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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**AND RESERVATION OF EASEMENTS**

**FOR**

**PACIFIC BUSINESS CENTER**

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03/29/04

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AND RESERVATION OF EASEMENTS  
FOR  
PACIFIC BUSINESS CENTER**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
PACIFIC BUSINESS CENTER**

THIS DECLARATION is made by HW - TUSTIN, LLC, a California limited liability company. The capitalized terms used in the Preamble are defined in Article I.

**P R E A M B L E:**

A. Declarant owns real property located in the City of Tustin, Orange County, California, described as:

B. For the efficient preservation of the values and amenities in the Property, Declarant created a "condominium project," as defined in Section 1351(f) of the California Civil Code, to subdivide the above-referenced property as authorized by Section 66427 of the California Government Code into "condominiums" as defined in Section 783 of the California Civil Code and to impose mutually beneficial restrictions under a general plan of ownership and use for the Project and for the benefit of all the Condominiums pursuant to the Davis-Stirling Common Interest Development Act (the "Act") but subject to Section 1373 of the California Civil Code which provides that certain provisions of the Act are not applicable to commercial developments. The general plan for operating the Property includes formation of a corporation pursuant to the California Nonprofit Mutual Benefit Corporation law to which will be assigned the powers of (1) owning, maintaining and administering the Association Property, (2) administering and enforcing the Governing Documents, and (3) collecting and disbursing the assessments and charges pursuant to this Declaration.

C. The Property shall be held, conveyed, encumbered, leased, used and improved subject to the limits, restrictions, reservations, rights, easements, conditions and covenants in this Declaration, all of which are for the purpose of enhancing the attractiveness and desirability of the Project, in furtherance of a general plan for the protection, maintenance, subdivision and sale of the Project. All provisions of this Declaration are imposed as equitable servitudes on the Property. All limits, restrictions, reservations, rights, easements, conditions and covenants in this Declaration shall run with and burden the Property and shall be binding on and for the benefit of the Project and all Persons acquiring any interest in the Project and may be enforced by Declarant, any Owner and the Association.

D. The appurtenant undivided interest in the Common Area, Membership in the Association, and easements conveyed with fee title to a Unit shall not be separated or separately conveyed, and each such undivided interest, Membership and easement shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. This restriction on severability of the component interests of the Condominiums shall not extend beyond the period for which the right to partition the Project is suspended in accordance with Section 1359 of the California Civil Code. Any conveyance of a Condominium, shall be presumed to convey the entire Condominium together with its appurtenant easements and Membership in the Association.

## ARTICLE I DEFINITIONS AND INTERPRETATION

1.1 **DEFINITIONS.** Unless otherwise expressly provided, the following words and phrases used in this Declaration have the following meanings.

1.1.1 **Annual Assessment.** A charge levied against the Owners and their Condominiums representing their share of Common Expenses. Annual Assessments may include for certain Owners and their Condominiums a Designated Services Area component which shall be levied equally against only those Owners sharing in such Designated Services Area. The Annual Assessment is a regular assessment as described in California Civil Code Section 1366.

1.1.2 **Articles.** The Articles of Incorporation of the Association currently in effect. A copy of the Articles is attached as Exhibit B.

1.1.3 **Assessment.** Any Annual Assessment, Capital Improvement Assessment, Restoration Assessment and Special Assessment.

1.1.4 **Association.** Pacific Business Center Owner's Association, a California nonprofit corporation and its successors in interest. The Association is an "association" as defined in Section 1351(a) of the California Civil Code.

1.1.5 **Association Maintenance Funds.** The accounts created for Association receipts and disbursements pursuant to Article VII.

1.1.6 **Association Property.** References in this Declaration to Association Property are references to all or part of the Association Property. The Association Property includes all portions of the Project excluding the Units and the Common Area, as delineated on the Condominium Plan for the Project. Association Property further includes, without limitation, all gas, water and waste pipes, sewers, ducts, chutes, conduits, wires and other utility installations, and all easements and reservations for the benefit of the Association as set forth in this Declaration. Association Property is defined as common area in Section 1351(b) of the California Civil Code.

1.1.7 **Board or Board of Directors.** The Association's Board of Directors.

1.1.8 **Budget.** A written, itemized estimate of the Association's income and Common Expenses prepared pursuant to the Bylaws.

1.1.9 **Building.** A commercial building located on the Property, with all its additions and modifications.

1.1.10 **Bylaws.** The Bylaws of the Association currently in effect. A copy of the Bylaws as initially adopted by the Board is attached as Exhibit C.

1.1.11 **Capital Improvement Assessment.** A charge levied against the Owners and their Condominiums representing their share of the Association's cost for installing or constructing Capital Improvements on the Common Property. Capital Improvement Assessments shall be levied in the same proportions as Annual Assessments. Capital Improvement Assessments are special assessments as described in California Civil Code Section 1366.

1.1.12 **City.** City means the City of Tustin, California, and its various departments, divisions, employees and representatives.

1.1.13 **Close of Escrow.** Close of Escrow means the date on which a deed is Recorded conveying a Condominium to a purchaser.

1.1.14 **Common Area.** The volumes of airspace described in the Condominium Plan which shall be owned by the Owners as tenants-in-common. Any references in this Declaration to Common Area are references to all or part of the Common Area. Common Area is defined as common area in Section 1351(b) of the California Civil Code.

1.1.15 **Common Expenses.** Expenses for which the Association is responsible under this Declaration including the actual and estimated costs of and reserves for maintaining, repairing, replacing, managing and operating the Common Property and managing and administering the Association. Common Expenses also include unpaid Annual Assessments, Special Assessments, Restoration Assessments and Capital Improvement Assessments. Common Expenses include the cost of all utilities metered to more than one Condominium, other commonly metered charges for the Project, trash collection and removal, as applicable, compensating Managers, accountants, attorneys and employees, gardening and other services benefiting the Common Property and the Directors, officers and agents of the Association, premiums for all insurance covering the Project and any applicable deductibles bonding the members of the Board, taxes paid by the Association, amounts paid by the Association for discharge of any lien or encumbrance levied against the Property, reasonable reserves, and all other expenses incurred by the Association for any reason whatsoever in connection with the Project or services provided to or for the benefit of the Owners and occupants of the Project.

1.1.16 **Common Property.** Collectively, the Common Area and the Association Property. Any references in this Declaration to Common Property are references to all or part of the Common Property.

1.1.17 **Condominium.** An estate in real property as defined in California Civil Code Section 1351(f). A Condominium consists of an undivided fee simple ownership interest

in the Common Area together with a separate ownership interest in fee in a Unit and all easements appurtenant to the Unit. Subject to the provisions of Article X, the undivided fee simple interest in the Common Area is appurtenant to each Unit and is a fraction having one (1) as its numerator and the number of Units in the Project as its denominator; and shall be held by the Owners of Condominiums in the Project as tenants-in-common.

**1.1.18 Condominium Plan.** The Recorded plan currently in effect, for the Project consisting of (a) a description or survey map of the Property which shall refer to or show monumentation on the ground, (b) a three-dimensional description of the Property, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the Association Property, Common Area and each Unit, and (c) a certificate consenting to the recording the plan signed and acknowledged by the record owner of fee title to the Property, and by either the trustee or the Mortgagee of each Recorded Mortgage encumbering the Property.

**1.1.19 County.** Orange County, California, and its departments, divisions, employees and representatives.

**1.1.20 Declarant.** Pacific Business Center – Tustin, LLC, its successors, and any Person to which it shall have assigned any of its rights under this Declaration by written assignment. As used in this Section, “successor” means a Person who acquires Declarant or substantially all of Declarants’ assets by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise. Unless otherwise expressly provided in the Declaration, all actions that may be taken by Declarant may be taken by Declarant in its sole discretion. Declarant is a builder as described in California Civil Code Section 1375.

**1.1.21 Declaration.** This instrument currently in effect.

**1.1.22 Fiscal Year.** The fiscal accounting and reporting period of the Association selected by the Board.

**1.1.23 Include.** Whether capitalized or not, include means “include without limitation.”

**1.1.24 Improvement.** (i) Any building, other structure and appurtenance located on the Property including a walkway, irrigation system, road, driveway, surface parking area, fence, any type of wall, antenna, awning, stair or balcony, (ii) any type of windbreak, landscaping or planting on the Property, (iii) any walls, dividers, window coverings, floor covering, fixtures, equipment, poles, signs in a Building, whether located within the interior of a Unit or otherwise, and (iv) any installation, construction, remodeling, replacement, refinishing, or alteration of any of the foregoing.

**1.1.25 Maintain.** Whether capitalized or not, maintain means maintain, repair and replace.

**1.1.26 Manager.** The Person retained by the Association to perform management functions of the Association.

1.1.27 **Membership.** The voting and other rights, privileges, and duties established in the Restrictions for members of the Association.

1.1.28 **Mortgage.** Any Recorded conveyance of a Condominium or other portion of the Property to secure the performance of an obligation.

1.1.29 **Mortgagee.** The beneficiary of a Mortgage.

1.1.30 **Mortgagor.** A Person who Mortgages property to another.

1.1.31 **Notice and Hearing.** Written notice and a hearing before the Board as provided in the Bylaws.

1.1.32 **Owner.** The Person or Persons, including Declarant, holding fee simple interest in a Condominium. Each Owner has a Membership in the Association. "Owner" includes sellers under executory contracts of sale but excludes Mortgagees. "Owner" may be expanded in a supplement to this Declaration to include other Persons.

1.1.33 **Percentage Share.** Each Owner's proportionate share of Annual, Capital Improvement and Restoration Assessments is set forth on the attached Schedule 1, which Percentage Share has been determined based generally on the ratio of the approximate total square footage of each Condominium shown on the Condominium Plan to the approximate total square footage of all Condominiums in the Project. Notwithstanding the foregoing, the Percentage Shares set forth on Schedule 1 shall be deemed reasonable and shall not be subject to revision except in connection with a change in the size of a Building. Any such revision to the Percentage Shares set forth Schedule 1 shall be documented in a supplement to this Declaration to be Recorded following approval by the Board.

1.1.34 **Person.** A natural individual or any entity recognized under California law. When the word "person" is not capitalized, the word only refers to natural persons.

1.1.35 **Project.** All of the real property and Improvements covered by this Declaration and subject to the jurisdiction of the Association following recordation of the Condominium Plan and the first close of escrow for conveyance of a Condominium to a purchaser. The Project is a "common interest development" and a "condominium project" as defined in Sections 1351(c) and 1351(p) of the California Civil Code.

1.1.36 **Property.** The real property described in Paragraph A of the Preamble of this Declaration.

1.1.37 **Restoration Assessment.** A charge levied against the Owners and their Condominiums representing their share of the Association's cost to restore a Building or any other Improvements on the Common Property. Such charge shall be levied among all Owners and their Condominiums in the same proportions as Annual Assessments. Restoration Assessments are special assessments as described in California Civil Code Section 1366.

1.1.38 **Record.** With respect to any document, entry of such document in Official Records of the County Recorder.

1.1.39 **Reserves.** Common Expenses for which Association funds are set aside pursuant to Article VII for funding the maintenance, repairs and replacement of the major components of the Association Property or to make additional Improvements to the Association Property which would not reasonably be expected to recur on an annual or more frequent basis and for payment of deductible amounts for insurance policies which the Association obtains. The amount of Reserves to be maintained by the Association will be determined annually by the Board pursuant to reserve guidelines established in accordance with prudent property management practices generally applied for a commercial common interest development.

1.1.40 **Restrictions.** Restrictions means this Declaration, the Articles, Bylaws and Rules and Regulations.

1.1.41 **Rules and Regulations.** Rules and Regulations means the current rules and regulations for the Project.

1.1.42 **Sign.** Signs means any advertising, placards, names, billboards, insignia, numerals, addresses, and descriptive words of any type affixed, inscribed, constructed, or maintained within the Project or on any portion of a Building.

1.1.43 **Sign Program.** Current guidelines and requirements adopted by the Association for the regulation of Signs within the Project.

1.1.44 **Special Assessment.** A charge against an Owner and the Owner's Condominium representing a reasonable fine or penalty, including reimbursement costs, as provided for in this Declaration.

1.1.45 **Unit.** A separate interest in space as defined in Section 1351(f) of the California Civil Code. Each Unit includes all Improvements located within the Unit. Each Unit is a separate freehold estate, as separately shown, numbered and designated in the Condominium Plan. In interpreting deeds, declarations and plans, the existing physical boundaries of the Unit or a Unit constructed or reconstructed in substantial accordance with the Condominium Plan and the Unit's original plans, if such plans are available, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Condominium Plan or Declaration, regardless of settling or lateral movement of a building and regardless of minor variances between boundaries, as shown on the Condominium Plan or defined in the deed or Declaration, and the boundaries of a building as constructed or reconstructed.

## 1.2 INTERPRETATION

1.2.1 **General Rules.** This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for creating and operating a commercial condominium development and for maintaining the Common Property. As used in this Declaration, the singular includes the plural and the plural the singular. The masculine, feminine and neuter each includes the other, unless the context dictates otherwise.

1.2.2 **Articles, Sections and Exhibits.** The Article and Section headings are for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections

or exhibits are to Articles, Sections and Exhibits of this Declaration. Exhibits A through D, inclusive, and Schedules 1 and 2 attached to this Declaration are incorporated herein by this reference.

**1.2.3 Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws, Rules and Regulations or Condominium Plan, then the provisions of this Declaration shall prevail.

**1.2.4 Severability.** The provisions of this Declaration are independent and severable. A determination of invalidity or partial invalidity or unenforceability of any one provision of this Declaration by a court of competent jurisdiction does not affect the validity or enforceability of any other provision of this Declaration.

**1.2.5 Statutory References.** All references made in this Declaration to statutes are to those statutes currently in effect as amended or replaced.

## ARTICLE II USE RESTRICTIONS

The Property shall be held, used and enjoyed subject to the following restrictions and exemptions and rights of Declarant.

**2.1 PERMITTED USES.** Pursuant to Conditional Use Permits 03-013 approved by the City and Declarant on August 11, 2003 (the "Use Restrictions"), the City has imposed restrictions on the Project regarding the minimum allowable square footage within the Project which must be used for office purposes, with the remainder of square footage to be used for storage. The attached Schedule 2 sets forth the minimum amount of square footage within each Unit which must be used for office purposes (the "Office Use Percentage"). In no event may the Office Use Percentage allocated to any Condominium be (i) decreased to the extent that such decrease would cause the total then-existing uses within the Project to violate the Use Restrictions, or (ii) increased to an extent which would prohibit any uses within any other Unit previously permitted pursuant to Schedule 2. Without limiting the foregoing, at any time prior to the sale of the last Condominium within the Project, Declarant shall have the right, in its sole discretion, to reallocate Office Use Percentages between unsold Condominiums provided that such reallocation may not violate any of the limitations the preceding sentence. Except to the extent expressly limited by this Section 2.1 or otherwise expressly restricted by this Declaration, the Condominiums within the Project may be used for any purposes permitted by law.

**2.2 PROHIBITED USES.** No Owner may use any Condominium in the Project for any use not compatible with the permitted uses for the Project as set forth in Section 2.1 or which would (a) constitute a nuisance to the Owners or interfere with the quiet enjoyment of any other Condominiums in the Project, or (b) increase the rate of insurance for the Project or any Condominium in the Project. Without limiting the foregoing, no Owner may conduct any activities in a Unit which would (i) emit any obnoxious or dangerous amount of noise, heat, glare, radiation or fumes perceptible outside the Unit in which the use is located or (ii) cause or recurrently generate any ground vibration perceptible outside a Unit or (iii) to the extent that any utilities within the Project are commonly metered, consume any such utilities in quantities

disproportionate to the use of other Owners within the Project, or (iv) to the extent that any mechanical or electrical systems serving a Unit, including heating, ventilating and air conditioning systems, also serve other portions of a Building, materially interfere with or impair the operation of such systems. No materials or wastes shall be permitted within a Unit in such form or manner as to permit transfer of such materials or wastes outside of that Unit by natural causes. No Condominium shall be used for residential purposes. No auction, sale or other commercial activity of any type shall be conducted upon any portion of the Common Property except with the prior written approval of the Board which may be withheld in the sole discretion of the Board. Except as to common trash bins or other such facilities as maintained and authorized by the Association, there shall be permitted no outside storage of trash or other materials of any kind. Any such prohibited storage may be removed by the Association at the expense of the offending Owner.

**2.3 PARKING AND VEHICULAR RESTRICTIONS.** No vehicle shall be parked in the parking areas on the Association Property other than within the striped parking areas indicated on Exhibit D. No Person shall conduct repairs, restorations, or painting of any motor vehicle, boat, trailer, aircraft or other vehicle on the Property. No parking is permitted which may obstruct free traffic flow, constitute a nuisance, or create a safety hazard. Loading and unloading of commercial vehicles shall be performed only within the striped spaces designated for "Loading Only" on Exhibit D, or such other area designated by the Board. No vehicle may be parked overnight in any parking space designated for "Loading Only" or for a period of more than thirty (30) minutes during normal business hours. The Board shall have the authority to adopt other reasonable rules and regulations regarding parking and vehicular use within the Project, and all vehicles must be operated and parked in compliance with such rules and regulations.

**2.4 FURTHER SUBDIVISION.** No Owner may physically or legally subdivide a Condominium in any manner, including dividing such Owner's Condominium into time-share estates or time-share uses. This provision does not limit the right of an Owner to (a) rent or lease the Owner's Condominium by a written lease or rental agreement subject to this Declaration; (b) sell the Owner's Condominium; or (c) transfer or sell any Condominium to more than one Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. There shall be no judicial partition of the Common Area, nor may Declarant, any Owner or any other Person acquiring any interest in any Condominium in the Property seek any such judicial partition.

**2.5 WATER SUPPLY SYSTEM.** No individual water supply, sewage disposal or water softener system is permitted in any Condominium without the prior written approval of the Board including without limitation, approval of the plans and specifications for such system in accordance with Article V, and in no event unless such system is designed, located, constructed and equipped in accordance with the requirements of any water district having jurisdiction over the Property, the City and all other governmental authorities with such jurisdiction.

**2.6 SIGNS.** All Signs displayed anywhere within the Project must comply with (i) all laws and regulations and licensing authorities with jurisdiction over the Property, and (ii) any Sign Program which may be adopted by the Board setting forth standards relating to dimensions, design, illumination, color, style and location of Signs. Notwithstanding the foregoing, the Sign

Program shall not regulate the content of political Signs. However, the Sign Program may regulate the time, place and manner of posting of such Signs. Any Sign maintained on or over the Common Property or shown or displayed from or visible from the outside of any Unit shall be subject to the prior written approval of the Board. However, Association approval shall not be required to show or display any sign or notice of customary and reasonable dimension and location which states that a Condominium is for rent or sale, or to display any signs required by a legal proceeding. Such signs or notice may be placed within a Condominium but may not be placed on the exterior portion of the Common Property without the prior approval of the Board. The Board may summarily cause all unauthorized Signs to be removed. Board approval of a Sign shall not affect an Owner's independent duty to comply with review or permit requirements of the City prior to Sign installation.

2.7 **UTILITIES.** All water, electrical power, gas, cable television, telephone, internet, sewer, storm water, and any other utility services, connections, lines, pipes, conduits, and facilities of any kind located within the Property shall be located, installed, and maintained underground.

2.8 **FIRE AUTHORITY MATERIAL STORAGE RESTRICTION.** Notwithstanding anything to the contrary in this Declaration, no material shall be stored in any area in the Project designed or used for storing materials so as to extend more than twelve (12) feet above the floor of such area, or more than six (6) feet above the floor of such area for high fire hazard materials as defined in the applicable fire codes. The Orange County Fire Authority shall have the right, but not the duty, to enforce the provisions of this Section 2.8. This Section 2.8 may not be amended without the express prior written consent of the Chief of the Orange County Fire Authority, or the chief executive of its successor.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES; DISCLAIMERS**

3.1 **NO REPRESENTATIONS OR WARRANTIES.** No representations or warranties, express or implied, have been made by Declarant, the Association or their agents in connection with the Property, its physical condition, zoning, compliance with laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a condominium project, except as provided in this Declaration.

3.2 **INDEMNITY.** Neither the Declarant nor the Association shall be liable or responsible for any damage that results from improvements constructed or modified by an Owner within any Unit.

3.3 **PROPERTY LINES.** The boundaries of each Condominium within the Property and the Common Property are delineated on the Condominium Plan that is a public record and is available at the office of the County Recorder.

3.4 **ADDITIONAL PROVISIONS.** There may be provisions of various laws, including the Davis-Stirling Common Interest Development Act codified at Sections 1350 et seq. of the California Civil Code which may supplement or override the Restrictions. Declarant

makes no representations or warranties regarding the future enforceability of any portion of the Restrictions.

#### **ARTICLE IV THE ASSOCIATION**

**4.1 GENERAL DUTIES AND POWERS.** The Association has the duties and powers listed in the Restrictions and also has the general and implied powers of a nonprofit mutual benefit corporation, generally to do all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of the Owners, subject only to the limits on the exercise of such powers listed in Restrictions. Unless otherwise indicated in the Restrictions, the powers of the Association may be exercised by the Board.

**4.2 SPECIFIC DUTIES AND POWERS.** In addition to its general powers and duties, the Association has the following specific powers and duties.

**4.2.1 Common Property.** The power and duty to accept, maintain and manage the Common Property in accordance with the Restrictions. The Association may install or remove capital Improvements on or within the Common Property. The Association may reconstruct, replace or refinish any Improvement on or within the Common Property.

**4.2.2 Utilities.** The power and duty to obtain, for the benefit of the Property, all commonly metered water, gas and electric services, and the power but not the duty to provide for janitorial services and trash collection.

**4.2.3 Granting Rights.** The power to grant exclusive and nonexclusive easements, licenses, rights of way and fee interests in the Common Property, to the extent any such grant is reasonably required for either (a) utilities and facilities to serve the Common Property and the Condominiums, (b) purposes of conformity with the as-built location of Improvements installed or authorized by Declarant or the Association, or (c) other purposes consistent with the intended use of the Property. The Association may de-annex any Property from the encumbrance of the Declaration in connection with any lawful lot line adjustment.

**4.2.4 Employ Personnel.** The power to employ a Manager and any other Persons necessary for the effective operation and maintenance of the Common Property, including legal and accounting services.

**4.2.5 Insurance.** The power and duty to maintain insurance for the Common Property and the Buildings in accordance with this Declaration.

**4.2.6 Rules and Regulations.** The power but not the duty to establish, amend, restate, delete, and create exceptions to, the Rules and Regulations.

(a) **Effective Date.** All changes to the Rules and Regulations will become effective fifteen days after they are either (i) posted in a conspicuous place in the Property or (ii) sent to the Owners by first class mail or by any system or technology designed to record and communicate messages.

(b) **Areas of Regulation.** The Rules and Regulations may concern use of the Property, and any other matter within the Association's jurisdiction. The Rules and Regulations are enforceable only to the extent they are consistent with the Restrictions.

(c) **Limits on Regulation.** The Rules and Regulations must apply uniformly to all Owners. The rights of Owners to display religious and holiday signs, symbols and decorations within their Units of the kinds normally displayed in commercial offices shall not be abridged, except the Association may adopt time, place and manner restrictions with respect to any such displays visible outside of the Unit in which they are located. No modification to the Rules and Regulations may require an Owner to dispose of personal property that was in a Unit prior to adoption of such modification if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Condominium and shall not apply to (i) subsequent Owners who take title to the Condominium after the modification is adopted, or (ii) clarifications to the Rules and Regulations.

4.2.7 **Borrowings.** The power, but not the duty, to borrow money for purposes authorized by the Articles, Bylaws and this Declaration, and to use the Association Property as security for the borrowing.

4.2.8 **Contracts.** The power but not the duty to enter into contracts. This includes contracts with Owners or other Persons to provide services or to maintain Improvements in the Property and elsewhere which the Association is not otherwise required to provide or maintain pursuant to this Declaration.

4.2.9 **Resale Program.** After the Declarant no longer owns a Condominium, or with the Declarant's consent, the Association may provide services related to the sale or leasing of Units.

4.2.10 **Reconstruction.** The power, but not the obligation, to reconstruct, replace or refinish any Improvements or portions thereof located on the Common Property.

4.2.11 **Indemnification.**

(a) **For Association Representatives.** To the fullest extent authorized by law, the Association has the power and duty to indemnify Board members, Association officers, and all Association committee members for all damages, pay all expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action brought because of performance of an act or omission within what such person reasonably believed to be the scope of the Person's Association duties ("Official Act"). Board members, Association officers, and all Association committee members are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any person entitled to such indemnification.

(b) **For Other Agents of the Association.** To the fullest extent authorized by law, the Association has the power, but not the duty, to indemnify any other

Person acting as an agent of the Association, for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act.

(c) **Provided by Contract.** The Association also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

#### 4.2.12 Prohibited Functions.

(a) **Off-site Nuisances.** The Association shall not use any Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of the Property.

(b) **Political Activities.** The Association shall not (i) participate in federal, state or local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Property (e.g. endorsement or support of (A) legislative or administrative actions by a local governmental authority, (B) candidates for elected or appointed office, or (C) ballot proposals, or (ii) conduct, sponsor, participate in or expend funds or resources for any activity, campaign or event, including any social or political campaign, event or activity which is not directly and exclusively pertaining to the authorized activities of the Association. There shall be no amendment of this Section so long as Declarant owns any portion of the Property.

### 4.3 STANDARD OF CARE, NONLIABILITY.

#### 4.3.1 Scope of Powers and Standard of Care.

(a) **General Scope of Powers.** Rights and powers conferred on the Board or committees or representatives of the Association by the Restrictions are not duties or obligations charged upon those Persons unless the rights and powers are explicitly identified as including duties or obligations in the Restrictions or law. Unless a duty to act is imposed on the Board or committees or representatives of the Association by the Restrictions or law, the Board and the committees have the right to decide to act or not act. Any decision to not act is not a waiver of the right to act in the future.

(b) **Business Affairs.** This Section 4.3.1(b) applies to Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances. Each Board member shall perform the duties of a Board member in good faith, in a manner such Board member believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing his duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial data prepared or presented by:

(i) One or more officers or employees of the Association whom the Board member believes to be reliable and competent in the matters presented;

(ii) Counsel, independent accountants or other Persons as to matters which the Board member believes to be within such Person's professional or expert competence; or

(iii) A committee of the Board upon which the Board member does not serve, as to matters within its designated authority, which committee the Board member believes to merit confidence, so long as, in any such case, the Board member acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

(iv) This Section 4.3.1(b) is intended to be a restatement of the business judgment rule established by law as it applies to the Association.

#### 4.3.2 Nonliability.

(a) **General Rule.** No Person is liable to any other Person (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Association or to any party claiming in the name of the Association for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct. The Association is not liable for damage to property in the Property unless caused by the negligence of the Association, the Board, the Association's officers, the Manager or the Manager's staff.

(b) **Nonliability of Volunteer Board Members and Officers.** A volunteer Board member or volunteer Association officer shall not be personally liable to any Person who suffers injury, including bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member if all applicable conditions specified in Section 1365.7 of the California Civil Code are met.

(c) **Nonliability of Owners.** Pursuant to California Civil Code Section 1365.9, no Owner shall be liable for any cause of action in tort which can be brought against the Owner solely because of the Owner's undivided interest in the Common Area so long as the Association keeps one or more policies of insurance which include coverage for general liability of the Association in the amount required by California Civil Code Section 1365.9 and that insurance is in effect for the cause of action being brought.

#### 4.4 MEMBERSHIP.

##### 4.4.1 Generally.

(a) **Owner Membership Rights.** Every Owner shall automatically acquire a Membership in the Association and retain the Membership until such Owner's Condominium ownership ceases, at which time such Owner's Membership shall automatically cease. Ownership of a Condominium is the sole qualification for Membership. Memberships are not assignable except to the Person to whom title to the Condominium is transferred.

(b) **Declarant Membership Rights.** Until Declarant is no longer the Owner of any Condominium within the Project, Declarant shall have the right to select a majority of the members of the Board of Directors. Notwithstanding the foregoing, Declarant's voting rights on all other matters subject to the approval of Members hereunder shall be limited to the votes allocated to Condominiums owned by Declarant as of the date of such Member vote.

4.4.2 **Transfer.** The Membership of any Owner may not be transferred or encumbered in any way, except on the transfer or encumbrance of such Owner's Condominium, and then only to the transferee or Mortgagee of such Condominium. A prohibited transfer is void and will not be reflected in the records of the Association. Any Owner who has sold a Condominium to a contract purchaser under an agreement to purchase may delegate the Owner's Membership rights to the contract purchaser. The delegation must be in writing and must be delivered to the Association before the contract purchaser may vote. The contract seller shall remain liable for all charges and Assessments attributable to the contract seller's Condominium which accrue before title to the Condominium is transferred. If an Owner fails or refuses to transfer a Membership to the purchaser of such Owner's Condominium on transfer of title, the Association may record the transfer in the Association's records. Until satisfactory evidence of such transfer is presented to the Association, the purchaser will not be entitled to vote at Association meetings. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Condominium. The fee shall be paid through escrow or added to the Annual Assessment chargeable to such new Owner to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the Association's records. Such fee may not exceed the Association's actual cost involved in changing its records.

#### 4.5 VOTING RIGHTS.

4.5.1 **Allocation of Votes.** As to any matter on which the Owners of all Condominiums in the Project are entitled to vote pursuant to this Declaration, each Owner shall be entitled to that number of votes allocated to the Owner's Condominium as set forth on Schedule I, which number of votes shall be roughly proportionate to the Percentage Share of that Owner as set forth on Schedule I. The number of votes allocated to each Condominium within the Project as set forth in Schedule I shall be deemed reasonable and shall not be subject to revision except upon unanimous approval of the Members of the Association. In no event may the total number of votes allocated to all Condominiums within the Project exceed 100 votes.

4.5.2 **Joint Ownership.** When more than one Person holds an interest in any Condominium ("co-owners"), each co-owner may attend any Association meeting, but only one such co-owner shall be entitled to exercise the votes allocated to that Condominium. Co-owners owning the majority interests in a Condominium may designate in writing one of their number to vote. Fractional votes shall not be allowed, and the votes allocated to each Condominium shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if the designation is revoked, the votes for the Condominium shall be exercised as the co-owners owning the majority interests in the Condominium agree. Unless the Association receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with the other co-owners' consent. No votes may be cast for any Condominium if the co-owners present in person or by proxy owning the majority interests in such Condominium fail to agree to the vote or other action. The nonvoting co-owner or co-owners are jointly and severally

responsible for all obligations imposed on the jointly-owned Condominium and are entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Restrictions are binding on all Owners and their successors in interest.

**4.5.3 Actions Subject to Declarant's Veto .** So long as Declarant owns a Condominium in the Project, Declarant shall have the right to veto the following actions authorized by this Declaration:

- (a) **Change in Design.** Any change in the general, overall, architectural or landscape design of the Project or the Association Property;
- (b) **Change in Assessments.** Any increase in any Assessments in excess of the limits on annual increases set forth in Section 7.5;
- (c) **Rules and Regulations.** Adopting Rules and Regulations and modifying the Rules and Regulations;
- (d) **Amendments.** Proposed amendments to this Declaration.

**4.6 REPAIR AND MAINTENANCE.**

**4.6.1 By Owners.** Each Owner shall maintain the Owner's Unit, at the Owner's sole expense, including all Improvements within the Owner's Unit, in a clean, sanitary and attractive condition, in accordance with the Condominium Plan, the building standard specifications for the Improvements in the Property which specifications may be revised by the Board and the Restrictions, the latter of which shall control in the event of any inconsistency. Repairs to any bearing walls, ceilings, floors or other structural or utility bearing portions of a Building may not be performed without the Board's prior written approval of the plans for such repair pursuant to Article V. Subject to any required approval of the Board pursuant to the Restrictions, each Owner shall maintain those portions of any mechanical, electrical, plumbing, utilities equipment and systems located within or which exclusively serve such Owner's Unit. Each Owner shall pay when due all charges for utility service which is separately metered to such Owner's Unit.

(b) Owners whose Units share a common building wall ("Party Wall") shall, except as otherwise expressly provided herein, be jointly responsible for its maintenance and repair and shall share the expenses for the common wall's maintenance and repair equally. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions apply. An Owner who by negligent or willful act causes a Party Wall to deteriorate or require repair or replacement shall bear the entire cost of necessary repairs or replacement. No Owner shall demolish, destroy or remove a Party Wall, including the footing, cut an opening into a Party Wall, penetrate through a Party Wall, or make any structural changes to a Party Wall and the footing without the approval of each affected Owner.

**4.6.2 By Association.**

(a) **Commencement of Obligations.** The Association's obligation to maintain Common Property in the Property commences on the date Annual Assessments commence on Condominiums in the Property. Until Annual Assessments commence Declarant shall maintain the Common Property.

(b) **Maintenance Standards.** Subject to Articles IX and X, the Association shall maintain the Common Property and Improvements or shall contract to assure the Common Property and Improvements are maintained in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget. The Association is not responsible for performing maintenance, repair or Improvement of the Units, the maintenance of which is the responsibility of the Owners pursuant to Section 4.6.1. The Board shall determine, in its sole discretion, the level and frequency of Common Property maintenance.

(c) **Maintenance Items.** The Association shall repair and pay for all centrally-metered utilities, water and sewer charges, and mechanical and electrical equipment serving the Common Property, and pay all charges for utilities which serve individual Condominiums but which are subject to a common meter. If the usage of such utilities by the occupants of any Condominium in the Project materially exceeds the usage of such utilities by other Condominiums in the Project, the Association may impose an additional charge on the Owner of such Condominium to offset the cost of such excess usage or may require the Owner of such Condominium to cause such utilities to be separately metered to the Owner's Condominium, at the Owner's sole expense; the Association shall maintain all Common Property, including all walks, driveways and other means of ingress and egress in the Property; perform periodic structural repair, resurfacing, sealing, caulking, replacement or painting of the Common Property. The Association may, but is not required to, perform all corrective repair work in any Unit if the Owner thereof fails to do so after Notice and Hearing.

(d) **Charges to Owners.** Except as otherwise stated in this Declaration, all costs of maintenance, repairs and replacements for the Project shall be paid for as Common Expenses out of the Association Maintenance Funds.

(e) **Inspection of the Property.** The Board shall require strict compliance with all provisions of this Declaration and may periodically cause the Project to be inspected by the Board for any violation thereof.

**4.6.3 Damage by Owners.** Each Owner is liable to the Association for any damage to the Common Property if the damage is sustained due to the act of an Owner, an Owner's guests, tenants or invitees, or any other persons deriving their right to use the Common Property from the Owner, or such Owner's respective tenants and guests. The Association may, after Notice and Hearing, (a) determine whether any claim shall be made on the Association's insurance, and (b) levy a Special Assessment equal to the amount expended to repair the damage and to pay any deductible paid plus the increase, if any, in insurance premiums directly attributable to the damage caused by such Owner or the person for whom such Owner may be responsible. If a Condominium is jointly owned, the liability of its Owners is joint and several, except to the extent that the Association has previously contracted in writing with the joint

owners to the contrary. After Notice and Hearing, the cost of correcting damage shall be a Special Assessment against such Owner.

4.7 **UNSEGREGATED REAL PROPERTY TAXES.** To the extent not assessed to or paid by the Owners, the Association shall pay all real and personal property taxes and assessments levied on the Property. If all Condominiums in the Property are taxed under a tax bill covering all of the Property, then each Owner shall pay a proportionate share of any installment due under the tax bill to the Association at least ten (10) days before the delinquency date. The Association shall transmit the tax payment to the appropriate tax collection agency on or before the delinquency date. The Association shall allocate taxes among the Owners and their Condominiums in the Property, based on the Percentage Shares set forth on Schedule I. The Association shall, at least forty-five (45) days before the delinquency date of any tax installment, deliver to each Owner a copy of the tax bill, along with a written notice setting forth the Owner's share of the tax installment and the potential additional charges to the Owner for failure to comply. The Association shall pay the taxes on behalf of any Owner who fails to pay. The Association shall add to the Annual Assessment of a delinquent Owner the amount of any sum advanced, plus interest at the rate of ten percent (10%) per year and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the tax bill, which late charge results from the failure of the delinquent Owner to make timely payment. Until Close of Escrow for the sale of ninety percent (90%) of the Condominiums in the Property has occurred, this Section may not be amended without the written consent of Declarant.

## **ARTICLE V DESIGN CONTROL**

5.1 **PLAN REVIEW.** No Owner shall permit or cause any portion of such Owner's Unit, or any Improvements located in the Unit (collectively, "Owner Improvements") to be altered, installed, constructed, reconstructed, maintained, relocated or demolished, unless such Owner Improvements conform to all requirements of the City. Without limiting the foregoing, no bearing walls, ceilings, floors or other structural or utility bearing portions of a Building may be moved, pierced or altered without prior approval from the Board nor shall the appearance of any Owner Improvement visible from outside of a Building be altered until the following submittals required by this article have been approved in writing by the Board:

- Two (2) sets of basic conceptual drawings;
- Two (2) sets of schematic plans and preliminary specifications, consistent with the basic conceptual drawings previously approved by the Board; and
- Two (2) sets of final working drawings and specifications, based on approved basic design concepts and schematic plans and preliminary specifications, including, but not limited to, color and material palette and signs, shall be submitted before commencement of any Owner Improvements.

5.2 **PARTIAL SUBMITTALS; PREPARATION OF SUBMITTALS.** Partial submittals may be made and approved, but construction or assembly of any Owner Improvement

may not proceed beyond the scope of the approval received. All plans and specifications submitted shall be prepared by an architect or engineer licensed to practice in California, and signed by the Owner or by an agent authorized by the Owner in writing.

**5.3 TIME FOR APPROVALS.** The Declarant or Board, as applicable, shall be conclusively deemed to have given its approval to a submittal unless within ten business days after such submittal has been received, it delivers written notice specifying in reasonable detail each item which has been disapproved or in connection with which additional information is required.

**5.4 BASIS OF APPROVAL.** If the Declarant or Board approves a submittal, it shall endorse its approval on one set of submitted documents and return the set to the Person from whom the documents were received. The Declarant or Board may disapprove any submittals which are not in harmony or conformity with (a) this Declaration, (b) requirements of the City, and (c) Declarant's master utility, general aesthetic and architectural plans and criteria for the Project.

**5.5 CERTIFICATE OF COMPLIANCE.** Upon completion of the Owner Improvements, the performing Owner shall, upon the Declarant's or the Board's request, supply it with a certification by a licensed or registered architect that the Owner Improvements as designed by such architect have been completed in accordance with the final working drawings and specifications previously approved.

**5.6 PRESUMPTION OF COMPLIANCE.** Upon expiration of one year after either (a) the date the City issued a certificate of occupancy for any Unit in which Owner Improvements have been performed, if applicable, or (b) the Recording date of a valid notice of completion with respect to such Owner Improvement, the Owner Improvement shall, in favor of purchasers and Mortgagees in good faith and for value without knowledge of the noncompliance and noncompletion, be deemed to be in compliance and completed in accordance with all provisions of this Article, unless either (i) actual notice of noncompliance or noncompletion executed by the Declarant or Board is Recorded, or (ii) legal proceedings are instituted by the Declarant or Board to enforce compliance or completion.

**5.7 IDENTICAL REPLACEMENTS.** Notwithstanding the foregoing, the Declarant or Board shall consent to any replacement of any Owner Improvement which submittals were previously approved as provided above, but only if the replacement Owner Improvement is substantially identical to the original Improvements located within the Unit at the time the Owner acquired the Unit or any Owner Improvement subsequently installed within the Unit but previously approved by the Board.

**5.8 EXCULPATION.** Neither the Declarant nor the Board shall be liable in damages to anyone making required submittals, or to any Owner, or other Person subject to or affected by this Declaration, on account of (a) the approval or disapproval of any submittal; (b) any construction, performance or nonperformance by an Owner of any work within a Unit, whether or not pursuant to approved submittals; (c) any mistake in judgment, negligence, action or omission in the Declarant's or Board's exercise of its rights, powers and duties; or (d) the enforcement or failure to enforce any of these Restrictions. Every Person who makes submittals

for approval agrees by reason of such submittal, and every Owner of a Condominium agrees by acquiring an interest in the Condominium, not to bring any suit or action against the Declarant or the Association or the Board seeking to recover any such damages. Neither the Declarant's nor Board's approval of any submittal shall constitute the assumption of any responsibility by, or impose any liability upon, the Board or the Association or the Declarant with respect to the accuracy or sufficiency of the submittal.

5.9 **ARCHITECTURAL REVIEW FEE.** As a condition to its review of submittals, the Declarant or Board may charge a reasonable architectural review fee to be paid at the time preliminary plans and specifications are submitted for approval to cover overhead and other costs of reviewing the submittals.

5.10 **COMMENCEMENT AND COMPLETION OF OWNER IMPROVEMENTS.** Unless otherwise specified by the Declarant or Board in its approval of a submittal, each Owner shall have a period of six months after the date of approval by the Declarant or Board within which to commence such work of Owner Improvement in accordance with the approval. Each Owner shall give the Declarant or Board, as applicable, at least fifteen days' prior written notice of the commencement of any work of Owner Improvement. Approval of a submittal shall expire six months after the date such approval is given. If an Owner fails to commence the work covered by the submittal in accordance with the approved document or documents within such period, any previous approvals for the work shall be invalid, and the Owner shall be obligated make a new submittal prior to commencing the work of Improvement. After a work of Improvement is commenced by an Owner, the Owner shall diligently pursue such work of Owner Improvement to completion.

5.11 **REMOVAL OF LIENS.** No Owner shall permit any mechanics, or materialmen, or other similar liens to be created or maintained against any Condominium within the Project to which labor or material has been performed or furnished in connection with the construction of an Owner Improvement. An Owner may post a bond and contest any such lien at the Owner's sole expense.

## **ARTICLE VI PROPERTY EASEMENTS AND RIGHTS**

### **6.1 EASEMENTS**

6.1.1 **Maintenance and Repair.** Declarant reserves for the benefit of the Association and all Association agents, officers and employees, nonexclusive easements over the Property as necessary to fulfill the obligations and perform the duties of the Association.

6.1.2 **Utility Easements.** Declarant reserves easements for maintaining utilities over the Common Property for the benefit of the Owners. Declarant reserves the right to grant additional easements and rights-of-way over the Property to utility companies and public agencies, as necessary, for the proper operation of the Project.

6.1.3 **Encroachments.** Declarant reserves, for its benefit and the benefit of the Owners, a reciprocal easement appurtenant to each Condominium over the other Units and the Common Property to accommodate (a) any existing encroachment of any wall or any other

authorized Owner Improvement, (b) authorized construction and repair, and (c) shifting, movement or natural settling of the Buildings and the demising walls which form the boundary of each Condominium. Use of the foregoing easements may not unreasonably interfere with each Owner's use and enjoyment of the burdened Condominium.

**6.1.4 Completion of Improvements.** Declarant reserves the right and easement to enter the Property to complete any Improvement which Declarant considers desirable to implement Declarant's plan for development and sale of the Project.

**6.1.5 Owners' Easements in Common Property.** Declarant reserves, for the benefit of every Owner, and all Owners' tenants and guests, a nonexclusive easement for access, ingress, egress, use and enjoyment of, in and to the Common Property in connection with use and enjoyment of each Condominium in the Property. This easement is appurtenant to and passes with title to every Condominium in the Property. This easement is subject to the restrictions, rights and other easements in the Restrictions, including without limitation the following:

(a) The Association's right to consent to or cause the construction of additional Improvements on the Common Property and to consent to or cause the alteration or removal of any existing Improvements on the Common Property for the benefit of the Members.

(b) The Association's right to grant, consent to or join in the grant or conveyance of easements, licenses and rights-of-way in, on and over the Common Property for purposes consistent with the intended use of the Property as a business Condominium project.

(c) The rights and reservations of Declarant set forth in this Declaration.

(d) The Association's right to reasonably restrict access to maintenance and landscaped areas and similar areas of the Property.

(e) The right of the Association to reasonably limit the number of guests, employees, patrons, and invitees of Owners using the Common Property including the parking areas and to reasonably restrict access to, or use of, portions of such parking areas.

(f) The right of the Association to establish uniform Rules and Regulations pertaining to the use of the Common Property including, but not limited to, the right and obligation of the Association to establish assigned parking areas and to enforce all parking restrictions within the Common Property as set forth in this Declaration.

**6.2 DELEGATION OF USE.** Any Owner entitled to the right and easement of use and enjoyment of the Common Property may delegate those rights and easements in writing to the Owner's tenants, contract purchasers or subtenants using such Owner's Condominium, subject to reasonable notice to and regulation by the Board. An Owner who has delegated such right and easement may not use or enjoy the facilities or equipment of the Property for so long as such delegation remains in effect. No Owner may become exempt from personal liability for assessments levied by the Association, nor shall such Owner's Condominium be released from

the liens and charges provided for in this Declaration by waiving use and enjoyment of the Common Property or by abandoning such Owner's Condominium.

6.3 **RIGHT OF ENTRY.** The Board shall have a limited right of entry in and on the interior of the Units to inspect or repair the Property, and may take whatever corrective action it determines to be necessary or proper if authorized by two-thirds of the Board. Entry onto a Unit under this Section by the Board pursuant to this Section may be made (i) after three days' advance written notice to the Owner of the Unit in normal situations, and (ii) with no notice in emergency situations. Nothing in this Section limits the right of an Owner to exclusive occupancy and control over the portion of the Owner's Unit that is not Common Area. Each Owner shall permit other Owners, and their representatives, to enter the Owner's Unit to perform installations, alterations or repairs to the mechanical or electrical services to a Unit if (a) requests for entry are made in advance; (b) entry is made at a time reasonably convenient to the Owner whose Unit is to be entered; and (c) the entered Unit is left in substantially the same condition as existed immediately preceding such entry.

## **ARTICLE VII ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS**

7.1 **PERSONAL OBLIGATION TO PAY ASSESSMENTS.** Each Owner covenants to pay to the Association all Assessments established pursuant to this Declaration. The Association shall not levy or collect any Assessment that exceeds the amount necessary for the purpose for which it is levied. All Assessments together with late payment penalties, interest, costs, and reasonable attorneys' fees for collection, are a charge and a continuing lien on the Condominium against which such Assessment is made. Each Assessment together with late payment penalties, interest, costs and reasonable attorneys' fees, is also the personal obligation of the Person who was the Owner of the Condominium when the Assessment accrued. The personal obligation for delinquent Assessments may not pass to any new Owner unless expressly assumed by the new Owner.

7.2 **ASSOCIATION FUNDS.** The Association shall establish no fewer than two separate Association Maintenance Fund accounts into which shall be deposited all money paid to the Association and from which disbursements shall be made, as provided in this Declaration. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an Operating Fund for current Common Expenses; (b) a Reserve Fund for the portion of Common Expenses allocated to (i) reserves for Improvements which the Board does not expect to perform on an annual or more frequent basis, and (ii) payment of deductible amounts for insurance policies which the Association obtains; and (c) any other funds which the Association may establish.

7.3 **PURPOSE OF ASSESSMENTS.** The Assessments shall be used exclusively to (a) promote the Owners' welfare, (b) operate, improve and maintain the Common Property, and (c) discharge all other Association obligations under the Declaration. All amounts deposited into the Maintenance Fund accounts must be used solely for the common benefit of all Owners for purposes authorized by this Declaration. Disbursements from the Operating Fund shall be made by the Association for such purposes as are necessary for the discharge of its responsibilities in this Declaration for the common benefit of all Owners, other than those purposes for which

disbursements from the Reserve Fund are to be used. Disbursements from the Reserve Fund shall be made by the Association only for the purposes specified in this Article and in Section 1365.5(c) of the California Civil Code.

**7.4 LIMITS ON ANNUAL ASSESSMENT INCREASES.**

**7.4.1 Maximum Authorized Annual Assessment.** During the Fiscal Years following the Fiscal Year in which Annual Assessments commence, the Board may not levy Annual Assessments which exceed the Annual Assessments for the immediately preceding Fiscal Year by more than twenty-five percent without the approval of Members controlling at least sixty-seven percent of the voting power of the Association. This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.4.3.

**7.4.2 Supplemental Annual Assessments.** If the Board determines that the Association's essential functions may be properly funded by an Annual Assessment in an amount less than the maximum authorized Annual Assessment, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limits described in Sections 7.4.1 and 7.4.3, the Board may levy a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Condominium.

**7.4.3 Emergency Situations.** For purposes of Sections 7.4.1, 7.4.2 and 7.6, an "Emergency Situation" is any one of the following: (a) An extraordinary expense required by an order of a court or the cost of complying with an order of the City issued to enforce specific provisions of this Declaration as provided in Article XVI of this Declaration; (b) an extraordinary expense necessary to maintain the portion of the Property for which the Association is responsible where a threat to personal safety on the Property is discovered; and (c) an extraordinary expense necessary to maintain the portion of the Property for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Before imposing and collecting an Assessment pursuant to this Subparagraph (c), the Board shall adopt a resolution containing written findings regarding the necessity of the extraordinary expense involved and the reasons the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Owners with the notice of the assessment.

**7.5 COMMENCEMENT AND COLLECTION OF ANNUAL ASSESSMENTS.**

Annual Assessments shall commence on all Condominiums in the Property on the first day of the first calendar month following the first Close of Escrow for the sale of a Unit within the Project. All Annual Assessments shall be assessed uniformly and equally against the Owners and their Condominiums based on the number of Condominiums owned by each Owner. Annual Assessments for fractions of a month shall be prorated. Declarant shall pay its full pro rata share of the Annual Assessments on all unsold Condominiums for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Condominium at least thirty days in advance of each Annual Assessment period. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or

Restoration Assessment shall be sent by first-class mail to every Owner not less than thirty nor more than sixty days before the first installment of such increased Assessment becomes due.

The Board may determine that funds in the Operating Fund at the end of the Fiscal Year will be retained and used to reduce the following Fiscal Year's Annual Assessments. On dissolution of the Association incident to the abandonment or termination of the Property as a condominium project, any amounts remaining in any of the Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners.

Each Owner shall pay Annual Assessments in installments at such frequency and in such amounts and by such methods as are established by the Board. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association may charge that expense to the Owner. The Association need not apportion the expense among all Owners as a part of Annual Assessments. Each installment of Annual Assessments may be paid to the Association in one check or in separate checks as payments attributable to specified Association Maintenance Funds. If any payment of an Annual Assessment installment (1) is less than the amount assessed and (2) does not specify the Association Maintenance Fund or Funds into which it should be deposited, then the amount received shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

**7.6 CAPITAL IMPROVEMENT ASSESSMENTS.** The Board may levy, in any Fiscal Year, a Capital Improvement Assessment or Restoration Assessment applicable to that Fiscal Year only to defray, in whole or in part, the cost of any construction, repair or replacement of a capital Improvement or other such addition to the Common Property. No Capital Improvement Assessments in any Fiscal Year which, if added to the Capital Improvement Assessments already levied during such Fiscal Year, exceed twenty-five percent of the Association's Budgeted gross expenses for such Fiscal Year, may be levied without the vote or written consent of Owners controlling a majority of the voting power of the Association. The Board may levy in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent of the Association's Budgeted gross expenses for such Fiscal Year if such increase is necessary for addressing an Emergency Situation as defined in Section 7.4.3.

## **ARTICLE VIII INSURANCE**

**8.1 DUTY TO OBTAIN INSURANCE .** The Association shall obtain and keep in effect at all times the following insurance coverages:

**8.1.1 Public Liability.** Adequate blanket public liability insurance including coverage for medical payments, with such limits required by Section 1365.9 of the California Civil Code, insuring against liability for bodily injury, death and property damage arising from the activities of the Association and the Owners, with respect to the Common Property.

8.1.2 **Fire and Casualty Insurance.** Fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of the Common Property.

8.1.3 **Fidelity Insurance.** Fidelity insurance coverage for any Person handling funds of the Association, whether or not such persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Person during the term of the insurance. The aggregate amount of the fidelity insurance coverage may not be less than the sum equal to one-fourth of the Annual Assessments on all Condominiums in the Property, plus reserve funds.

8.1.4 **Other Insurance.** Such other insurance insuring other risks customarily insured by associations managing condominium projects similar in construction, location and use. Such additional insurance shall include general liability insurance and director's and officer's errors and omissions insurance in the minimum amounts established in Section 1365.9 of the California Civil Code.

8.1.5 **Beneficiaries.** The Association's insurance shall be kept for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements established in this Declaration.

8.2 **WAIVER OF CLAIM AGAINST ASSOCIATION.** As to all policies of insurance kept by or for the benefit of the Association and the Owners, the Association and the Owners waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of the foregoing Persons.

8.3 **RIGHT AND DUTY OF OWNERS TO INSURE.** Each Owner is responsible for insuring the Owner's personal property and all other property and Owner Improvements in the Owner's Unit for which the Association has not purchased insurance in accordance with Section 8.1. Nothing in this Declaration precludes any Owner from carrying any public liability insurance as the Owner considers desirable. However, Owners' policies may not adversely affect or diminish any coverage under any of the Association's insurance policies. Duplicate copies of Owners' insurance policies shall be deposited with the Association on request. If any loss intended to be covered by the Association's insurance occurs and the proceeds payable are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of the Owner's insurance to the Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied.

8.4 **NOTICE OF EXPIRATION REQUIREMENTS.** If available, each of the Association's insurance policies must contain a provision that the policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without at least ten days' prior written notice to the Board and Declarant, and to each Owner and Mortgagee, insurer and guarantor of a First Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity insurance shall provide that it may not be canceled or substantially modified without at least ten

days' prior written notice to any insurance trustee named pursuant to Section 8.6 and to each servicer who has filed a written request with the carrier for such notice.

**8.5 INSURANCE PREMIUMS.** Premiums for insurance policies obtained by the Association are Common Expenses.

**8.6 TRUSTEE FOR POLICIES.** The Association is trustee of the interests of all named insureds under the Association's insurance policies. Unless an insurance policy provides for a different procedure for filing claims, all claims made under such policy must be sent to the insurance carrier or agent by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made. All insurance proceeds under any such policies provided for in Section 8.1 must be paid to the Board as trustees. The Board has the authority to negotiate loss settlements with insurance carriers, with participation, to the extent they desire, of First Mortgagees who have filed written requests within ten days after receipt of notice of any damage or destruction as provided in Section 9.4. Any two officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures are binding on all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any insurance policy and to perform such other functions assigned by the Board.

**8.7 ACTIONS AS TRUSTEE.** Except as otherwise specifically provided in this Declaration, the Board has the exclusive right to bind the Association and the Owners in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty insurance kept by the Association, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who request them in writing.

**8.8 ANNUAL INSURANCE REVIEW.** The Board shall review the Association's insurance policies at least annually to determine the amount of the casualty and fire insurance referred to in Section 8.1. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements on the Property except for foundations and footings, without deduction for depreciation, from a qualified independent insurance appraiser, before each such annual review.

**8.9 REQUIRED WAIVER.** All of the Association's insurance policies insuring against physical damage must provide, if reasonably possible, for waiver of:

- (i) Subrogation of claims against the Owners and tenants of the Owners;
- (ii) Any defense based on coinsurance;
- (iii) Any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Association;

- (iv) Any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured;
- (v) Any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;
- (vi) Notice of the assignment of an Owner's interest in the insurance by virtue of a conveyance of any Condominium;
- (vii) Any right to require any assignment of any Mortgage to the insurer;
- (viii) Any denial of an Owner's claim because of negligent acts by the Association or other Owners; and
- (ix) Prejudice of the insurance by any acts or omissions of Owners that are not under the Association's control.

**ARTICLE IX  
DESTRUCTION OF IMPROVEMENTS**

**9.1 RESTORATION OF THE PROPERTY.** Except as otherwise authorized by the Owners, if any portion of the Property which the Association is responsible for maintaining is destroyed, the Association shall restore the same to its former condition as promptly as practical. The Association shall use the proceeds of its insurance for restoration of the Property unless otherwise authorized in this Declaration. The Board shall prepare or obtain the documents necessary for commencing such restoration as promptly as practical. The Property shall be restored substantially in accordance with the Condominium Plan and the original construction plans if they are available, unless changes recommended by the Board have been approved by at least sixty-seven percent of the Owners. If the insurance proceeds amount to at least ninety-five percent of the estimated cost of restoration, the Board shall levy a Restoration Assessment to provide the additional funds necessary for reconstruction. If the insurance proceeds amount to less than ninety-five percent of the estimated cost of restoration, the Board may levy a Restoration Assessment and proceed with the restoration only if both of the following conditions ("Conditions to Restoration") have been satisfied: (a) the levy of a Restoration Assessment to pay the costs of restoration of the Property is approved by the Owners; and (b) within one year after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration ("Restoration Certificate"). If either of the Conditions to Restoration does not occur following a destruction for which insurance proceeds available for restoration are less than ninety-five percent of the estimated cost of restoration, then the Board shall proceed as provided in Section 9.2.

**9.2 SALE OF PROPERTY AND RIGHT TO PARTITION.** No Owner shall have the right to partition of the Owner's interest in a Condominium and there shall be no judicial partition of the Property, except as provided in Section 1359(b) of the California Civil Code. For purposes of Subsection 4 of Section 1359(b), partition may occur only if all of the following

conditions are satisfied: (a) either or both of the Conditions to Restoration described in Section 9.1 have failed to occur; (b) within six months after the date on which destruction occurred, restoration has not commenced; and (c) the Owners of at least sixty-seven percent of the Condominiums in the Property approve the partition. In such event, the Association shall prepare, execute and Record, as promptly as practical, a certificate stating that a majority of the Board may properly exercise an irrevocable power of attorney to sell the Property for the benefit of the Owners and execute such other documents and instruments necessary for the Association to consummate the sale of the Property at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. Such certificate shall be conclusive evidence of such authority for any Person relying thereon in good faith. The net proceeds of such sale and the proceeds of any insurance carried by the Association shall be divided proportionately among the Owners, such proportions to be determined in accordance with the relative appraised fair market valuation of the Condominiums as of a date immediately before such destruction or condemnation, expressed as percentages, and computed by dividing such appraised valuation of each Condominium by the total of such appraised valuations of all Condominiums in the Property. The Board is authorized to hire one (1) or more appraisers for such purpose and the cost of such appraisals shall be a Common Expense of the Association. However, the balance then due on any valid Mortgage of Record shall be first paid in order of priority before the distribution of any proceeds to an Owner whose Condominium is so encumbered. Nothing in this Declaration prevents partition of a cotenancy in any Condominium. Except as provided above, each Owner and the successors of each Owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for the Condominiums and for the benefit of all other Owners, waive all rights and causes of action for a judicial partition of the tenancy in common ownership of the Property and further covenant that no action for such judicial partition shall be instituted.

**9.3 INTERIOR DAMAGE.** With the exception of any casualty or damage covered by insurance kept by the Association, restoration of any damage to the interior of any individual Unit, including all Improvements, must be made by and at the individual expense of the Owner of the Unit so damaged. If a determination to rebuild the Property after partial or total destruction is made, as provided in this Article, such interior restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Board as provided in this Declaration.

**9.4 NOTICE TO OWNERS AND LISTED MORTGAGEES.** The Board, immediately on having knowledge of any damage or destruction affecting a Unit or a material portion of the Common Property, shall promptly notify all Owners and Mortgagees, insurers and guarantors of First Mortgages on Condominiums in the Property who have filed a written request for such notice with the Board.

**ARTICLE X  
EMINENT DOMAIN**

The term "taking" as used in this Article means condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. The Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All takings proceeds shall be payable to the Association for the benefit of the Owners and their Mortgagees, and shall be distributed to such Owners and Mortgagees as provided in this Article.

**10.1 PROJECT CONDEMNATION.** If (a) there is a taking of an interest in all or part of the Project such that the ownership, operation and use of the Project in accordance with this Declaration is substantially and adversely affected, and (b) within one hundred twenty days after the effective date of the taking the Owners of Units (i) not taken, or (ii) only partially taken but capable of being restored to at least ninety-five percent of their floor area and to substantially their condition before the taking (collectively, the "Remaining Units") do not by affirmative vote of at least one-third of their voting power approve the continuation of the Property and the restoration to the extent feasible of the Association Property and the Remaining Units, then the Board shall proceed with the sale of that portion of the Property which was not taken and distribute the net proceeds of such sale after deducting any incidental fees and expenses, in the same proportion and manner as provided in Section 9.2.

**10.2 CONDEMNATION OF COMMON PROPERTY.** If there is a taking of (a) the Common Area or any interest therein other than the taking of an undivided interest taken as a result of the taking of a Condominium, or (b) the Association Property, or any interest therein, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Fund.

**10.3 CONDEMNATION OF CONDOMINIUMS.** If there is a taking of a Condominium, the award in condemnation shall be paid to the Owner of the Condominium. However, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority.

**10.4 CONDEMNATION OF PORTIONS OF UNITS.**

**10.4.1 Minor Takings Within Limits.** If (a) there is a taking of a portion of one or more Units such that the existing use of such Units immediately prior to the taking is not substantially and adversely affected, and (b) restoration of such Units can be accomplished at a cost less than or equal to the sum of (i) the amount of the condemnation awards for such takings plus (ii) any amounts the Owners of the taken Units wish to contribute to restoration plus (iii) an amount less than or equal to five percent of the Budgeted gross expenses of the Association for that Fiscal Year (collectively, the "Allowable Cost"), then the Board shall contract for such restoration and levy a Restoration Assessment in an amount equal to the Allowable Cost minus the amount of the condemnation awards and Owners' contributions, and the condemnation awards, Owners' contributions and Restoration Assessment shall be applied to such restoration. If the restoration is accomplished at a cost less than the amount of the condemnation awards, then that portion of the condemnation awards which exceeds the restoration costs shall be paid to

the Owners of the partially taken Units in proportion to the decreases in the fair market values of their Condominiums. However, such awards shall first be applied to the balance then due on any Mortgages encumbering such Owners' Condominiums, in order of priority. In the event that any taking within the scope of this Section 10.5.1 has the effect of reducing the square footage of any Unit by more than ten percent, the Office Use Percentage allocable to such Unit may be revised by the Board in its reasonable discretion subject to the conditions set forth in Section 2.1 above.

**10.4.2 Minor Takings Exceeding Limits.** If (a) there is a taking of a portion of one or more Units such that the existing use of such Units immediately prior to the taking is not substantially and adversely affected, and (b) restoration cannot be accomplished at a cost less than or equal to the Allowable Cost, then the Board shall call a Special Meeting of the Owners. If more than fifty percent (50%) of the voting power of the Association is represented at such Special Meeting, either in person or by proxy, and a majority of the votes cast at such Special Meeting are in favor of levying a Restoration Assessment in an amount equal to the restoration costs minus the sum of the amount of the condemnation awards and the amounts the Owners of the taken Units wish to contribute to such restoration, then the Board shall contract for such restoration and levy a Restoration Assessment, and the condemnation awards, Owners' contributions and Restoration Assessment shall be applied to such restoration.

**10.4.3 Major Takings.** If the requisite approval is not obtained at the Special Meeting referred to in Section 10.4.2, or if there is a taking of a portion of one or more Units such that the Units are not capable of being restored such that the existing use of such Units immediately prior to the taking is not substantially and adversely affected, then the award in condemnation shall be paid to the Owners of the taken Units. However, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority. The Board shall have the remaining portions of the taken Units razed. The remaining portions of the taken Units shall become part of the Association Property, and the Owners of such taken Units, by acceptance of the award allotted to them in taking proceedings, relinquish (a) to the other Owners such Owners' undivided interest in the Common Area, and (b) to the Association, the remaining portions of the Units. Each Owner relinquishing an interest in the Common Area pursuant to this Section shall, at the Board's request and at the Association's expense, execute and acknowledge such deeds and other instruments which the Board considers necessary or convenient to evidence such relinquishment. Each Owner of a taken Unit is not liable for Assessments under this Declaration which accrue on or after the date such Owner accepts a condemnation award.

**10.5 PORTIONS OF AWARDS IN CONDEMNATION NOT COMPENSATORY FOR VALUE OF REAL PROPERTY.** Those portions of awards in condemnation which do not directly compensate Owners for takings of real property such as awards for takings of personal property, relocation expenses, moving expenses and other allowances of a similar nature intended to facilitate relocation, shall be paid to the Owners whose personal property is taken, or whose relocation is intended to be facilitated.

**10.6 NOTICE TO OWNERS AND MORTGAGEES.** The Board, on learning of any pending or threatened taking affecting a Unit or a material portion of the Property shall promptly notify all Owners and those Mortgagees, insurers and guarantors of Mortgages on

Condominiums in the Property who have filed a written request for such notice with the Association.

**ARTICLE XI  
RIGHTS OF MORTGAGEES**

11.1 **GENERAL PROTECTIONS.** No amendment or violation of this Declaration defeats or renders invalid the rights of the Mortgagee under any Mortgage encumbering one or more Condominiums made in good faith and for value, provided that after the foreclosure of any such Mortgage such Condominium will remain subject to this Declaration. For purposes of this Declaration, "First Mortgage" means a Mortgage with first priority over other Mortgages or Deeds of Trust on a Condominium, and "First Mortgagee" means the Mortgagee of a First Mortgage. For purposes of any provisions of the Restrictions which require the vote or approval of a specified percentage of First Mortgagees, such vote or approval is determined based on the number of votes allocated to the applicable Condominiums encumbered by each such First Mortgage as set forth on the attached Schedule 1.

11.2 **ADDITIONAL RIGHTS.** To induce commercial lenders to participate in the financing of the sale of Condominiums, the following provisions apply. To the extent these provisions conflict with any other provisions of this Declaration or any other of the Restrictions, these provisions control.

11.2.1 **Notices.** Each Mortgagee, insurer and guarantor of a Mortgage encumbering one or more Condominiums, on filing a written request for notification with the Board, is entitled to written notice from the Association of: (a) any condemnation or casualty loss which affects either a material portion of the Property or the Condominiums securing the Mortgage; (b) any delinquency of sixty days or more in the performance of any obligation under the Restrictions, including the payment of Assessments or charges owed by the Owners of the Condominiums securing the Mortgage, which notice each Owner consents to and authorizes; (c) a lapse, cancellation, or material modification of any insurance policy kept by the Association; and (d) any proposed action of the Association which requires consent by a specified percentage of First Mortgagees who have submitted a written request to the Association for notice of such proposed action.

11.2.2 **Right of First Refusal.** Each Owner, including each First Mortgagee of a Mortgage encumbering any Condominium who obtains title to such Condominium pursuant to (a) the remedies provided in such Mortgage, (b) foreclosure of the Mortgage, or (c) deed in lieu of foreclosure, is exempt from any "right of first refusal" created or purported to be created by the Restrictions.

11.2.3 **Unpaid Assessments.** Each First Mortgagee of a Mortgage encumbering any Condominium who obtains title to such Condominium pursuant to the remedies provided in such Mortgage or by foreclosure of such Mortgage or by deed in lieu of foreclosure shall take title to such Condominium free of any claims for unpaid Assessments or charges against such Condominium which accrued before the time such Mortgagee acquires title to such Condominium.

11.2.4 **Association Records.** All Mortgagees, insurers and guarantors of First Mortgages, on written request to the Association may: (a) examine current copies of the Association's books, records and financial statements and the Restrictions during normal business hours; (b) receive written notice of all meetings of Owners; and (c) designate in writing a representative authorized to attend all meetings of Owners.

11.2.5 **Material Changes.** All Mortgagees, insurers and guarantors of First Mortgages, on written request to the Board, shall be given thirty days' written notice before the effective date of (a) any proposed material amendment to the Restrictions or Condominium Plans; (b) any termination of an agreement for professional management of the Property following any decision of the Owners to assume self-management of the Property; and (c) any proposed termination of the Property as a condominium project.

11.2.6 **Reserves.** The Reserve Fund described in Article VII must be funded by regular scheduled monthly, quarterly, semiannual or annual payments rather than by large Special Assessments.

11.2.7 **Payment of Taxes.** If the Association fails to pay taxes, other charges, or premiums for hazard insurance on the Common Property, then following ten days' notice to the Board, First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Property, and the Association shall immediately reimburse First Mortgagees making such payments.

## ARTICLE XII ENFORCEMENT

12.1 **ENFORCING RESTRICTIONS.** The Restrictions shall be enforced as follows.

12.1.1 **Violations Identified by the Association.** If the Board determines that there is a violation of the Restrictions, or the Board determines that an Improvement which is the maintenance responsibility of an Owner needs installation, maintenance, repair, restoration or painting, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Board and the length of time the Owner has to complete the work proposed in the plans submitted to the Board. If an Owner does not perform such corrective action as is required by the Board within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and charge the cost to the Owner as a Special Assessment. If the violation involves nonpayment of an Assessment, then the Board may collect the delinquent Assessment pursuant to the procedures established in Section 12.2.

12.1.2 **Violations Identified by an Owner.** If an Owner alleges that another Person is violating the Restrictions (other than nonpayment of an Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining

Owner may resort to alternative dispute resolution, as required by Section 1354 of the California Civil Code, or litigation.

**12.1.3 Legal Proceedings.** Failure to comply with any of the terms of the Restrictions by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof. However, the procedures established in Section 1354 of the California Civil Code and in these Restrictions must first be followed.

**12.1.4 Additional Remedies.** The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, the Board may assess against a Person for the failure of such Person to comply with the Restrictions. Fines or penalties may only be assessed after Notice and Hearing. After Notice and Hearing, the Board may direct the officers of the Association to Record a notice of noncompliance if allowed by law against the Condominium owned by any Owner who has violated any provision of this Declaration. The notice shall include a legal description of the Condominium and shall specify the provision of the Declaration that was violated, describe the violation committed, and the steps required to remedy the violation. Once the violation is remedied, the Board shall direct the officers of the Association to Record a notice that the violation has been remedied.

**12.1.5 No Waiver.** Failure to enforce any provision of this Declaration does not waive the right to enforce that provision, or any other provision of this Declaration.

**12.1.6 Right to Enforce.** The Board and any Owner may enforce the Restrictions as described in this Article, subject to Section 1354 of the California Civil Code. Each Owner has a right of action against the Association for the Association's failure to comply with the Restrictions. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

**12.1.7 Limit on Expenditures.** The Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of the Owners (excluding the voting power of any Owner who would be a defendant in such proceedings), and, if applicable, complies with the requirements of Section 1354 of the California Civil Code. This approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in Article II, (b) to enforce the architectural and landscaping control provisions contained in Article V, (c) to collect any unpaid Assessments levied pursuant to the Restrictions, (d) for a claim, the total value of which is less than fifty thousand dollars, or (e) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer reserve funds or borrow funds to pay for any litigation, the Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly.

## 12.2 NONPAYMENT OF ASSESSMENTS.

**12.2.1 Delinquency and Acceleration.** Any installment of an assessment is delinquent if not paid within fifteen days after the due date established by the Board. Any installment of Annual Assessments, Capital Improvement Assessments, Special Assessments, or Restoration Assessments not paid within thirty days after the due date, plus all reasonable costs of collection, including attorneys' fees and late charges, bears interest at the maximum rate permitted by law commencing thirty days after the due date until paid. The Board may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 1366(e)(2). The Association need not accept any tender of a partial payment of an assessment installment and related costs and attorneys' fees, and any acceptance of any such tender does not waive the Association's right to demand and receive full payment. If any installment of an Assessment is not paid within fifteen days after its due date, the Board may mail a notice to the Owner and to each First Mortgagee of a Condominium which has requested a copy of the notice. Such notice shall specify (1) the fact that the installment is delinquent; (2) the action required to cure the default; (3) a date, not less than fifteen days after the date the notice is mailed to the Owner, by which such default must be cured; and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Assessment for the then current Fiscal Year and sale of the Condominium. If the delinquent installments of the Assessment and any related charges are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of the Assessment for the then current Fiscal Year attributable to that Owner and his Condominium to be immediately due and payable without further demand and may enforce the collection of the full Assessment and related charges in any manner authorized by law and this Declaration.

### 12.2.2 Creation and Release of Lien.

(a) **Priority of Lien.** All liens levied in accordance with this Declaration shall be superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior, and (ii) the lien or charge of any First Mortgage of Record, meaning any Recorded Mortgage with first priority over other Mortgages, made in good faith and for value and Recorded before the date on which the "Notice of Delinquent Assessment" described in this Section against the respective Condominium was Recorded.

(b) **Prerequisite to Creating Lien.** Before the Association may place a lien on an Owner's Condominium to collect a past due Assessment, the Association shall send a written notice to the Owner by certified mail which contains the following information: (i) the fee and penalty procedure of the Association, (ii) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges and the method of calculation, any attorneys' fees, (iii) the collection practices used by the Association, and (iv) a statement that the Association may recover the reasonable costs of collecting past due Assessments.

(c) **Notice of Delinquent Assessment.** The lien becomes effective on Recording of a Notice of Delinquent Assessment ("Notice of Delinquent Assessment") as provided in Section 1367 of the California Civil Code. The Notice of Delinquent Assessment must identify (i) the amount of the Assessment and other authorized charges and interest,

including the cost of preparing and Recording the Notice of Delinquent Assessment, (ii) the amount of collection costs incurred, including reasonable attorneys' fees, (iii) a sufficient description of the Condominium that has been assessed, (iv) the Association's name and address, (v) the name of the Owner of the Condominium that has been assessed, and (vi) if the lien is to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment must be signed by an authorized Association officer or agent and must be mailed in the manner required by Section 2924b of the California Civil Code to the Owner of record of the Condominium no later than ten calendar days after Recording. The lien relates only to the individual Condominium against which the Assessment was levied and not to the Property as a whole.

(d) **Exceptions.** Assessments described in Section 1367(c) of the California Civil Code and Section 2792.26(c) of the California Code of Regulations may not become a lien against an Owner's Condominium enforceable by sale of the Condominium under Sections 2924, 2924(b) and 2924(c) of the California Civil Code.

(e) **Release of Lien.** On payment or other satisfaction of the full amount claimed in the Notice of Delinquent Assessment, the Board shall cause to be Recorded a Notice of Satisfaction and Release of Lien ("Notice of Release") stating the satisfaction and release of the amount claimed. The Board may require the Owner to pay a reasonable charge for preparing and Recording the Notice of Release. Any purchaser or encumbrancer who has acted in good faith and extended value may rely on the Notice of Release as conclusive evidence of the full satisfaction of the sums identified as owed in the Notice of Delinquent Assessment.

**12.2.3 Enforcement of Liens.** The Board shall enforce the collection of amounts due under this Declaration by one or more of the alternative means of relief afforded by this Declaration. The lien on a Condominium may be enforced by foreclosure and sale of the Condominium after failure of the Owner to pay any Annual, Capital Improvement or Restoration Assessment, or as provided in this Declaration. The sale shall be conducted in accordance with the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law. The Association or any Owner if the Association refuses to act, may sue to foreclose the lien if (a) at least thirty days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded and (b) at least ten days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the affected Owner. The Association may bid on the Condominium at foreclosure sale, and acquire and hold, lease, mortgage and convey it. On completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Condominium, and the defaulting Owner shall be required to pay the reasonable rental value for the Condominium during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any lien securing it, but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from an action initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

**12.2.4 Priority of Assessment Lien.** Mortgages Recorded before a Notice of Delinquent Assessment have lien priority over the Notice of Delinquent Assessment. Sale or

transfer of any Condominium does not affect the Assessment lien, except that the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a First Mortgage extinguishes the lien of such Assessments as to payments which became due before such sale or transfer. No sale or transfer relieves such Condominium from liens for any Assessments thereafter becoming due. No Person who obtains title to a Condominium pursuant to a judicial or nonjudicial foreclosure of the First Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Condominium which became due before the acquisition of title to the Condominium by such Person. Such unpaid share of Common Expenses or Assessments is a Common Expense collectible from all Owners including such Person.

**12.2.5 Alternative Dispute Resolution.** An Owner may dispute the Assessments imposed by the Association if such Owner pays in full (a) the amount of the Assessment in dispute, (b) any late charges, (c) any interest, and (d) all fees and costs associated with preparing and filing a Notice of Delinquent Assessment and states by written notice that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty days after Recording the Notice of Delinquent Assessment. On receipt of the written notice, the Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as established in Civil Code Section 1354. The right of any Owner to use alternative dispute resolution under this Section may not be exercised more than two times in any calendar year, and not more than three times within any five calendar years unless the Owner and the Association mutually agree to use alternative dispute resolution when this limit is exceeded. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (a) through (d) above, if it is determined that the Assessment levied by the Association was not correctly levied.

**12.2.6 Receivers.** In addition to the foreclosure and other remedies granted the Association in this Declaration, each Owner, by acceptance of a deed to such Owner's Condominium, conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Condominium, subject to the right of the Association to collect and apply such rents, issues and profits to any delinquent Assessments owed by such Owner, reserving to the Owner the right, before any default by the Owner in the payment of Assessments, to collect and retain such rents, issues and profits as they become due. On any such default the Association may, on the expiration of thirty days following delivery to the Owner of the "Notice of Delinquent Assessment" described in this Declaration, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described in this Declaration, (a) enter in or on and take possession of the Condominium, (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner, and in such order as the Association may determine. The entering upon and taking possession of the Condominium, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default under this Declaration or invalidate any act done pursuant to such notice.

**ARTICLE XIII  
DURATION AND AMENDMENT**

13.1 **DURATION.** This Declaration shall continue in full force unless a declaration of termination satisfying the requirements of an amendment to this Declaration is Recorded.

13.2 **TERMINATION AND AMENDMENT.**

13.2.1 **Amendment Approval.** Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment must be adopted by the vote, in person or by proxy, or written consent of Owners representing not less than sixty-seven percent of the voting power of the Association, provided that the specified percentage of the Association's voting power necessary to amend a specific provision of this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the provision that is the subject of the proposed amendment.

13.2.2 **Mortgagee Consent.** In addition to the notices and consents required by Section 13.2.1, the following types of amendment to this Declaration must be approved by Mortgagees of the First Mortgages on Condominiums representing the lesser of (i) fifty-one percent of the Mortgagees of First Mortgages who have requested that the Association notify them of any of the proposed amendments listed below, or (ii) Mortgagees holding First Mortgages on Condominiums within the Project to which not less than fifty-one percent of the total voting power of the Association as allocated pursuant to Section 4.5.1 above:

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Mortgagees, insurers or guarantors of First Mortgages.

(b) Any amendment which would require a Mortgagee after it has acquired a Condominium through foreclosure to pay more than its proportionate share of any unpaid Assessment or Assessments accruing before such foreclosure.

(c) Any amendment relating to (i) the insurance provisions in Article VIII, (ii) the application of insurance proceeds in Article IX, or (iii) the disposition of any money received in any taking under condemnation proceedings.

(d) Any amendment which would or could result in partition or subdivision of a Condominium in any manner inconsistent with this Declaration.

(e) Any amendment which would subject any Owner to a right of first refusal or other such restriction, if such Condominium is proposed to be transferred.

(f) Any amendment concerning:

(i) Voting rights;

- (ii) Rights to use the Common Property;
- (iii) Reallocation of interests in the Common Area or rights to its use;
- (iv) Changes to the Condominium Plan, including conversion of Common Property into Units or Units into Common Property;
- (v) Imposition of restrictions on leasing of Units;
- (vi) Expansion or contraction of the Buildings or the Property or addition, annexation or deannexation of real property to or from the Property; or
- (vii) Restoration of the Property in a manner other than as specified in this Declaration.

**13.2.3 Termination Approval.** Termination of this Declaration requires approval of the Owners as provided in Section 13.2.1. No such termination is effective unless it is also approved in advance either by (a) if termination is proposed due to substantial destruction or condemnation of the Property, that percentage of Mortgagees required for amendment of this Declaration as set forth in Section 13.2.2 above, or (b) if termination is for reasons other than such substantial destruction or condemnation, by Mortgagees holding First Mortgages on Condominiums representing not less than sixty-seven percent of the total voting power of the Association as allocated pursuant to Section 4.5.1 above.

**13.2.4 Notice to Mortgagees.** Each Mortgagee of a First Mortgage on a Condominium in the Project which receives proper written notice of a proposed amendment or termination of this Declaration is deemed to have approved the amendment or termination if the Mortgagee fails to submit a response to the notice within thirty days after the Mortgagee receives the notice.

**13.2.5 Certificate.** A copy of each amendment must be certified by at least two Association officers. The amendment becomes effective when a Certificate of Amendment is Recorded. The certificate, signed and sworn to by two Association officers that the requisite number of Owners and Mortgagees have approved the amendment, when Recorded, is conclusive evidence of that fact. The Association shall keep in its files for at least four years the record of all such approvals. The certificate reflecting any termination or amendment which requires the written consent of any of the Mortgagees of First Mortgages must include a certification that the requisite approval of such First Mortgagees was obtained.

**ARTICLE XIV  
GENERAL PROVISIONS**

14.1 **MERGERS OR CONSOLIDATIONS.** In a merger or consolidation of the Association with another association, its Property, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the Property, rights and obligations of another association may, by operation of law, be added to the Property, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Property, together with the covenants and restrictions established on any other property, as one plan.

14.2 **NO PUBLIC RIGHT OR DEDICATION.** Nothing in this Declaration is a gift or dedication of all or any part of the Property to the public, or for any public use.

14.3 **NOTICES.** Except as otherwise provided in this Declaration, notice to be given to an Owner must be in writing and may be delivered personally to the Owner. Personal delivery of such notice to one or more co-Owners, or any general partner of a partnership owning a Condominium, constitutes delivery to all Owners. Personal delivery of such notice to any officer or agent for the service of process on a corporation or limited liability company constitutes delivery to the corporation or limited liability company. Such notice may also be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address has been furnished, to the street address of the Owner's Condominium. Such notice is deemed delivered three business days after the time of such mailing, except for notice of a meeting of Owners or of the Board, in which case the notice provisions of the Bylaws control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as may be fixed and circulated to all Owners.

14.4 **CONSTRUCTIVE NOTICE AND ACCEPTANCE.** Every Person who owns, occupies or acquires any right, title or interest in any Condominium or other portion of the Property does consent and agree, and shall be conclusively deemed to have consented and agreed, to every limit, restriction, easement, reservation, condition and covenant contained in this Declaration, whether or not any reference to these restrictions is in the instrument by which such person acquired an interest in the Property.

**ARTICLE XV  
DECLARANT'S RIGHTS AND RESERVATIONS**

If there is a conflict between any other portion of the Restrictions and this Article, this Article shall control.

15.1 **CONSTRUCTION RIGHTS.** So long as any Condominium in the Property remains unsold, Declarant shall have the right to (a) subdivide or resubdivide those portions of the Property remaining unsold, (b) modify Improvements to and on the Common Property or any portion of the Property owned solely or partially by Declarant, (c) alter Improvements and

Declarant's construction plans and designs, (d) modify Declarant's development plan for the Property, and (e) construct or install such additional Improvements on the Property as Declarant considers advisable.

**15.2 SALES AND MARKETING RIGHTS.** Declarant's rights under this Declaration include, but are not limited to, the right to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary to conduct Declarant's business of completing the work and disposing of the Condominiums by sale, resale, lease or otherwise. Declarant may use any Condominiums owned or leased by Declarant in the Property as a real estate sales office or leasing office.

**15.3 CREATING ADDITIONAL EASEMENTS.** At any time before acquisition of title to a Condominium in the Property by a purchaser from Declarant, Declarant has the right to establish on that Condominium additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as Declarant determines are reasonably necessary to the Property' proper development and disposal.

**15.4 ASSIGNMENT OF RIGHTS.** Declarant may assign its rights under the Restrictions to any successor in interest to any portion of Declarant's interest in the Property by a written assignment.

**15.5 AMENDMENTS.** No amendment may be made to this Article without the prior written approval of Declarant. At any time before the first Close of Escrow in the Property, Declarant may unilaterally amend or terminate this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. For so long as Declarant owns any portion of the Property, Declarant may unilaterally amend this Declaration by Recording a written instrument signed by Declarant to comply with any City, County State or Federal laws or regulations, or correct typographical errors.

**15.6 EXERCISE OF RIGHTS.** Each Owner grants an irrevocable, special power of attorney to Declarant to execute and Record all documents and maps necessary to allow Declarant to exercise its rights under this Article.

**15.7 USE OF PROPERTY.** Declarant and its prospective purchasers of Condominiums are entitled to the nonexclusive use of the Common Property without further cost for access, ingress, egress, use or enjoyment, to (a) show the Property to prospective purchasers, and (b) dispose of the Property as provided in this Declaration. Declarant, and prospective purchasers, are also entitled to the nonexclusive use of any portions of the Common Property which are private streets, drives and walkways for ingress, egress and accommodating vehicular and pedestrian traffic to and from the Property. The use of the Common Property by Declarant may not unreasonably interfere with its use by other Owners.

**15.8 PARTICIPATION IN ASSOCIATION.** The Association shall without requiring a request, provide Declarant with written notice of the transfer of any Condominium and all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration. Commencing on the date on which Declarant no longer has an elected

representative on the Board, and continuing until the Declarant no longer owns a Condominium in the Property, the Association shall provide Declarant with written notice of all meetings of the Board as if Declarant were an Owner and Declarant shall be entitled to have a representative present at all such Board meetings ("Declarant's Representative"). The Declarant's Representative shall be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board.

**15.9 DECLARANT APPROVAL OF ACTIONS.**

**15.9.1 General Rights.** Until Declarant no longer owns a portion of the Property, Declarant's prior written approval is required for any amendment to the Restrictions which would impair or diminish Declarant's rights to complete developing the Property or sell or lease Condominiums.

**15.9.2 Limit on Actions.** Until Declarant no longer owns any Condominiums in the Property, the following actions, before being undertaken by the Association, must first be approved in writing by Declarant: (a) Any amendment or action requiring the approval of First Mortgagees; (b) the annexation to the Property of additional real property; (c) the levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Property by Declarant; (d) any significant reduction of Association maintenance or other services; or (e) any modification or termination of any provision of the Restrictions benefiting Declarant.

The Property shall be marketed under the general name "Pacific Business Center." Declarant may change the marketing name of the Property at any time in Declarant's sole discretion.

**ARTICLE XVI  
RESTRICTIONS FOR THE BENEFIT OF THE CITY**

**16.1 MAINTENANCE.** The Association is responsible for daily maintenance and upkeep of the Common Property, including but not limited to, trash removal, exterior painting, graffiti removal, and maintenance of Common Property Improvements including landscaping to ensure that they are maintained in a neat and attractive manner. All graffiti shall be removed within seventy two hours after the Association receives a complaint from the City.

All Common Area landscaping shall be maintained such that it is evenly cut, evenly edged, free of bare or brown spots, debris, and weeds. All trees and shrubs shall be trimmed so they do not impede pedestrian traffic along walkways. Trees shall be pruned so they do not intrude into neighboring properties and shall be maintained so they do not have droppings or create other nuisances to neighboring properties. All trees shall also be root pruned to eliminate exposed surface roots and damage to sidewalks, driveways and structures.

All driveways and sidewalks in the Project shall be maintained so they are safe for users. Significant pavement cracks, pavement distress, excessive slab settlement, abrupt vertical variations, and debris on travel-ways shall be removed or repaired promptly.

All Common Areas and facilities shall be maintained in such a manner to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to public health, safety, or general welfare, or that such a condition of deterioration or disrepair causes harm or is materially detrimental to property values or Improvements within three hundred feet of the Property.

16.2 **FIRE LANES.** The Fire Lanes shown on Exhibit D shall remain open and unobstructed at all times. The Association shall regularly inspect the Fire Lanes and take such steps as the Board deems appropriate to keep the Fire Lanes open and unobstructed. Declarant reserves for the benefit of the City a nonexclusive easement over the Fire Lanes shown on Exhibit D for emergency vehicle use.

16.3 **REPRESENTATIVE FOR CITY CONTACT.** Before January 1 of each calendar year, the Association shall provide the City Community Development Department with the name address and telephone number of at least one Member or authorized representative of the Association for the purpose of the City contacting the Association.

16.4 **NOTICE TO NEW MEMBERS.** The Association shall notify all new Members of the Association and their tenants of the provisions of this Declaration affecting the shared access, driveways and Common Areas in the Project.

16.5 **CITY ENFORCEMENT RIGHTS.** The City shall have the right, but not the duty to enforce the obligations in Article II, this Article XVI, and Section 4.4, 4.6, 5.1 and 6.1 of this Declaration. No amendment to Article II, this Article XVI, or Sections 4.4, 4.6, 5.1, or 6.1 of this Declaration shall be effective without the prior written approval of the City's Community Development Department, or its successor.

16.6 **WATER SERVICE EASEMENT.** In order to provide a loop water connection to the City of Tustin's water supply, an easement in favor of the City has been granted by the Pacific Telephone and Telegraph Company to the City of Tustin over a portion of Lot 1 of lot line adjustment No. 03-02, in the City of Tustin, Orange County California recorded August 22, 2003 as Instrument No. 2003001020224 of Official Records in the office of the Orange County Recorder, to connect with a water line located thereon. In the event this easement is terminated or the water service from the Pacific Telephone and Telegraph Company is discontinued pursuant to an order of the California Public Utilities Commission or upon its own motion, the Pacific Telephone and Telegraph Company determines it is in the interest of its service to its patrons or consumers and necessary or desirable to commence or resume the use of the property subject to the easement, resulting in a disconnection of water service from the Pacific Telephone and Telegraph Company property, the Association shall construct a new water line in or along the western boundary of the Property or such other area, including any area reserved for water service, to the satisfaction of the City of Tustin's Public Works Department to ensure the provision of a loop water system, with at least two points of connection to the City's water system through the Property.

16.7 **DRAINAGE EASEMENT.** An easement for drainage has been granted by Pacific Bell Telephone Company for the benefit of the Association over a portion of Lot 1 of

Lot Line Adjustment No. 03-02 recorded August 22, 2003, as Instrument No. 2003001020224 of Official Records in the office of the Orange County Recorder to connect to an existing surface water drainage system on the Pacific Bell Telephone Company property. In the event this easement is terminated or the drainage facilities on the Pacific Bell Telephone Company Property are discontinued pursuant to an order of the California Public Utilities Commission or upon its own motion, the Pacific Bell Telephone Company determines it is in the interest of its service to its patrons or consumers and necessary or desirable to commence or resume the use of the property subject to the easement, resulting in a disconnection of the drainage facilities on the Pacific Bell Telephone Company property, the Association shall construct a new drainage line in a location on the Property approved by the City of Tustin's Public Works Department and to the satisfaction of the City's Public Works Department to ensure that the Property is properly drained and that surface waters, including storm waters, are disposed of in a proper manner.

*SIGNATURES ON FOLLOWING PAGE*

**SIGNATURE PAGE  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR PACIFIC BUSINESS CENTER**

This Declaration is dated for identification purposes June 10<sup>th</sup>, 2004.

**DECLARANT:**

**HW – TUSTIN, LLC,**  
a California limited liability company

By: Pacific Business Center – Tustin, LLC,  
a California limited liability company  
its Managing Member

By: Werdin Corporation,  
a California corporation

By:   
Russell Werdin  
President

**APPROVED:**

**WOODRUFF, SPRADLIN & SMART,**  
as City Attorney of the City of Tustin

By:   
Douglas C. Holland, Esquire

**NOTARY ACKNOWLEDGEMENTS ON FOLLOWING PAGE**

NOTARY ACKNOWLEDGEMENTS TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Orange )

On June 10, 2004, before me, Catherine Kennedy, Notary Public  
personally appeared Russell Weadin, personally known to me ~~or proved to me on the~~  
~~basis of satisfactory evidence~~ to be the person whose name is subscribed to the within instrument  
and acknowledged to me that he executed the same in his authorized capacity, and that by his  
signature on the instrument the person, or the entity upon behalf of which the person acted,  
executed the instrument.

WITNESS my hand and official seal.

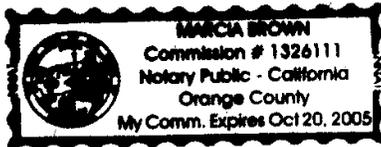


Catherine Kennedy  
Signature of Notary

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Orange )

On May 20, 2004, 2004, before me, Marcia Brown, Notary Public  
personally appeared Douglas C. Holland, personally known to me ~~or proved to me on the~~  
~~basis of satisfactory evidence~~ to be the person whose name is subscribed to the within instrument  
and acknowledged to me that he executed the same in his authorized capacity, and that by his  
signature on the instrument the person, or the entity upon behalf of which the person acted,  
executed the instrument.

WITNESS my hand and official seal.



Marcia Brown  
Signature of Notary

**EXHIBIT A  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR PACIFIC BUSINESS CENTER**

**LEGAL DESCRIPTION**

LOT 2 OF LOT LINE ADJUSTMENT NO. 03-02, RECORDED AUGUST 22, 2003, AS INSTRUMENT NO. 2003001020224 OF OFFICIAL RECORDS, IN THE COUNTY RECORDER OF ORANGE COUNTY, STATE OF CALIFORNIA.

EXCEPTING THEREFROM ALL OIL, GAS, AND OTHER HYDROCARBON AND MINERAL SUBSTANCES LYING NOT LESS THAN ONE-HUNDRED (100) FEET BELOW THE SURFACE OF SAID REAL PROPERTY, PROVIDED THAT THE GRANTOR, ITS SUCCESSORS AND ASSIGNS, SHALL NOT HAVE THE RIGHT TO GO UPON THE SURFACE OF SAID REAL PROPERTY FOR THE PURPOSE OF EXTRACTING SAID OIL, GAS, OR OTHER HYDROCARBON AND MINERAL SUBSTANCES, NOR FOR ANY PURPOSE IN CONNECTION THEREWITH, BUT SHALL HAVE THE RIGHT TO EXTRACT AND REMOVE SAID OIL, GAS, AND OTHER HYDROCARBON AND MINERAL SUBSTANCES BY MEANS OF SLANTDRILLED WELLS LOCATED ON ADJACENT OR NEARBY LAND, OR BY ANY OTHER MEANS WHICH SHALL NOT REQUIRE ENTRY UPON THE SURFACE OF SAID REAL PROPERTY, AS RESERVED IN THE DEED RECORDED DECEMBER 29, 1983, AS INSTRUMENT NO. 83-589655 OF OFFICIAL RECORDS.

32329\TDP07\CCRS\504396.5  
03/29/04

**EXHIBIT B  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR PACIFIC BUSINESS CENTER**

**ARTICLES OF INCORPORATION**

32329\TDP071\CCRS\504396.5  
03/29/04

**ARTICLES OF INCORPORATION**

**OF**

**PACIFIC BUSINESS CENTER OWNERS ASSOCIATION**

ONE: The name of this corporation is **PACIFIC BUSINESS CENTER OWNERS ASSOCIATION** ("*Corporation*").

TWO: The Corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of the Corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.

THREE: The Corporation's initial agent for service of process is Russell Werdin, whose business address is 4100 MacArthur Boulevard, Suite 310, Newport Beach, California 92660.

FOUR: The Corporation shall have and exercise all powers, rights and privileges which a corporation is organized under the Nonprofit Mutual Benefit Corporation Law may now or hereafter have or exercise, provided that the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of the Corporation, which is to operate a property owners association within the meaning of Section 23701t of the California Revenue and Taxation Code and Section 528 of the Internal Revenue Code and to manage a common interest development under the Davis-Stirling Common Interest Development Act. The Corporation does not have a corporate office. The common interest development is near the intersection of Woodlawn Avenue and Industrial Drive, Tustin, California 92780-0000.

FIVE: The classes of Membership and the voting and other rights and privileges of Members shall be as set forth in the Bylaws. Amendment of these Articles of Incorporation shall require the assent by vote or written consent of (i) a bare majority of the Board of Directors of the Corporation, and (ii) a bare majority of the total voting power of the Members.

SIX: The Corporation has no managing agent.

The undersigned, who is the incorporator of the Corporation, has executed these Articles of Incorporation on \_\_\_\_\_, 2003.

\_\_\_\_\_  
Russell Werdin, Incorporator

DC:\324\32329\000\ART\INCR\PA505467.1  
09/19/03

**EXHIBIT C  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR PACIFIC BUSINESS CENTER**

**BYLAWS OF THE ASSOCIATION**

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03/29/04

**BYLAWS  
OF  
PACIFIC BUSINESS CENTER  
OWNERS ASSOCIATION**

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09/19/03

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**FOR BYLAWS**

**OF**

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**BYLAWS**  
**OF**  
**PACIFIC BUSINESS CENTER OWNERS ASSOCIATION**

**ARTICLE I**  
**PLAN OF CONDOMINIUM OWNERSHIP**

1.1. **DEFINITIONS AND INTERPRETATION.** Unless otherwise provided in these Bylaws, the capitalized terms used in these Bylaws have the same meanings as in the Declaration defined below. These Bylaws shall be interpreted in accordance with the Declaration.

1.2. **NAME.** The name of the corporation is PACIFIC BUSINESS CENTER OWNERS ASSOCIATION. The principal office of the Association shall be located in the City.

1.3. **APPLICATION.** These Bylaws apply to the commercial condominium project known as Pacific Business Center, located in the City. All Persons who use the facilities of the Project in any manner, are subject to the regulations in these Bylaws and in the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for the Pacific Business Center ("Declaration"), Recorded in the Official Records of the County. Use of any Condominium in the Project signifies acceptance and ratification of these Bylaws.

**ARTICLE II**  
**BOARD OF DIRECTORS**

2.1. **NUMBER.** The property, business and affairs of the Association shall be governed and managed by a Board of Directors composed of three persons, each of whom, except for those appointed and serving as first Directors, must be either an Owner or an agent of Declarant. The authorized number of Directors may be changed by amending these Bylaws.

2.2. **ELECTION.**

2.2.1 **General Procedure.** At the first annual meeting of the Owners, and at each annual meeting thereafter, the Owners shall elect new Directors to fill vacancies on the Board. If an annual meeting is not held, or all positions on the Board are not filled at the annual meeting, Board members may be elected at a special meeting of the Owners.

2.2.2 **Voting.** Information and requirements concerning classes of voting, vote distribution, voting rights and Declarant's veto rights are set forth in the Declaration. Voting shall be by secret written ballot. An Owner may cumulate votes for any candidate for the Board in any election in which more than two Directors are to be elected if (a) the candidate's name has been placed in nomination before the voting, and (b) an Owner has given notice at the meeting before the voting of such Owner's intent to cumulate votes. If an Owner cumulates votes, such Owner may cast a number of votes equal to the Owner's share of the voting power multiplied by the number of Directors to be elected.

2.3. **TERM OF OFFICE.** Each Director shall hold office until the earlier to occur of (a) the end of the Director's term of office after a successor has been elected, or (b) the Director's death, resignation, removal or judicial adjudication of mental incompetence. At the first annual meeting, the term of office of each Director elected shall be two years and the term of office of each Director elected to fill a vacancy created by expiration of a Director's term of office shall be one year. The term of office of each Director elected or appointed to the Board for any other reason shall be the balance of the unserved term. Any person serving as a Director may be reelected. There is no limit on the number of terms that a Director may serve.

2.4. **VACANCIES.** A vacancy on the Board is deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director or if the Owners fail to elect the full number of authorized Directors at any meeting at which a Directors election is to take place. Vacancies on the Board caused by any reason other than the removal of a Director may be filled by either (a) vote of a majority of the remaining Directors, even though they may constitute less than a quorum, or (b) by vote of the Owners at a meeting. Any vacancy caused by the removal of a Director must be filled by a vote of the Owners. A Director may resign at any time by giving notice to the President, the Secretary or the Board. Any Director who ceases to be an Owner, an agent, employee or representative of Owner, or an agent, employee or representative of Declarant is deemed to have automatically resigned from the Board. Notwithstanding the foregoing, in the event that any Director elected by Declarant ceases to serve on the Board, whether due to the resignation or removal of such Director or any other cause, Declarant may appoint a new Director to fill the resulting vacancy.

2.5. **REMOVAL OF DIRECTORS.** At any meeting of the Owners, any individual Director or the entire Board may be removed before the expiration of their terms of office with or without cause by the vote of Owners representing a majority of the Association's voting power.

However, if the entire Board is not removed as a group pursuant to a single vote, no individual Director may be removed if the number of votes cast against removal would be sufficient to elect such Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the Director's most recent election were then being elected. Any Director whose removal has been proposed by the Owners must be given an opportunity to be heard at the meeting. If any Directors are removed, new Directors may be elected at the same meeting. Any Director elected to office solely by votes of Declarant may only be removed by Declarant.

2.6. **COMPENSATION.** Directors may not receive any compensation for their services as Directors unless such compensation is first approved by Owners representing at least a majority of the Association's voting power. However, (a) nothing in these Bylaws precludes any Director from serving the Association in some other capacity and receiving compensation therefor, and (b) any Director may be reimbursed for actual expenses incurred in performance of Association duties, and (c) no officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation for service as a Director of the Association.

2.7. **POWERS AND DUTIES.** The Board has the powers and duties necessary to administer the Association's affairs. All the Association's powers shall be exercised by the Board except those powers specifically reserved to the Owners.

2.8. **SPECIAL POWERS AND DUTIES.** Without limiting the scope of the Board's general powers and duties, the Board is granted the following powers and duties:

2.8.1 **Officers, Agents and Employees.** The power and duty to select, appoint and remove all Association officers, agents and employees, to prescribe such powers and duties for them consistent with law and with the Restrictions, to fix their compensation, to require from them such security for faithful service as the Board considers advisable, and to contract to provide them with such indemnification as the Board determines is appropriate.

2.8.2 **Contracts.** The power to enter into contracts. This includes contracts (a) for maintenance, landscaping, and common utilities services, (b) materials, supplies and other Common Expenses relating to the Condominiums, (c) employing personnel necessary to manage the Properties, including legal and accounting services, and (d) paying for Improvements on the Common Property.

2.8.3 **Enforcement.** The power to enforce the Restrictions and any agreements entered into by the Association and to impose sanctions against Owners for violating the Restrictions.

2.8.4 **Principal Office, Place of Meetings, Seal.** The power but not the duty to move the Association's principal office from one location to another in the County; to designate any place in the County for holding any meetings of Owners consistent with the provisions of Section 4.4; and to adopt and use a corporate seal and to alter the form of such seal.

2.8.5 **Assessments.** The power and duty to fix and levy Assessments and identify the due date for payment of Assessments. The Board may incur Common Expenses. The Association's funds shall be held in trust for the Owners.

2.8.6 **Insurance.** The power and duty to contract and pay for insurance in accordance with the Declaration, covering and protecting against such damages or injuries as the Board considers advisable, which coverage may include medical expenses of persons injured on the Common Property. The Board shall review, not less frequently than annually, all insurance policies and bonds obtained by the Board on the Association's behalf.

2.8.7 **Delegation.** The power but not the duty to delegate its powers according to law.

2.8.8 **Bylaws.** The power and duty to adopt these Bylaws.

2.8.9 **Records.** The power and duty to keep a complete record of Association acts and corporate affairs.

2.8.10 **Sale of Property.** The power but not the duty to sell property of the Association, subject to the following limitations. Approval from Owners representing at least a

majority of the Association's voting power must be obtained before personal property of the Association having an aggregate fair market value greater than five percent of the Association's budgeted gross expenses for the Fiscal Year is sold in a single Fiscal Year. Approval from Owners representing at least seventy-five percent of the Association's voting power must be obtained before the Association may sell or otherwise transfer the Association Common Area, or any portion thereof, and the Association shall only make any such sale or other transfer to another nonprofit corporation.

2.8.11 **Manager.** The power to engage a professional Manager for the Association at a compensation established by the Board to perform such duties and services as the Board authorizes.

2.8.12 **Agreements with Declarant.** The power but not the duty to negotiate and enter into agreements with Declarant.

## 2.9. MEETINGS.

2.9.1 **Organization Meeting.** The first regular ("**Organization**") meeting of a newly elected Board must be held within ten days after election of the Board, at such place as is fixed and announced by the Directors at the meeting at which such Directors were elected, to organize, elect officers and transact other business. No notice is necessary to the newly elected Directors to hold such meeting; provided that (a) a majority of the whole Board is present when the time and place are announced at the annual meeting and (b) the meeting is held on the same day and at the same place as the annual meeting of the Owners at which the newly constituted Board was elected.

2.9.2 **Regular Meetings.** Regular meetings may be held at such time and place in the City as is determined by a resolution adopted by a majority of a quorum of the Directors. Regular meetings must be held no less frequently than quarterly. Notice of the time and place of regular meetings of the Board shall be given to each Director at least four days before the date of the meeting. Notices may be given personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means, or posted at a prominent place or places in the Common Property.

2.9.3 **Special Meetings.** Special meetings may be called by the President or by any two Directors by posting notice at least four days before such meeting at a prominent place or places in the Common Property or on four days' notice by first-class mail or forty-eight hours' notice delivered personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. The notice must state the time, place and the purpose of the meeting.

2.9.4 **Executive Sessions.** The Board may convene in executive session to discuss and vote upon personnel matters, litigation, matters relating to the formation of contracts with third parties, or Owner discipline. The nature of business to be considered in executive session must first be announced in an open session and must be generally noted in the minutes of

the Board. In any matter relating to the discipline of an Owner, the Board shall meet in executive session if requested by that Owner. The Owner may attend the executive session.

**2.9.5 Other Meetings.** Any congregation of a majority of the members of the Board at the same time and place to hear, discuss, or deliberate on any item of business scheduled to be heard by the Board, except those matters that may be discussed in executive session, shall constitute a meeting of the Board. All Owners shall have the right to attend any regular, special or other meeting of the Board, except an executive session. Owners who are not Directors may not participate in any deliberation or discussion at such meetings unless authorized by a vote of a majority of a quorum of the Board. However, at each Board meeting, except for executive sessions, the Board must set aside time for Owners to speak, subject to reasonable limits imposed by the Board.

**2.9.6 Notice to Owners.** Generally, if a meeting of the Board is not a regular or special meeting, Owners shall be given notice of the time and place of the meeting at least four days before the meeting. Notice required by this Section may be given by posting the notice in a prominent place or places in the Common Property, by mail or delivery of the of the notice to each Condominium in the Properties, or by newsletter or other similar means of communication. If there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board and which of necessity make it impractical to provide notice to the Owners, then an emergency meeting of the Board may be called by the President or any two other members of the Board without providing notice to the Owners.

**2.9.7 Waiver of Notice.** Before or at any meeting of the Board, any Director may, in writing, waive personal notice of such meeting. Attendance by a Director at any Board meeting waives the requirement of personal notice. If all Directors are present at a Board meeting, no notice to Directors is required and any business may be transacted at such meeting. The transactions of any Board meeting, however called and noticed or wherever held, are valid as though had at a meeting duly held after regular call and notice, if (a) a quorum is present, (b) notice to the Owners of such meeting was posted as provided in Sections 2.9.2, 2.9.3 or 2.9.6, and (c) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding such meeting, or an approval of the Minutes thereof. The Secretary shall file all such waivers, consents and approvals with the Association's records or make them a part of the Minutes of the meeting.

**2.10. ACTION WITHOUT MEETING.** The Board may act without a meeting if all Directors consent in writing to such action. Written consents must be filed with the minutes of the Board. Each action by written consent has the same effect as a unanimous vote of such Directors. Within three (3) days after the written consents of all Directors have been obtained, an explanation of any action taken by unanimous written consent without a meeting must be either (a) posted by the Board in a prominent place or places in the Common Property, or (b) communicated to the Owners by other means the Board determines to be appropriate.

**2.11. QUORUM AND ADJOURNMENT.** Except as otherwise expressly provided in these Bylaws, at all meetings of the Board, a majority of the Directors constitutes a quorum for the transaction of business, and the acts of a majority of the Directors present at a meeting at which a quorum is present are the acts of the Board. At any meeting of the Board when less than

a quorum present, the majority of those present may adjourn the meeting to another time. At any such reconvened meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice if a quorum is present.

2.12. **COMMITTEES.** The Board may by resolution establish such committees as it desires, and may establish the purposes and powers of each such committee created. The resolution establishing the committee must (a) provide for the appointment of its members and a chairman, (b) state the purposes of the committee, and (c) provide for reports, termination and other administrative matters as the Board considers appropriate.

### **ARTICLE III OFFICERS**

3.1. **DESIGNATION.** The Association's principal officers are a President, one or more Senior Vice Presidents, one or more Vice Presidents, a Secretary, and a Chief Financial Officer, all elected by the Board. The Board may appoint an Assistant Financial Officer, an Assistant Secretary and such other additional officers as it determines to be necessary. Officers need not be Directors. Any person may hold more than one office except one person cannot be both the Secretary and the Chief Financial Officer.

3.2. **ELECTION OF OFFICERS.** The Board shall annually elect the Association's officers at the new Board's Organization meeting. Each officer shall hold office at the pleasure of the Board, until the officer resigns or is removed, is otherwise disqualified to serve or a successor is elected and qualified to serve.

3.3. **REMOVAL OF OFFICERS.** On an affirmative vote of a majority of the entire Board, any officer may be removed, either with or without cause, and a successor elected at any meeting of the Board. Any Officer who ceases to be an Owner, an agent of Owner, or an agent of Declarant is deemed to have automatically resigned. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary. Any such resignation is effective on the date of receipt of such notice or at any later time specified therein. Unless specified in the notice, acceptance of the resignation by the Board is not necessary to make it effective.

3.4. **COMPENSATION.** Officers, agents, and employees shall receive such reasonable compensation for their services as is authorized or ratified by the Board. However, no officer may receive any compensation for services performed in the conduct of the Association's business unless such compensation is approved by the vote or written consent of Owners representing at least a majority of the Association's voting power. Nothing in these Bylaws precludes (i) any officer from serving the Association in some other capacity and receiving compensation therefor, and (ii) reimbursement of any officer for actual expenses incurred in the performance of Association duties. Appointment of any officer, agent, or employee does not of itself create contractual rights of compensation for services performed by such officer, agent, or employee. Notwithstanding the foregoing, no officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation except reimbursement for actual expenses incurred in the performance of Association duties.

3.5. **PRESIDENT.** The President is the chief executive officer of the Association and shall have all of the general powers and duties that are usually vested in the office of the President of a corporation and have general supervision, direction and control of the Association's business. The President is ex officio a member of all standing committees and has such other powers and duties as prescribed by the Board or these Bylaws.

3.6. **VICE PRESIDENT.** A Senior Vice President shall take the President's place and perform the President's duties whenever the President is absent, disabled, refuses or is unable to act. If neither the President nor a Senior Vice President is able to act, such duties will fall to the next most senior Vice President of the corporation and if none of the Vice Presidents is able to act, the Board shall appoint a member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as prescribed by the Board or these Bylaws.

3.7. **SECRETARY.** The Secretary shall (a) keep the Minutes of all meetings of the Board and the Minutes of all meetings of the Association at the Association's principal office or at such other place as the Board may order, (b) keep the Association's seal in safe custody, (c) have charge of such books and papers as the Board may direct, (d) in general, perform all of the duties incident to the office of Secretary, (e) keeping or causing to be kept a record book of Owners, listing the names, mailing addresses and telephone numbers of the Owners as furnished to the Association ("**Membership Register**") and recording or causing to be recorded the termination or transfer of ownership by any Owner in the Membership Register, together with the date of the transfer, and (f) perform such other duties as prescribed by the Board or these Bylaws. The Secretary may delegate these duties to the Assistant Secretary.

3.8. **TREASURER.** The Treasurer is the Association's chief financial officer and is responsible for Association funds. The Treasurer shall (a) keep, or cause to be kept, full and accurate accounts and tax and business records of the Association, including accounts of all assets, liabilities, receipts and disbursements, (b) be responsible for the deposit of all funds in the name of the Association in such depositories as the Board designates, (c) disburse the Association's funds as ordered by the Board, and (d) render to the President and Directors, on request, an account of all transactions as Treasurer and of the Association's financial condition. The Treasurer has such other powers and duties as prescribed by the Board or these Bylaws.

#### **ARTICLE IV OWNERS**

4.1. **MAJORITY OF QUORUM.** Unless otherwise provided in the Restrictions, any action which may be taken by the Association may be taken by a majority of a quorum of the Owners.

4.2. **QUORUM.** Except as otherwise provided in these Bylaws, the presence in person or by proxy of at least twenty-five percent of the Association's voting power constitutes a quorum of the Membership. Owners present at a properly held meeting at which a quorum is present may continue to do business until adjournment, despite the withdrawal of enough Owners to leave less than a quorum, if any action taken, other than adjournment, is approved by at least a majority of a quorum. If a meeting is attended, in person or by proxy, by Owners having less than one-third of the Association's voting power, then no matter may be voted on

except matters which were generally described in the notice of the meeting. No action by the Owners on any matter is effective if the votes cast in favor are fewer than the minimum number of votes required by the Restrictions to approve the action.

4.3. **PROXIES.** Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary in advance of each meeting. Every proxy is revocable and automatically ceases after completion of the meeting for which the proxy was filed. Any form of proxy or written ballot distributed by any Person to the Owners must afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted on, except it is not mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot must provide that, when the Owner specifies a choice, the vote shall be cast in accordance with that choice. The proxy must also identify the person authorized to exercise the proxy and the length of time it will be valid. No proxy is valid with respect to a vote on any matter described in Section 7613(g) of the California Corporations Code unless the general nature of the proposal was described in the proxy.

4.4. **PLACE OF MEETINGS OF OWNERS.** Meetings of the Owners shall be held on the Project, or such other suitable place as proximate thereto as practical and convenient to the Owners, as designated by the Board.

4.5. **ANNUAL MEETINGS OF OWNERS.** The first annual meeting of Owners shall be held within one year after the first Close of Escrow for a Condominium in the Project. Thereafter, the annual meetings shall be held on or about the anniversary date of the first annual meeting.

4.6. **SPECIAL MEETINGS OF OWNERS.** The Board shall call a special meeting of the Owners (a) as directed by resolution of a majority of a quorum of the Board, (b) by request of the President of the Association, or (c) on receipt of a petition signed by Owners representing at least five percent of the Association's voting power. The Secretary shall give notice of any special meeting within twenty days after adoption of such resolution or receipt of such request or petition. The notice must state the date, time and place of the special meeting and the general nature of the business to be transacted. The special meeting must be held not less than thirty-five nor more than ninety days after adoption of such resolution or receipt of such request or petition. No business may be transacted at a special meeting except as stated in the notice.

4.7. **NOTICE.** The Secretary shall send to each Owner of record, and to each first Mortgagee who has filed a written request for notice with the Secretary, a notice of each annual or special meeting. The notice must be sent by first-class mail, at least ten but not more than thirty days before the meeting. The notice must state the purpose for the meeting as well as the day, hour and place where it is to be held. The notice may establish time limits for speakers and nominating procedures for the meeting. The notice must specify those matters the Board intends to present for action by the Owners, but, except as otherwise provided by law, any proper matter may be presented for action at the meeting. The notice of any meeting at which Directors are to be elected must include the names of all nominees when the notice is given to the Owners. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served, forty-eight hours after the notice has been deposited in a regular depository of the United States mail. Such notice must be posted in a conspicuous place on the Common Property

and is deemed served on an Owner on posting if no address for such Owner has been then furnished the Secretary.

Notwithstanding any other provision of these Bylaws, approval by the Owners of any of the following proposals, other than by unanimous approval of those Owners entitled to vote, is not valid unless the general nature of the proposal was stated in the notice or in any written waiver of the notice: (a) removing a Director without cause; (b) filling vacancies on the Board; (c) approving a contract or transaction between the Association and one or more Directors, or between the Association and any entity in which a Director has a material financial interest; (d) amendment of the Articles; or (e) electing to wind up and dissolve the Association.

**4.8. RECORD DATES.** The Board may fix a date in the future as a record date for determining which Owners are entitled to notice of any meeting of Owners. The record date so fixed must be not less than ten nor more than sixty days before the date of the meeting. If the Board does not fix a record date for notice to Owners, the record date for notice is the close of business on the business day preceding the day on which notice is given. In addition, the Board may fix a date in the future as a record date for determining the Owners entitled to vote at any meeting of Owners. The record date so fixed must be not less than ten nor more than sixty days before the date of the meeting. If the Board does not fix a record date for determining Owners entitled to vote, Owners on the day of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

**4.9. ADJOURNED MEETINGS.** If a quorum is not present at the time and place established for a meeting, a majority of the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than five nor more than thirty days from the original meeting date, at which meeting the quorum requirement is the presence in person or by proxy of Owners holding at least twenty-five percent of the Association's voting power. Such an adjourned meeting may be held without the notice required by these Bylaws if notice is given by announcement at the meeting at which such adjournment is taken.

**4.10. ORDER OF BUSINESS.** Meetings of Owners must be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. The order of business at all meetings of the Owners is as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) election of inspector of election at annual meetings or special meetings held for such purpose; (g) election of Directors at annual meetings or special meetings held for such purpose; (h) unfinished business; and (i) new business.

**4.11. ACTION WITHOUT MEETING.** Except for election of Directors, any action which may be taken at a meeting of the Owners may be taken without a meeting by written ballot of the Owners. Ballots must be solicited in the same manner as provided in these Bylaws for giving of notice of meetings to Owners. Such solicitations must specify (a) the number of responses needed to meet the quorum requirements, (b) the percentage of approvals necessary to approve the action, and (c) the time by which ballots must be received to be counted. The form of written ballot must afford an opportunity to specify a choice between approval and disapproval of each matter and must provide that, where the Owner specifies a choice, the vote

shall be cast in accordance with the Owner's choice. Receipt within the time period specified in the solicitation of (i) ballots which equal or exceed the quorum which would be required if the action were taken at a meeting, and (ii) approvals which equal or exceed the number of votes which would be required for approval if the action were taken at a meeting at which the total number of votes cast was the same as the total number of ballots cast, constitutes approval by written ballot.

4.12. **CONSENT OF ABSENTEES.** The actions taken at any meeting of Owners, however called and noticed, are valid as though taken at a meeting properly held if (a) a quorum is present either in person or by proxy, and (b) either before or after the meeting, each of the Owners not present in person or by proxy signs (i) a written waiver of notice, (ii) a consent to the holding of such meeting, or (iii) an approval of the minutes thereof. The Secretary shall file all such waivers, consents or approvals with the corporate records or make them a part of the minutes of the meeting.

4.13. **MINUTES, PRESUMPTION OF NOTICE.** Minutes or a similar record of the proceedings of meetings of Owners, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters described therein. A recitation in the Minutes executed by the Secretary that proper notice of the meeting was given constitutes prima facie evidence that such notice was given.

#### **ARTICLE V AMENDMENTS**

These Bylaws may be amended by the vote or written consent of Members representing at least a majority of the voting power of the Association. However, the specified percentage of Members necessary to amend a specific provision of these Bylaws may not be less than the percentage of affirmative votes prescribed for action to be taken under that provision. Notwithstanding the foregoing, these Bylaws may be amended solely by a majority of the entire Board, (i) if the proposed amendment is required to conform the Bylaws to the requirements of lenders and is within the Board's power to adopt without Member approval pursuant to the California Corporations Code, (ii) if the proposed amendment conforms the Bylaws to California law, (iii) at any time before the Close of Escrow for the sale of the first Condominium, or (iv) if the proposed amendment corrects a typographical error in the Bylaws.

#### **ARTICLE VI MISCELLANEOUS**

6.1. **CHECKS, DRAFTS AND DOCUMENTS.** All checks, drafts, orders for payment of money, notes and other evidences of indebtedness issued in the name of or payable to the Association must be signed or endorsed in the manner and by the person or persons the Board designates by resolution.

6.2. **CONFLICTS.** If any of these Bylaws conflict with any California laws, such conflicting Bylaws shall be void on final court determination to such effect, but all other Bylaws shall remain in full force. In case of any conflict between the Articles of Incorporation and these

Bylaws, the Articles of Incorporation shall control. In case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

6.3. **EXECUTION OF DOCUMENTS.** The Board may authorize any officer or agent to enter into any contract or execute any instrument in the name and on behalf of the Association. Such authority may be general or confined to specific instances. Unless so authorized by the Board, no Person may bind the Association by any contract or pledge its credit or render it liable for any purpose in any amount.

6.4. **AVAILABILITY OF ASSOCIATION DOCUMENTS.**

6.4.1 **Records To Be Maintained.** The Association shall keep at its principal office, or at such other place in or near the Properties as the Board may prescribe, the Restrictions and the Association's books of account; minutes of meetings of Owners, the Board and committees; and the Membership Register (collectively, the "**Association Documents**"), each of which shall be made available for inspection and copying by any Owner or the Owner's authorized representative for a purpose reasonably related to the Owner's interest as an Owner.

6.4.2 **Limits on Availability.** The Board may establish reasonable rules regarding (a) notice to be given to the custodian of the Association Documents by the Owner desiring to make the inspection, (b) hours and days of the week when such an inspection may be made, and (c) payment of the cost of copying any of the Association Documents requested by an Owner. Every Director may at any reasonable time inspect all Association Documents and the physical properties owned or controlled by the Association, and make extracts and copies of documents.

6.4.3 **Time of Availability.** The minutes, minutes that are proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board, other than an executive session, must be available to Owners within thirty days after the meeting. The minutes, proposed minutes or summary minutes must be distributed to any Owner on request and on reimbursement of the Association's cost in making that distribution.

6.5. **FISCAL YEAR.** The Board shall select and may change the Association's Fiscal Year.

**ARTICLE VII  
NOTICE AND HEARING PROCEDURE**

7.1. **INITIAL COMPLAINT.** Persons who believe a violation of the Restrictions has occurred may file a complaint with a Person designated by the Board on a form approved by the Board. The Board will commence the enforcement process. In its discretion, the Board may issue one or two violation letters to the Person alleged to have committed the violation ("**Respondent**") or set a hearing described in Section 7.2 below. The Board may direct the Manager to assist the Board in any of the steps the Board chooses to take in enforcing the Restrictions except that decisions made at hearings must be made by the Board.

7.2. **SCHEDULING HEARINGS.** A hearing before the Board to determine whether a sanction should be imposed may be initiated by the Board after receipt of at least one

complaint. To initiate a hearing, the Board must deliver to the Respondent a notice which includes the following:

7.2.1 **Complaint.** A written statement setting forth in ordinary and concise language the acts or omissions with which the Respondent is charged,

7.2.2 **Basis for Violation.** A reference to the specific provisions of the Restrictions which the Respondent is alleged to have violated,

7.2.3 **Hearing Schedule.** The date, time and place of the scheduled hearing,

7.2.4 **Sanctions.** A list of sanctions which may be imposed at the hearing.

The date for the hearing may be no less than fifteen days after the date the notice of hearing is mailed or delivered to the Respondent. The Respondent is entitled to attend the hearing, submit a statement of defense to the Board in advance of the hearing, or present a statement of defense and supporting witnesses at the hearing. If the Respondent does not attend the hearing, the Respondent waives these rights.

7.3. **CONDUCT OF HEARING.** The Board shall conduct the hearing in executive session, affording the Respondent a reasonable opportunity to be heard. Prior to the effectiveness of any sanction, proof of notice and the invitation to be heard must be placed in the minutes of the meeting. Such proof is adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the Association officer or Board member who mailed or delivered such notice. The record of the meeting must contain a written statement of the results of the hearing and the sanction, if any, imposed.

7.4. **IMPOSITION OF SANCTIONS.** After affording the Respondent an opportunity for a hearing before the Board, the Board may impose any one or more of the following sanctions: (a) levy a Special Assessment as authorized in the Declaration; (b) suspend the Respondent's voting privileges established under the Declaration; (c) enter upon a Condominium to perform maintenance which, according to the Declaration, is the responsibility of the Respondent; or (d) record a notice of noncompliance if allowed by law. Any suspension of Membership privileges may not be for a period of more than thirty days for any noncontinuing infraction, but in the case of a continuing infraction, including nonpayment of any delinquent assessment, may be imposed for so long as the violation continues. Written notice of any sanctions to be imposed must be delivered to the Respondent personally, by any system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means, via first class mail or certified mail return receipt requested, or any combination of the foregoing. No action against the Respondent arising from the alleged violation may take effect prior to five days after the hearing.

7.5. **LIMITS ON REMEDIES.** The Board's failure to enforce the Restrictions does not waive the right to enforce them. The remedies provided by the Restrictions are cumulative and not exclusive. However, any individual Owner must exhaust all available internal Association remedies prescribed by the Restrictions before that Owner may resort to a court of law for relief with respect to any alleged violation of the Restrictions by another Owner.

**CERTIFICATE OF SECRETARY**

I, the undersigned, certify that:

1. I am the elected and acting Secretary of PACIFIC BUSINESS CENTER OWNERS ASSOCIATION, a California nonprofit corporation (“**Association**”); and

2. The foregoing Bylaws comprising \_\_\_\_\_ pages including this page constitute the Bylaws of the Association adopted by Consent of Directors in Lieu of First Meeting dated \_\_\_\_\_, 2003.

DATE: \_\_\_\_\_

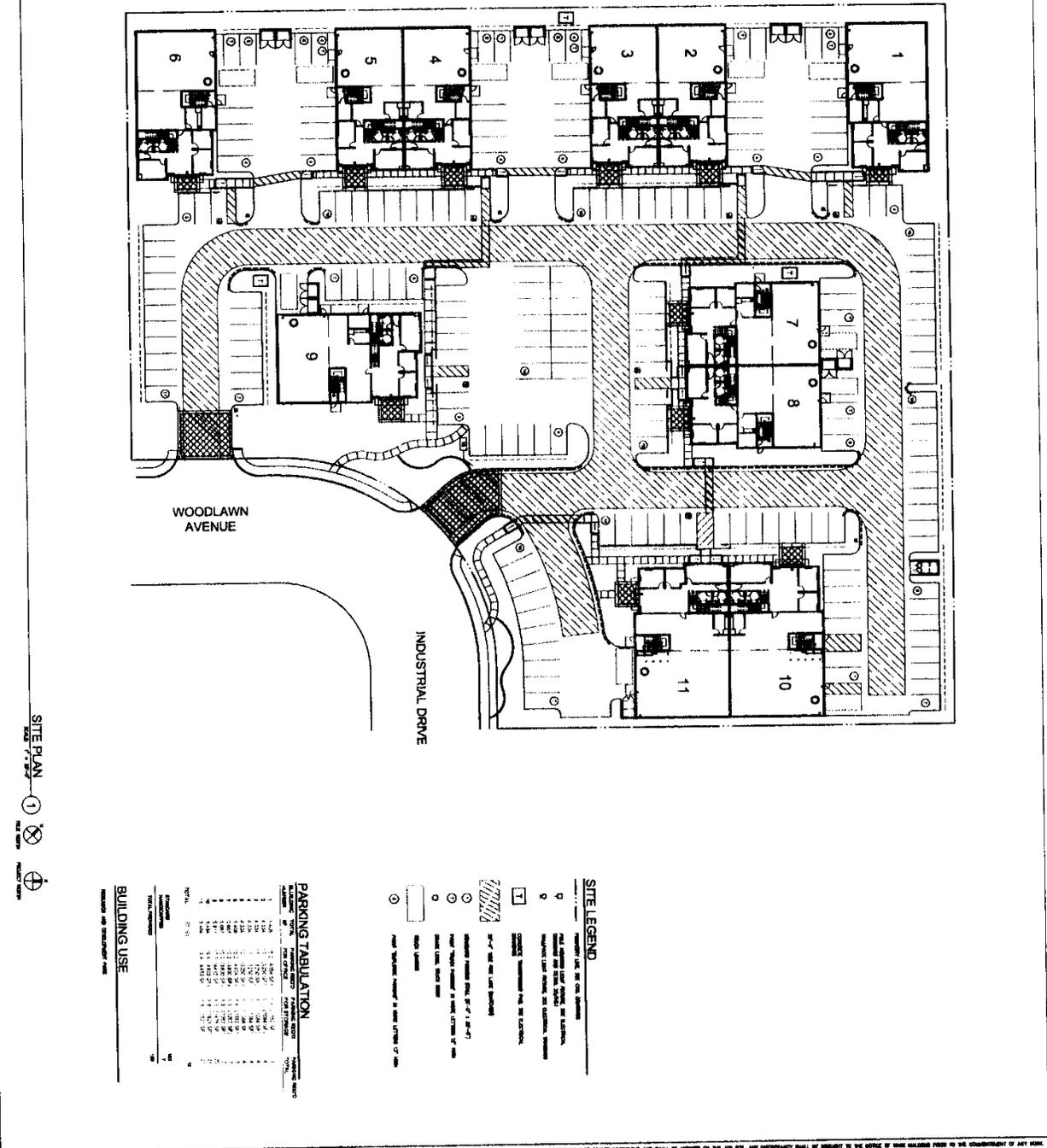
\_\_\_\_\_  
, Secretary

(SEAL)

**EXHIBIT D  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR PACIFIC BUSINESS CENTER  
DRAWINGS DEPICTING FIRE LANES**

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SITE PLAN  
SCALE 1/8" = 1'-0"  
N  
1

**PARKING TABULATION**

NO.	DESCRIPTION	AREA (SQ. FT.)	NO. OF SPACES	TYPE
1	OFFICE	11,200	112	Surface
2	OFFICE	11,200	112	Surface
3	OFFICE	11,200	112	Surface
4	OFFICE	11,200	112	Surface
5	OFFICE	11,200	112	Surface
6	OFFICE	11,200	112	Surface
7	OFFICE	11,200	112	Surface
8	OFFICE	11,200	112	Surface
9	OFFICE	11,200	112	Surface
10	OFFICE	11,200	112	Surface
11	OFFICE	11,200	112	Surface
TOTAL		123,200	1,232	

- SITE LEGEND**
- 1. OFFICE BUILDING
  - 2. OFFICE BUILDING
  - 3. OFFICE BUILDING
  - 4. OFFICE BUILDING
  - 5. OFFICE BUILDING
  - 6. OFFICE BUILDING
  - 7. OFFICE BUILDING
  - 8. OFFICE BUILDING
  - 9. OFFICE BUILDING
  - 10. OFFICE BUILDING
  - 11. OFFICE BUILDING

<p><b>A1.0</b></p>	<p><b>SITE PLAN</b></p>	<p><b>PACIFIC BUSINESS CENTER</b> 15151 WOODLAWN AVE. TUSTIN, CALIFORNIA</p>	<p><b>WARE MALCOMB</b></p>
	<p>WERDIN CORPORATION</p>	<p>15151 WOODLAWN AVE. TUSTIN, CALIFORNIA</p>	<p>15151 WOODLAWN AVE. TUSTIN, CALIFORNIA</p>

**SCHEDULE 1**

**PERCENTAGE SHARES  
AND ALLOCATION OF VOTES**

<u>Unit</u>	<u>Percentage Share</u>	<u>Allocated Votes</u>
<b>1</b>	9.1%	1
<b>2</b>	9.1%	1
<b>3</b>	9.1%	1
<b>4</b>	9.1%	1
<b>5</b>	9.1%	1
<b>6</b>	9.1%	1
<b>7</b>	9.1%	1
<b>8</b>	9.1%	1
<b>9</b>	9.1%	1
<b>10</b>	9.1%	1
<b>11</b>	9.1%	1

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**SCHEDULE 2**

**PERMITTED USES**  
**(Minimum/Maximum Square Footage Allocation)**

Unit	Max. Sq. Footage Office Uses
1	75% of the total gross square feet in such Unit
2	75% of the total gross square feet in such Unit
3	75% of the total gross square feet in such Unit
4	75% of the total gross square feet in such Unit
5	75% of the total gross square feet in such Unit
6	75% of the total gross square feet in such Unit
7	75% of the total gross square feet in such Unit
8	75% of the total gross square feet in such Unit
9	75% of the total gross square feet in such Unit
10	75% of the total gross square feet in such Unit
11	75% of the total gross square feet in such Unit

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 03/29/04

Government Code 27361.7

I certify under the penalty of perjury that the notary seal on this document read as follows:

Name of Notary: Catherine Kennedy  
Date Commission Expires: 04/23/06  
County where bond is Filed: Orange  
Commission No.: 1353035  
Manufacturer/Vendor No.: NNA1

Place of execution - Newport Beach

Date - June 11, 2004

~~FIDELITY NATIONAL TITLE COMPANY~~

Government Code 27361.7

I certify under the penalty of perjury that the notary seal on this document read as follows:

Name of Notary: Marcia Brown  
Date Commission Expires: 10/20/05  
County where bond is Filed: Orange  
Commission No.: 1326111  
Manufacturer/Vendor No.: NNA1

Place of execution - Newport Beach

Date - June 11, 2004

~~FIDELITY NATIONAL TITLE COMPANY~~