARE SUBJECT TO THE PROVISIONS OF SECTION 7.01(b) BELOW.

Section 6.03 Plans and Specifications.

(a) The DRB shall have the right to disapprove any submitted plans that are not in compliance with this Declaration and the Development Guidelines, if they are incomplete or if the DRB determines that such plans are deficient from an engineering or design standpoint. The DRB may base its approval or disapproval on, among other things:

- (i) Architectural character of all proposed Improvements, taking into consideration the aesthetic quality of any Structures with respect to height, form, proportion, volume, siting, exterior materials, and roofing materials (type, scale, texture, color, and durability), proposed quality of workmanship, and the appearance of the Improvements from the air;
- (ii) Adequacy of Site dimensions for the proposed Improvements;
- (iii) Conformity and harmony of external design with Improvements on neighboring Sites and types of operations and uses thereof;
- (iv) Relation to topography, grade, and finish ground elevations to that of neighboring Sites;
- (v) Effect of the Improvements on aircraft navigation or communication and communication or navigation aids or equipment;
- (vi) Screening of mechanical and other installations;

(vii) Functional appropriateness with respect to vehicle handling, pedestrian circulation, siting of buildings (both in relationship to one another and in relationship to buildings, existing or proposed, located on other Sites), drainage, utility service systems, and lighting;

(viii) Extent and quality of landscaped areas;

(ix) Exterior signage; or

(x) Compliance with the purpose and general plan, intent, and provisions of this Declaration and the Development Guidelines.

The DRB shall be available on a reasonable basis, on reasonable request of an Owner, to meet with an Owner and/or its representatives to discuss and answer questions concerning proposed Improvements and their compliance with this Declaration and the Development Guidelines.

(b) The development review process consists of three (3) phases:

(i) The Concept Plan Phase as provided for in Section 6.03(c) below;

(ii) The Preliminary Plans Review as provided for in Section 6.03(d) below; and

(iii) The Final Plans Review as provided for in Section 6.03(e) below.

(c) The Owner shall present to the DRB its concept design plan for the Improvements proposed to be constructed or installed on its Site and the DRB may communicate to the Owner any specific development requirements for the Owner's Site (the "**Concept Plan Phase**"). The concept design plan submitted by the Owner shall provide and show all information specified and required in the Development Guidelines. The DRB must approve in writing the Owner's design concept before the DRB will accept the Owner's submission for Preliminary Plans Review (defined below). THIS CONCEPT DESIGN PHASE SHALL OCCUR AS EARLY AS POSSIBLE. A PRIMARY PURPOSE OF THE CONCEPT DESIGN PHASE IS TO IDENTIFY ANY GENERAL DESIGN ASPECTS OF THE PROPOSED IMPROVEMENTS THAT ARE UNACCEPTABLE TO THE DRB BEFORE THE OWNER HAS INCURRED SUBSTANTIAL DESIGN AND ENGINEERING COSTS.

(d) Based on the design concept approved by the DRB during the Concept Plan Phase, the Owner shall submit to the DRB its preliminary plans for the proposed Improvements on its Site for review by the DRB (the "**Preliminary Plans Review**"). At this stage, such plans shall provide and show all the information, drawings, and data specified and required in the Development Guidelines and such other information as may be reasonably requested or required by the DRB. The DRB must approve in writing the Owner's preliminary plans for such Improvements before the DRB will accept the Owner's submission for Final Plans Review (defined below).

(e) Based on the preliminary plans approved by the DRB, the Owner shall submit to the DRB its final plans and specifications for the proposed Improvements on its Site for final review by the DRB (the "**Final Plans Review**"). At such stage, plans and specifications shall be prepared by an architect, professional engineer, landscape architect, and land surveyor (as appropriate) registered under the Applicable Law, bearing the signature, seal, and certification of such architect, professional engineer, landscape architect, and land surveyor and shall provide and show all the information, drawings, and data specified and required in the Development Guidelines and such other information as may be reasonably requested or required by the DRB. The plans shall be accompanied by the written certification by the Owner's architect that the Improvements comply with the provisions of the Development Guidelines and this Declaration. If any of the plans or specifications that are submitted for Final Plans Review do not comply with this Declaration or the Development Guidelines, the Owner's architect, in such certificate, shall specify and explain any noncompliance.

(f) At the request of an Owner, the DRB shall complete an expedited review of plans for phased or "fast-track" construction to determine if the Owner is eligible for expedited approval of plans. Before obtaining written approval in the Concept Plan Phase, the Preliminary Plans Review, or the Final Plans Review, the Owner may submit plans and specifications prepared by an architect, professional engineer, landscape architect, and land surveyor (as appropriate) registered under the Applicable Law, bearing the signature, seal, and certification of such architect, professional engineer, landscape architect, and land surveyor together with all the information, drawings, and data specified and required in the Development Guidelines. The plans shall be accompanied by the written certification by the Owner's architect that the Improvements comply with the provisions of the Development Guidelines and this Declaration. The DRB must approve in writing the Owner's plans. On approval, the Owner's plans no longer need to undergo review in the Concept Plan Phase, the Preliminary Plans Review, or the Final Review. A request for such expedited review of plans shall be at the risk of such Owner because the DRB shall have the right to withhold further approvals or to withdraw its approval of plans previously submitted if later plans for further construction on such Site result in such previously approved Improvements no longer being in substantial compliance with this Declaration or the Development Guidelines or being consistent in all material respects with plans for the Site previously approved by the DRB. In such event, the Owner shall modify any such previously constructed Improvements as may be required by the DRB.

(g) Approval of plans and specifications shall be based on a determination by the DRB whether or not, in its [reasonable] judgment such plans and specifications adequately meet objectives established for the Property's aesthetic quality, as well as meeting the requirements created by this Declaration and the Development Guidelines. The DRB shall notify the Owner of the DRB's disapproval of any portion of the plans or other submissions and shall give the reasons for such disapproval. Approval of any plans and specifications for certain Improvements shall not be deemed a waiver of the DRB's right, in its [reasonable] discretion, to disapprove similar plans and specifications, or any of the features or elements included, for any other Improvements or to refrain from granting similar variances.

(h) If any submission of plans is not complete or does not include all data required by this Declaration or the Development Guidelines, the DRB, within fifteen (15) days after such submission, shall notify the Owner of such deficiencies, and such plans shall not be considered to have been submitted until such deficiencies have been corrected. Should the DRB fail to approve or disapprove plans at any stage, Concept Plan Phase, Preliminary Plans Review, or Final Plans Review, properly presented by an Owner as provided above, within twenty (20) days after submission to the DRB, it shall be presumed that the DRB has [approved such properly submitted plans and specifications; provided, however, if before the end of such twenty (20)-day period, the DRB notifies the Owner in writing that more time, not to exceed ten (10) days, is needed for further review, after which additional period it shall be presumed that approval has been given absent specific disapproval in writing having been given by the DRB during such additional review period/disapproved such properly submitted plans and specifications; provided, however, if before the end of such twenty (20)-day period, the DRB notifies the Owner in writing that more time, not to exceed ten (10) days, is needed for further review, after which additional period it shall be presumed that disapproval has been given absent specific approval in writing having been given by the DRB during such additional review period]. The DRB in the future may modify, by provisions in the Development Guidelines, the procedure for the submission and review of plans provided the review times set forth above are not materially changed.

(i) If work does not begin within eighteen (18) months from the date of DRB approval of final plans, then the approval given under this Section 6.03 shall be deemed revoked by the DRB, unless the DRB expressly extends the time for commencing work. All work covered by such approval, once begun, shall be constructed with due diligence and completed as soon as reasonably possible, but in any event absent an extension granted by the DRB, must be completed within three (3) years of starting, except for such period of time as such completion is rendered impossible or would result in great hardship due to strikes, fires, national emergencies, critical materials shortages, or other intervening forces beyond the control of the Owner.

Section 6.04 Inspections. The DRB, or its designees, shall have the right during reasonable business hours to enter on and inspect any Site or Improvements then under construction. If the DRB shall determine that such Plans have not been approved or that the Plans which have been approved are not being substantially complied with, the DRB may, in its [reasonable] discretion, give the Owner of such Site and Improvements written notice and, thereafter, the Board or the DRB, on behalf of the Association, may enjoin further construction and require the removal or correction of any work that does not comply with approved Plans. If any Improvements are altered or replaced on any Site other than in substantial conformity with the approved Plans, such action shall be deemed to have been undertaken without requisite approval of the DRB and to be in violation of this Declaration; the Board or the DRB, on behalf of the Association, may take action as permitted under this Declaration with respect thereto.

Section 6.05 Interior Alterations. Notwithstanding any other provisions of this Declaration or the Development Guidelines, an Owner may make alterations within the interior of any building on its Site without first obtaining DRB approval, provided such alterations do not change the exterior appearance of any Improvements.

Section 6.06 Changes. No construction or installation of Improvements on a Site that is inconsistent with, in addition to, or materially different from any previously approved Plans shall be started or permitted until the Plans reflecting such change or addition have been submitted to and approved by the DRB in accordance with this Article VI; provided, however, no such approval is required for changes within the interior of any building that do not change exterior appearance.

Section 6.07 Limitation of Liability and Indemnification Related to Improvements.

(a) Limitation of Liability Related to Improvements. Declarant, the Association or any of its officers, the Member Owners, the Non-Member Owners, the DRB, the Members of the DRB, and the Board or any of its members, shall not, individually or in combination, be liable for any Loss or Losses to any Owner submitting Plans or specifications for approval or to any Owner of any portion of the Property, by reason of subjective decisions, mistakes in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any Plans and specifications submitted or in connection with enjoining or removing any construction undertaken prior to written approval of the DRB; provided, however, this provision does not apply to Bad Acts. Declarant, the Association or any of its officers, the Member Owners, the Non-Member Owners, the DRB, the Members of the DRB, and the Board or any of its members shall not, individually or in combination, be liable in damages or otherwise in connection with any construction, design, engineering, or defect associated with any Improvement constructed on the Property. APPROVAL OF PLANS AND SPECIFICATIONS DOES NOT CONSTITUTE ANY WARRANTY OR REPRESENTATION THAT SUCH PLANS AND SPECIFICATIONS COMPLY WITH GOVERNMENTAL REQUIREMENTS OR GOOD AND PRUDENT DESIGN, ENGINEERING, AND CONSTRUCTION PRACTICES. IT IS THE SOLE RESPONSIBILITY OF THE OWNER TO DETERMINE AND SEE THAT ITS PLANS AND SPECIFICATIONS COMPLY WITH GOVERNMENTAL REQUIREMENTS AND THE DESCRIBED PRACTICES.

(b) Indemnification Related to Improvements. The Association, as a Common Expense of the Association, shall indemnify, defend, save, and hold harmless such Board members and officers of the Association from any and all Loss or Losses to others on account of any approval or disapproval or failure to approve or to disapprove any Plans and specifications submitted or on account of enjoining or removing any construction undertaken prior to written approval of the DRB (to the extent not covered by insurance proceeds). In addition, each Board member and each officer of the Association shall be indemnified, defended, saved, and held harmless by the Association, as a Common Expense of the Association, from any Loss to others (to the extent not covered by insurance proceeds) by reason of having served as such Board member or as such officer and against all Losses incurred at the time it was a Board member or officer, subject to any provisions regarding indemnity contained in the Association Documents, except in cases wherein the Loss or Losses arise from a proceeding in which such Board member or such officer is adjudicated guilty of Bad Acts (THIS INDEMNITY IS INTENDED TO AND DOES COVER LIABILITIES RESULTING FROM THE NEGLIGENCE OF THE BOARD MEMBERS OR THE OFFICERS OF THE

ASSOCIATION). In the event of a settlement of any such proceeding, the indemnification provided hereby shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association. Any right to indemnification provided for herein shall not be exclusive of any other rights to which a Board member or officer, or former Board member or officer, may be entitled.

Section 6.08 Certificate of Compliance. Within twenty (20) days of the Association's receipt of a written request by an Owner who has fully and timely complied with the provisions of this Article VI, the Association shall deliver to such Owner a written certificate of such compliance in recordable form, and such certificate shall be conclusive evidence of such compliance.

Section 6.09 Documents. Within sixty (60) days after completion of any Improvements, the Owner of such Site shall provide to the Association as-built site, utility, drainage, and landscape plans, plans for underground irrigation systems in the landscaping on and adjacent to such Site, and such other as-built information which may be [reasonably] requested by the Board or the DRB.

ARTICLE VII DEVELOPMENT COVENANTS

Section 7.01 General.

(a) No use shall be permitted on the Property which is not allowed under Applicable Law. Each Owner, occupant, or other user of any portion of the Property at all times shall comply with this Declaration and the Development Guidelines and with any and all Applicable Law, specifically including, but not limited to, applicable zoning restrictions placed on the Property, as they exist from time to time. IN SOME INSTANCES, GOVERNMENTAL REQUIREMENTS MAY BE MORE OR LESS RESTRICTIVE THAN THE PROVISIONS OF THIS DECLARATION AND THE DEVELOPMENT GUIDELINES. IF A CONFLICT EXISTS BETWEEN ANY GOVERNMENTAL REQUIREMENT AND ANY REQUIREMENT UNDER THIS DECLARATION OR THE DEVELOPMENT GUIDELINES, THE MOST RESTRICTIVE REQUIREMENT SHALL PREVAIL, EXCEPT IN CIRCUMSTANCES WHERE COMPLIANCE WITH A MORE RESTRICTIVE PROVISION OF THE DECLARATION OR THE DEVELOPMENT GUIDELINES WOULD RESULT IN A VIOLATION OF MANDATORY APPLICABLE GOVERNMENTAL REQUIREMENTS, IN WHICH CASE THOSE GOVERNMENTAL REQUIREMENTS SHALL APPLY. COMPLIANCE WITH MANDATORY GOVERNMENTAL REQUIREMENTS WILL NOT RESULT IN THE BREACH OF THIS DECLARATION OR THE DEVELOPMENT GUIDELINES EVEN IF SUCH COMPLIANCE COULD OTHERWISE RESULT IN NONCOMPLIANCE OF PROVISIONS UNDER THIS DECLARATION OR THE DEVELOPMENT GUIDELINES. WHERE A GOVERNMENTAL REQUIREMENT DOES NOT CLEARLY CONFLICT WITH THE PROVISIONS OF THIS DECLARATION OR THE DEVELOPMENT GUIDELINES BUT PERMITS ACTION THAT IS DIFFERENT FROM THAT REQUIRED BY THIS DECLARATION OR THE DEVELOPMENT GUIDELINES, THE PROVISIONS OF

THIS DECLARATION AND THE DEVELOPMENT GUIDELINES SHALL PREVAIL. All portions of the Property shall be developed in accordance with this Declaration as it may be amended as herein provided. The provisions of this Article VII set forth certain requirements which, in addition to the other provisions of this Declaration and the Development Guidelines, shall apply with respect to the development and use of the Property.

(b) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE PROVISIONS OF THIS DECLARATION OTHER THAN THIS SECTION 7.01(b), THE ASSOCIATION, THE BOARD, AND THE DRB SHALL NOT HAVE THE RIGHT OR AUTHORITY TO EXERCISE ANY OF THE POWERS OR RIGHTS GRANTED TO ANY OF THEM IN THIS DECLARATION IN SUCH A MANNER AS TO PROHIBIT THE USE BY ANY OWNER OF ITS SITE FOR ANY USE: (a) THAT COMPLIES WITH THE FOREGOING PROVISIONS OF SECTION 7.01(a) ABOVE; AND (b) THAT IS NOT PROHIBITED BY THE PROVISIONS OF SECTION 7.02 BELOW. BY WAY OF EXAMPLE, THE BOARD SHALL NOT ADOPT (INITIALLY OR BY AMENDMENT) DEVELOPMENT GUIDELINES THAT ARE DESIGNED TO PROHIBIT AN OWNER'S USE OF ITS SITE THAT OTHERWISE WOULD BE IN COMPLIANCE WITH THE PROVISIONS OF SECTION 7.01(a) ABOVE AND NOT PROHIBITED BY SECTION 7.02 BELOW. FURTHER, BY WAY OF EXAMPLE, THE DRB SHALL NOT EXERCISE ITS APPROVAL RIGHTS UNDER ARTICLE VI OF THIS DECLARATION IN A MANNER INTENDED TO PROHIBIT AN OWNER'S USE OF ITS SITE THAT OTHERWISE WOULD BE IN COMPLIANCE WITH THE PROVISIONS OF SECTION 7.01(a) ABOVE AND NOT PROHIBITED BY SECTION 7.02 BELOW. THE PROVISIONS OF THIS SECTION 7.01(b), HOWEVER, DO NOT AFFECT: (i) THE RIGHT AND AUTHORITY OF THE ASSOCIATION, THE BOARD, OR THE DRB TO EXERCISE THEIR RIGHTS AND POWERS SET FORTH IN THIS DECLARATION; OR (ii) THE OBLIGATIONS OF EACH OWNER TO COMPLY FULLY WITH THE PROVISIONS OF THIS DECLARATION, SPECIFICALLY, BY WAY OF EXAMPLE, BUT NOT IN LIMITATION, THE PROVISIONS OF ARTICLE VI AND ARTICLE VII OF THIS DECLARATION NOTWITHSTANDING ANY INCIDENTAL EFFECT OF SUCH COMPLIANCE ON AN OWNER'S USE OF ITS SITE.

Section 7.02 Prohibited Uses. Without limiting the generality of Section 7.01 above, the following are prohibited on the Property:

- (a) Any use described in Exhibit [LETTER];
- (b) Any use that is unlawful [(including, without limitation, any manner that is lawful under the State's law but unlawful under federal law)];
- (c) Any use that creates damage, waste, or a nuisance; or
- (d) Any use that emits objectionable odors, sounds, or vibrations, or allows any pests, insects, or vermin.

Section 7.03 Setbacks.

(a) Except as hereinafter specifically provided, each Site shall be subject to Front Yard Setbacks consisting of a "**Paving Setback**" and a "**Building Setback**" as detailed in the chart below and measured in feet from the right-of-way line of each Street contiguous to such Site (a Site shall have a front yard on each boundary abutting a Street) as follows:

Street	Paving Setback	Building Setback
[STREET NAME]	[NUMBER] feet	[NUMBER] feet
[STREET NAME]	[NUMBER] feet	[NUMBER] feet
[STREET NAME]	[NUMBER] feet	[NUMBER] feet

Notwithstanding the Building Setbacks specified above, each front yard Building Setback for any building to be constructed on a Site that will be greater in height than the width of the above-specified applicable front yard Building Setback shall be increased one (1) foot for each one (1) foot of building height in excess of the width of the above-specified applicable front yard Building Setback up to a maximum required front yard Building Setback of [NUMBER IN WORDS] ([NUMBER]) feet.

(b) Except as hereinafter specifically provided, each Site shall be subject to "**Side and Rear Yard Setbacks**" on all sides of a Site not abutting a Street consisting of a Paving Setback of [NUMBER IN WORDS] ([NUMBER]) feet and a Building Setback of [NUMBER IN WORDS] ([NUMBER]) feet, measured from the applicable boundary lines of the Site.

(c) No Improvements shall be constructed, installed, or planted by an Owner within a Paving Setback or within the Unpaved Right-of-Way on or adjacent to a Site other than landscaping, sidewalks, underground utility lines and connections (including surface mounted switch gear), driveways crossing such area into the Site, and, but only if approved in writing by the DRB, gates and gatehouses, landscape walls, signs, flags, sculptures, and other Improvements specifically authorized by the DRB.

(d) No Improvements shall be constructed, installed, or planted on any Site between the Paving Setback and the Building Setback applicable to such Site except for:

- (i) Those Improvements permitted in Section 7.03(c) above;
- (ii) Underground Structures;
- (iii) Steps, pedestrian plazas, benches, and related hardscape;
- (iv) Planters and retaining walls;
- (v) Fences, screening walls, and security walls approved in writing by the DRB;

- (vi) Driveways, *porte cocheres*, and surface parking areas; and
- (vii) Other Improvements specifically authorized by the DRB.

(e) Notwithstanding the setbacks specified above, the DRB shall have the right, with respect to any retail shopping areas or mixed-use centers developed on the Property, to waive or reduce any applicable Side or Rear Yard Setbacks and Paving and Building Setbacks for internal private drives or roadways and all other Streets.

Section 7.04 Site Circulation. Declarant intends for the Property to be developed in such a manner as to minimize the number of curb cuts on to and median cuts in Streets, all of which curb and median cuts must be approved in writing in advance by the DRB. Driveways on a Site shall be paved with concrete and shall accommodate adequate vehicle stacking so that stacking on Streets of vehicles entering the Site is minimized. Notwithstanding the provisions of Section 7.03 above, the DRB may, in its [reasonable] discretion, permit jointly used driveways along the common side or rear yard boundary lines of two (2) adjacent Sites designed to help vehicular circulation provided the other side and rear yard landscaping is provided on such Sites acceptable to the DRB. Each Owner, in accordance with the provisions of the Development Guidelines, shall install sidewalks on its Site and the Unpaved Right-of-Way of any abutting Street if, as, and when required to do so by the City. The design, materials, and location of such sidewalks are subject to approval of the DRB. In addition, pedestrian circulation areas around buildings and parking areas shall be installed and landscaped as required by the DRB.

Section 7.05 Fire Protection. All buildings shall be designed, constructed, and maintained to comply fully at all times with any Applicable Law relating to fire protection. All such buildings and their associated ingress and egress from and to Streets and surface parking areas shall be so related to one another and arranged to permit ease of access for emergency fire vehicles. Designated fire lanes within any Site shall be so located, marked, and protected from encroachment to function effectively at all times. Appropriate signage, subject to DRB approval, shall be installed for such fire lanes as may be required either by any public authority or by the DRB and shall be kept in readable condition.

Section 7.06 Parking. Each Owner must provide on its Site adequate parking areas for employees, the handicapped, visitors, and service vehicles. No parking shall be permitted on Streets, on entrance driveways, or on internal roads on the Site except in a manner satisfactory to the DRB. All surface parking shall be paved and shall have integral concrete curbs and gutters. To the extent required by the DRB, all surface parking shall be screened to block the ground level view of automobiles below their hood lines and otherwise reduce the visibility of vehicles and parking surfaces from Streets, in a manner satisfactory to the DRB.

Section 7.07 Signage. No sign or other advertising device of any nature shall be placed on the Property except as approved by the DRB. All signage shall be consistent with the design criteria of the DRB, including the manner and method of attachment of the signage to the building. All signage must be permitted under Applicable Law. Declarant or the Association shall have the right to install and maintain standard directional/informational signage and traffic signage in any Unpaved Right-of-Way.

Section 7.08 Underground Utilities. Any and all pipes, lines, and wires used for the transmission of water, fuel, storm drainage, natural gas, electricity, telephone, security, telecommunication systems, television, sewage, industrial sewage, sound, or any other utilities which are not within a building shall be constructed and maintained underground within the Property unless required to be above ground for technical or environmental reasons and approved by the DRB. However, temporary above-ground utilities may be approved by the DRB for use during construction and until permanent underground service is available to the Site on written advance approval by the DRB. No well shall be constructed on the Property except by Declarant or the Association on Property owned by Declarant or the Association unless otherwise approved by the Declarant or the Association.

Section 7.09 Screening. All towers, tower antennae, satellite receiving and transmitting equipment, roof-mounted equipment, other equipment, outside storage areas and service areas on the Property, and such other items and areas as designated by the DRB, shall be screened to the extent reasonably practicable from ground level view. The DRB shall have full power to determine what facilities or areas must be screened and the screening materials and requirements for each.

Section 7.10 Loading Docks and Areas. Each Site shall provide sufficient on-site loading facilities to accommodate activities, and all loading movements, including, but not limited to, turnarounds, shall be made off of Streets. No materials, supplies, or equipment shall be permitted to remain outside of any Structure unless screened in a manner satisfactory to the DRB. Loading docks and areas and maneuvering areas shall be located on a Site in accordance with the provisions of the Development Guidelines. The DRB may require screening of loading and maneuvering areas facing an adjacent Site or a Street.

Section 7.11 Landscaping. Each Owner, contemporaneously with the development of Improvements on a Site, shall install landscaping, including plants, grass vines, ground cover, trees, shrubs, flowers, mulch, bulbs, rocks, landscape edging, water features, lighting in landscaped areas, underground irrigation systems, and related landscape improvements and materials, on all unimproved areas on its Site in accordance with Plans approved by the DRB (other than on land held for expansion purposes as approved by the DRB). An Owner shall keep all such landscaping in good condition and repair and in a neat and orderly appearance and shall be responsible for all expenses relating to the maintenance, repair, or replacement of Landscaping on the Owner's Site and on the Unpaved Right-of-Way adjacent to such Site. Automatic underground irrigation systems must be installed in all landscaped areas on a Site (other than land held for expansion purposes as approved by the DRB) and the adjacent Unpaved Right-of-Way. No changes shall be made to the landscaping plan for a Site or an adjacent Unpaved Right-of-Way without the prior written approval of the DRB.

Section 7.12 Trash and Garbage. No Site, or part thereof, shall be used or maintained as a dumping ground for rubbish, trash, or garbage before, during, or after the installation of any Improvements. Trash collection containers shall be situated and enclosed or otherwise screened as required by the DRB so as not to be visible from Streets or other adjacent Sites. Each Owner shall observe and comply with any and all requirements established by the DRB for the storage and removal of trash and garbage. If within five (5) days after receipt of written notice from the Declarant or the Association to an Owner, the Owner fails either to remove such trash, rubble, or

construction debris, or to exercise reasonable care or conduct to prevent or remedy a dangerous, unclean, or unsightly condition, then the Declarant or the Association shall have the authority and right to go on the Site to clean said Site and/or otherwise correct said condition or conditions.

Section 7.13 Surface Water Flow and Drainage. Plans for all dams, lakes, ponds, other water features of any kind, and general Site drainage must be submitted in advance for DRB approval. Each Owner shall control water runoff drainage from the Owner's Site to prevent damage to adjacent tracts, Streets, or any other area in the Property.

Section 7.14 Environment.

(a) No Owner, tenant, operator, occupant, or other user of the Property or any portion thereof shall handle, store, deposit, use, process, make, dispose of, release, or allow any of its agents, employees, contractors, occupants, or invitees to handle, store, deposit, use, process, make, dispose of, or release any Hazardous Substances (defined below) of any kind from, on, in, under, or in the air above any part of the Property, including, but not limited to, any surface waters or groundwater located on the Property, or into public sanitary sewer systems serving the Property without complying with all Environmental Laws (defined below), including, but not limited to, performing pre-treatment, obtaining permits, and giving notices as required by Environmental Laws. "**Hazardous Substances**" means those substances now or hereafter included within (whether as a result of such substance's inclusion on a list, physical characteristics, or otherwise) any of the definitions of "hazardous substances," "hazardous waste," "hazardous materials," "pollutant," "contaminant," or "toxic substance" under, or otherwise regulated by, any Environmental Laws, including, but not limited to: (i) mixtures containing listed Hazardous Substances and waste generated from the treatment, storage, or disposal of Hazardous Substances; (ii) asbestos; (iii) polychlorinated biphenyls; (iv) radioactive materials; and (v) petroleum (including crude oil or any fraction thereof), natural gas, natural gas liquids, liquified natural gas, and synthetic gas. [Hazardous Substances does not include *de minimis* amounts of hazardous materials used solely for household purposes.] "**Environmental Laws**" means and includes all Applicable Law relating to pollution or protection of human health, wildlife, natural resources, or the environment (including ambient air, surface water, ground water, land surface, or subsurface strata) including such laws governing or regulating the use, generation, storage, removal, remediation, recovery, treatment, handling, transport, disposal, control, release, discharge of, or exposure to, Hazardous Materials. Without limiting the generality of the foregoing, Environmental Laws include the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substances Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, *et seq.*, the Clean Air Act, 42 U.S.C. Sections 7401, *et seq.*, the Safe Drinking Water Act, 42 U.S.C. Section 300f, *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. Chapter 15, *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251, *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 136, *et seq.*, and the River and Harbors Appropriation Act, 33 U.S.C. Section

403, *et seq.*, and all regulations adopted thereunder and all state and local analogs. In addition to the foregoing, Environmental Laws also means and includes all voluntary cleanup programs and/or brownfields programs under federal, state, or local law and all requirements imposed by any related permit.

(b) Each Owner, tenant, operator, occupant, or other user of the Site shall be responsible for and shall pay all Loss or Losses related to the disposal or release by such Owner, tenant, operator, occupant, or other user of any Hazardous Substances, sewage, or wastes of any kind in, on, under, or in the air above the Property, which Loss shall include, but not be limited to, closure, removal, remediation, cleanup, containment, and other response costs, injuries to Persons, damages to property, legal expenses, and interest paid to any Governmental Entity; provided, however, this covenant does not apply to Hazardous Substances generated on or migrating from other Sites or already existing on the Site in question as of the date of the acquisition of such Site by such Owner, tenant, operator, occupant, or other user. The covenant in the immediately preceding sentence itself does not create any obligation of Owner, tenant, operator, occupant, or other user of a Site other than for the payment of the costs and expenses described in such sentence, and no Person has any rights under the covenant in such sentence to enforce any claim for any remedy against such Owner, tenant, operator, occupant, or other user of such Site other than for the payment or recovery of the costs and expenses described in such sentence.

(c) The provisions of this Section 7.14 do not affect the rights, liabilities, or obligations of any Person under Environmental Laws or other Applicable Law. Notwithstanding any provision contained in this Declaration to the contrary, the Association shall not have the right to levy any Regular Assessment or Special Purpose Assessment for the purpose of collecting funds from Owners to be used for the payment of closure, removal, remediation, cleanup, containment, or other response costs relating to Hazardous Substances in the Common Areas or in any other portions of the Property; provided, however, this restriction shall not affect the right of the Association to levy a Special Member Assessment to collect funds to pay such costs from any Owner who is responsible for the presence of such Hazardous Substances or from or on whose Site such Hazardous Substances were generated, stored, or released.

Section 7.15 Fences. The use of fences on the Property is permitted only if specifically approved in writing in advance by the DRB.

Section 7.16 Prohibited Activities. No dangerous, noxious, offensive, or nuisance activities or any activities which violate any Applicable Law shall be conducted or permitted to occur by any Owner or its agents, employees, contractors, occupants, or invitees on any portion of the Property. No operation or use of any portion of the Property shall be permitted or maintained by any Owner or its agents, employees, contractors, occupants, or invitees that causes or produces noise or sound that is objectionable because of its volume, duration, frequency or shrillness, smoke, noxious, toxic, or corrosive fumes or gases, obnoxious odors, dust, or unusual fire or explosion hazards. The above prohibitions are in addition to those set forth in Section 7.01 and Section 7.02 above.

Section 7.17 Certain Declarant Uses. Declarant may conduct its sales and marketing program for the Property from any permanent or temporary sales buildings or trailers and may conduct work and activities on portions of the Property owned by Declarant and do all things reasonably necessary or convenient as required to expeditiously begin, continue, and complete such work, including, but not limited to, the provision of temporary buildings (including trailers), temporary storage of construction materials and equipment, and the installation of temporary signage of such types, in such sizes, and at such locations on portions of the Property owned by Declarant as Declarant deems appropriate. In addition, Declarant shall have the right, at its expense, to install on any Site a standardized sign announcing a future development on such Site, which sign may remain in place even after its sale until completion of the development. If Declarant installs such a sign, the Owner of such Site shall not install another sign for the same purpose.

Section 7.18 Construction Standards.

(a) Any builder engaged to construct Improvements on any portion of any Site may conduct its construction operations and activities and do all things reasonably necessary as required to expeditiously begin, continue, and diligently complete construction of any such Improvements, including the provision of temporary buildings or trailers for administration of work and for the storage of materials and equipment, and the construction of temporary security fences and lighting, except that all construction activities, temporary Structure, storage of materials and equipment, all construction-related parking, and temporary security fences shall be confined entirely on such Site behind the Paving Setbacks. Topsoil shall be scraped and preserved before laying temporary parking lots. Once begun, all construction on a Site shall be continued with due diligence and good faith until completion.

(b) Each Owner expressly covenants that it will use its reasonable good faith efforts to prevent any Loss or Losses causing adverse impacts (such as, but not limited to, air, soil, and water pollution, soil erosion, elimination of trees without replacement, or increased water runoff rates) to areas outside its Site in any way (negligent or otherwise) resulting from construction, alteration, maintenance, repair, replacement, or removal of Improvements to the Site and that it will indemnify, defend, save, and hold harmless Declarant, the Association or any of its officers, the Member Owners, the Non-Member Owners, the DRB, the Members of the DRB, and the Board or any of its members from any and all Loss or Losses [(including court costs and reasonable attorneys' fees incurred by or imposed in connection with any proceeding)]resulting therefrom. All possible contaminants must be stored in a containment facility that will not allow such materials to enter any soils on or off the Site.

(c) Each Owner shall take such action as is necessary to keep the Property reasonably free from mud, dirt, and debris resulting from construction activities on that Owner's Site. Each Owner is responsible for all costs of, and shall cause, through appropriate contractual provisions, the cleaning up of any debris or waste improperly disposed of anywhere on the Property. Each Owner and its contractors must maintain an attractive, clean, nuisance-free environment during the period of construction. Declarant shall have the right to reasonably designate points of ingress and egress on the Site and

within the Property for construction vehicles, and each Owner of a Site on which Improvements are being constructed shall keep all Streets reasonably cleared of mud and dirt left by construction vehicles entering such Site. Each Owner shall cause its contractors to comply with the requirements of Declarant or the DRB regarding points of construction access to a Site, cleaning mud and construction debris from Streets, re-establishment of landscaping, keeping mud from washing onto Streets and adjoining Sites, and other matters set forth in the Development Guidelines.

(d) Before any excavation on a Site, the Owner will determine and mark the location of and will protect all existing utilities and underground irrigation systems. Utility lines and underground irrigation systems are to be located before earth moving or drilling equipment operations are allowed to start near underground utilities or underground irrigation systems. All backfill will be adequately compacted to prevent future settlement, especially under pavement and other Structures.

ARTICLE VIII EASEMENTS

Section 8.01 Utility and Service Easements. Notwithstanding any provision in this Declaration to the contrary, Declarant reserves for itself and its successors and assigns, an easement for installation, maintenance, repair, and removal of underground utilities or other underground services (including, but not limited to, water, fuel, storm drainage, natural gas, electricity, telephone, security, telecommunication systems, television, sewage, industrial sewage, sound, or any other utilities) on all portions of each Site within twenty-five (25) feet of the right-of-way boundary of Streets (or twenty (20) feet for non-median divided Streets) and within five (5) feet from all boundaries of the Site other than those boundaries abutting Streets. Full right of ingress and egress shall be had by Declarant at all times over each Site for the installation, operation, maintenance, repair, or removal of any such utility or service together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation, or installation of such utility or service; provided, however, such activities shall be conducted to minimize disruption of other access to and use of a Site by an Owner and its employees and business invitees. Within such easement, Declarant reserves a temporary construction and maintenance easement for such duration as is reasonably necessary for the construction and maintenance of Streets, utilities, drainage facilities, and related Improvements. An Owner may construct, install, or plant in the setback areas affected by these easements those Improvements specifically authorized in Section 7.03(c) and Section 7.03(d) above, subject to the rights of Declarant in this Section 8.01. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved hereunder to one or more public utility companies, to the Association, to the City, or to any other Person. Declarant (or its assignee exercising such easement rights) shall repair any landscaping or pavement damaged by the exercise by Declarant (or its assignee exercising such easement rights) of the rights set forth in this Section 8.01.

Section 8.02 Other Easements. Declarant and the Association shall have an easement for full right of ingress and egress at all times over and on the Property for the exercise of rights under this Declaration and for the carrying out by the Association of their other rights, functions, duties, and obligations set out in this Declaration. Any such entry by Declarant or the

Association on the Property shall be made with as minimum inconvenience to the affected Owner as is practicable.

ARTICLE IX MAINTENANCE BY OWNERS

Each Owner shall have the duty and responsibility, at its sole cost and expense, to keep its Site and any Unpaved Right-of-Way adjacent to the Site and, subject to ordinary wear, tear, and deterioration, buildings and Improvements thereon in a well-maintained, safe, clean, neat, orderly, and attractive condition at all times. Such maintenance includes, but is not limited to, the following: prompt removal of all litter, trash, refuse, and wastes; lawn mowing; tree and shrub care; watering; other landscaping maintenance; keeping exterior lighting and mechanical facilities in working order; keeping lawn and garden areas, driveways, and private roads in good repair; keeping all signs in good repair; complying with all Applicable Law; repairing exterior damage to Improvements; and striping of parking areas and repainting of Improvements. An Owner shall maintain the Unpaved Right-of-Way adjacent to its Site and the front yard Paving Setback area on that Site on such schedule and in such manner as is specified by the DRB in an effort to maintain a reasonably consistent appearance of all Unpaved Right-of-Way and front yard Paving Setback areas in the Property. The Association shall have the right to perform any action required of an Owner or its contractors under Section 7.18 above and to perform any maintenance, repair, or replacement of landscaping, signs, screening or decorative walls, surface parking areas, ponds, lakes, fountains, pools, exterior lighting, sculptures, utilities, drainage systems, lighting, and park and recreational facilities and equipment on a Site or the adjacent Unpaved Right-of-Way if the Owner fails to do so within seven (7) days after the Owner's receipt of written notice from the Association (or after such longer period as may be allowed by the DRB due to the nature of such deficiency).

ARTICLE X GENERAL PROVISIONS

Section 10.01 Binding Effect and Duration. The Restrictions shall run with and bind the Property, shall be binding on all Owners, and shall inure to the benefit of and be enforceable by Declarant, the Association, and the Owners and their respective heirs, executors, legal representatives, successors, and assigns[./, and shall remain in effect for fifty (50) years from and after the date of the recording of this Declaration. This Declaration shall automatically be extended for three (3) successive periods of ten (10) years each. Provided, however, if, at the expiration of either the initial fifty (50)-year period or the end of any of the three (3) successive ten (10)-year periods, an instrument executed by the Owners of at least a majority of the gross acreage (exclusive of the Streets and Common Areas) in the Property abolishing this Declaration is filed of record in the County, this Declaration shall terminate at that time.]

Section 10.02 Other Persons. The Restrictions contained in ARTICLE VI, ARTICLE VII, ARTICLE VIII, and ARTICLE IX of this Declaration shall be binding on and enforceable against not only the Owners but also all tenants or other occupants of a Site.

Section 10.03 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Board, will best affect the intent of Declarant's general plan of development as reflected in this Declaration. The Board shall have the right, power, and authority to determine all questions arising under or in connection with this Declaration and to construe and interpret its provisions, and any determination, construction, or interpretation made by the Board, in the absence of an adjudication by a court of competent jurisdiction that such action was an abuse of discretion, shall be binding on the Owners. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any less restrictive Applicable Law.

(a) **Drafting Party.** The fact that this Declaration was prepared by Declarant's counsel as a matter of convenience shall have no import or significance to the construction of this Declaration. Any uncertainty or ambiguity in this Declaration shall not be construed against Declarant because Declarant's counsel prepared this Declaration in its final form. Any rule of construction that requires any ambiguities to be interpreted against the drafter shall not be employed in the interpretation of: (i) this Declaration; (ii) any exhibits to this Declaration; or (iii) any document drafted or delivered in connection with the transactions contemplated by this Declaration.

(b) **Effective Date.** The effective date of this Declaration shall be the date of its filing of record in the office of the County ("**Effective Date**").

(c) **Captions.** Any captions or headings used in this Declaration are for convenience only and do not define or limit the scope of this Declaration.

(d) **Singular or Plural.** The singular of any term, including any defined term, shall include the plural and the plural of any term shall include the singular. The use of any pronoun with respect to gender shall include the neutral, masculine, feminine, and plural.

Section 10.04 Enforcement. Declarant, the Association, and the Owners shall have the right, but not the obligation, to enforce the Restrictions. Enforcement may be made by any proceedings at law or in equity against any Person violating or attempting to violate any part of this Declaration, as such may be amended, either to restrain or enjoin violations or to recover damages. Damages shall not be deemed adequate compensation for any breach or violation of any provision of this Declaration, and Declarant, the Association, and each Owner shall be entitled to relief by way of injunction, as well as any other remedy either at law or in equity. The rights, powers, and remedies provided in this Declaration shall be cumulative and not restrictive of other remedies at law or in equity, and the exercise by a Person of any particular right, power, or remedy shall not be deemed an election of remedies or to preclude such person's resort to other rights, powers, or remedies available to it.

Section 10.05 No Waiver or Obligation to Enforce. No delay or failure on the part of Declarant, the Association, or any other aggrieved party to invoke any available right, power, or remedy in respect to a breach of this Declaration shall be held or deemed to be a waiver by that party of (or estop that party from asserting) any right, power, or remedy available to it on the recurrence or continuance of said breach or the occurrence of a different breach. Declarant and

the Association, or its officers or Board members, shall not be under any obligation to take any action to enforce the terms of this Declaration. No waiver by Declarant, the Association, or any other aggrieved party of the provisions hereof shall be effective unless explicitly set out in writing and signed by the party so waiving. No waiver by Declarant, the Association, or any other aggrieved party shall operate or be construed as a waiver for any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver.

Section 10.06 Liens, Validity, and Severability. Violation of or failure to comply with this Declaration shall not affect the validity of any mortgage, lien, or other similar security instrument which may then be existing on any Site. Invalidation of any one or more of the provisions of this Declaration, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. If any portion of this Declaration conflicts with mandatory provisions of any Applicable Law, then such Applicable Law shall control.

Section 10.07 Owner/Occupant Records. Except for those Owners who purchase portions of the Property from Declarant or its affiliate, any Person, on becoming an Owner of a parcel within the Property, shall furnish the Board a true and correct copy of the recorded instrument of conveyance vesting such ownership in said Owner. Each Owner shall furnish to the Association the name of a contact Person with such Owner and a street address for receiving notices from the Association. Each Owner shall notify the Association of the name and address of all tenants of long-term ground leases or long-term build-to-suit leases (meaning leases with combined primary and renewal terms exceeding ten (10) years) affecting the Owner's Site. It shall be the responsibility of the Owner (and a non-owner occupant of a Site, if any) to keep such information current and to advise the Association of any changes.

Section 10.08 Notices. Unless specifically stated otherwise in this Declaration, all notices, waivers, and demands required or permitted hereunder shall be in writing and delivered to the addresses set forth below, by one of the following methods: (a) hand delivery, whereby delivery is deemed to have occurred at the time of delivery; (b) a nationally [or regionally] recognized overnight courier company, whereby delivery is deemed to have occurred the business day following deposit with the courier; (c) registered United States mail, signature required and postage-prepaid, whereby delivery is deemed to have occurred on the third business day following deposit with the United States Postal Service; or (d) electronic transmission (facsimile or email) if the transmission is completed no later than 4:00 p.m. [TIME ZONE] on a business day and the original also is sent via overnight courier or United States Mail, whereby delivery is deemed to have occurred at the end of the business day on which electronic transmission is completed.

To Declarant:

Name:

Address:

Telephone:

Facsimile:

Email:

with a copy to:

Name:
Address:
Telephone:
Facsimile:
Email:

To Association:

Name:
Address:
Telephone:
Facsimile:
Email:

with a copy to:

Name:
Address:
Telephone:
Facsimile:
Email:

Any party may change its address for purposes of this Section 10.08 by giving written notice as provided in this Section 10.08. All notices and demands delivered by a party's attorney on a party's behalf shall be deemed to have been delivered by said party. Notices shall be valid only if served in the manner provided in this Section 10.08.

Section 10.09 Mortgagees. The holder of a mortgage of any interest in a Site shall be furnished with written notification from the Association of any default by the respective Owner or tenant of that Site in the performance of obligations set forth in this Declaration if the Association has been furnished, in writing, a name and address of such mortgage holder and a request to receive such notification. Cure by said mortgage holder within the times herein provided Owner shall be accepted. No default by an Owner or a tenant of a Site under any provision of this Declaration shall affect any existing lien or mortgage on that Site. A mortgagee shall not be liable for Assessments made with respect to a Site during any period its only interest in the Site is that of mortgagee.

Section 10.10 Approvals. No approval by the Declarant, the Board, or the DRB under the provisions hereof shall be effective unless in writing, unless otherwise expressly provided herein.

Section 10.11 Miscellaneous Provisions.

(a) **Amendments.** Except as otherwise provided in this Section 10.11, this Declaration, or any provisions hereof, may be terminated, amended, or vacated for any

portion of the Property only by a document duly executed and acknowledged by Owners of at least a majority of the gross acreage (exclusive of acreage in Streets and Common Areas) in the Property; provided, however:

- (i) Until the Conversion Date, no such termination, amendment, or vacation shall be effective without the written approval of Declarant;
- (ii) Declarant, without the joinder of any other party, shall have the absolute right to make minor changes or amendments to this Declaration to correct or clarify errors, omissions, mistakes, or ambiguities contained herein; and
- (iii) Declarant shall have the right to supplement this Declaration for the inclusion of additional property or for the removal of property as provided in Section 1.03 above.

No such termination, amendment, supplement, or vacation shall be effective until a written instrument setting forth the terms thereof has been executed by the parties by whom approval is required as set forth above and recorded in the real property records of the County. Notwithstanding the above, no amendments shall be made to this Declaration unless they have been first approved by a Special Vote of the Class A Members as evidenced by a certificate of the Secretary of the Association:

- (iv) Changing the definition of Common Areas, Common Facilities, Common Services, Conversion Date, or Default Rate;
- (v) Increasing the number of acres that can be made subject to this Declaration or that can be deleted from the Property as provided in Section 1.03;
- (vi) Changing the provisions requiring membership in the Association as provided in Section 3.01;
- (vii) Changing the allocation of voting rights as provided in Section 3.03;
- (viii) Changing the definition of a Quorum as provided in Section 3.04;
- (ix) Changing the type of and basis for allocation of Assessments as provided in Section 4.01, Section 4.02, Section 4.03, Section 4.04, and Section 4.05;
- (x) Changing the limits on the Association reserve fund amount and annual contribution as provided in Section 4.02;
- (xi) Changing the provisions regarding the subordination of the lien for Assessments as provided in Section 4.07;
- (xii) Changing the audit rights as provided in Section 5.02(o);

(xiii) Changing the provisions regarding affiliated contracts as provided in Section 5.03;

(xiv) Changing the provisions regarding the limitations of the rights and powers of the Association, the Board, and the DRB as provided in Section 7.01(b);

(xv) Changing the list of prohibited uses as provided in Section 7.02;

(xvi) Changing the setbacks as provided in Section 7.03 (subject to the above provision regarding setbacks applicable to additional property subjected to this Declaration as provided in Section 1.03 above);

(xvii) Changing the environmental obligations as provided in Section 7.14(b);

(xviii) Expanding the reserved easements as provided in Section 8.01;

(xix) Changing the extent of the Association's rights to enter a Site to perform maintenance as provided in Article IX; or

(xx) Changing this Section 10.11.

(b) **Partial Invalidity.** Any term or provision of this Declaration which is invalid or unenforceable in any jurisdiction will, for that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Declaration or affecting the validity or enforceability of any of the terms or provisions of this Declaration in any other jurisdiction. If any provision of this Declaration is so broad that it is unenforceable, the provision will be interpreted to be only so broad as is enforceable.

Section 10.12 Third-Party Beneficiary; Successors and Assigns.

(a) **Third-Party Beneficiary.** This Declaration is an agreement solely for the benefit of the Owners (and their permitted successors and/or assigns). No other Person shall have any rights hereunder nor shall any other Person be entitled to rely on the terms, covenants, and provisions contained herein. The provisions of this Section 10.12 shall survive the termination of this Declaration or dissolution of the Declarant.

(b) **Successors and Assigns.** This Declaration and all its covenants, terms, and provisions shall be binding on and inure to the benefit of each Party and its successors and assigns.

Section 10.13 Further Assurances. Each Owner agrees to do such things, perform such acts, and make, execute, acknowledge, and deliver such documents as may be reasonably necessary and customary to carry out the intent and purposes of this Declaration, so long as any of the foregoing do not materially increase any Owner's obligations hereunder or materially decrease any Owner's rights hereunder.

Section 10.14 Days; Performance on a Saturday, Sunday, or Holiday. Whenever the term "day" is used in this Declaration, it shall refer to a calendar day unless otherwise specified. Should this Declaration require an act to be performed or a notice to be given on a day other than a business day, the act shall be performed or notice given on the following business day.

Section 10.15 Governing Law. This Declaration shall be governed and construed in accordance with the law of the State, without giving effect to any choice or conflict of law provision or rule (whether of the State or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State.

Section 10.16 Submission to Jurisdiction. The parties hereby agree that any suit, action, or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Declaration or the transactions contemplated hereby, whether in contract, tort, or otherwise, shall be brought in the [United States District Court for the District of CA (or, if such court lacks subject-matter jurisdiction, in the Superior Court of the State of CA)], so long as one of such courts shall have subject-matter jurisdiction over such suit, action, or proceeding, and that any cause of action arising out of this Declaration shall be deemed to have arisen from a transaction of business in the State. Each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action, or proceeding and irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action, or proceeding in any such court or that any such suit, action, or proceeding that is brought in any such court has been brought in an inconvenient forum. Service of process, summons, notice, or other document by registered mail to the address set forth in Section 10.08 shall be effective service of process for any suit, action, or other proceeding brought in any such court.

Section 10.17 Attorneys' Fees.

(a) **[Each Party's Attorney.** Each party to this Declaration shall be responsible for all costs it incurs in connection with the preparation, review, and negotiation of this Declaration [and the transactions contemplated by this Declaration], including any attorneys' or consultants' fees.]

(b) **Recovery of Attorneys' Fees.** If any action is brought by any party against another in connection with or arising out of this Declaration or any of the documents and instruments delivered in connection herewith or in connection with the transactions contemplated hereby, the prevailing party shall be entitled to recover from the other party its reasonable out-of-pocket costs and expenses, including, without limitation, reasonable attorneys' fees incurred in connection with the prosecution or defense of such action.

Section 10.18 Waiver of Jury Trial. EACH OWNER HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION, OR PROCEEDING BROUGHT BY THE OTHER PARTY HERETO UNDER THIS AGREEMENT OR IN CONNECTION WITH ANY TRANSACTION CONTEMPLATED HEREBY, ANY AND EVERY RIGHT EACH OWNER MAY HAVE TO A TRIAL BY JURY.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Declarant hereto has executed this Declaration as of the date set out above.

PROJECT 200, a CALIFORNIA LLC

By _____

Name:

Title:

EXHIBIT [LETTER]

REAL PROPERTY DESCRIPTION

[REAL PROPERTY DESCRIPTION].

EXHIBIT [LETTER]

CONVEYANCES

[REAL PROPERTY CONVEYANCES].

EXHIBIT [LETTER]
PROHIBITED USES

[LIST OF PROHIBITED USES].