

ORIGINAL

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS

PROOF OF CLAIM

Name of Debtor: (Check Only One):

- ☐ Opus West Corporation
☐ Opus West Construction Corporation
☒ O.W. Commercial, Inc.
☐ Opus West LP
☐ Opus West Partners, Inc.

Case Number:

09-34356

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. All other requests for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property):

Fremont Tech Center
c/o GS Management Company
5674 Sonoma Drive
Pleasanton, CA 94566

RECEIVED

NOV 03 2009

BMC GROUP

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number:
(If known)

Filed on:

Name and address where notices should be sent:

Telephone number:

Email Address:

Name and address where payment should be sent (if different from above):

Telephone number:

1. Amount of Claim as of Date Case Filed: \$ 55,425.00

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: Recorded CC&R's (attached)

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor:

3a. Debtor may have scheduled account as:
(See instruction \$3a on reverse side).

4. Secured Claim (See instruction #4 on reverse side.)

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Equipment ☐ Other

Value of Property: \$ Annual Interest Rate %

Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$

Basis for perfection: Amount Unsecured: \$

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

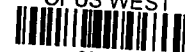
Date:

11/02/2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Phillip G. Vermont

FOR COURT USE ONLY
OPUS WEST



00353

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.
Modified B10 (GCC) (12/08)

1 *In re: Opus West Corporation, et al. (Debtors)*
2 *U.S. Bankruptcy Court, Northern Dist. of Texas, Case No. 09-34356*

3 **CERTIFICATE OF SERVICE**

4 I, Sue Betti, declare:

5 I am employed in Alameda County, State of California, am over the age of eighteen
6 years, and not a party to the within action. My business address is 5000 Hopyard Road, Suite
7 400, Pleasanton, California 94588. I am readily familiar with the business practice for collection
8 and processing of correspondence for mailing with the United States Postal Service and/or other
9 overnight delivery. Under overnight delivery practice, all mailings are deposited in an
10 authorized area for pick-up by an authorized express service courier the same day it is collected
11 and processed in the ordinary course of business. On the date set forth below, I served the within:

12 **PROOF OF CLAIM**

13 on the parties in this action by placing a true copy thereof in a sealed envelope, and each
14 envelope addressed as follows:

15 ***Attorneys for Opus West Corporation, Opus***
16 ***West Construction Corporation, and O.W.***
17 ***Commercial, Inc.:***
18 Clifton R. Jessup, Jr.
19 Greenberg Traurig, LLP
20 2200 Ross Avenue, Ste. 5200
21 Dallas, TX 75201

Attorneys for Opus West Partners, Inc., and
Opus West LP:
Peter Franklin
Doug Skierski
Franklin Skierski Lovall Hayward, LLP
10501 N. Central Expressway, Ste. 106
Dallas, TX 75231

Office of the U.S. Trustee
1100 Commerce St., Room 976
Dallas, TX 75242

18 [xx] (By U.S. Mail) I caused each such envelope to be served by depositing same, with
19 postage thereon fully prepaid, to be placed in the United States Postal Service in the
20 ordinary course of business at Pleasanton, California.

21 [] (By Facsimile) The above-referenced document(s) was transmitted by facsimile
22 transmission to the number(s) shown and the transmission was reported as complete and
23 without error.

24 [] (By Overnight Delivery) I caused each such envelope to be served by depositing same in
25 an authorized area for pick-up by an authorized express service courier (UPS Overnight)
26 the same day it is collected and processed in the ordinary course of business .

27 [] (By Personal Service) I caused each such envelope to be delivered by hand to the persons
28 named above.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration
was executed on November 2, 2009, at Pleasanton, California.


Sue Betti

PROOF OF SERVICE

\\Fsprolaw\ProLawDocs\G0423.082\207578.doc

7/16/2009
User: LAURIE

GS MANAGEMENT COMPANY

10:05:04AM
Page 1 of 2

**Aging Report
(Detailed)**

Property : FREMONT TECH
4760 CENTER OWNERS ASC

as of 07/16/2009

Unit Type	Unit Reference Number	Occupant Name	Deposits Held	Balance Due	AGED 1 - 30 DAYS	AGED 31 - 60 DAYS	AGED 61-90 DAYS	AGED OVER 90 DAYS
CURR	UNSOLD	O.W. COMMERCIAL, INC.	0.00	55,425.00	12,780.00	9,546.00	16,016.00	17,083.00
	Contact :	Don Little						

CHARGE CODE	CHARGE DESCRIPTION	CHARGE DATE		
AD	Jan-Mar 2009 Adj Dues	04/01/2009		1,067.00
AD	ASSOCIATION DUES	04/01/2009		16,016.00
AD	ASSOCIATION DUES	05/01/2009		
AD	ASSOCIATION DUES	06/01/2009	9,546.00	16,016.00
AD	ASSOCIATION DUES	07/01/2009	12,780.00	

9/22/2009
User: LAURIE

GS MANAGEMENT COMPANY

11:08:46AM
Page 1 of 1

OCCUPANT LEDGER

Unit Reference Number	: 4760-UNSOLD	Occupant Type	: CURRENT
Property Name	: FREMONT TECH CENTER OWNERS	Tenant Id	: 11900003108
Co. Name	: O.W. COMMERCIAL, INC.	Phone Number	:
Address1	: UNSOLD UNITS	Cell Number	:
Address2	:	Fax Number	:
City, State, Zip	:	Unit Number	: UNSOLD
D/B/A Name	:		
Email Address	:		

This Tenant has no Lease Options

Open Items

Date	Charge Code	Charge Description	Amount	Balance
04/01/2009	AD	ASSOCIATION DUES	16,016.00	16,016.00
04/01/2009	AD	Jan-Mar 2009 Adj Dues	1,067.00	17,083.00
05/01/2009	AD	ASSOCIATION DUES	16,016.00	33,099.00
06/01/2009	AD	ASSOCIATION DUES	9,546.00	42,645.00
07/01/2009	AD	ASSOCIATION DUES	12,780.00	55,425.00
08/01/2009	AD	ASSOCIATION DUES	12,780.00	68,205.00
09/01/2009	AD	ASSOCIATION DUES	12,780.00	80,985.00

9/15/2009
User: LAURIE

GS MANAGEMENT COMPANY

12:32:27PM
Page 1 of 2

**Aging Report
(Detailed)**

Property : FREMONT TECH
4760 CENTER OWNERS ASC

as of 09/15/2009

Unit Type	Unit Reference Number	Occupant Name	Deposits Held	Balance Due	AGED 1 - 30 DAYS	AGED 31 - 60 DAYS	AGED 61-90 DAYS	AGED OVER 90 DAYS
CURR	UNSOLD	O.W. COMMERCIAL, INC.	0.00	80,985.00	12,780.00	12,780.00	12,780.00	42,645.00
	Contact :	Don Little						

CHARGE CODE	CHARGE DESCRIPTION	CHARGE DATE				
AD	Jan-Mar 2009 Adj Dues	04/01/2009				1,067.00
AD	ASSOCIATION DUES	04/01/2009				16,016.00
AD	ASSOCIATION DUES	05/01/2009				16,016.00
AD	ASSOCIATION DUES	06/01/2009				9,546.00
AD	ASSOCIATION DUES	07/01/2009				
AD	ASSOCIATION DUES	08/01/2009			12,780.00	
AD	ASSOCIATION DUES	09/01/2009	12,780.00			

**FREMONT TECH CENTER OWNERS ASSOCIATION
ASSOCIATION DUES PER UNIT/BLDG**

	Jan - Mar Adj	April	May	June	July	August	September	Total Due
Bldg A 1-4 Total:	\$ 337.27	\$ 5,062.60	\$ 5,062.60	\$ 3,017.46	\$ 4,039.71	\$ 4,039.71	\$ 4,039.71	\$ 25,599.08
Bldg B 6-11 Total:	\$ 185.73	\$ 2,787.93	\$ 2,787.93	\$ 1,661.69	\$ 2,224.63	\$ 2,224.63	\$ 2,224.63	\$ 14,097.17
Bldg C Total:	\$ 128.03	\$ 1,921.79	\$ 1,921.79	\$ 1,145.45	\$ 1,533.50	\$ 1,533.50	\$ 1,533.50	\$ 9,717.67
Bldg D Total:	\$ 78.07	\$ 1,171.83	\$ 1,171.83	\$ 698.44	\$ 935.06	\$ 935.06	\$ 935.06	\$ 5,925.35
Bldg F Total:	\$ 52.97	\$ 795.12	\$ 795.12	\$ 473.91	\$ 634.47	\$ 634.47	\$ 634.47	\$ 4,020.52
Bldg G Total:	\$ 91.33	\$ 1,370.92	\$ 1,370.92	\$ 817.11	\$ 1,093.93	\$ 1,093.93	\$ 1,093.93	\$ 6,932.06
Bldg H Total:	\$ 62.20	\$ 933.70	\$ 933.70	\$ 556.51	\$ 745.05	\$ 745.05	\$ 745.05	\$ 4,721.25
Bldg K Total:	\$ 131.38	\$ 1,972.12	\$ 1,972.12	\$ 1,175.44	\$ 1,573.65	\$ 1,573.65	\$ 1,573.65	\$ 9,972.02
Unsold Units	\$ 1,067.00	\$ 16,016.00	\$ 16,016.00	\$ 9,546.00	\$ 12,780.00	\$ 12,780.00	\$ 12,780.00	\$ 80,985.00

**FREMONT TECH CENTER OWNERS ASSOCIATION
ASSOCIATION DUES PER UNIT/BLDG**

ANNUAL BUDGET:

\$257,202

Total Square Footage:	136,730
Annual Cost Per Square Foot:	\$1.88
Monthly Cost Per Square Foot:	\$0.16

Annual Dues Monthly Dues

Bldg A 1-4 Total:	OW Commercial, Inc.	32,294	23.62%	\$21,913	\$1,826
Bldg B 6-11 Total:	OW Commercial, Inc.	17,784	13.01%	\$33,453	\$2,788
Bldg C Total:	OW Commercial, Inc.	12,259	8.97%	\$23,060	\$1,922
Bldg D Total:	OW Commercial, Inc.	7,475	5.47%	\$14,061	\$1,172
Bldg F Total:	OW Commercial, Inc.	5,072	3.71%	\$9,541	\$795
Bldg G Total:	OW Commercial, Inc.	8,745	6.40%	\$16,450	\$1,371
Bldg H Total:	OW Commercial, Inc.	5,956	4.36%	\$11,204	\$934
Bldg K Total:	OW Commercial, Inc.	12,580	9.20%	\$23,664	\$1,972
Unsold Units	Consolidated Total	102,165	74.72%	\$153,346	\$12,780

W
H
H
R
RECORDING REQUESTED BY:
CHICAGO TITLE
WHEN RECORDED MAIL TO:

Luce, Forward, Hamilton & Scripps LLP
121 Spear Street, Suite 200
San Francisco, CA 94105
Attn: Cathy L. Croshaw



2007376542

10/26/2007 08:30 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 245.00



80 PGS

S9014051

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

FREMONT TECH CENTER

SECTION 15.4 OF THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. YOU SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS ON THESE OR OTHER PROVISIONS OF THIS DECLARATION.

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS.....	2
1.1 Additional Charges	2
1.2 Allocable Share	2
1.3 Alteration	2
1.4 Applicable Laws	3
1.5 Architectural Committee.....	3
1.6 Architectural Guidelines	3
1.7 Articles.....	3
1.8 Association.....	3
1.9 Association Maintenance Manual.....	3
1.10 Association Property.....	3
1.11 Board.....	3
1.12 Building.....	3
1.13 Building Envelope	3
1.14 Bylaws.....	4
1.15 Capital Improvement Assessments.....	4
1.16 City.....	4
1.17 Claims	4
1.18 Common Area.....	4
1.19 Common Expenses.....	4
1.20 Condominium	5
1.21 Condominium Plan	5
1.22 County.....	5
1.23 Declarant.....	5
1.24 Declaration.....	6
1.25 Designated Exclusive Use Common Area Walls or Floors.....	6
1.26 Enforcement Assessments	6
1.27 Exclusive Use Easement or Exclusive Use Easement Area	6
1.28 Final Map	6
1.29 Finished Condominium.....	6
1.30 Finished Condominium Owner.....	6
1.31 First Mortgage.....	6
1.32 First Mortgagee.....	6
1.33 Fiscal Year	7
1.34 Governing Documents	7
1.35 Governmental Agency	7
1.36 Hazardous Materials	7
1.37 Improvements	7
1.38 Invitee	8
1.39 Lease	8
1.40 Lessee.....	8
1.41 Lot	8
1.42 Maintenance Associations	8
1.43 Maintenance Obligations	8

1.44	Majority of the Voting Power	8
1.45	Master Agreements	8
1.46	Master Declaration	8
1.47	Master Maintenance Agreements	8
1.48	Member	9
1.49	Mortgage	9
1.50	Mortgagee	9
1.51	Notice and Hearing	9
1.52	Owner	9
1.53	Owner Maintenance Manual	9
1.54	Parking Space(s)	9
1.55	Project	9
1.56	Project Handbook	9
1.57	Property	9
1.58	Regular Assessments	9
1.59	Rules and Regulations	9
1.60	Shell Condominium	9
1.61	Shell Condominium Owner	10
1.62	Signage	10
1.63	Signage Program	10
1.64	Special Assessments	10
1.65	Square Footage	10
1.66	State	10
1.67	Storm Water Maintenance Agreement	10
1.68	Supplementary Condominium Plan	10
1.69	Supplementary Declaration	10
1.70	Traffic Impact Fees	10
1.71	Unit	10
1.72	Utility Facilities	11
1.73	Voting Power	11
ARTICLE 2	OWNERSHIP AND EASEMENTS	11
2.1	Ownership of Condominium	11
2.2	Master Agreements	12
2.3	Delegation of Use	12
2.4	Easements	12
2.5	Creation of Designated Exclusive Use Easement Area Walls or Floors	14
ARTICLE 3	THE ASSOCIATION	15
3.1	The Organization	15
3.2	Association Action; Board of Directors and Officers; Members' Approval	15
3.3	Appointment of Association as Agent	15
3.4	Powers and Duties of the Association	15
3.5	Enter Into Maintenance Agreements	17
3.6	Duties of the Association	17
3.7	Personal Liability	19

ARTICLE 4	MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION	20
4.1	Membership.	20
4.2	Number of Votes.....	21
4.3	Joint Owner Votes.....	21
ARTICLE 5	ASSESSMENTS	21
5.1	Creation of Lien and Personal Obligation for Assessments	21
5.2	Regular Assessments	22
5.3	Special Assessments	22
5.4	Capital Improvement Assessment.....	23
5.5	Additional Special Assessments	23
5.6	Enforcement Assessments	23
5.7	Limitation on Assessments	24
5.8	Allocation of Assessments to Condominiums	24
5.9	Date of Commencement of Regular Assessments; Due Dates	24
5.10	Notice and Assessment Installment Due Dates	24
5.11	Collection of Assessments, Liens	24
5.12	Subordination of Lien to First Mortgages.....	26
5.13	No Offsets	26
5.14	Personal Liability of Power	26
5.15	Transfer of Property	27
5.16	Failure to Fix Assessments	27
5.17	Property Exempt from Assessments	27
5.18	Reserve Fund	27
5.19	Inspection of Books and Records	27
5.20	Estoppel Certificate.....	27
5.21	Initial Capital Contribution	27
ARTICLE 6	USE RESTRICTIONS	28
6.1	Restrictions of Master Agreements.....	28
6.2	Permitted Uses	28
6.3	Prohibited Uses	28
6.4	Rental of Condominiums	29
6.5	Signs.....	29
6.6	No Animals	29
6.7	Inside and Outside Installations	29
6.8	No Mechanics' Liens	30
6.9	Outside Storage.....	30
6.10	Fire Life Safety Systems.....	30
6.11	Drainage.....	30
6.12	Antennae and Satellite Dishes	30
6.13	Parking and Vehicular Restriction.....	31
6.14	Toxic or Noxious Matter.....	32
6.15	Air Pollution.....	33
6.16	Compliance with Laws, Etc.	33
6.17	Trash Disposal	33
6.18	Closure	33

6.19	Compliance with Requirements Regarding Project Storm Water Pollution.....	34
ARTICLE 7	MAINTENANCE	34
7.1	Maintenance Obligations of Owners.	34
7.2	Maintenance Obligations of Association.	36
7.3	Compliance with Warranties.....	37
7.4	Water Meters.....	38
ARTICLE 8	ARCHITECTURAL REVIEW	39
8.1	Scope.....	39
8.2	No Additional Mezzanines	41
8.3	Architectural Guidelines	41
8.4	Duties of Board for Architectural Review	41
8.5	Powers of Board for Architectural Review.....	42
8.6	Inspection and Correction of Work.....	42
8.7	Government Regulations	43
8.8	Diligence in Construction	43
8.9	Fee for Review	43
8.10	Compensation	43
8.11	Interpretation and Appeal	43
8.12	Waiver.....	44
8.13	Estoppel Certificate.....	44
8.14	Liability.....	44
8.15	Non-Applicability to Declarant.....	44
8.16	Government Requirements	44
8.17	Variances.....	44
8.18	Appointment of Architectural Committee	45
ARTICLE 9	DEVELOPMENT RIGHTS.....	45
9.1	Limitations of Restrictions.....	45
9.2	Access	45
9.3	Rights to Complete Construction.....	45
9.4	Size and Appearance of Project	46
9.5	Marketing Rights	46
9.6	Title Rights.....	47
9.7	Power of Attorney.....	47
9.8	Supplementary Condominium Plans and Supplementary Declarations	47
ARTICLE 10	INSURANCE.....	47
10.1	Association's Insurance Obligations	47
10.2	Owners' Insurance Obligations.....	50
10.3	Review of Insurance.	51
10.4	Board's Authority to Revise Insurance Requirements.....	51
ARTICLE 11	DESTRUCTION OF IMPROVEMENTS AND CONDEMNATION	52
11.1	Restoration Defined	52
11.2	Insured Casualty.....	52

11.3	Restoration Proceeds.....	52
11.4	Rebuilding Contract.....	54
11.5	Authority to Effect Changes.....	54
11.6	Minor Repair and Reconstruction.....	55
11.7	Damage or Destruction to a Unit.....	55
11.8	Condemnation of Common Area/Association Property.....	55
11.9	Condemnation Of A Condominium.....	56
ARTICLE 12	PARTITION AND SEVERABILITY OF INTERESTS.....	56
12.1	Partition.....	56
12.2	Power Of Attorney.....	56
12.3	Prohibition Against Severance.....	57
12.4	Conveyances.....	57
ARTICLE 13	RIGHTS OF MORTGAGEES.....	57
13.1	Mortgagee's Opportunity to Cure.....	57
13.2	Application of Charges to First Mortgagees.....	58
13.3	Limitation of Enforcement Against First Mortgagee.....	58
13.4	Damage or Destruction.....	58
13.5	Insurance and Condemnation Proceeds.....	58
ARTICLE 14	AMENDMENTS.....	58
14.1	Amendment Before the Close of First Sale.....	58
14.2	Amendments After the Close of First Sale.....	58
14.3	Controlling Provisions.....	59
14.4	Further Approvals Regarding Amendments.....	59
ARTICLE 15	ENFORCEMENT.....	59
15.1	Term.....	59
15.2	Enforcement and Nonwaiver.....	60
15.3	Notice and Opportunity to Repair.....	60
15.4	Alternative Dispute Resolution.....	61
ARTICLE 16	GENERAL PROVISIONS.....	65
16.1	Headings.....	65
16.2	Severability.....	65
16.3	City Review.....	65
16.4	Excuse for Non-Performance.....	65
16.5	Cumulative Remedies.....	66
16.6	Violations as Nuisance.....	66
16.7	No Unlawful Restrictions.....	66
16.8	Access to Books.....	66
16.9	Liberal Construction.....	66
16.10	Estoppel Certificate.....	66
16.11	Notification of Sale of Condominium.....	66
16.12	Number, Gender.....	67
16.13	Exhibits.....	67

16.14	Binding Effect.....	67
16.15	Easements Reserved and Granted.....	67
16.16	Statutory References	67

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF FREMONT TECH CENTER**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF FREMONT TECH CENTER ("Declaration") is made this 17th day of OCTOBER, 2007 by O.W. Commercial, Inc., a Delaware corporation ("Declarant") with reference to the facts set forth in the Article hereof entitled "Recitals."

RECITALS

Capitalized terms under the Recitals are defined in **ARTICLE 1** below.

A. **Property Owned by Declarant.** Declarant is the owner in fee simple of that certain real property situated in the City of Fremont, County of Alameda, State of California, more particularly described on **Exhibit "A"** attached hereto and incorporated herein.

B. **Nature of Project.** Declarant intends to establish a plan of condominium ownership and to develop the Property as research and development and light industrial condominium project within the meaning of California Civil Code Section 1351(f), and to subject the Property to certain limitations, restrictions, conditions and covenants as hereinafter set forth, in accordance with the provisions of California Civil Code Sections 1350 et seq. To that objective, Declarant desires and intends to impose on the Property certain mutually beneficial restrictions, limitations, easements, assessments and liens under a comprehensive plan of improvement and development for the benefit of all of the Owners, the Condominiums, Common Area and Association Property and the future Owners of said Condominiums, Common Area and Association Property.

C. **Description of Condominium Project.** The Project is planned to include two different product types. Buildings A through C, as designated on the Condominium Plan, will be constructed as finished condominiums, which will be built-out as individual units with demising walls and restrooms. Buildings D through H, inclusive and J through K, inclusive will be developed as shell condominiums, without demising walls or restrooms. Buildings D through H, inclusive and J through K, inclusive are intended to be sold initially as entire buildings, with the option for the Owners of such buildings to sell individual units within those buildings. The Owners of Buildings D through H, inclusive and J through K, inclusive may develop these buildings into between two and four separate condominiums, as designated on the Condominium Plan. Declarant makes no guarantee that the Project will be constructed as presently proposed. Owners of a Condominium will receive fee title to a Unit plus an undivided fractional interest as tenant-in-common to the Common Area located within the Building Envelope within which the Unit is located. In addition, certain Owners of a Condominium will receive the exclusive right of use and occupancy of a portion of the Common Area designated as an appurtenant Exclusive Use Easement, all as shown on the Condominium Plan. Each Condominium Owner will also receive certain easements for ingress, egress, and other purposes over the Association Property and the Common Area within the Building Envelope in which the Unit is located. Such easements are more particularly described in this Declaration and the deeds conveying the Condominiums to the Owners. Each Condominium shall have appurtenant to it a membership in the Fremont Tech

Center Owners Association, a California non-profit mutual benefit corporation. Each Condominium shall also have appurtenant to it a membership in the Bayside Technology Park Common Area Maintenance Association, a California non-profit corporation, and the Bayside Technology Park Drainage Maintenance Association, a California non-profit corporation (collectively, the "Maintenance Associations").

DECLARATION

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

ARTICLE 1 DEFINITIONS

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

1.1 Additional Charges. The term "Additional Charges" means costs, fees, charges and expenditures, including, without limitation, attorneys' fees, late charges, interest and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of assessments, fines and/or any other amounts levied under this Declaration.

1.2 Allocable Share. The term "Allocable Share" means each Owner's share of assessments which shall be a fraction (a) the numerator of which shall be the Square Footage of such Owner's Unit, and (b) the denominator of which is the total Square Footage of all Units within the Property subject to this Declaration, as further described on **Exhibit "B"**, attached hereto and incorporated herein. By accepting a deed to a Condominium, each Owner acknowledges and agrees that it shall have no right to challenge its Allocable Share of Assessments, as determined by Declarant.

1.3 Alteration. The term "Alteration" means an alteration, addition, modification to, or replacement of, all or any portion of the Improvements to a Unit, which alteration, addition, modification or replacement (a) is visible from the exterior of a Unit, (b) impacts or affects in any manner the structural systems or structural integrity of a Building, the Common Area, the life safety systems of a Building, or any shared utility lines or systems, and/or (c) affects the

grade or drainage patterns of the Project. An Alteration does not include any original installation or construction of an Improvement by any Declarant.

1.4 Applicable Laws. The term "Applicable Laws" means the City approved entitlements for the Project (including, but not limited to Final Parcel Map No. 9348 (PLN2007-00145, Zoning Administration Permit No. PLN2007-00134, Planned Signing Program MIS2007-00707) including but not limited to any law, regulation, rule, order and ordinance of any Governmental Agencies, applicable to the Project or any portion thereof or the use or occupancy thereof, now in effect or as hereafter promulgated.

1.5 Architectural Committee. The term "Architectural Committee" refers to any committee which may be appointed by the Board, pursuant to the provisions of **ARTICLE 8** of this Declaration.

1.6 Architectural Guidelines. The term "Architectural Guidelines" means the design criteria that may be adopted by the Board pursuant to the provisions of **ARTICLE 8** of this Declaration. The Architectural Guidelines will be included as part of the Project Handbook.

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

1.8 Association. The term "Association" means the Fremont Tech Center Owners Association, a California nonprofit mutual benefit corporation, its successors and assigns.

1.9 Association Maintenance Manual. The term "Association Maintenance Manual" refers to the manual which may be provided to the Association, specifying obligations for maintenance of the Common Area and other areas to be maintained by the Association, as updated and amended from time to time.

1.10 Association Property. The term "Association Property" means all real property owned, from time-to-time, in fee title or held as an easement by the Association, which shall consist of all real property within the Project, excepting therefrom the Building Envelopes.

1.11 Board. The term "Board" means the Board of Directors of the Association.

1.12 Building. The term "Building" refers to each building within the Project within which the Units are located.

1.13 Building Envelope. The term "Building Envelope" means each Building Envelope designated on the Condominium Plan. Each Building Envelope is a three dimensional shape and has been created pursuant to California Government Code Section 66427. The lower and upper boundaries of the Building Envelopes are shown on the Condominium Plan. The lateral boundaries of each Building Envelope are vertical planes which are also described and depicted in the Condominium Plan. The Building Envelope includes all land and Improvements (whether now or hereafter located) within its boundaries.

1.14 Bylaws. The term "Bylaws" means the bylaws of the Association, as they may from time to time be amended, which are or shall be adopted by the Board.

1.15 Capital Improvement Assessments. The term "Capital Improvement Assessments" means the assessments which are levied pursuant to the provisions of Section 5.4 of this Declaration.

1.16 City. The term "City" means the City of Fremont, California.

1.17 Claims. The term "Claims" means all claims, actions, demands, liabilities, damages, costs, penalties, forfeitures, losses or expenses, including, without limitation, reasonable attorneys' fees and costs and the costs and expenses of enforcing any indemnification, defense and/or hold harmless obligations under the Governing Documents.

1.18 Common Area. The term "Common Area" refers to that portion of the Building Envelope which is not designated as a Unit on the Condominium Plan, which Common Area is owned in equal undivided interests by the Owners of the Units located within such Building Envelope. The Common Area includes, without limitation, the exterior walls, exterior doors, exterior windows and glass, electrical rooms, fire riser room, roofs (including the roof structure and membrane), skylights, floor slabs (if any), and foundations of the Buildings, the bearing or shear walls located within a Unit, if any, and all structural components within a Unit which may be required for the support of the Building within which the Unit is located, except for the finished surfaces thereof. Any Utility Facilities serving more than one Unit, wherever located, are a part of the Common Area.

1.19 Common Expenses. The term "Common Expenses" refers to the actual and estimated costs and expenses incurred or to be incurred by the Association, including, without limitation, the following:

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

1.19.2 assessments due but unpaid hereunder and assessments levied against the Project under this Declaration;

1.19.3 costs of management and administration of the Association, including, without limitation, compensation paid by the Association to managers, accountants, attorneys, architects and employees;

1.19.4 the costs of any utilities, trash pickup and disposal, refuse and recyclable collection fees, landscaping, and other services benefiting the Owners and their Units to the extent such services are paid for by the Association, including costs of parking lot lighting;

1.19.5 the costs of fire, casualty, liability, worker's compensation and other insurance required to be maintained by the Association hereunder;

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

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

1.19.8 taxes and assessments paid by the Association;

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

1.19.10 costs incurred by the Board or other committees of the Association;

1.19.11 costs incurred under the Master Declaration as defined below;

1.19.12 costs of maintaining storm drainage systems pursuant to the Storm Water Maintenance Agreement, as defined below, including, without limitation storm drain inlets located within the Association Property and Common Area, and annual inspection fees or charges imposed by any Governmental Agency, if any;

1.19.13 costs of compliance by the Association with the Signage Program, as defined below, to the extent any costs are incurred; and

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

1.20 Condominium. The term "Condominium" means an estate in real property as defined in California Civil Code Section 1351(f) consisting of an undivided interest as a tenant-in-common in all or any portion of the Common Area, together with a separate fee interest in a Unit and any other separate interests in the Property as are described in this Declaration, the Condominium Plan or in the deed conveying the Condominium. The term "Condominium" shall include both Shell Condominiums and Finished Condominiums, as further defined below.

1.21 Condominium Plan. The term "Condominium Plan" means (i) any condominium plan recorded pursuant to California Civil Code Section 1351, and any amendments to the plan, and (ii) any Supplementary Condominium Plans (as defined below), recorded pursuant to the provisions of this Declaration.

1.22 County. The term "County" means the County of Alameda, California.

1.23 Declarant. The term "Declarant" means O.W. Commercial, Inc., a Delaware corporation, and its successors and assigns, provided (i) such successors and assigns acquire any or all of Declarant's interest in the Property for the purpose of the development, sale and marketing of the Units and then only during the period such successors and assigns are actively developing, selling and marketing the Units, and (ii) Declarant has expressly transferred or

assigned to such successors or assigns its rights and duties as Declarant to a portion or all of the Project. For any successor or assignee of "Declarant" to be deemed a Declarant under the terms of this Declaration, Declarant shall record in the County an instrument so designating said successor or assignee as Declarant. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale.

1.24 Declaration. The term "Declaration" means this Declaration of Covenants, Conditions and Restrictions of Fremont Tech Center, as this Declaration may from time to time be amended or supplemented.

1.25 Designated Exclusive Use Common Area Walls or Floors. The term "Designated Exclusive Use Common Area Walls or Floors" refers (i) to those portions of the Common Area consisting of walls and internal equipment located within such walls or floors such as plumbing, ventilating and electrical wires, which are located between two (2) adjacent Units (either horizontally or vertically) over which an Exclusive Use Easement shall be assigned by the Declarant or the Association if an Owner acquires fee title to two (2) or more adjacent Finished Condominiums separated by such wall or floor; or (ii) the area that is designated for future installation of demising walls if an Shell Condominium Owner has not installed the demising walls that are shown on the Condominium Plan in order to create separate units, subject to compliance with the requirements of this Declaration.

1.26 Enforcement Assessments. The term "Enforcement Assessments" means the assessments which are levied pursuant to the provisions of **Section 5.6** of this Declaration.

1.27 Exclusive Use Easement or Exclusive Use Easement Area. The term "Exclusive Use Easement" or "Exclusive Use Easement Area" means those portions of the Common Area and/or Association Property over which exclusive, appurtenant easements are reserved for the benefit of certain Owners in accordance with California Civil Code Section 1351(i), which are described in this Declaration and the Condominium Plan.

1.28 Final Map. The term "Final Map" means the final subdivision or parcel map covering the Project.

1.29 Finished Condominium. The term "Finished Condominium" shall refer to those condominiums located in Buildings A-C, as shown on the Condominium Plan.

1.30 Finished Condominium Owner. The term "Finished Condominium Owner" refers to an owner of a Finished Condominium.

1.31 First Mortgage. The term "First Mortgage" means a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Condominium in the Project.

1.32 First Mortgagee. The term "First Mortgagee" means the Mortgagee of a First Mortgage.

1.33 Fiscal Year. The term "Fiscal Year" means a calendar year unless the Board elects a different accounting period.

1.34 Governing Documents. The term "Governing Documents" refers collectively to this Declaration, any Supplementary Declarations, the Articles, the Bylaws, and the Project Handbook.

1.35 Governmental Agency. The term "Governmental Agency" or "Governmental Agencies" means the City, the County and any other federal, state, local or municipal governmental entity or quasi-governmental entity or agency including, without limitation, any special assessment district, maintenance district or community facilities district having jurisdiction over the Property.

1.36 Hazardous Materials. The term "Hazardous Materials" means and refers to any substance, material or waste which is or becomes (i) regulated by any local or regional governmental authority, the State of California or the United States Government as a hazardous waste; (ii) is defined as a "solid waste," "sludge," "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "Non-RCRA hazardous waste," "RCRA hazardous waste," or "recyclable material," under any federal, state or local statute, regulation, or ordinance, including, without limitation, Sections 25115, 25117, 25117.9, 25120.2, 25120.5 or 25122.7, 25140, 25141 of the California Health and Safety Code; (iii) defined as a "Hazardous Substance" under Section 25316 of the California Health and Safety Code; (iv) defined as a "Hazardous Material," "Hazardous Substance" or "Hazardous Waste" under Section 25501 of the California Health and Safety Code; (v) defined as a "Hazardous Substance" under Section 25281 of the California Health and Safety Code; (vi) asbestos; (vii) petroleum products, including, without limitation, petroleum, gasoline, used oil, crude oil, waste oil, and any fraction thereof, natural gas, natural gas liquefied, methane gas, natural gas, or synthetic fuels, (viii) materials defined as hazardous or extremely hazardous pursuant to the California Code of Regulations; (ix) pesticides, herbicides and fungicides; (x) polychlorinated biphenyls; (xi) defined as a "Hazardous Substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 *et seq.*); (xii) defined as a "Hazardous Waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; (xiii) defined as a "Hazardous Substance" or "Mixed Waste" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*, and regulations promulgated thereunder; (xiv) defined as a "Hazardous Substance" pursuant to Section 401.15 of the Clean Water Act, 40 C.F.R. 116; (xv) defined as an "Extremely Hazardous Substance" pursuant to Section 302 of the Superfund Amendments and Reauthorizations Act of 1986, 42 U.S.C. Section 11002 *et seq.*; or (xvi) defined as "medical waste" pursuant to Section 25023.2 of the California Health and Safety Code, Chapter 6.1 (Medical Waste Management Act).

1.37 Improvements. The term "Improvements" means any Buildings, fences, walls, plantings, trees, shrubs, paving, irrigation, sidewalks, curbs, loading facilities, utility facilities, poles, signs, and all other structures or improvements of every type and kind installed or erected on the Property.

1.38 Invitee. The term "Invitee" means any person whose presence within the Project is approved by or is at the request of Declarant, the Association or a particular Owner, including, without limitation, Lessees and the visitors, employees or licensees of Owners or Lessees.

1.39 Lease. The term "Lease" means any lease, license or other agreement whereby an occupant acquires rights to use or occupy any portion of the Condominiums.

1.40 Lessee. The term "Lessee" means each person who, at any given time, is leasing a Condominium in a Building under a written Lease. Except as otherwise provided herein, an Owner may not designate a Lessee as primarily responsible for the burdens and obligations imposed on such Owner herein during the term of the Lease, and further may not designate to such Lessee the right to exercise the voting powers granted to such Owner under this Declaration.

1.41 Lot. The term "Lot" means each legally subdivided lot or parcel upon which Condominiums are located.

1.42 Maintenance Associations. The term "Maintenance Associations" refers to the Bayside Technology Park Drainage System Maintenance Association, a California non-profit corporation, and the Bayside Technology Park Common Area Maintenance Association, a California non-profit corporation.

1.43 Maintenance Obligations. The term "Maintenance Obligations" refers to the Association's obligations and each Owner's obligations to perform (i) all maintenance required under the Association Maintenance Manual and Owner Maintenance Manual, respectively, (ii) any maintenance obligations and schedules provided to an Owner or the Association, whether contained in any warranty or otherwise; (iii) any commonly accepted maintenance practices intended to prolong the life of the materials and construction of the Association Property, Common Area and Units, as applicable; and (iv) any maintenance obligations and requirements set forth in this Declaration, as updated and amended from time to time.

1.44 Majority of the Voting Power. The term "Majority of the Voting Power" means those Owners collectively owning a majority of the Square Footage within the Project, and, so long as Declarant owns any portion of the Property, the Declarant. However, should the Declarant still own a portion of the Property five (5) years after the date of recordation of this Declaration, the Declarant shall no longer have the Majority of the Voting Power unless it owns a majority of the Square Footage.

1.45 Master Agreements. The term "Master Agreements" refers collectively to the Master Declaration and the Master Maintenance Agreement, as defined below.

1.46 Master Declaration. The term "Master Declaration" refers to the Declaration of Covenants, Conditions and Restrictions of the Bayside Technology Park recorded as Document No. 84-015148 in the Official Records of Alameda County of January 24, 1984.

1.47 Master Maintenance Agreements. The term "Master Maintenance Agreements" refers collectively to the Adjoining Landowners Agreement (Landscape) ("Landscape Assessment") recorded as Document No. 83-068617 in the Official Records of

Alameda County on April 26, 1983 and the Adjoining Landowners Agreement (Drainage) ("Drainage Agreement") recorded as Document No. 83-068613 in the Official Records of Alameda County on April 26, 1983.

1.48 Member. The term "Member" means every person or entity who holds a membership in the Association.

1.49 Mortgage. The term "Mortgage" means any duly recorded mortgage or deed of trust encumbering a Condominium in the Project.

1.50 Mortgagee. The term "Mortgagee" means a mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

1.51 Notice and Hearing. The term "Notice and Hearing" means the procedure which gives an Owner notice of an alleged violation of the Governing Documents and the opportunity for a hearing before the Board.

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

1.53 Owner Maintenance Manual. The term "Owner Maintenance Manual" refers to the manual which may be provided by Declarant to each Owner, specifying obligations for maintenance of the Units by the Owners, as updated and amended from time to time.

1.54 Parking Space(s). The term "Parking Space(s)" means those parking spaces within the Project, as shown on the Condominium Plan.

1.55 Project. The term "Project" means all of the Property, together with all Improvements situated thereon.

1.56 Project Handbook. The term "Project Handbook" refers to the handbook that contains the Architectural Guidelines, Rules and Regulations and Signage Program.

1.57 Property. The term "Property" means all of the real property described in Exhibit "A" of this Declaration.

1.58 Regular Assessments. The term "Regular Assessments" means the assessments that are levied pursuant to the provisions of Section 5.2 of this Declaration.

1.59 Rules and Regulations. The term "Rules and Regulations" refers to the rules and regulations which may be established by the Association. The Rules and Regulations will be included as part of the Project Handbook.

1.60 Shell Condominium. The term "Shell Condominium" refers to those condominiums located in Buildings D-H and J-K, as shown on the Condominium Plan.

1.61 Shell Condominium Owner. The term "Shell Condominium Owner" refers to an owner of a Shell Condominium.

1.62 Signage. The term "Signage" refers to any signage, billboards, monument signage, entry signage (if any), posters, banners, flags or any other signage medium of any type or kind.

1.63 Signage Program. The term "Signage Program" refers to the Fremont Tech Center Master Sign Program approved by the City (designated as MIS 200-00707) and included in the Project Handbook and any amendments or supplements to such Signage Program.

1.64 Special Assessments. The term "Special Assessments" means the assessments that are levied pursuant to the provisions of Section 5.3 of this Declaration.

1.65 Square Footage. The term "Square Footage" means the gross floor area of a Unit or Building, as determined by Declarant for purposes of calculating the Allocable Share.

1.66 State. The term "State" means the state of California.

1.67 Storm Water Maintenance Agreement. The term "Storm Water Maintenance Agreement" refers to that certain Storm Water Treatment Measures Maintenance Agreement that has been or shall be recorded in the Official Records of Alameda County, which sets forth operation and maintenance requirements for storm water treatment measures within the Project.

1.68 Supplementary Condominium Plan. The term "Supplementary Condominium Plan" means any Condominium Plan, which (i) supplements a previously recorded Condominium Plan, (ii) corrects errors in the originally recorded Condominium Plan, and/or (iii) is prepared after the completion of construction to show the actual "as-built" locations or dimensions of any component of the Project.

1.69 Supplementary Declaration. The term "Supplementary Declaration" means those certain declarations of covenants, conditions and restrictions, or similar instruments, which may do any or all of the following: (a) identify areas referenced in this Declaration to be maintained by the Association, (b) impose additional covenants, restrictions and or obligations on any Condominiums prior to conveyance of such Condominium to an Owner other than Declarant and/or (c) make corrections to the provisions of this Declaration, or any previously recorded Supplementary Declaration(s).

1.70 Traffic Impact Fees. The term "Traffic Impact Fees" means those fees charged by the City based upon the types of use and the ratio of Parking Spaces to square footage of the units.

1.71 Unit. The term "Unit" means the elements of a Condominium which are not owned in common with any other Owners of Condominiums in the Project, such Units and their respective elements and boundaries being shown and particularly described in the Condominium Plan. The dimensions of a Unit are measured from the unfinished floor and walls and from an upper horizontal plane located above the finished floor as shown on the Condominium Plan, except as otherwise noted herein. The Unit includes all Improvements situated within its

boundaries, and includes, without limitation, (i) interior walls (except interior bearing walls and/or columns) if any, (ii) the interior undercoated surfaces of bearing walls and perimeter walls and floors, (iii) any insulation located within the Common Area that provides insulation for the Unit; (iv) appliances, cabinets, interior doors, and all electrical, heating, plumbing and other utility fixtures, (v) the openings and outlets of all Utility Facilities that are located partially within the Unit and partially in the Common Area (such as electrical outlets), and that exclusively serve the Unit, and (vi) all Utility Facilities serving solely that Unit, whether located in the Unit or the Common Area. The following are not part of any Unit: bearing walls, columns, exterior doors, exterior windows and glass, floors, mechanical and vent shafts, roofs and foundations, and Utility Facilities including rooms that house such utilities, that serve two or more Condominiums wherever located. In interpreting deeds and plans, the then existing physical boundaries of a Unit, whether in its original state or reconstructed in substantial conformance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the Condominium Plan or any other recorded document, regardless of settling or lateral movements of the Building and regardless of minor variance between boundaries shown on the Condominium Plan or any other recorded document and those of the Building.

1.72 Utility Facilities. The term "Utility Facilities" means all utility facilities including intake and exhaust systems, plumbing, storm and sanitary sewer systems, drainage systems, HVAC units and utility services, domestic water systems, natural gas systems, electrical systems, fire protection water and sprinkler systems, vacant conduits in utility rooms, vacant conduits throughout the Common Area and/or Association Property, main service telephone systems, satellite dishes, cable television systems, telecommunications systems, water systems, sump pumps, central utility services and all other utility systems and facilities reasonably necessary to service any Improvement situated in, on, over and under the Project.

1.73 Voting Power. The term "Voting Power" refers to the total voting power of the Association as set forth in Section 4.2.1, which is based on Square Footage.

ARTICLE 2 OWNERSHIP AND EASEMENTS

2.1 Ownership of Condominium. Ownership of each Condominium within the Project shall include (a) fee title to a Unit, (b) an undivided interest in the Common Area of the Building Envelope within which the Unit is situated as designated on the Condominium Plan and/or shown on the deed to the Condominium, (c) a membership in the Association, and the Maintenance Associations and (d) subject to the terms of the Governing Documents, any easements appurtenant to such Condominium over the Common Area and/or Association Property as described in this Declaration, the Condominium Plan and the deed to the Condominium. Each Condominium Owner shall have a non-exclusive easement for ingress and egress over the Common Area of the Building Envelope in which the Unit is situated and over the remaining Common Area and Association Property within the Project, subject to any Exclusive Use Easements, and other restrictions described in this Declaration, the Master Declaration and/or any Condominium Plan and any easements or other matters of record.

2.2 Master Agreements. All rights and easements granted to Owners under the Master Agreements are held by the Association, as the owner in fee of the land within the Project. Each Owner under this Declaration, by acceptance of a deed, appoints the Association to act on its behalf under the Master Agreements and acknowledges that any rights such Owner may have under the Master Agreements are derived through its membership in the Association. Without limiting the foregoing, each Owner delegates to the Association and appoints the Association as his or her attorney-in-fact, for himself or herself and each of his or her Mortgagees, optionees, grantees, licensees, trustees, receivers, lessee, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successor and assigns, whether voluntary or involuntary, full right, power and authority to execute any amendments to the Master Agreements on behalf of such Owners and any such amendments to executed by the Association shall be binding on all Owners and such other parties. Notwithstanding the foregoing assignment of rights, each Owner must comply with all obligations and covenants under the Master Agreements.

2.3 Delegation of Use. Any Owner entitled to the right and easement of use of the Common Area and the Association Property may delegate such Owner's rights provided in this Declaration to use of the Common Area and the Association Property to such Owner's Lessees, contract purchasers or subtenants who occupy such Owner's Condominium, subject to reasonable regulation by the Board. An Owner who has made such a delegation of rights shall not be entitled to use of the Common Area or Association Property for so long as such delegation remains in effect, other than such access rights as are directly related to the Owner's rights and duties as landlord. Notwithstanding such delegation of the rights to use the Common Area and Association Property, an Owner may not delegate to a Lessee any of its voting rights under the Governing Documents, and no such delegation of use shall release an Owner from being primarily liable and responsible for all obligations under this Declaration and the other Governing Documents.

2.4 Easements. The ownership interests in the Common Area, Association Property and to the extent applicable, the Units described in this Article are subject to the easements granted and reserved in this Declaration and the Master Declaration. Each of the easements reserved or granted under this Declaration shall be deemed to be established with respect to the Property covered by this Declaration upon the recordation of this Declaration and shall, upon recordation, be deemed to be covenants running with the land for the use and benefit of the Owners, and their Condominiums, the Common Area, the Association Property and the Declarant superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Condominiums may, but shall not be required to, set forth the easements specified in this Article.

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

2.4.2 Utilities. There are reserved and granted for the benefit of each Unit and the Common Area, over, under, across and through the Project, reciprocal, non-exclusive

easements for the maintenance, repair and replacement of the Utility Facilities servicing such Unit.

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

2.4.4 Association Easement. The Association shall have an easement over the Common Areas for performing its duties and exercising its powers described in this Declaration.

2.4.5 Easements for Common Area and Association Property. Subject to the provisions of the Governing Documents, every Owner of a Condominium shall have, for himself or herself and such Owner's Invitees, a nonexclusive easement of access, ingress, egress, and use of, in, to and over all portions and appurtenances of the Association Property, including without limitation, the parking areas, trash enclosures and recycling facilities, and the Common Area of the Building Envelope in which the Unit is located.

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

(b) Control Parking. Subject to the provisions of this Declaration, the Association shall have the right to control parking within the Project and to promulgate rules and regulations to control parking in a manner consistent with this Declaration, provided however, that the Declarant has reserved an easement over the Parking Spaces with the exclusive right to assign such Parking Spaces in a manner consistent with the provisions of **Section 6.13** of this Declaration and Applicable Law to Owners should it so decide.

(c) Exclusive Use Easements. Any Exclusive Use Easement granted to an Owner over a portion of the Common Area or Association Property shall be for the benefit of such Owner and such Owner's Lessees and Invitees and in no event shall any other Owner have a right of ingress or egress over such Exclusive Use Easement Area.

2.4.6 Easement To Declarant. Declarant shall have and hereby expressly reserves the easements necessary for Declarant to exercise its rights set forth in **ARTICLE 9** of this Declaration.

2.4.7 Submetering Equipment. Declarant hereby expressly reserves an easement over portions of the Common Area or Association Property as necessary to permit the installation and maintenance of equipment necessary to allow the remote reading of any submeters which may be installed in the Shell and Finished Condominiums, including without limitation, the installation of a modem and other necessary equipment required for the transmission of such information on the roof of any or all of the Shell and Finished Condominiums, as appropriate.

2.5 Creation of Designated Exclusive Use Easement Area Walls or Floors. So long as two contiguous Units are owned or acquired by the same Owner, no demising wall is required to be constructed between Shell Condominiums and any existing demising wall may be removed subject to the limitations set forth below. Alternatively, the Owner of two or more Finished Condominiums which are contiguous and have a demising wall between the two Units may construct, at such Owner's expense and in accordance with all codes and ordinances, a means of access (such as a doorway) between said Units. The Owner of contiguous Finished Condominiums who has removed a demising wall as described above shall have an easement for ingress, egress and passage through that portion of the Common Area which has been pierced in the process of connecting the contiguous Condominiums or constructing said means of access. The easement shall exist only for so long as the connected Finished Condominiums continue to be owned by the same Owner. If and when the Owner of such connected Finished Condominiums sells, transfers, or conveys one of the Finished Condominiums, then prior to the recordation of the deed or instrument of transfer, the means of access shall be sealed off by such Owner, a demising wall shall be properly installed or completely reconstructed to its original as-built condition, as the case may be, and the easement that existed during the period that the Finished Condominiums were joined by virtue of such access shall automatically terminate. Prior to commencing any construction, the Owner shall obtain the approvals required under **ARTICLE 8** of this Declaration. The Owner shall also comply with the following requirements: (a) no bearing or shear wall shall be removed or altered without approval of the Association and a structural engineer designated by the Association; and (b) no utility facilities shall be removed or damaged in the course of the construction described in this Section. All costs, and expenses of such modifications, and subsequent demising wall construction or restoration of said modifications shall be borne by the Owner of the Units so joined. Conversely, for Shell Condominiums, if the Owner or Owners of such Shell Condominiums desire to install demising walls to create separate units at the location(s), as shown on the Condominium Plan for Designated Exclusive Use Common Area Walls, the Shell Condominium Owners shall have the right to do so without amending this Declaration or the Condominium Plan, subject to the consent of Declarant and pursuant to the provisions of **ARTICLE 8**. Notwithstanding the foregoing, all combination or separation of Units as described in this Section shall be subject to applicable governmental regulations and codes, as well as architectural review as described in **ARTICLE 8**, and review by an architect and/or structural engineer. Owner is responsible for identifying applicable governmental regulations and codes, and is responsible for all costs associated with complying with such codes and obtaining architectural review.

ARTICLE 3 THE ASSOCIATION

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

3.2 Association Action; Board of Directors and Officers; Members' Approval. Except as to matters requiring the approval of Members as set forth in the Governing Documents, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with the Governing Documents. Except as otherwise provided in this Declaration, the Articles and the Bylaws, all matters requiring the approval of Members shall be deemed approved if (i) a Majority of the Voting Power assent to them by written consent as provided in the Bylaws, or (ii) such matters are approved by a Majority of the Voting Power of the Owners present at a meeting at which a quorum of Members is present (and which is held in accordance with the Bylaws).

3.3 Appointment of Association as Agent. Each Owner agrees that each Owner has no direct rights under the Master Declaration and Master Maintenance Agreements and only has such rights through the Association and only for so long as an Owner owns a Condominium and is a Member of the Association. Notwithstanding the foregoing, to the extent that it is determined that an Owner has any rights under the Master Agreements, then each Owner, by acceptance of a deed, hereby irrevocably delegates and appoints the Association to act on its behalf as an "Owner" under the Master Agreements. Each Owner of a Condominium in the Project, by accepting a deed to the Condominium, shall be deemed to have (a) agreed and acknowledged that only the Association shall have the right to vote under the Master Agreements, (b) that all approvals and rights under the Master Agreements shall be exercised, if at all, by the Association, and (c) that the Association can consent to any amendments to the Master Agreements without the consent or approval of the Owners. Each Owner by acceptance of a deed, hereby appoints the Association as its agent to act on behalf of itself and each of its mortgagees, optionees, grantees, licensees, lessees, tenants, heirs, administrators, executors, legal representatives, successors and assigns.

3.4 Powers and Duties of the Association. The Association shall have all the powers of a nonprofit corporation organized under the Nonprofit Mutual Benefit Corporation Law of California subject only to such limitations on the exercise of such powers as are set forth in the Governing Documents, including the rights as an Owner under the Master Agreements pursuant to Section 3.3. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under the Governing Documents, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the powers set forth below.

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

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

(a) Suspend Rights of Members. The Board shall have the right after Notice and Hearing to temporarily suspend an Owner's rights as a Member pursuant to the terms of this Declaration;

3.4.3 Delegation of Powers, Professional Management. The Association may delegate its powers, duties, and responsibilities to committees and shall retain a professional managing agent as property manager for the Association.

3.4.4 Association Rules. The Association shall have the power to adopt, amend and repeal Rules and Regulations as it deems reasonable. The Rules and Regulations shall govern the use of the Common Area and the Association Property by all Owners and their Invitees. However, the Rules and Regulations shall not be inconsistent with or materially alter any provisions of the Governing Documents, nor shall they be inconsistent with any Applicable Law including the City-issued Project entitlements. A copy of the Rules and Regulations, as adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. If there is any conflict between any of the Rules and Regulations and any other provisions of this Declaration, or the other Governing Documents the conflicting Rules and Regulations shall be deemed to be superseded by the provisions of the other Governing Documents.

3.4.5 Right of Entry and Enforcement. Except in the case of emergencies in which case no prior notice need be given, the Association or any authorized representative shall have the right, upon forty-eight (48) hours prior notice and during reasonable hours, to enter into a Unit for the purpose of construction, maintenance or emergency repair for the benefit of the Common Area, Association Property, or the other Condominiums, or to perform its obligations under this Declaration, or to cure any default by an Owner under this Declaration. Such persons shall not be deemed guilty of trespass by reason of such entry. If any such repair or maintenance is due to the failure of an Owner to perform its obligations hereunder, the cost of such maintenance or repair shall be assessed against said Owner as an Enforcement Assessment in accordance with the provisions of the Article hereof entitled "Assessments". Any entry and repair performed by the Association pursuant to this Section 3.4.5 shall be performed so as not to unreasonably interfere with access to and use of the Unit by the Owner of such Unit.

3.4.6 Easements and Rights of Way. The Association may grant and convey to any third party easements and licenses for use and rights of way in, on, over or under the

Association Property conveyed or otherwise transferred to said Association or under its jurisdiction in accordance with the provisions of this Declaration. The affirmative vote of a Majority of the Voting Power shall be required before the Board may grant exclusive use of any portion of the Common Area or Association Property to any Member unless the grant of exclusive use is one of the exceptions to the Member approval requirement listed in California Civil Code Section 1363.07. A vote on a proposed grant of exclusive use shall be by secret ballot in accordance with the procedures set forth in California Civil Code Section 1363.03 and the rules adopted by the Board pursuant thereto.

3.4.7 Capital Improvements. Subject to the terms of this Declaration, the Association may approve the construction, installation or acquisition of a particular capital Improvement to the Common Area and/or the Association Property.

3.5 Enter Into Maintenance Agreements. The Association shall have the power to enter into market rate maintenance agreements with Declarant.

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

3.5.2 Contract for Goods and Services. The Association shall have the power to contract for goods and services for the benefit of the Project necessary for the Association to perform its duties and obligations hereunder. The ability to contract for services shall include the ability to contract for security services, provided, however, that in no event shall the Association be required to obtain such services, nor shall any contract with such security service impose any additional liability on the Association beyond that which the Association would have in the absence of such a contract.

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

3.5.4 Claims and Actions. Subject to the provisions of this Declaration, the Association shall have the power, but not the duty, to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Association in matters pertaining to (a) the application or enforcement of this Declaration and (b) any and all claims, causes of action, damages and suits for defects relating in any way to the design or construction of the Association Property or Common Area or any portion thereof, on behalf of the Owners; provided that no action shall be taken pursuant to Subsection (b) without first (i) obtaining the consent of a Majority of the Voting Power, and (ii) notifying the Owners and the Declarant of the initiation of such proceedings as required pursuant to Section 3.6.7 below.

3.6 Duties of the Association. In addition to the powers delegated to it by its Articles and the Bylaws, and without limiting their generality, the Association, acting by and

through the Board, has the obligation to perform each of the duties set forth below, provided that operation of the Project shall be performed in a manner which maintains a unified, well-maintained, and cohesively operated property. Exterior renovations, remodeling, and site improvements in general shall be undertaken in a holistic manner, including consistent architecture and design on all facades and roofs.

3.6.1 Taxes and Assessments. The Association shall pay all real and personal property taxes and assessments and all other taxes levied against the Association Property, personal property owned by the Association or against the Association, if any. Such taxes and assessments may be contested or compromised by the Association if they are paid or a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes. To the extent any taxes or assessments for the Project including any Association Property are not segregated or Declarant or the Association receives a tax bill which covers any Condominiums, then the Association or Declarant, as applicable, shall allocate such taxes based upon the Allocable Share used to pay Regular Assessments except that if the tax bill covers less than all of the Units subject to this Declaration, then the Declarant or the Association shall allocate the taxes and assessments based upon the Square Footage which a Condominium bears to the Square Footage of all the Condominiums shown on the tax bill, which determination by Declarant or the Association shall be binding on the Owners and not subject to challenge.

3.6.2 Water and Other Utilities. The Association shall have the duty to acquire, provide and pay for water, sewer, refuse and rubbish collection, electrical, telephone, gas and other necessary utility services for the Common Area or Association Property. Each Building within which the Units are located is separately serviced by one domestic water meter, but submeters, have been or will be installed. All Units which are separately metered or serviced for electricity, telephone and gas, of which each Unit Owner is responsible for maintenance and direct payment to the utility provider.

3.6.3 Life Safety Systems. The Association shall have the duty to provide for the monitoring of fire sprinkler life safety systems for each Building .

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

3.6.5 Maintenance of Project. The Association shall maintain and/or replace and repair the Common Area and Association Property, and any other portions of the Project described in ARTICLE 7 pursuant to the provisions of this Declaration.

3.6.6 Insurance. The Association shall obtain, from reputable insurance companies licensed to do business in California and maintain the insurance described in the Article of this Declaration entitled "Insurance."

3.6.7 Notice Prior to Filing Claim. The Association shall notify all Owners and the Declarant of any litigation filed, or other claims made pursuant to the provisions of Section 15.4 of this Declaration, for or on behalf of the Association relating to any Disputes (as

defined in Section 15.4 below). Such notice shall specify, at a minimum, all of the matters set forth in Section 1368.5 of the California Civil Code.

3.6.8 Refuse and Rubbish Collection. The Association shall provide refuse and rubbish collection for the Owners, which cost shall be included as a Common Expense. The Association shall provide receptacles for the collection of refuse, organic waste, and recyclable materials as described in Section 6.18. The Association may enter into contracts and/or leasing agreements for trash pickup, disposal and rental of trash disposal equipment. In the event certain Owners generate more trash and/or require more pickup than is generally being provided by the Association to the other Owners, the Association shall have the right to allocate the additional cost for such increased trash pickup to such Owners. Owners may make arrangements for additional refuse or rubbish collection provided that any such arrangements are approved by the Board in writing, which approval may be withheld in the Board's sole and absolute discretion.

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

3.6.10 Warranties. The Association shall comply with the terms of any warranty in favor of the Association for any equipment or facilities within the Common Area. The Association acknowledges that certain warranties require the Association to maintain certain maintenance contracts in effect and, to the extent the Board discontinues such maintenance contracts, the effectiveness of the warranty may be impaired or eliminated.

3.6.11 Use of Proceeds to Repair. In the event the Association receives, on its own behalf or for the benefit of the Owners, any proceeds as a result of any construction defect or other claims or litigation brought by the Association, then the Association shall apply such proceeds first for the purpose of repairing such defects or replacing reserve funds previously utilized by the Association to cause such repairs and then to the costs of such litigation. Any excess proceeds shall be applied as determined by the Board, subject to any requirements established by the non-profit mutual benefit laws of the State of California and any other applicable laws.

3.6.12 Storm Water Maintenance Agreement. The Association shall assume all obligations and responsibilities under the Storm Water Maintenance Agreement.

3.6.13 Master Agreements. The Association shall have the duty to perform all obligations imposed under the Master Agreements which obligations shall include, without limitation, the obligations to pay the common expenses as defined in the Master Agreements levied against the Association Property or any portion of the Project by the Master Maintenance Associations and to collect such amount as part of the Common Expenses under this Declaration.

3.7 Personal Liability. No member of the Board, or of any committee of the Association, or any officer of the Association, or any manager, or Declarant, or any agent or employee or consultant of Declarant, (each a "Management Party"), shall be personally liable to any Owner, or to any other party, including the Association, for any act or omission of any Management Party if such person has, on the basis of such information as may be possessed by

him or her, acted in good faith without willful, wanton or gross misconduct within the scope of the person's Association duties (collectively, an "Official Act"). California Civil Code Section 1365.7, as drafted as of the date of recordation of this Declaration, does not apply to common interest developments that are not "exclusively residential." The Project contains only commercial condominiums. However, the criteria and requirements set forth in California Civil Code Section 1365.7 are hereby incorporated herein by reference, and shall apply to the Management Parties, regardless of the fact that the Project includes commercial condominiums.

3.7.1 Indemnity. The Association has the power and duty to indemnify, defend, protect and hold harmless each Management Party for all damages, and expenses incurred (including, without limitation, reasonable attorneys' fees and costs), and satisfy any judgment or fine levied as a result of any action or threatened action brought because of an act or omission what such person reasonably believed was an Official Act. Management Parties are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any person entitled to such indemnification. The Association has the power, but not the duty, to indemnify any other person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act. The Association also has the power, but not the duty, to contract with any person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

ARTICLE 4 MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

4.1 Membership.

4.1.1 Qualifications. Each Owner of a Condominium which is subject to assessment, including Declarant, shall be a Member of the Association. Ownership of a Condominium or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until its ownership interest in the Condominium in the Project ceases at which time its membership in the Association shall automatically cease.

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

4.1.3 Transfer of Membership. The Association membership of each person or entity who owns, or owns an interest in, one or more Condominiums shall be appurtenant to each such Condominium, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such Condominium or interest in it and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Condominium or interest in it shall operate automatically to transfer the appurtenant membership right in the Association to the new Owner.

Notwithstanding the foregoing, Declarant's Class B membership (as defined below) may not be transferred except to a successor to Declarant's rights to all or a portion of the Project. Transfer of Declarant's Class B membership shall be evidenced by the recordation in the Office of the County Recorder of an assignment of Declarant's rights which specifically assigns such Declarant's Class B membership rights.

4.1.4 Commencement of Voting Rights. An Owner's right to vote, including Declarant's right to vote, shall not vest until Regular Assessments have been levied upon such Owner's Condominium as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided for herein and in the other Governing Documents. Notwithstanding the foregoing, this Section shall not apply to any exercise by Declarant of its rights as a Class B Member.

4.2 Number of Votes. The Association shall have two (2) classes of voting membership as described below. The voting rights described in Section 4.2.1 below shall constitute the Voting Power of the Association.

4.2.1 Class A Members. Class A Members shall be all Owners, except Declarant. Each such Owner shall be entitled to a vote, which vote shall be equal to each Owner's Allocable Share.

4.2.2 Class B Member. The Class B Member shall be Declarant. Declarant shall be entitled to appoint a majority of the members of the Board until Declarant no longer owns any Condominiums in the Property. Board Members appointed by Declarant pursuant to Declarant's Class B membership do not have to be Owners.

4.3 Joint Owner Votes. If there is more than one Owner of a Condominium, the voting rights for each Condominium may not be cast on a fractional basis. If the joint Owners of a Condominium are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit the vote on the matter in question. Upon the close of escrow on a Condominium by more than one Owner, the Owners of such Condominium must notify the Association in writing of the one Owner who will exercise the voting rights for such Condominium ("Voting Owner"). In the event such Owners do not notify the Association in writing in accordance with this Section 4.3, the Owner shall not be entitled to exercise their vote in writing, unless and until they deliver written notice to the Association designating the Voting Owner and until such designation is made, the Association can cast the votes, if it so elects, for such Condominium. In the event the Owners desire to designate a different Voting Owner, such request to change the Voting Owner must be made in writing to the Association. If any Owner other than the Owner designated in the records of the Association as the Voting Owner exercises the voting rights of a particular Condominium, such vote shall not be counted and shall be deemed void.

ARTICLE 5 ASSESSMENTS

5.1 Creation of Lien and Personal Obligation for Assessments. Declarant, for each Condominium owned within the Property, hereby covenants, and each Owner of a

Condominium by acceptance of a deed therefor, is deemed to covenant and agrees to pay to the Association all assessments levied pursuant to the provisions of this Declaration. All assessments levied hereunder, together with interest, costs and reasonable attorneys' fees assessed hereunder, shall be a charge on the land and shall be a continuing lien upon the Condominium against which each such assessment is made, the lien to be effective upon recordation of a notice of delinquent assessments. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due and shall, except with respect to any Mortgagee as provided in Section 5.12, bind his or her heirs, devisees, personal representatives and assigns. No such assumption of personal liability by a successive Owner (including a contract purchaser under an installment land contract) shall relieve any Owner against whose Condominium the lien was levied from personal liability for delinquent assessments. If more than one person or entity was the Owner of a Condominium, the personal obligation to pay such assessment or installment respecting such Condominium shall be both joint and several.

5.2 Regular Assessments.

5.2.1 Payment of Regular Assessments. Regular Assessments for each Fiscal Year shall be established when the Board approves the budget for that Fiscal Year, which budget shall be prepared in accordance with the provisions of the Governing Documents. Regular Assessments shall be levied on a Fiscal Year basis. Based on such budget, each Owner shall, in advance, on the first day of each month during the term of this Declaration pay to the Association as such Owner's Regular Assessment, one-twelfth (1/12th) of such Owner's Allocable Share of Common Expenses for such calendar year; provided, however, that the Association shall have the ability to bill the Owners monthly or quarterly, in which event each Owner shall on the first day of each third month during the term of this Declaration pay, in advance, to the Association as such Owner's Regular Assessment, one-fourth (1/4th) of such Owner's Allocable Share of Common Expenses for such calendar year. Any excess funds collected by the Association during a calendar year shall be proportionally deducted from each Owner's Allocable Share of Common Expenses for the following calendar year.

5.2.2 Budgeting. Each year the Board shall prepare, approve and make available to each Member a budget for the Common Expenses not less than 45 days nor more than 60 days prior to the beginning of the Fiscal Year or as otherwise required. The Association shall provide notice by first class mail to the Owners of any increase in the Regular Assessments or Special Assessments of the Association, not less than 30 days and not more than 60 days prior to the increased assessment becoming due and payable.

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

5.3 Special Assessments. If the Board determines that the estimated total amount of funds necessary to defray the Common Expenses of the Association for a given Fiscal Year is or will become inadequate to meet expenses for any reason, including, without limitation,

unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements on, damage and destruction or condemnation of the Common Area and Association Property, the Board may levy a Special Assessment chargeable to each Owner based upon such Owner's Allocable Share to defray such costs. If the Special Assessment exceeds in the aggregate 5% of the budgeted gross expenses of the Association for that Fiscal Year, it must be approved by a Majority of the Voting Power. The Board may, in its discretion, prorate such Special Assessment over the remaining months of the Fiscal Year or levy the assessment immediately against each Condominium.

5.4 Capital Improvement Assessment. In addition to any other assessments provided for hereunder, the Association may levy a Capital Improvement Assessment for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement in accordance with the provisions of **Section 3.4.7**. Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate.

5.5 Additional Special Assessments. Additional Special Assessments may be levied by the Board under the conditions and in the manner specified in the Article hereof entitled "Destruction and Condemnation."

5.6 Enforcement Assessments. The Association may levy an Enforcement Assessment against any Owner for bringing an Owner or its Condominium into compliance with the provisions of the Governing Documents, and/or any other charge designated an Enforcement Assessment in the Governing Documents, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. The Board may incur and levy an Enforcement Assessment against any Owner for bringing an Owner or such Owner's Condominium into compliance with the provisions of the Governing Documents and/or any other charge designated an Enforcement Assessment in the Governing Documents, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. If the Board undertakes to provide materials or services which benefit individual Owners, then such Owners in accepting such materials or services agree that the costs thereof shall be an Enforcement Assessment. The Board shall have the authority to adopt a reasonable schedule of Enforcement Assessments for any violation of the Governing Documents. If, after Notice and Hearing as required by the Governing Documents (and that satisfies California Corporations Code Section 7341 and California Civil Code Section 1363), the Owner fails to cure or continues such violation, the Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Enforcement Assessment as herein provided for nonpayment of an assessment. A hearing committee may be established by the Board to administer the foregoing. Notwithstanding any other provision in this Declaration to the contrary, except as provided in **Section 5.11** of this Declaration, Enforcement Assessments are assessments but they may not become a lien against the Owner's Condominium that is enforceable by a power of sale under California Civil Code Sections 2924, 2924b and 2924c. This restriction on enforcement is not applicable to late payment penalties for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

5.7 Limitation on Assessments. Any assessments levied pursuant to this Declaration or any other Governing Document shall not exceed the maximum amount permitted by applicable law.

5.8 Allocation of Assessments to Condominiums. Each Owner of a Condominium as to which assessments have commenced shall pay its Allocable Share of Regular Assessments. Each Owner acknowledges that there are many different measurement standards for a Condominium and that Declarant shall have the sole right to adopt its measurement standard. The measurements for purposes of calculating Square Footage shall not affect any other measurements made by an Owner or Lessee for its own purposes. By accepting a deed to its Condominium, each Owner acknowledges and agrees that it shall have no right to challenge its Allocable Share of assessments, as determined by the Declarant. Special Assessments, Additional Special Assessments and Capital Improvement Assessments shall be allocated in the same manner as Regular Assessments. Enforcement Assessments shall be levied directly to the individual Condominiums in a manner consistent with the provisions of this Declaration.

5.9 Date of Commencement of Regular Assessments; Due Dates. The Regular Assessments provided for herein shall commence as to all Condominiums subject to this Declaration on the first day following the conveyance of the first Condominium to an Owner by Declarant. Upon the close of escrow by an Owner of a Condominium, such Owner shall be responsible for payment of all assessments subsequently levied against such Owner's Condominium.

5.10 Notice and Assessment Installment Due Dates. A single 10 day prior written notice of each Special Assessment and Capital Improvement Assessment shall be given to each Owner. The due dates for the payment of installments normally shall be the first day of each month unless some other due date is established by the Board. Each installment of Regular Assessments, Special Assessments and Capital Improvement Assessments shall become delinquent if not paid within 15 days after its due date. There shall accrue with each delinquent installment a late charge, interest charge to be set by the Board and reasonable costs of collection, including attorneys' fees, which shall not, in any event, exceed the maximum rates permitted under California Civil Code Section 1366.

5.11 Collection of Assessments, Liens.

5.11.1 Right to Enforce. The right to collect and enforce assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative can enforce the obligations of the Owners to pay assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to Section 5.11.6 enforce the lien rights created. Suit to recover a money judgment for unpaid assessments together with all other Additional Charges shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein, except for monetary penalties imposed by the Association to reimburse the Association for costs incurred by the Association in the repair of damage to Common Area or Association Property and facilities for which the Member was allegedly responsible, which may become a lien on the Owner's Condominium, a monetary penalty imposed by the Association as a disciplinary

measure for failure of a Member to comply with the Governing Documents or in bringing the Member and the Member's Condominium into compliance with the Governing Documents may not be characterized nor treated as an assessment which may become a lien against the Member's Condominium enforceable by a sale of the interest hereunder. The limitation in the preceding sentence however, does not apply to any Additional Charges.

5.11.2 Notice of Assessments and Foreclosure. The Association shall distribute a written notice regarding assessments and foreclosure as set forth in California Civil Code Section 1365.1 during the 60 day period immediately preceding the beginning of the Association's Fiscal Year.

5.11.3 Delinquent Assessments. In collecting delinquent assessments, the Association shall comply with the requirements of California law, including, without limitation, California Civil Code Section 1367.1. As of the date of this Declaration, such laws require that, among other things, before the Association records a lien against the Owner's Condominium, the Association: (i) notify the delinquent Owner of certain matters, and (ii) offer and, if requested by the Owner, participate in, dispute resolution procedures pursuant to the Association's "meet and confer" program required in California Civil Code Sections 1363.810 through 1363.850.

5.11.4 Creation of Lien. If there is a delinquency in the payment of any assessment, or installment on a Condominium, any amounts that are delinquent, together with the late charge described in California Civil Code Section 1366, interest at the rate permitted in such Section, and all costs that are incurred by the Board or its authorized representative in the collection of the amounts, including reasonable attorneys' fees, shall be a lien against such Condominium upon the recordation in the Office of the County Recorder of a notice of delinquent assessment as provided in, and subject to the requirements of, California Civil Code Section 1367.1.

5.11.5 Assignment. The Association may not voluntarily assign or pledge the Association's right to collect payments or assessments, or to enforce or foreclose a lien to a third party except where provided under California Civil Code Section 1367.1(g).

5.11.6 Notice of Default; Foreclosure. The Board can record a notice of default and notice of delinquent assessment, subject to the requirements and limitations of California Civil Code Section 1367.4, can cause the Condominium with respect to which a notice of default has been recorded to be sold either in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c or through judicial foreclosure as provided in California Civil Code Section 1367.1. However, as a condition precedent to the holding of any such sale under Section 2924c, appropriate publication shall be made. In connection with any such sale, the Board is authorized to appoint a trustee for purposes of conducting the sale. If a delinquency is cured before sale of the Condominium or before completing a judicial foreclosure, or if it is determined that a lien previously recorded against a Condominium was recorded in error, the Board shall apply payments and follow the procedures set forth in California Civil Code Section 1367.1. On becoming delinquent in the payment of any assessments or installments, each delinquent Owner shall be deemed to have absolutely assigned all rent, issues and profits of his or her Condominium to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may,

at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Owners, shall have the power to bid upon the Condominium at foreclosure sale and to acquire, hold, lease, mortgage and convey the Condominium and vote as an Owner of the Condominium.

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

5.11.8 Notice to Mortgagees of Right to Cure. If the Board files a Notice of Delinquent Assessment as provided above, it shall give notice of such filing to any Mortgagee which shall have given written notice to the Board of its desire to receive such notice. Such Mortgagee shall have the right, but not the obligation, both before and for 60 days after notice of the recording of the Association's lien, to cure such defaults, including the payment of interest and other charges as provided herein.

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

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

5.14 Personal Liability of Power. No Owner may exempt himself or herself from personal liability for assessments, nor any part thereof, levied by the Association, nor release the Condominium owned by such Owner from the liens and charges hereof by waiver of the use and enjoyment of the Common Area or Association Property, or by abandonment of such Owner's Condominium.

5.15 Transfer of Property. After transfer or sale of Property within the Project by an Owner other than Declarant, the selling Owner or Owners shall not be liable for any assessment levied on such Owner or Owner's Condominium after the date of such transfer of ownership if written notice of such transfer is delivered to the Association. After transfer or sale of any portion of the Property within the Project, Declarant shall automatically be released from any liability for assessments after the date of transfer of such ownership. It shall be the responsibility of selling Owner to instruct such Owner's escrow agent to deliver written notice of the transfer to the Association. The selling Owner shall still be responsible for all assessments and charges levied on his or her property prior to any such transfer and the delivery of such written notice. The Association shall have the right to charge a fee in the amount of Two Hundred Fifty Dollars (\$250.00) or any such greater amounts established in the Rules and Regulations for (i) the costs incurred in changing its records and/or escrow and (ii) for the costs incurred in preparing a letter certifying the status of assessment payments for such Owner's Condominium.

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

5.17 Property Exempt from Assessments. The Association Property shall be exempt from the assessments, charges and liens created herein.

5.18 Reserve Fund. The Association shall establish and maintain a reserve account fund sufficient to pay for maintenance, repair and periodic replacement of the Common Area, Association Property and Improvements located thereon that the Association is obligated to maintain.

5.19 Inspection of Books and Records. Upon request, any Owner shall be entitled to inspect the books, records and financial statements of the Association and the Governing Documents and any amendments thereto during normal business hours.

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

5.21 Initial Capital Contribution. Upon acquisition of record title to a Condominium from Declarant, each Owner shall contribute to the capital of the Association an amount equal to Five Hundred Dollars (\$500.00) for each Condominium acquired by an Owner. This amount shall be deposited by the Owner into the purchase and sale escrow for such Owner's Condominium and disbursed therefrom to the Association.

ARTICLE 6 USE RESTRICTIONS

6.1 Restrictions of Master Agreements. Each Owner shall comply with all of the restrictions set forth in the Master Agreements. The provisions set forth in this **ARTICLE 6** are in addition to the restrictions set forth in the Master Agreements and each Owner shall, in addition to complying with the restrictions set forth in the Declaration, comply with the restrictions set forth in the Master Agreements. In the event of any conflict between this Declaration and the Master Agreements, the more restrictive provision shall apply.

6.2 Permitted Uses. Condominiums in the Project may only be used for research and development and light industrial uses, and any other uses permitted by the City so long as such other uses are not otherwise prohibited under **Section 6.3** of this Declaration or provided such uses have been approved or authorized by Declarant in a Supplementary Declaration.

6.3 Prohibited Uses. No use or operation shall be made, conducted or permitted on or with respect to all or any part of the Project, which use or operation violates (i) applicable laws, regulations, or ordinances, or (ii) the provisions of this Declaration or the Master Declaration. In addition to the foregoing, no Condominium or any part of the Project shall be used for the following purposes:

6.3.1 Any use involving Hazardous Materials, noxious, hazardous, toxic, caustic, explosive or corrosive fuel, gas or other substance;

6.3.2 Any use involving any fire, explosion or other damaging or dangerous hazard, including the storage or sale of explosives or fireworks;

6.3.3 Any distillation or refinery facility;

6.3.4 Any dumping of garbage or refuse, except in places designated for disposal by the Association;

6.3.5 Any use that results in vibration, noise, sound or disturbance that is objectionable due to intermittence, beat, frequency, shrillness or loudness;

6.3.6 Any use that results in air or water pollution in violation of applicable laws, ordinances, rules, regulations or permits;

6.3.7 Any use that results in emission of odorous, noxious, caustic or corrosive matter or gas, whether toxic or non-toxic;

6.3.8 Any use that results in unusual litter, dust, dirt or debris, except as generated during construction of Improvements;

6.3.9 Any motel, hotel or other short term transient occupancy facility; and

6.3.10 Any food services or restaurant.

6.4 Rental of Condominiums. An Owner shall be entitled to lease the Owner's Condominium subject to the restrictions contained in this Declaration. Any rental or leasing agreement shall be in writing, shall provide that the Lease is subject to the Governing Documents, shall have a term of at least thirty (30) days, and shall provide that any failure to comply with any provision of the Governing Documents shall be a default under the terms of the Lease. A copy of the Governing Documents and the Master Agreements shall be made available to each Lessee by the Owner so renting or leasing. The Owners of the Condominium which is being leased shall, at all times, be responsible for the Lessee's compliance with all of the provisions of this Declaration and the Governing Documents and shall remain primarily liable for any violations by a Lessee of any of the provisions of the Governing Documents. A Lessee shall not have any voting rights in the Association, and an Owner may not delegate any other rights to a Lessee. All Owners who lease their Condominiums shall submit names and contact numbers for their Lessees to the management company for the Project.

6.5 Signs. All proposed signs shall be designated to conform with the regulations of the City of Fremont and the requirements of the Master Signage Program and shall require a separate application and approval from the City. No signs or other advertising device whatsoever, including, without limitation, political and similar signs, shall be erected or maintained within the Project except (a) signs placed or displayed by Owners or Lessees of Condominiums in accordance with the Project Handbook, provided such signs are in conformance with all applicable federal, state and local laws and regulations and the Signage Program, (b) job identification signs during the time of construction of any portion of the Project by Declarant; and (c) signs used by Declarant for the purpose of developing, improving and selling Condominiums. So long as Declarant owns any interest in the Project, no "for lease" or "for sale" signs shall be erected or maintained within the Project by any Owner other than Declarant and all identification and other signs for Condominiums (and any changes thereto) referenced in Subsection (b) above shall be subject to the prior written approval of Declarant. Any signs which are approved for installation by an Owner shall be installed only by contractors pre-approved by the Association.

6.6 No Animals. No animals shall be allowed in the Project, except assistance animals.

6.7 Inside and Outside Installations. No Alteration, including, without limitation installation of signs, shall be commenced without the prior written approvals required under **ARTICLE 8** of this Declaration. Nothing shall be done in or to any Condominium which will or may tend to impair the structural integrity of any other Condominium or other Improvement in the Property or which would structurally alter any Building except as otherwise expressly provided herein. In addition to the foregoing, all Improvements installed or constructed by an Owner within the Project must be completed in accordance with applicable laws, including without limitation, the laws, regulations and ordinances of the City. Window tinting and coverings shall be prohibited unless approved by the Board, except that Board approval is not required for any window tinting or window coverings installed by any Declarant. Window blinds shall be restricted to the one type designated by Declarant or the Board in the Project Handbook.

6.8 No Mechanics' Liens. No Owner shall cause or permit any mechanic's lien to be filed against any portion of the Project for labor or materials alleged to have been furnished or delivered to the Project or any for such Owner, and any Owner who does so shall immediately cause the lien to be discharged either by paying the indebtedness which gave life to such lien or by posting such bond or other security as shall be required by law to obtain such release and discharge. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner an Enforcement Assessment for such cost of discharge.

6.9 Outside Storage. No Owner shall use any Association Property or exterior Common Area for storage purposes. No Owner shall allow any personal property belonging to such Owner to remain within any portion of the Common Area or the Association Property except as may otherwise be permitted by the Board or the Project Handbook.

6.10 Fire Life Safety Systems. No Owner or the Association shall not turn off or otherwise disable the Fire Life Safety System servicing an Owner's Unit or the Building in which such Owner's Unit is located without first providing reasonable prior written notification to the Owners within the Building and the management company who controls the fire alarm company. The Association shall maintain the Fire Life Safety System. In no event shall any Owner or the Association cause the Fire Life Safety System to be shut off or disabled for a period longer than twelve (12) consecutive hours.

6.11 Drainage. No Owner shall be permitted to make any alterations which result in any interference with the established drainage pattern over the Property, unless an adequate alternative provision is made for proper drainage with the prior written approval of the Board pursuant to **ARTICLE 8** of this Declaration. For the purpose hereof, "established" drainage is defined as the drainage shown on the grading and drainage plan approved by the City, or that which is shown on any plans approved by the Board. If an Owner violates this restriction and, as a result, imminent danger or damage to person or property may result to the other Owners, then the Association shall have the right of access onto such area for the purpose of clearing debris and other material so as to not impede the flow of water. This right of access shall be exercised only for the purpose of preventing damage to persons and property and the entering party ("**Entering Party**") shall use reasonable care so as to not cause any damage. The Owner shall reimburse the Association for any costs and expenses incurred in clearing such debris pursuant to **Section 5.7** of this Declaration.

6.12 Antennae and Satellite Dishes. No Owner shall install any antenna, satellite dish, or other over-the-air receiving device ("**Antenna**") (i) on any real property which such Owner is not entitled to exclusively use or control, as provided in Title 47 U.S.C. §§ 1 *et seq.*, 47 CFR § 1.4000 and any other applicable laws, rules and decisions promulgated with respect thereto ("**collectively 'Antenna Laws'**"), (ii) in a particular location if, in the Board's opinion, the installation, location or maintenance of such Antenna unreasonably affects the safety of the Owners or any other person, or for any other safety-related reason established by the Board, or (iii) that is of a size larger than is permitted under the Antenna Laws. If an Owner is entitled to install an Antenna under the foregoing requirements, such Owner shall provide the Board with written notice that such Owner has installed or is about to install the Antenna. If an Owner desires to install an Antenna, other than as described in (i) through (iii) above, such Owner may do so only upon the prior approval of the Board pursuant to **ARTICLE 8** and subject to the

requirements set forth in Section 7.1.1 and Section 7.3 below. The Board shall not impose or enforce any restrictions upon Antennae that are inconsistent with the Antenna Laws.

6.13 Parking and Vehicular Restriction.

6.13.1 Authorized Vehicles. The following vehicles are "Authorized Vehicles": standard passenger vehicles, including automobiles, passenger vans designed to accommodate 10 or fewer people, motorcycles and pickup trucks having a manufacturer's rating or payload capacity of one ton or less, commercial-type vehicles including delivery trucks, limousines, and vehicles which are the principal source of transportation for an Owner. Authorized Vehicles may be parked in any portion of the Project intended for parking of motorized vehicles subject to Sections 6.13.2 and 6.13.3 below; however, no Owner may park an Authorized Vehicle in a manner which the Association determines either restricts the passage of pedestrians or vehicles over streets, driveway, or sidewalks in the Project or extends beyond the limits of the space where the Authorized Vehicle is parked. The Association has the power to identify additional vehicles as Authorized Vehicles in the Rules and Regulations.

6.13.2 Prohibited Vehicles. The following vehicles are "Prohibited Vehicles": (a) recreational vehicles (e.g., motorhomes, travel trailers, camper vans and boats) (b) buses or vans designed to accommodate more than ten (10) people, (c) trailers, (d) inoperable vehicles or parts of vehicles, (e) aircraft, (f) any vehicles or vehicular equipment deemed a nuisance by the Board, (g) dump trucks, tank trucks, concrete trucks, (h) stakebed trucks, and (i) any other vehicles not classified as an Authorized Vehicle. Prohibited Vehicles may not be parked, stored or kept within any portion of the Property, except for brief periods for loading, unloading, making deliveries, providing services or emergency repairs. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Board.

6.13.3 General Restrictions. Each Owner acknowledges that there shall be maintained at all times at the Project, a parking ratio of one (1) Parking Space for each 300 square feet contained in the Owner's Unit. Any unassigned, unreserved Parking Spaces shall be used and shared in common with all Owners. Owners shall be prohibited from leaving any vehicles overnight in the Parking Spaces. Unless otherwise approved by the Board in writing, Owners shall not park or permit an Owner's Invitees to park vehicles so as to exceed the parking allocation provided under this Section 6.13.3. If an Owner's use of his or her Unit triggers a change to the Traffic Impact Fee charged by the City, that Owner shall be responsible for paying the increased charge. The Association shall maintain up-to-date parking and use information for each Owner and tenant in the Project and track the number of unused spaces, and make this information available in a timely manner upon receipt of requests from Owners submitting applications to the City. There shall be no parking in the Project that obstructs free traffic flow, constitutes a nuisance, violates the Rules and Regulations, or otherwise creates a safety hazard. The parking areas in the Property shall be used for parking Authorized Vehicles only and shall not be used for storage, living or recreational purposes. No maintenance, repair, restoration, or construction of any vehicle shall be conducted on the Property. Unless otherwise approved by Declarant, and after Declarant no longer owns any Units in the Project, unless otherwise approved by the Board in writing, vehicles may not be parked overnight within the Project. The

Declarant or the Board shall have the right, but not the obligation, to assign exclusive parking areas to each Building, designate exclusive parking areas to be utilized by the Invitees of a specified Building during specified time periods, issue parking permits for authorized users of allocated parking spaces and/or establish such other system of controlled parking on the Association Property as the Board may determine reasonably necessary to ensure equitable use of the available parking within the Project. The Board may establish additional regulations regarding parking areas, including designated "parking," "visitor parking" and "no parking" areas.

6.13.4 Enforcement. The Board may enforce all parking and vehicle use regulations applicable to the Project, including, without limitation, removing violating vehicles from the Project pursuant to California Vehicle Code Section 22658 or other applicable ordinances or statutes. In the event that the Board determines, after Notice and a Hearing, that any enforcement action is required pursuant to this **Section 6.13.4**, the Board may impose an Enforcement Assessment on the Unit of the Owner whose violation, or whose Invitee's violation, has resulted in enforcement action in an amount equal to the reasonable cost to the Association of the applicable enforcement action. The Board, in its sole and absolute discretion, may waive in writing all or any portion of the provisions of this **Section 6.13.4**.

6.13.5 Loading Facilities. All temporary loading and unloading activities shall be conducted from the designated loading areas within the Association Property; subject to such reasonable restrictions as may be imposed by the Board (including, without limitation, restrictions on the maximum duration of loading and unloading activities within the Association Property or the hours during which such activities occur). Without limiting the foregoing, no loading and unloading activities shall be conducted in any manner which may obstruct free traffic flow during normal business hours or otherwise constitute a nuisance or create a safety hazard.

6.13.6 Non-Applicability to Declarant. Nothing contained in this **Section 6.13** shall restrict Declarant from permitting construction vehicles reasonably necessary for the development of the Project to be parked, stored or kept within the Project.

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

Each Owner covenants, at its own expense, to procure, maintain in effect and comply with all conditions of any and all permits, licenses, and other governmental and regulatory approvals required for its or its Lessee's use of the Property, including, without limitation, discharge of (approximately treated) materials or wastes into or through any sanitary sewer serving the Property. Except as discharged into the sanitary sewer in strict accordance and conformity with all applicable Hazardous Materials laws, no person shall cause any Hazardous Materials removed from the Property to be removed and transported except solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes. Each Owner, Occupant and user shall in all respects handle, treat, deal with and manage any and all

Hazardous Materials in, on, under or about the Property in total conformity with all applicable Hazardous Materials laws and prudent industry practices regarding management of such Hazardous Materials. Upon transfer of possession of a Unit or leased premises, such transferor shall cause all Hazardous Materials to be removed from the Unit or leased premises and transferred and transported for use, storage or disposal in accordance with and compliance with all applicable Hazardous Materials laws.

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

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

6.16 Compliance with Laws, Etc. Nothing shall be done, constructed, installed or kept in any Unit or in the Common Area or the Association Property that might increase the rate of, or cause the cancellation of, insurance for the Project, or any portion of the Project. No Owner shall permit anything to be done, constructed, installed or kept in such Owner's Condominium that violates any law, ordinance, statute, rule or regulation of any local, County, State or federal body, including any laws, ordinances or statutes pertaining to the use or storage of any Hazardous Materials.

6.17 Trash Disposal. Trash, garbage or other waste shall be kept only in sanitary containers. No Owner shall permit or cause any trash or refuse to be kept on any portion of the Project other than in the receptacles customarily used for it, which, shall be located only in places specifically designated for such purpose in the Rules and Regulations. The Association shall be responsible for the provision and maintenance of central refuse and recyclable collection facilities as they are initially constructed and as they may be needed for future use.

6.18 Closure. At the request of the Association, the Owner of a Condominium shall, following the permanent closure or cessation of any business operation which is expected to continue for any extended period of time: (a) board up or otherwise enclose the windows and entrances of such Building or portion thereof previously occupied by such business operation in a reasonably attractive manner; and (b) unless prevented from so doing by the terms and

conditions of a Lease to a Lessee, thereafter diligently seek to sell or relet the vacant premises to another Owner or Lessee whose business operation conforms to the requirements of this Declaration.

6.19 Compliance with Requirements Regarding Project Storm Water Pollution.

Each Owner acknowledges that unlike the water in the sewer system in the Owner's Condominium, which flows to wastewater treatment plants, water that enters a storm drain flows to waterways, creeks, streams, rivers, lakes and/or oceans. Accordingly, various federal, State and City laws, regulations, policies and ordinances prohibit discharging anything other than natural rain water into storm drainage systems. No Owner, nor the Association, shall discharge any toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, detergents, pet waste, and other such materials and pollutants into the storm drain system. The disposal of such pollutants and materials into a storm drain system may result in significant penalties and fines and the Owner or the Association may be responsible for any activities by the Owner's or the Association's contractors (e.g., painters, etc.) who dispose of such pollutants from an Owner's Unit into a storm drain system.

6.19.1 Storm Water Pollution Prevention Best Management Practices. The City has required the Declarant to establish best management practices in connection with handling storm water pollution at the Project ("BMPs"), as further described in the Storm Water Maintenance Agreement. The Association shall comply with and perform all maintenance that may be imposed by any water quality management plan that may affect the Property. The costs of such maintenance by the Association, if any, shall be included within the Common Expenses. All Owners within the Project and the Association are required to comply with any and all restrictions imposed by the City concerning the proper disposal of any Hazardous Materials.

6.19.2 Liability to Declarant. So long as Declarant owns any Condominium, if the Association is not in compliance with the provisions of this Section and, as a result, Declarant incurs any liability, Declarant shall have the right but not the obligation to enter the Condominium or the Common Area to correct such violation. If the Association violates the requirements of this Section, the Association shall indemnify, protect, defend and hold Declarant and Declarant's officers, directors, successors and assigns entirely free and harmless from and against any Claims arising from or attributed to a violation of the provisions of this Section and shall within 15 days after request from Declarant, reimburse Declarant for any costs and expenses incurred by Declarant in correcting any violation of this Declaration.

**ARTICLE 7
MAINTENANCE**

7.1 Maintenance Obligations of Owners.

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

(a) All portions of such Owner's Unit, including, without limitation, any Exclusive Use Easement Areas and the interior surfaces of the Unit;

(b) The Utility Facilities servicing its Unit and located either within or outside the Unit, so long as those systems are used exclusively by such Owner and not in common, including, without limitation, any HVAC equipment on the roof of the Building; provided however, that Owners shall be required to use contractors pre-approved by the Association for any maintenance that requires access to the roof, including the maintenance of roof mounted HVAC equipment, and for the installation and maintenance of any Antennae installed pursuant to Section 6.12. Notwithstanding anything to the contrary contained herein, an Owner shall use a contractor approved by Declarant for any HVAC installation, or penetration contemplated in this Section 7.1.1(b), unless otherwise authorized by the Board;

(c) The interior of the windows enclosing an Owner's Unit, provided, however, that the Owner shall only be responsible for cleaning the window interior and shall not be responsible for maintaining, repairing or replacing any portion of the window or the window casing, except if the damage to the window is caused by the Owner in which case the Owner shall be obligated to reimburse the Association for repairing such damage;

(d) Designated Exclusive Use Common Area Walls;

(e) Doors located within the interior of an Owner's Unit;

(f) Signage for an Owner's Unit; and

(g) Exterior doors servicing an Owner's Unit provided, however, that the exterior doors shall be replaced by the Association; and,

(h) Signage for an Owner's Unit that is exclusively for such Owner, including any signage permitted to be installed on the exterior wall of a Building. In the event an Owner's Signage is removed the Owner shall, at the request of the Association, perform repairs, including, without limitation, patching and painting, to restore the surface to which the sign was attached to its original condition within 10 days after removal of such sign or reimburse the Association for any costs incurred by the Association; and

(i) The exterior doors servicing an Owner's Unit, provided, however, that all exterior doors shall be replaced by the Association; and

(j) Loading dock areas shall be kept free of debris.

7.1.2 Additional Maintenance Obligations of Shell Condominium Owners.

In addition to the obligations set forth above, Shell Condominium Owners shall have the maintenance obligations described below.

(a) The Shell Condominium Owners shall be responsible for installing any finish Improvements within the Shell Condominium including, without limitation, Improvements necessary for use of the Building as individual Units such as installation of flooring, electrical distribution, restrooms and demising walls; and

(b) The Shell Condominium Owners shall be responsible for installing, maintaining, repairing and replacing utility submeters compatible with the systems installed in the Finished Condominiums or as approved by the Board, and HVAC. Installation and maintenance of the HVAC shall be done by a contractor who is pre-approved by the Association.

7.1.3 Emergency Repairs. In the event of any occurrence which threatens imminent danger to persons or property, one or more Owners of the Units in the Building may take appropriate actions to make any emergency repairs until the Association can correct the malfunction. Such repairing Owner shall not be deemed guilty of trespass by reason of such entry.

7.1.4 Notification of Damage. In the event Owner becomes aware of any damage caused to the Association Property or Common Area, Owner is obligated to notify the Association immediately. Similarly, should an Owner become aware of water infiltration in a Condominium, Common Area or Association Property, Owner is obligated to notify the Association immediately.

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

7.2 Maintenance Obligations of Association.

7.2.1 Maintenance of Common Area and Association Property. Except for the maintenance responsibilities of Owners described in Section 7.1, the Association shall be responsible for the general clean-up, maintenance, repair, and replacement of all Common Area and Association Property in accordance with the Maintenance Obligations and the requirements of the Association Maintenance Manual. The Association shall provide for all necessary maintenance services and cause all acts to be done which may be necessary or proper to assure the maintenance of the Common Area and Association Property in a good and workmanlike manner consistent with other institutional quality projects in the market. The Association's obligations to perform such maintenance shall commence on the date Regular Assessments commence on Condominiums. The Association's obligations shall include without limitation, maintenance, repair and replacement of the following:

(a) the landscaping, irrigation systems, hardscape and drainage within the Association Property and Common Area except those areas to be maintained by the Master Association;

(b) the gang mail boxes, trash enclosures, exterior lighting, central distribution unit, and monument signs within the Association Property;

(c) the electrical room and fire riser room located within the Common Area of the Buildings;

(d) exterior walls, facades, roofs, foundations, bearing walls, and structural components of the Buildings, subject to the obligations of any Owners to perform other Maintenance Obligations as provided in Section 7.1;

(e) utility areas and all Utility Facilities that serve more than one Unit (whether located within the Units, the Common Area or the Association Property) which are not maintained by a public entity, utility company or improvement district;

(f) windows enclosing an Owner's Unit including the frames, tracks and window casings provided, however that the Owner shall be responsible for cleaning the interior of the window as provided in Section 7.1.1(c);

(g) fire sprinkler and fire monitoring systems for each Building, as provided in Section 3.6.3;

(h) parking areas, and any areas designated for vehicle and/or pedestrian circulation; and

(i) all obligations under the Storm Water Maintenance Agreement, including without limitation, maintenance of the bioswales and two underground water treatment units, pursuant to the requirements of the Storm Water Maintenance Agreement.

7.2.2 Inspections. The Association shall regularly inspect, maintain and repair the Association Property, including, without limitation, the landscaping, drainage and irrigation systems serving or within the Association Property in accordance with the requirements of the Association Maintenance Manual and any warranty provided to the Association. The Association shall employ the services of such experts and consultants as are necessary to assist the Association in performing its duties hereunder and follow any recommendations contained in the Association Maintenance Manual and any warranty provided to the Association. If requested by Declarant, Declarant shall be invited to attend any such inspections. Any inspection report prepared for a portion of the Project covered by a warranty shall, upon the request of Declarant, be provided to Declarant. The Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors and shall keep a record of all such matters in the Board's minutes.

7.3 Compliance with Warranties. So long as any warranty provided to an Owner or the Association is in effect, if an Owner or the Association is not, in the reasonable discretion of

Declarant, in compliance with any provisions of such warranty, Declarant or any party designated by Declarant to perform such repairs, shall have the right, but not the obligation, to enter upon the Common Area and the Condominiums to correct such non-compliance at the Owner's or Association's expense, as the case may be, after such Owner's (or the Association's) failure to correct such non-compliance within 5 days of receipt of written notice issued by the Declarant (unless an emergency situation exists in which case notice to such Owner or the Association is not required).

7.4 Water Meters. Each Owner, by acceptance of a deed, acknowledges that the City ("Service Provider") provides water and sewer service to the Project. The Project contains common water meter(s) that will be used to measure water usage of all the Units within the Project. The Service Provider will prepare a bill based upon overall water usage through the Service Provider's water meter. The Association will be responsible for the payment of this bill to the Service Provider. Individual submeters will be installed on each Condominium Building that measure water usage for the Units within a Condominium Building (Declarant will install the water submeters in Buildings A-C, and the Shell Condominium Owners will be responsible for installing submeters there) and each Owner will be responsible for paying its share of such water bill in accordance with the procedures set forth below. The Association shall be responsible for maintaining the sewer system.

7.4.1 Payment of Water and Sewer Bills. All water bills will be sent to the Association, and the Association will be responsible for distributing those bills. In order to calculate the share attributable to each Unit for water, and other charges imposed by the Service Provider (collectively "Water Charges"), the Association shall either (i) allocate the Water Charges based on the actual use to each Unit, or (ii) charge each Owner within a Building a percentage or reasonable allocation of the total Water Charges for each Building. The Association shall have the right, but not the obligation, to enter into a contract with a water metering service company ("Metering Company"). The Metering Company will be responsible for (a) reading the individual submeters, (b) allocating the water, sewer and other charges imposed by the Service Provider to the individual Units and (c) preparing the individual bills for delivery to each Owner. Additionally, the Metering Company will impose a service charge for their services which will be charged to each Owner with a submeter. Each Owner will be responsible for paying directly to the Metering Company such Owner's share of water, sewer and other charges imposed by the Service Provider and the service charge to the Metering Company prior to the due date. The Metering Company will provide to the Association a statement of all amounts received from the Owners with submeters on a regular basis along with such funds received. If an Owner with a submeter fails to pay any amounts when due, such Owner will be responsible for any penalties or delinquent amounts levied by the Service Provider and the Metering Company. Additionally, the Association shall have the right to cure any failure by an Owner ("Defaulting Owner") to pay the amounts due to the Service Provider. If the Association elects to cure such default, then the Defaulting Owner will be responsible for reimbursing the Association. If the Defaulting Owner fails to reimburse the Association, the Association will be entitled to impose an Enforcement Assessment as provided under this Declaration for any Water Charges that are not paid by the due date, may enter the Unit to shut off water service to the Defaulting Owner's Unit or may pursue any other remedies as provided under this Declaration. The Association shall have the obligation to maintain, repair and replace the submeter providing service to each Unit. Each Owner with a submeter shall provide

unobstructed access to the Association or Metering Company for any inspections and maintenance and remove any items which would prohibit inspection and maintenance of such submeters upon prior notice of such inspection and maintenance from the Association of an Owner's submeter. In the event Owners of Units within a Building desire to install a second submeter to measure each Unit's individual water usage, such Owners may install such meter subject to the prior written approval of the Association. Such Owners shall be responsible for all costs and expenses associated with the installation of such submeter and, once such additional submeter is installed, the Owners shall share equally in the cost of reading the additional submeter which costs shall be included as part of the Water Charges or Metering Company of an Owner's submeter. Shell Condominium Owners shall install submeters when and if any portion of the Building is sold as a Condominium. If, in the future, there are no companies which can provide the water metering service, then it will be the responsibility and obligation of the Association to allocate costs for water and sewer usage and the other charges levied by the City to the Owners in the Project.

ARTICLE 8 ARCHITECTURAL REVIEW

Except for the references contained in Section 8.3, 8.4 and 8.15, all references to the Board or the Association contained in this ARTICLE 8 shall be deemed to refer to Declarant until such time as Declarant is no longer actively developing, marketing and/or selling any Condominiums in the Property.

8.1 Scope. No Alterations of any kind whatsoever (including, without limitation, the extension of gas service lines to a Unit and or any penetration through the Building Envelope) shall be commenced until the following have been submitted to and approved in writing by the Board in accordance with the procedures set forth in the Architectural Guidelines (the items listed in Sections 8.1 (a) through (n) below are referenced to collectively herein as "**Plans and Specifications**"):

- (a) Plumbing plan;
- (b) Electrical plans;
- (c) Mechanical HVAC plans;
- (d) Sprinkler plans;
- (e) Partition plan;
- (f) Reflective ceiling plan;
- (g) Finish plan;
- (h) Structural plans (if any);
- (i) Floor plans, if an Owner is requesting permission to remove or relocate a wall;

- (j) Description of materials and colors and material samples;
- (k) A proposed construction schedule (including proposed start and completion dates);
- (l) Certificates of insurance (including contractors exclusions and proof of valid workers compensation insurance);
- (m) Permits and licenses, if applicable;
- (n) Any other documents or payments required to be submitted in the Project Handbook.

No Alterations of any kind whatsoever (including, without limitation, any modification or removal of any walls located between 2 Units as described in Section 2.5 above) shall be commenced until the location and the complete Plans and Specifications showing the Alteration's nature, kind, shape, height and materials, including the color have been submitted to and approved in writing by the Board in accordance with the procedures set forth in the Architectural Guidelines. The Board shall not approve any exterior renovations, remodeling and/or site improvements unless improvements include consistent architecture and design on all facades and roofs. All Plans and Specifications submitted shall be prepared by an architect or engineer licensed to practice in the State, and signed by the Owner or by an agent authorized by the Owner in writing. The Board shall not approve any Plans and Specifications without first submitting such Plans and Specifications for review and comment to an architect, landscape architect, engineer or other consultants as deemed appropriate in the determination of the Board based on the nature of the proposed Alterations (collectively the "Outside Consultant"), which Outside Consultant shall be duly qualified and licensed in the State and shall have no current financial or ownership interest in the Project. The choice of the Board as to the selection of the Outside Consultants shall be deemed to be final. All fees, costs and expenses associated with retaining the Outside Consultant shall be borne by the submitting Owner as provided in Section 8.9 hereof. Notwithstanding the foregoing, the reconstruction of a Unit or other Improvements that were originally constructed by any Declarant or approved by the Board under this Article, shall not require such submittal, so long as such Improvements are constructed in accordance with the original Plans and Specifications and in a manner otherwise consistent with this Article. In the discretion of the Board, inspections of such Improvements in accordance with Section 8.6 of this Declaration may be performed to ensure compliance with the original Plans and Specifications. In the event of non-compliance with such Plans and Specifications, the Board shall have the right to require correction of such work as provided in the Architectural Guidelines.

8.1.2 Designated Exclusive Use Common Area. Any alteration, modification installation or removal of any Designated Exclusive Use Common Area Walls or other work involving the penetration of the unfinished surfaces of the ceilings, walls or floors shall, for a period of ten (10) years after the date a certificate of occupancy is issued for the last Unit in the Project, require the prior written consent of the Declarant unless Declarant has notified the Association, in writing, that it (i) waives its consent to the particular work of Improvement or (ii) no longer desires to exercise such right of review and approval for any

future works of Improvement. In the case of (i) or (ii) above, the Board shall not grant approval of the removal of a demising wall or floor between two (2) or more adjoining Units which are owned by one (1) Owner unless (a) Outside Consultants consisting of both an architect and structural engineer licensed in the State of California have approved the Plans and Specifications for such Improvements, (b) such Improvements do not adversely impact the structural integrity of the Project, do not contain any common utilities, and (c) the Plans and Specifications are otherwise in conformance with the requirements of this Declaration and the Architectural Guidelines. If an Owner of two (2) or more Units which have been joined as described above, decides to sell such Units separately, such Owner shall be responsible for replacing all building components which were removed and for performing all work necessary to return the Units to the configuration they were in prior to being joined in accordance with the procedures of this ARTICLE 8.

8.2 No Additional Mezzanines. No additions may be made to the mezzanines, regardless of whether such additional floor area may be identified for storage, office or another use.

8.3 Architectural Guidelines. The Board may, from time to time and in its sole discretion, adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "Architectural Guidelines." The Architectural Guidelines shall interpret and implement the provisions of this Declaration by setting forth (i) the standards and procedures for architectural review, (ii) the requirements for the Plans and Specifications, and (iii) the guidelines for architectural design of Alterations, placement of Alterations, exterior color schemes, finishes and materials, and similar features which are recommended for use in the Project; provided, however, that the Architectural Guidelines shall not detract from or conflict with the standards required by this Declaration or Applicable Law including the city issued entitlements defined in Section 1.4.

8.4 Duties of Board for Architectural Review. It shall be the duty of the Board to consider and act upon such proposals or plans submitted to it pursuant to the terms hereof and the Architectural Guidelines, to administer the Architectural Guidelines to ensure that any Alterations constructed within the Property conform to plans approved by the Board, and to carry out all other duties imposed upon it by the Governing Documents related thereto.

8.4.1 Time Limitations. The Architectural Guidelines shall set forth the periods for review and approval of Plans and Specifications as set forth in this Article. The Architectural Guidelines may also set forth time limitations for the completion of any Alterations for which approval is required.

8.4.2 Procedures. The Board shall implement the procedures for architectural review set forth in the Architectural Guidelines, which shall be followed by each Owner. The failure of the Board to include any particular standards or guidelines in the Architectural Guidelines shall not limit the right of the Board to enforce standards to protect the overall theme and development of the Property.

8.4.3 Conformity of Plans and Specifications. The Architectural Guidelines shall require the conformity of completed Alterations to the Plans and Specifications approved by the Board and to the Architectural Guidelines. The Board may, but shall not be required to

record a notice of noncompletion if the Alterations have not been completed as required under this Declaration or, if permitted by law, to record a notice of noncompliance if the Alterations are not in conformance with the requirements of this Declaration identifying the violating Unit and its Owner and specifying the reason for the notice executed by the appropriate Board, in the Office of the County Recorder and provide such notice to such Owner after the expiration of the time limitations established pursuant to **Section 8.4.1** above or institute legal proceedings to enforce compliance or completion of the Alterations approved by the Board.

8.4.4 Identical Replacements. Notwithstanding the foregoing, the Board shall not unreasonably withhold consent to any replacement of an Improvement to a Condominium for which submittals were previously approved as provided above, but only if the replacement Improvement is substantially identical to the Improvement previously so approved. Any Improvement may be repainted without the Board's approval so long as the Improvement is painted the identical color it was first painted with the approval of the Declaration or the Board.

8.5 Powers of Board for Architectural Review. The Board may exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction of Alterations within the Property or any portion thereof. Unless any such rules regarding submission of plans are complied with, such Plans and Specifications shall be deemed not submitted.

8.6 Inspection and Correction of Work. The Board or its duly authorized representative may enter into any Condominium, from time to time, as provided below during the course of or after the construction or installation of any Alterations for the purpose of inspecting such construction and/or installation to determine whether it was performed in substantial compliance with the approved Plans and Specifications. If the Board determines that such construction and/or installation is not being done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner of the Condominium of such non-compliance not more than 30 days after the inspection specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance. The Board may not enter onto a Unit without obtaining the prior permission of the Owner or occupant of such Unit; provided, however, that such prior permission shall not be unreasonably withheld and shall be given for entry by the Board during the daylight hours within 48 hours of the request for entry.

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

8.6.2 Failure to Notify. If for any reason the Board fails to notify the Owner of any non-compliance within 90 days after receipt of said notice of completion from the Owner, the Improvement shall be deemed to be in accordance with said approved Plans and Specifications.

8.7 Government Regulations. If there is any conflict between the requirements or actions of the Board and any Applicable Law relating to the Property, the Applicable Law, to the extent that it is more restrictive, shall control and the Board shall modify its requirements or actions to conform to the Applicable Law; provided, however, that if the Applicable Law is less restrictive, the provisions of this Declaration shall nonetheless apply. The application by an Owner for review and approval by the Board of any Plans and Specifications or other submittals by such Owner shall in no way be deemed to be satisfaction of compliance with any applicable statute or law, or governmental rule or regulation or public utility requirement (hereinafter collectively referred to as "**Additional Requirements**"); provided, however, if the Additional Requirements are less restrictive than the provisions of this Declaration, the provisions of this Declaration shall nonetheless apply. Although the Board has the right to require evidence of City approval of the Alterations as a condition to review of the final Plans and Specifications, nothing contained herein shall impose on the Board the duty to obtain evidence of approval by the City of any Alterations as a condition to issuance of final approval or any liability on the Association as a result of the failure of the Board to request evidence of City approval. However, approval by the Board shall not relieve any Owner from its obligations to comply with Applicable Law.

8.8 Diligence in Construction. Upon final approval by the Board of any Plans and Specifications, the Owner shall promptly commence construction and diligently pursue the same to completion. In addition, each Owner shall cause all work to be as non-disruptive as practicable to the Property and the Invitees, Lessees, employees and Owners who use the Property. Each Owner shall disrupt traffic flow and parking as little as possible during construction and shall clean up daily any construction debris to the extent reasonably practicable.

8.9 Fee for Review. The Board shall have the right to retain Outside Consultants, and establish a fee for the review and approval of Plans and Specifications that must be submitted to the Board pursuant to the provisions of this Article, which fee shall not be less than Five Hundred Dollars (\$500.00). The Board shall have the right to hire any engineer or other consultant, the opinion of which the Board deems necessary in connection with its review of any plans submitted by any Owner and such Owner shall be liable for payment of such engineer's and/or consultant's fee.

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

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

8.12 Waiver. The approval by the Board of any Plans and Specifications for any work done or proposed, or for any other matter requiring the approval of the Board under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

8.13 Estoppel Certificate. Within 30 days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall issue to such Owner an estoppel certificate, executed by a majority of its members, stating (with respect to any Condominium of said Owner): (a) whether the Alterations made and other work completed by said Owner were submitted to and approved by the Board, and (b) whether the Board has any knowledge, without any duty of investigation or inquiry, of any non-compliance of such Alterations or work with the provisions of the Governing Documents. Any purchaser from the Owner, or from anyone deriving any interest in said Unit through such Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through them.

8.14 Liability. Neither any Declarant, the Board nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved Plans and Specifications; (c) the development of the Project or any property within the Project; or (d) the execution and delivery of an estoppel certificate pursuant to Section 8.13, whether or not the facts therein are correct, provided, however, that such Board member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing, the Board, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Board.

8.15 Non-Applicability to Declarant. The provisions of this Article shall not apply to any Improvements installed by any Declarant for so long as Declarant is developing the Project as set forth in ARTICLE 9.

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

8.17 Variances. The Board may authorize variances from compliance with any of the architectural provisions of this Declaration. Such variances must be evidenced in writing, and must be signed by at least two members of the Board. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Unit and the particular provision hereof covered by the variance, nor shall it affect in anyway the Owner's obligation to comply with all Applicable Law.

8.18 Appointment of Architectural Committee. The Board shall have the right to delegate its review and approval rights under this **ARTICLE 8** to an Architectural Committee. If the Board so elects, the Architectural Committee shall consist of three (3) members. One alternate member may be designated by the Board to act as a substitute on the Architectural Committee in the event of absence or disability of any member. In the event the Board appoints an Architectural Committee, all rights hereunder shall apply to the Architectural Committee and all references to the Board shall be deemed to refer to the Architectural Committee.

8.18.1 Appeal. If the Board establishes an Architectural Committee and the Architectural Committee disapproves any Plans and Specifications submitted by an Owner pursuant to this Article, the party or parties making such submission may appeal in writing to the Board. The Board must receive the written request not more than 30 days following the final decision of the Architectural Committee. Within 30 days following receipt of the written request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within the 30 day period shall be deemed a decision against the appellant. The decision of the Board shall be binding and final.

ARTICLE 9 DEVELOPMENT RIGHTS

9.1 Limitations of Restrictions. Declarant is undertaking the work of developing, marketing and/or selling Condominiums and other Improvements within the Project. The completion of the development work and the marketing and sale, rental and other disposition of the Condominiums is essential to the establishment and marketing of the Property as a research and development, light industrial condominium project. In order that the work may be completed, nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this Article or any other rights of Declarant set forth in this Declaration which rights shall, unless otherwise provided below, continue so long as Declarant is actively developing, marketing and/or selling Condominiums and thereafter shall terminate.

9.2 Access. Declarant, its contractors and subcontractors and any other party Declarant designates, shall have the right to obtain access over and across the Common Area and Association Property of the Project or do within any Unit owned by it whatever is reasonably necessary or advisable in connection with the completion of the Project and the development, marketing and maintenance thereof. The Declarant shall also have the right to reserve easements and restrict access over the Common Area and Association Property for the purpose of constructing the Condominiums and/or other Improvements to the Project.

9.3 Rights to Complete Construction. Declarant, its contractors and subcontractors and any other party Declarant designates shall have the rights set forth below.

9.3.1 Construct Improvements. Declarant, its contractors and subcontractors and any other party Declarant designates shall have the right to erect, construct and maintain on the Common Area and the Association Property of the Project or within any Unit owned by it (i) such structures or Improvements, including, without limitation, sales offices and signs, as may be reasonably necessary for the conduct of its business to complete the work and convey the Units by sale, lease or otherwise, as determined by Declarant in its sole

discretion, and (ii) additional Improvements as Declarant deems advisable before completion and sale of the entire Project.

9.3.2 Grant Easements. Declarant, shall have the right to establish and/or grant over and across said Common Area and the Association Property such easements and rights of way on, over, under or across all or any part thereof to or for the benefit of the State, the City or any other political subdivision or public organization, or any public utility entity or cable television provider, for the purpose of constructing, erecting, operating and maintaining Improvements thereon, therein or thereunder at that time or at any time in the future, including, without limitation: (i) roads, streets, walks and driveways; (ii) poles, wires and conduits for transmission of electricity, providing telephone service and cable television service to the Project and for the necessary attachments in connection therewith; and (iii) public and private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith. The Common Area and the Association Property shall be subject to any dedications stated in any subdivision map or Condominium Plan for the Project of an easement for public use for installation, maintenance and operation of facilities for public utilities over all of the Common Area and the Association Property. Said public utilities easement shall inure and run to all franchised utility companies and to the City, the County and the State and shall include the right of ingress and egress over the Common Area and the Association Property by vehicles of the City, the County and the State and such Service Providers to properly install, maintain, repair, replace and otherwise service such Utility Facilities. The grant of said public utility easement shall not be interpreted to imply any obligation or responsibility of any such Service Providers or the City, the County or the State for maintenance or operation of any of the Common Area and the Association Property or the facilities located thereon or the repair, replacement or reconstruction thereof except as occasioned by such Service Providers or City or County of the Utility Facilities for which they are responsible. Except for lawful and proper fences, structures and facilities placed upon the Common Area and the Association Property by Service Providers, the Common Area and/or Association Property subject to the public utility easement shall be kept open and free from Buildings and structures. The City and County furthermore is granted an easement across the Common Area and/or Association Property for ingress and egress for use by emergency vehicles of the City.

9.4 Size and Appearance of Project. Declarant shall not be prevented from changing the exterior appearance of Common Area or Association Property structures, the landscaping or any other matter directly or indirectly connected with the Project in any manner deemed desirable by Declarant, if Declarant obtains governmental consents required by law.

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

marketing; and (iv) conduct its business of disposing of Condominiums by sale, lease or otherwise.

9.6 Title Rights. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations and rights-of-way to itself, to Service Providers, to the City, to the County, to the State, or to others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

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

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

ARTICLE 10 INSURANCE

10.1 Association's Insurance Obligations.

10.1.1 Liability Insurance. The Association shall obtain and maintain liability insurance providing coverage at least as broad as a current ISO commercial general liability insurance form or its equivalent (including coverage for medical payments), insuring the Association, the Declarant (as long as Declarant is the Owner of any Condominium and/or has any rights under ARTICLE 9 of this Declaration) and the Owners against liability arising from the ownership, operation, maintenance and use of the Common Area by the Association and the performance by the Association of its duties under this Declaration. Coverage for such matters shall be primary to any coverage provided by any other liability insurance policy maintained by such insureds. The limits of such insurance shall be not less than Three Million Dollars (\$3,000,000) per occurrence and Three Million Dollars (\$3,000,000) general aggregate and shall

at all times meet or exceed the minimum requirements of Section 1365.9 of the California Civil Code. Such insurance shall include coverage against water damage liability and a broad form named insured endorsement, if reasonably available, and may include coverage against any other liability customarily covered with respect to properties similar in construction, location and use, all as may be determined by the Board. Such policy shall include, if reasonably available as determined by the Board, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured.

10.1.2 Property Insurance. The Association shall obtain and maintain property insurance for the risks covered by, and providing coverage at least as broad as, a current ISO "special form" policy or its equivalent, insuring (1) all Improvements upon, within or comprising the Common Area and any other areas to be maintained by the Association, including fixtures and building service equipment which are part thereof; and (2) all personal property owned or maintained by the Association. Such insurance shall be maintained in the amount of the maximum insurable replacement value of the property to be insured thereunder, as determined annually. Such coverage may exclude land, foundations, excavations, or other items typically excluded from property insurance coverage on properties similar in construction, location and use.

(a) **Units.** The property insurance maintained by the Association shall also cover any portions of the Units not required to be insured by the Owners pursuant to **Section 10.2.1.**

(b) **Payment of Insurance Proceeds.** Subject to the rights of Mortgagees, the proceeds from such property insurance shall be payable to the Association or an insurance trustee ("Trustee") to be held and expended pursuant to this Declaration for the benefit of the Association and the Owners, as their respective interests shall appear.

(c) **Earthquake Insurance.** Nothing in this Declaration shall obligate either Declarant or the Association to maintain earthquake insurance for any portion of the Project. At such time as the Board is no longer controlled by the Declarant, the Association may elect to obtain earthquake insurance from time to time, and if so, assessments may increase to cover the additional cost of such insurance.

(d) **Primary.** With respect to all real and personal property to be insured by the Association under this Declaration, the property insurance maintained by the Association shall be primary and noncontributing with any other property insurance maintained by an Owner covering the same loss.

(e) **Endorsements.** The property insurance policy shall contain, to the extent available on commercially reasonable terms as may be determined by the Board, the following endorsements or their equivalents: agreed amount, boiler and machinery (to the extent applicable), inflation guard, ordinance or law, replacement cost, pollution claims including mold, and such other endorsements as may customarily be obtained with respect to properties similar in construction, location and use, as may be determined by the Board.

(f) **Adjustment of Losses.** The Association shall timely file, pursue and complete the adjustment of all claims arising under the property insurance policies carried by the Association. The Board is appointed attorney-in-fact by each Owner, to negotiate and agree on the value and extent of any property damage under any policy carried by the Association. The Board is granted full right and authority to compromise and settle any property damage claim under any policy of property insurance carried by the Association or enforce any such claim by legal action or otherwise and to execute releases in favor of any insurer with respect to any such claim.

(g) **Waiver of Claims and Subrogation.** The Association waives all claims against the Owners for any damage to the real and personal property that the Association is obligated under this Declaration to insure (including without limitation any loss of use of such property), except that the Association may claim against an Owner for property damage caused by that Owner to the extent that either (i) the peril causing such damage is not covered by the property insurance required by this Declaration to be maintained by the Association or actually maintained by the Association (whichever is greater), provided that such Owner's liability for such uninsured damage is limited to the amount of liability insurance required to be maintained by such Owner pursuant to this Declaration; (ii) the peril causing such damage is covered by the Association's property insurance, but the damage is within the amount of the deductible or self-insured retention, provided that such Owner's liability for such damage is limited to the amount of liability insurance required to be maintained by such Owner pursuant to this Declaration; or (iii) such damage is caused by the gross negligence or willful misconduct of that Owner. Any property insurance policy obtained by the Association must contain a waiver of subrogation rights by the insurer consistent with this Section; provided, however, that a failure or inability of the Association to obtain such a waiver from an insurer shall not defeat or impair the waivers between the Association and the Owners as set forth herein. If an Owner is liable for damage under this Section, the Association may, after Notice and Hearing, levy an Enforcement Assessment equal to the cost of repairing the damage or any insurance deductible paid under the Association's insurance policy, as applicable, and the increase, if any, in insurance premiums directly attributable to such damage.

The waivers of claims and subrogation set forth in this subsection apply only in favor of the Owners and do not limit or waive, release or discharge any claims that the Association (or its insurers) may have against any third party, including without limitation any contractor, service provider, agent, or Invitee; provided, that such waivers shall also apply in favor of (i) an Owner's Lessee occupying a Unit under a written Lease if and to the extent that the Owner has similarly agreed in such Lease to a waiver of claims and subrogation against such tenant, and (ii) if the Owner is Declarant, to any contractor or subcontractor working for or on behalf of Declarant under a written construction agreement in connection with any Improvements to the Property or any Unit (including any interior Improvements) if and to the extent that the Declarant has similarly agreed in a written construction agreement to a waiver of claims and subrogation against such contractors(s).

10.1.3 Fidelity Bond. The Association shall maintain a fidelity bond in an amount equal to the greater of (a) the estimated maximum amount of funds, including reserves, expected to be regularly held by or on behalf of the Association at any given time during the term of the fidelity bond; and (b) three (3) months' aggregate of the Regular Assessments on all

Units plus any reserve funds. The bonds shall name the Association as obligee and shall insure against loss by reason of the acts of the Board, officers and employees of the Association, and any managing agent and its employees, whether or not such persons are compensated for their services.

10.1.4 Worker's Compensation Insurance. The Association shall maintain worker's compensation insurance to the extent necessary to comply with all applicable laws.

10.1.5 Directors and Officers Insurance. The Association shall maintain a policy insuring the Association's officers and directors against liability for their acts or omissions while acting in their capacity as officers and directors of the Association. The limits of such insurance shall be not less than Two Million Dollars (\$2,000,000).

10.1.6 General Policy Requirements. All insurance policies the Association is required to obtain pursuant to this Article shall be placed and maintained with companies rated at least "A-/VII" by A.M. Best Insurance Service and otherwise reasonably satisfactory to the Association. Such insurance policies may have reasonable deductible amounts comparable to those customarily maintained with respect to properties similar in construction, location and use, as may be determined by the Board. the coverage amounts required for such insurance policies may be satisfied by any combination of primary and excess policies that collectively serve to satisfy the requirements of this Article.

10.1.7 Copies of Policies. Copies of all insurance policies of the Association shall be retained by the Association and be available for inspection by Owners at reasonable times. All such insurance policies shall provide that they shall not be cancelable or substantially modified by the insurer without first giving at least thirty (30) days prior notice in writing to the Owners and First Mortgagees. In addition to the foregoing, the Association shall provide to the Owner's such information regarding the insurance of the Association as may be required by Applicable law or under the Bylaws.

10.2 Owners' Insurance Obligations

10.2.1 Property Insurance.

(a) **Units.** Each Owner shall obtain and maintain at its sole expense property insurance for the risks covered by, and providing coverage at least as broad as, a current ISO form Condominium Commercial Unit Owners Insurance policy or its equivalent, insuring (1) all Improvements within the Unit or any Exclusive Use Easement Areas; and (2) any personal property (including property under the care, custody, or control of the Owner, that may be located in, upon or about the Unit (collectively referred to as the "Owner's Property") for an amount equal to the maximum insurable replacement value thereof.

(b) **Auto Insurance.** Automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired and non-owned automobiles, within limits of liability not less than One Million Dollars (\$1,000,000) combined single limit each accident for bodily injury and property damage combined.

(c) **Waiver of Claims and Subrogation.** Each Owner waives all claims against the Association for any damage to the real and personal property that such Owner is obligated under this Declaration to insure (including without limitation any loss of use of such property), except that an Owner may claim against the Association for property damage to the extent that the damage is caused by the gross negligence or willful misconduct of the Association or its managing agent. Any property insurance policy obtained by an Owner must contain a waiver of subrogation rights by the insurer consistent with this Section; provided, however, that a failure or inability of an Owner to obtain such a waiver from an insurer shall not defeat or impair the waivers between the Owners and the Association as set forth herein.

The waivers of claims and subrogation set forth in this subsection apply only in favor of the Association and do not limit or waive, release or discharge any claims that an Owner (or its insurers) may have against any third party, including without limitation any contractor, Service Provider, agent, other Owner, or Invitee; provided, that such waivers shall also apply in favor of the Association's managing agent if and to the extent that the Association has similarly agreed in a written management agreement to a waiver of claims and subrogation against such managing agent.

10.2.2 Liability Insurance. Each Owner shall, at such Owner's sole cost and expense maintain liability insurance providing coverage at least as broad as the current ISO Commercial General Liability Insurance form or its equivalent (including coverage for medical payments), insuring the Owner against liability arising from the ownership, operation, maintenance and use of the Owner's Unit and Exclusive Use Common Area by such Owner. Such policies of insurance shall be written in companies reasonably satisfactory to the Association and may be part of a Condominium Unit Owners insurance policy.

(a) **Limits of Liability for Units** Liability insurance maintained by the Owner shall have limits of liability of not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) general aggregate.

10.2.3 Copies of Policies. Copies of all insurance policies that an Owner is required to maintain pursuant to this Declaration, or a certificate of such insurance, shall be delivered to the Association upon request. All policies shall indicate they may not be canceled or modified without thirty (30) days prior written notice to the Association. The acceptance of a copy of an insurance policy by the Association from an Owner shall not constitute a waiver of any of the insurance requirements set forth herein.

10.3 Review of Insurance. The Board shall review the adequacy of all insurance required by this Declaration to be maintained by the Association and by the Owners at least once every year. The review shall include a reasonable determination of the replacement cost of all real and personal property required to be insured by the Association in accordance with Section 10.2.1 of this Declaration without respect to depreciation.

10.4 Board's Authority to Revise Insurance Requirements. Subject to any statutory insurance requirements, the Board shall have the power and right to adjust and modify the insurance requirements for Owners and the Association set forth herein to require coverage and protection that is customarily carried by and reasonably available to prudent owners and

associations of communities similar in construction, location and use. If the Board elects to materially reduce the coverage required to be maintained by the Association from the coverage required in this **ARTICLE 10**, the Board shall make all reasonable efforts to notify the Owners and Mortgagees of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain one or more of the insurance coverages required hereunder to the extent the insurance is no longer available, or, if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances, or if the Owners fail to approve any assessment increase needed to fund the insurance premiums. An Owner shall not be in breach of its obligations hereunder solely as a result of the inability to obtain insurance if, after a good faith effort, the Owner is unable to obtain one or more of the insurance coverages required hereunder to the extent the insurance is no longer available, or if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, agrees is unreasonable under the circumstances.

ARTICLE 11 DESTRUCTION OF IMPROVEMENTS AND CONDEMNATION

11.1 Restoration Defined. As used in this **ARTICLE 11**, the term "restore" shall mean repairing, rebuilding or reconstructing damaged Improvements to substantially the same condition and appearance in which it existed prior to fire or other casualty damage.

11.2 Insured Casualty. If any Common Area or other Improvements required to be maintained by the Association is damaged or destroyed from a risk covered by the insurance required to be maintained by the Association, then the Association shall, to the extent permitted under existing laws, restore the Improvement to the same condition as it was in immediately prior to the damage or destruction. The Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. The insurance proceeds shall be paid to and held by the Association or an insurance Trustee selected under the provisions of **Section 11.3.2(a)**.

11.3 Restoration Proceeds.

11.3.1 Sufficient Proceeds. The costs of restoration of the damaged Improvement shall be paid first from any insurance proceeds paid to the Association under existing insurance policies. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid into reserves and held for the benefit of the Association. If the insurance proceeds are insufficient to restore the damaged Improvement, the Board shall then add to the insurance proceeds all reserve account funds designated for the repair or replacement of the damaged Improvement. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to pay the total costs of restoration, a Special Assessment against all Owners shall be levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in this Declaration and by Applicable Law.

11.3.2 Insufficient Proceeds. If the total funds available to the Association are still insufficient to restore the damaged Improvement, then the Board first shall attempt to impose an Additional Special Assessment pursuant to Subsection (a) below and if an Additional Special Assessment cannot be levied to use a plan of alternative reconstruction pursuant to Subsection (b) below. If the Members do not approve such actions, then the entire Building of which the damaged Improvement is a part shall be sold pursuant to Subsection (c) below.

(a) **Additional Special Assessment.** If the total funds available to restore the damaged Improvement are insufficient, then a meeting of the Members shall be called for the purpose of approving a Special Assessment to make up all or a part of the deficiency ("Additional Special Assessment"). If the amount of the Additional Special Assessment approved by the Members, and the amounts available pursuant to **Section 11.3.1** above, are insufficient to restore the damaged Improvement, or if no Additional Special Assessment is approved, the Association shall consider a plan of alternative reconstruction in accordance with Subsection (b).

(b) **Alternative Reconstruction.** The Board shall consider and propose plans to reconstruct the damaged Improvement making use of whatever funds are available to it pursuant to **Section 11.3.2** and Subsection (a) above ("Alternative Reconstruction"). All proposals shall be presented to the Owners. If 2/3 of the Voting Power of the Owners whose Units were materially damaged, as determined by the Association ("Affected Owners") and a Majority of the Voting Power of the Members, including the Affected Owners, agree to any plan of Alternative Reconstruction, then the Board shall contract for the reconstruction of the damaged Improvement in accordance with the plan of Alternative Reconstruction making use of whatever funds are then available to it. If no plan of Alternative Reconstruction is agreed to, then the provisions of Subsection (c) shall apply.

(c) **Sale of Building.** If the damaged Improvement is part of a Building ("Damaged Building"), the damage renders one or more of the Condominiums uninhabitable, and the Improvements will not be restored in accordance with the provisions of Subsections (a) and (b) above, the Board, as the attorney-in-fact for each Owner of a Condominium in the Damaged Building, shall be empowered to sell the Damaged Building, including all Condominiums therein, in their then present condition, on terms to be determined by the Board, provided that the Board receives adequate assurances that the purchaser shall, and has the financial capability to: (i) restore the Damaged Building (either by renovation or removal and rebuilding), (ii) remove the Damaged Building (including foundations), grade the Project, and appropriately landscape or otherwise improve the Project, or (iii) perform any combination of the foregoing. Any work to be performed by the purchaser with respect to any of the foregoing shall be subject to the provisions of **ARTICLE 11** and the provisions of the Declaration. In lieu of selling the Damaged Building to a third person, the Association may purchase the Building on satisfaction of the following conditions:

(i) Members holding at least sixty seven percent (67%) of the total Voting Power (including the votes allocated to the Condominiums within the Damaged Building) approve of the purchase;

(ii) the purchase price is the fair market value of the Damaged Building as of the date of sale as determined by an appraisal made by a qualified and independent real estate appraiser;

(iii) any Special Assessment needed to fund the purchase price shall be levied against all Condominiums, including the Condominiums within the Damaged Building;

(iv) the Association has an adequate source of funds to repair, renovate or rebuild all or a portion of the Damaged Building and/or to remove and appropriately landscape the remaining portions of the Project. For this purpose, no Condominium that is being purchased shall be subject to any assessment intended to be used as a source of such funds.

(d) **Distribution of Proceeds.** The proceeds from the sale, together with the insurance proceeds received and any reserve funds allocated to the Damaged Building, after deducting therefrom the Association's sale expenses, including commissions, title and recording fees, and legal costs, shall be distributed among the Owners of Condominiums in the Damaged Building and their respective Mortgagees, in proportion to the respective fair market values of these Condominiums immediately prior to the date of the event causing the damage as determined by an independent appraisal made by a qualified real estate appraiser selected by the Board.

If a Damaged Building is removed and not restored so that the new Building contains the same number of Condominiums as the removed Building, the Board shall take appropriate steps to adjust the property interests of the remaining Owners and to effect such amendments as may be necessary to the Declaration, the Condominium Plan and the map to reflect the revised property interests and other related changes.

11.4 Rebuilding Contract. If there is a determination to restore, the Board or its authorized representative shall obtain bids from at least two licensed and reputable contractors and shall accept the repair and reconstruction work from whomever the Board determines to be in the best interests of the Members. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds shall be disbursed to the contractor according to the terms of the contract. The Board shall take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date. Such construction shall be commenced no later than 180 days after the event requiring reconstruction and shall thereafter be diligently prosecuted to completion. Such construction shall return the Project to substantially the same condition and appearance in which it existed prior to the damage or destruction.

11.5 Authority to Effect Changes. If any Building or portion thereof containing Condominiums is damaged or destroyed or in need of renovation or rehabilitation and the Building is repaired or reconstructed, the Building may be repaired or reconstructed in a manner that alters the boundaries of the Units or Common Area provided the following conditions are satisfied:

(i) the Alteration has been approved by the Board of Directors and by a Majority of the Voting Power of the Association;

(ii) the Board of Directors has determined that the Alteration is necessary in order to comply with current building code requirements, to meet current building construction standards and procedures, or to improve the conditions and quality of the Building;

(iii) the Alteration does not materially change the location of any Unit or materially reduce the size of any Unit without the consent of the Unit Owner. For purposes herein, a material reduction in the size of the Unit shall mean any Alteration that decreases the Square Footage of the interior floor space of the Unit by more than 10% from that which was originally constructed by any Declarant;

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

(v) the Condominium Plan is amended to reflect the Alteration to the Units, Common Area and/or Association Property; and

(vi) all applicable government approvals have been obtained for the Alteration to the Units, Common Area and/or Association Property.

Each Owner irrevocably appoints the Association as that Owner's attorney-in-fact and irrevocably grants to the Association the full power in the name of the Owner to effect any Alteration to any Unit or Common Area and Association Property as authorized above, including, without limitation, the execution, delivery and recordation of any Condominium Plan amendments, deeds or other instruments.

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

11.7 Damage or Destruction to a Unit. If there is damage or destruction to any Unit, the Owner thereof shall, at its own cost and expense, perform interior repair and restoration which shall be completed as promptly as practical and in a lawful and workmanlike manner, and, to the extent required under ARTICLE 8 and the Architectural Guidelines, in accordance with plans approved by the Board as provided in ARTICLE 8 herein.

11.8 Condemnation of Common Area/Association Property. If any portion of the Common Area and/or Association Property is taken by condemnation, eminent domain or any proceeding in lieu thereof, then the Owners of the Common Area, and their Mortgagees as their

respective interests then appear, shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds would be distributed pursuant to the provisions above; provided, however, that should it be determined to repair or rebuild any portion of the Common Area and/or the Association Property, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in this Article for repairing damaged or destroyed portions of the Common Area and/or the Association Property. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in this Article for determining whether to rebuild or repair following damage or destruction.

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

ARTICLE 12 PARTITION AND SEVERABILITY OF INTERESTS

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

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

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

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

12.2.3 Be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under the authority of this Declaration. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

12.3 Prohibition Against Severance. An Owner shall not be entitled to sever such Owner's Unit from such Owner's membership in the Association, and shall not be entitled to sever such Owner's Unit and such Owner's membership from such Owner's undivided interest in the Common Area and the right to use the Association Property for any purpose. None of the component interests in a Condominium can be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to such Owner's Unit over the Common Area and Association Property from such Owner's Condominium, and any attempt to do so shall be void.

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

ARTICLE 13 RIGHTS OF MORTGAGEES

13.1 Mortgagee's Opportunity to Cure. In addition to the other rights of Mortgagees set forth in this Declaration, during the continuance of any Mortgage and until such time as the lien of any Mortgage has been extinguished, the Mortgagee shall have the rights set forth below.

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

13.1.2 Notice to Mortgagees. At the request of a Mortgagee, the Association and each Owner shall mail or deliver to such Mortgagee a duplicate copy of any and all notices which the Association or each Owner may from time to time give to or serve upon another Owner pursuant to the provisions of this Declaration and such copy shall be mailed or delivered to each Mortgagee simultaneously with and in the same manner as the mailing or delivery of the same to the other Owner.

13.2 Application of Charges to First Mortgagees. Each First Mortgagee who obtains title pursuant to its remedies under the First Mortgage and any purchaser at a foreclosure sale (but excluding a deed in lieu of foreclosure), shall take title to the Condominium free and clear of any claims for unpaid payments, assessments and charges, and liens therefor, which accrued prior to such acquisition of title. Except as provided in this **ARTICLE 13**, any such sale shall extinguish such liens for payments, assessments and liens accrued prior to such acquisition of title, but the purchaser or First Mortgagee who so acquires title shall be liable for payments and impositions accruing after the date of such sale. Following any such sale, the Association shall seek payment of all unpaid payments, assessments and charges accruing prior to such acquisition of title solely from the Defaulting Owner as provided in this Declaration.

13.3 Limitation of Enforcement Against First Mortgagee. No violation of this Declaration by, or enforcement of this Declaration against, an Owner shall impair, defeat or render invalid, the lien of any First Mortgage, but this Declaration shall be enforceable against an Owner whose title is acquired by foreclosure, trustee's sale, voluntary conveyance, assumption or otherwise.

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

13.5 Insurance and Condemnation Proceeds. No provision of this Declaration shall be construed to give any Owner or any other person priority over the rights of any First Mortgagee with respect to the distribution of insurance proceeds or proceeds of losses to or a condemnation of the Condominiums or Improvements encumbered by such First Mortgagee's Mortgage.

ARTICLE 14 AMENDMENTS

14.1 Amendment Before the Close of First Sale. Before the close of the first sale of a Condominium to a purchaser other than Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record of an instrument amending or terminating this Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder.

14.2 Amendments After the Close of First Sale. Except as may otherwise be stated in this Declaration, after the close of the first sale of a Condominium in the Project to an Owner other than Declarant this Declaration may be amended at any time and from time to time with the vote or approval by written ballot of at least a Majority of the Voting Power of the Association. The vote on a proposed amendment to the Declaration shall be held by secret written ballot in accordance with the procedures set forth in California Civil Code Section 1363.03 and the rules adopted by the Board pursuant thereto. Such amendment shall become effective upon the

recording of an amendment signed and acknowledged by the President or Vice President of the Association and the Secretary or Assistant Secretary of the Association certifying that such votes or approval by written ballot have been obtained. For the purposes of recording such instrument, the President or Vice-President and Secretary or Assistant Secretary of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording said amendment with the office of the County Recorder.

14.3 Controlling Provisions. Each present and future Owner hereby waives the provisions of Section 1355.5 of the California Civil Code and agrees that the provisions of this Section 14.3 regarding amendments shall be controlling on each Owner. The Owners acknowledge that, due to the limited number of Owners of Condominiums, the fact that each of the Owners are sophisticated commercial Owners and that each Owner has specific voting rights on the Board, the Owners do not need the benefit of Civil Code Section 1355.5 relating to amendments.

14.4 Further Approvals Regarding Amendments. Notwithstanding anything to the contrary contained in this Declaration, the following additional approvals shall be required prior to any amendment of the provisions of this Declaration set forth below:

14.4.1 Approvals by Declarant. Sections 1.9, 1.42, 1.53, 3.5.4, 3.6.7, 3.6.10, 4.2.2, 7.1.1, 7.2.1, 8.1 (with regard to the requirement that the Association consult with an Outside Consultant prior to approving any Alterations that impact or affect in any manner the structural systems or structural integrity of a Building), 15.3 and 15.4 et seq. of this Declaration shall not be amended without (a) the vote or approval by written ballot of at least ninety percent (90%) of the Voting Power of the Members of the Association, and (b) the vote or approval by written ballot of at least ninety percent (90%) of the Mortgagees, and (c) for a period of 15 years after the date of recordation of this Declaration, the prior written approval of Declarant.

14.4.2 Approvals by Declarant While Declarant is Developing, Marketing or Selling Condominiums. ARTICLE 8 of this Declaration (except for those provisions of Section 8.1 which are addressed in Section 14.4.1 above) and ARTICLE 9 of this Declaration shall not be amended without the written consent of Declarant so long as such Declarant is actively developing, marketing or selling the Condominiums in the Project.

ARTICLE 15 ENFORCEMENT

15.1 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or any Member, their respective legal representatives, heirs, successors and assigns, for a term of 60 years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of 10 years each, unless an instrument, signed by at least sixty-seven percent of the then Members has been recorded and approved by the City in accordance with Section 16.3, at least one year prior to the end of any such period in the manner required for a conveyance of real property, in which it is agreed that this Declaration shall terminate at the end of the then applicable term.

15.2 Enforcement and Nonwaiver.

15.2.1 Rights of Enforcement of Governing Documents. The Association, Declarant or any Owner shall have a right of action against any Owner, and any Owner shall have a right of action against the Association, to enforce by proceedings at law or in equity, all covenants, conditions, and restrictions, now or hereafter imposed by the provisions of the Governing Documents or any amendment thereto, including the right to prevent the violation of such covenants, conditions and restrictions and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning assessment liens. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Rules and Regulations, if any, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

15.2.2 Procedure for Enforcement. Notwithstanding anything to the contrary set forth in Section 15.2.1, in enforcing any action under the Governing Documents for monetary damages, the parties shall comply with the notice and delivery requirements and other provisions of California Civil Code Section 1350 et seq. relating to such enforcement action.

15.3 Notice and Opportunity to Repair. If an Owner discovers an unsatisfactory condition related to the original construction of Owner's Unit or if the Association discovers an unsatisfactory condition related to the original construction of the Common Area or Association Property ("Condition"), then prior to commencing any claim or action against a person or entity it may seek to hold liable for such Condition (a "Repairing Party"), the Owner or the Association, as applicable, must notify such Repairing Party in writing of such Condition. Such notice shall include: (a) a description of the Condition, (b) the date upon which the Condition was discovered, and (c) dates and times during ordinary business hours when service calls or inspections by the Repairing Party can be scheduled. The Repairing Party shall, in its sole discretion, be entitled to inspect the Property regarding the reported Condition and within its sole discretion, be entitled to cure such Condition. Nothing set forth herein shall obligate the Repairing Party to perform any inspection or repair nor shall this Section be deemed create or increase the Repairing Party's legal obligations (if any) to an Owner or to the Association. Neither the Owner nor the Association shall pursue any other remedies available under this Declaration, or at law or otherwise, including, without limitation, the filing of any lawsuit or action, until the Repairing Party has had the reasonable opportunity to inspect and cure the alleged Condition. If any statute(s) of limitations applicable to such actions would expire within 90 days after the date such notice is delivered by the Owner or the Association, then during the period of such inspection and cure (but not to exceed the earlier to occur of (i) 90 days from the date of the Repairing Party's receipt of Owner's or the Association's notice described above, or (ii) 20 days from the Repairing Party's delivery of written notice to Owner or the Association of the Repairing Party's determination not to proceed with such cure), such applicable statute(s) of limitation shall be tolled. The Repairing Party shall not be liable for any general, special or consequential damage, cost, diminution in value or other loss which Owner or the Association may suffer as a result of any Condition in the Property, which reasonably might have been avoided had the Owner or the Association given to the Repairing Party the notice and

opportunity to cure described above. The provisions of this Section 15.3 do not establish any legal or contractual duty or obligation on the part of the Repairing Party to repair, replace or cure any Condition in the Property.

15.4 Alternative Dispute Resolution. Subject to the Owner's and the Association's obligations under Section 15.3, the purpose of this Section 15.4 is to provide an expedited means of resolving any claims, disputes and disagreements which may arise between an Owner and/or the Association on the one hand and, Declarant and/or any third party involved with the planning, construction, sales or marketing of the Project on the other hand (each a "Disputing Party") after the close of escrow or other conveyance of any portion of the Property by Declarant concerning the construction, sale or marketing of the Project (individually referenced to herein as "Dispute" and collectively as "Disputes"). If there is a Dispute, any Repairing Party may attempt to resolve such Dispute pursuant to Section 15.3 above. If there is a Dispute which cannot be resolved between the parties as specified in Section 15.3 or if there is any other Dispute, it will be decided through the mediation and arbitration procedure as set forth below. **THIS PROCESS INVOLVES WAIVER OF THE RIGHT TO A JURY TRIAL. BY EXECUTING THIS DECLARATION AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, RESPECTIVELY, DECLARANT, EACH OWNER AND THE ASSOCIATION, AGREE TO BE BOUND BY THE PROVISIONS SET FORTH IN THIS SECTION 15.4.**

15.4.1 Mediation. Subject to the provisions of Section 15.4.2(h) below, Owner, Association and Declarant agree to submit any and all disputes to non-binding mediation before commencing arbitration. The cost of mediation shall be split by the Disputing Parties, as applicable. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

15.4.2 Arbitration.

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

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

(c) Rules Applicable to All Cases. The arbitration will be conducted by Judicial Arbitration and Mediation Services ("JAMS") in accordance with the JAMS Comprehensive Arbitration Rules and Procedures in effect as of the initiation of the arbitration ("JAMS Rules"), as supplemented by the provisions set forth in this ARTICLE 15. If JAMS is no longer in existence at the time of such Dispute, the arbitration shall be conducted by any other entity offering arbitration services that is mutually acceptable to the parties. The following

supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between the rules set forth below and the JAMS Rules.

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

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

(f) **Expenses.** All fees charged by JAMS and the arbitrator shall be advanced by the Declarant. If Declarant is the prevailing party in the arbitration, the arbitrator may, in its discretion and only to the extent permitted by law and the JAMS Minimum Standards of Procedural Fairness, direct the Owner or Association to reimburse the Declarant for Owner's or the Association's, as applicable, pro rata share of the JAMS fee and arbitrator's fee advanced by the Declarant. Each party shall bear its own attorneys' fees and costs. Notwithstanding the foregoing, if the Declarant is not party to a Dispute, all fees charged by JAMS and the arbitrator shall be shared equally by the parties to the Dispute.

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

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

(i) **Participation by Other Parties.** The Association, an Owner and Declarant, to the extent any such party is defending a claim in the arbitration, may request to have all necessary and appropriate parties included as parties to the arbitration, but failure to participate shall not invalidate the arbitration procedure.

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

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

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

(a) **Qualifications of Arbitrator.** In addition to the requirements of Section 15.4.2(d) above, the arbitrator shall be a retired judge of the California Superior Court, a California Court of Appeal, or the California Supreme Court.

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

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

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

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

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

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

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

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

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

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

(c) **Issues on Appeal.** The only issues that may be considered on appeal are: (1) the award of money was excessive; (2) the award of money was insufficient;

(3) the arbitrator awarded non-monetary relief that was inappropriate; (4) a party who received non-monetary relief should have received other or additional relief. A majority of the appeal arbitrators may affirm the arbitration award or make any alternative award they find to be just, but they must not reject the arbitrator's decisions (a) that a particular party is entitled to relief of some nature or amount or (b) that a particular party is responsible to provide relief of some nature or amount.

(d) **Expenses and Costs on Appeal.** The fees charged by JAMS and the appeal arbitrator(s) shall be advanced by the Declarant, except as provided in Section 15.4.4(b) above. The party who files the appeal must, at its sole expense, provide JAMS and all non-appealing parties with a certified copy of the hearing transcript, and must provide JAMS with copies of all documentary evidence and all other tangible evidence received by the arbitrator. If more than one party appeals, the appealing parties must share equally the cost of the transcript and copies of all other documentary and tangible evidence received by the arbitrator. The appeal arbitrators may, within 30 days of their determination, award costs of the nature provided in the Federal Rules of Appellate Procedure. If the Declarant is the prevailing party on appeal, the appeal arbitrator(s) may, in his, her or their discretion and only to the extent permitted by law and JAMS Minimum Standards Of Procedural Fairness, include the non-prevailing party(ies) pro rata share of the JAMS fee and arbitrator's fee advanced by the Declarant in the award of costs on appeal. Notwithstanding the foregoing, if the Declarant is not party to a Dispute, all fees charged by JAMS and the arbitrator shall be shared equally by the parties to the Dispute.

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

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

15.4.6 ARBITRATION OF DISPUTES. BY EXECUTING THIS DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER AND THE ASSOCIATION AGREE TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND OWNER AND DECLARANT ARE GIVING UP ANY RIGHTS DECLARANT, OWNER AND THE ASSOCIATION MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. DECLARANT, OWNER AND ASSOCIATION ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 15.4. IF DECLARANT, ANY OWNER OR THE ASSOCIATION REFUSED TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, SUCH PARTY MAY BE COMPELLED TO

ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT.

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

15.4.8 Severability. In addition to and without limiting the effect of any general severability provisions of this Declaration, if the arbitrator or any court determines that any provision set forth in this Section 15.4 is unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this Section 15.4 shall be conducted under the remaining enforceable terms of this Section 15.4.

15.4.9 Application of Award. Any proceeds awarded to the Association arising from any Dispute by settlement, award or otherwise shall be applied in accordance with the provisions of Section 3.6.11 of this Declaration.

**ARTICLE 16
GENERAL PROVISIONS**

16.1 Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

16.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions of it shall not invalidate any other provisions.

16.3 City Review. The Association shall be responsible for submitting a zoning administrator permit amendment review application prior to scheduling votes for proposed site modifications or changes to this Declaration that could reasonably affect compliance with City requirements and the Project entitlements, including but not limited to the provisions of Sections 1.19, 1.63, 1.72, 2.4.1, 2.4.2, 2.4.5, 3.4.3, 3.6, 5.18, 6.5, 6.17, 7.1, 16.3, and ARTICLE 8.

16.4 Excuse for Non-Performance. Each Owner and the Association shall be excused from performing any obligation or undertaking provided in this Declaration, except any obligation to pay any sums of money under the applicable provisions hereof (unless such payment is conditioned upon performance of any obligation or undertaking excused by this Section), in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage; inability to procure or general shortage of labor, equipment, facilities, materials or supplied in the ordinary course on the open market; failure of normal transportation; strikes, lockouts, action of labor unions; condemnation, requisition; laws or orders of governmental or civil or military authorities; breach or default of the other Owners or the Association of any of its obligations hereunder; failure to obtain

necessary governmental approvals or permits despite the exercise of due diligence and good faith efforts by a Owner or the Association, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such Owner or the Association, other than the lack of or inability to obtain funds or causes which were reasonably foreseeable.

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

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

16.7 No Unlawful Restrictions. No Owner shall execute or cause to be recorded any instrument which imposes a restriction upon the sale, leasing or occupancy of its Unit on the basis of race, sex, color or creed.

16.8 Access to Books. Declarant may, at any reasonable time and upon reasonable notice to the Board or manager at his or her own expense, cause an audit or inspection to be made of the books and financial records of the Association.

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

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

16.11 Notification of Sale of Condominium. Concurrently with the consummation of the sale of any Condominium under circumstances whereby the transferee becomes an Owner

thereof, or within five business days thereafter, the transferee shall notify the Board in writing of such sale. Such notification shall set forth the name of the transferee and its Mortgagee and transferor, the common address of the Condominium purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board or the manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Board. Notices shall be deemed received 48 hours after mailing if mailed to the transferee, or to his or her transferor if the Board has received no notice of transfer as above provided, by certified mail return receipt requested, at the mailing address above specified.

16.12 Number, Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

16.13 Exhibits. All exhibits referred to in this Declaration are attached to this Declaration and incorporated by reference.

16.14 Binding Effect. This Declaration shall inure to the benefit of and be binding on the successors and assigns of the Declarant, and the heirs, personal representatives, grantees, tenants, successors and assigns of the Owners.

16.15 Easements Reserved and Granted. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in the first deed by Declarant to any Condominium.

16.16 Statutory References. All references in this Declaration to various statutes, codes, regulations, ordinances and other laws shall be deemed to include those laws in effect as of the date of this Declaration and any successor laws as may be amended from time to time.

[Signature to follow]

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

DECLARANT:

O.W. Commercial, Inc.,
a Delaware corporation

By: Randall R. Ackerman
Name: Randall R. Ackerman
Title: Vice President

STATE OF California

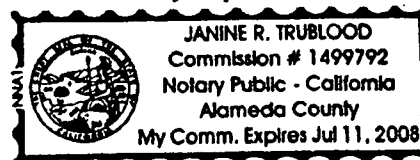
COUNTY OF Alameda

On 10-18-07, before me, Janine R. Trublood, Notary Public,

personally appeared Randall R. Ackerman
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]
Signature



(Seal)

ILLEGIBLE NOTARY SEAL DECLARATION

GOVERNMENT CODE 27361.7

I declare under penalty of perjury that the Notary Seal on the document to which this statement is attached, reads as follows:

Name of Notary Public: Janine R. Trublood

Commission number: 1499792

Notary Public State: California

Notary Public County: Alameda

My commission expires: July 11, 2008

Signature of Declarant: _____

Print Name of Declarant: Ross Kennedy

City and State of Execution: Pleasanton, California

Date Signed: October 25, 2007

SUBORDINATION AGREEMENT

The undersigned, as holder of the beneficial interest in that certain Deed of Trust dated June 15, 2007 and recorded in the Office of the County Recorder of Alameda County as Document No. 2007-224923, which Deed of Trust encumbers all or a portion of the real property covered by the Declaration of Covenants, Conditions and Restrictions for Fremont Tech Center ("Declaration"), does hereby intentionally and unconditionally subordinate the lien of said Deed of Trust to (a) the foregoing Declaration, (b) any Supplementary Declaration which is recorded pursuant to the Declaration, and (c) any amendment or restatement of the Declaration or any Supplementary Declaration.

Dated: October 18, 2007

Bank of America, N.A.
a National Banking Association

By: [Signature]
Name: EDUARDO MARTINEZ
Title: ASST. VICE PRESIDENT

STATE OF Arizona
COUNTY OF Maricopa
On Oct. 18, 2007, before me, Nancy Alonzo, Notary Public,
personally appeared Eduardo Martinez
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Nancy Alonzo
Signature

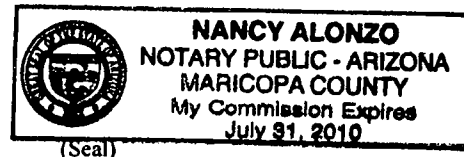


EXHIBIT "A"

Legal Description of the Property

ALL OF PARCEL MAP NO. 9348 AS SHOWN ON THE MAP FILED ON SEPTEMBER 21, 2007 IN BOOK 302 OF MAPS, AT PAGES 5 THROUGH 8, INCLUSIVE OF MAPS RECORDED IN THE COUNTY RECORDER OF ALAMEDA COUNTY.

**FREMONT TECH CENTER ALLOCATION
EXHIBIT B**

Building A	Address/Ste	SF	%
A1	47603 Lakeview Blvd	3,139	2.2957654%
A2	47607 Lakeview Blvd	2,800	2.0478315%
A3	47611 Lakeview Blvd	2,769	2.0251591%
A4	47615 Lakeview Blvd	2,941	2.1509544%
A5	47619 Lakeview Blvd	2,861	2.0924450%
A6	47623 Lakeview Blvd	2,996	2.1911797%
A7	47627 Lakeview Blvd	2,738	2.0024867%
A8	47631 Lakeview Blvd	3,007	2.1992247%
A9	47635 Lakeview Blvd	2,944	2.1531485%
A10	47639 Lakeview Blvd	2,959	2.1641191%
A11	47643 Lakeview Blvd	3,140	2.2964967%
Bldg A Total:		32,294	23.6188108%
Building B	Address/Ste	SF	
B1	47693 Lakeview Blvd	3,139	2.2957654%
B2	47689 Lakeview Blvd	2,800	2.0478315%
B3	47685 Lakeview Blvd	2,769	2.0251591%
B4	47681 Lakeview Blvd	2,941	2.1509544%
B5	47677 Lakeview Blvd	2,861	2.0924450%
B6	47673 Lakeview Blvd	2,996	2.1911797%
B7	47669 Lakeview Blvd	2,738	2.0024867%
B8	47665 Lakeview Blvd	3,007	2.1992247%
B9	47661 Lakeview Blvd	2,944	2.1531485%
B10	47657 Lakeview Blvd	2,959	2.1641191%
B11	47653 Lakeview Blvd	3,140	2.2964967%
Bldg B Total:		32,294	23.6188108%
Building C	Address/Ste	SF	
C1	2722 Bayview Drive	3,763	2.7521393%
C2	2726 Bayview Drive	3,083	2.2548087%
C3	2730 Bayview Drive	2,501	1.8291523%
C4	2734 Bayview Drive	2,912	2.1297448%
Bldg C Total:		12,259	8.9658451%
Building D	Address/Ste	SF	
D1	2742 Bayview Drive	2,295	1.6784905%
D2	2746 Bayview Drive	2,909	2.1275506%
D3	2750 Bayview Drive	2,271	1.6609376%
Bldg D Total:		7,475	5.4669787%

**FREMONT TECH CENTER ALLOCATION
EXHIBIT B**

Building E	Address/Ste	SF	
E1	2782 Bayview Drive	2,295	1.6784905%
E2	2786 Bayview Drive	2,909	2.1275506%
E3	2790 Bayview Drive	2,271	1.6609376%
Bldg E Total:		7,475	5.4669787%

Building F	Address/Ste	SF	
F1	2766 Bayview Drive	3,162	2.3125868%
F2	2762 Bayview Drive	1,910	1.3969136%
Bldg F Total:		5,072	3.7095005%

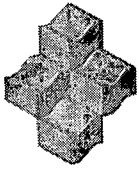
Building G	Address/Ste	SF	
G1	2823 Lakeview Ct	2,229	1.6302201%
G2	2827 Lakeview Ct	2,123	1.5526951%
G3	2831 Lakeview Ct	2,163	1.5819498%
G4	2835 Lakeview Ct	2,230	1.6309515%
Bldg G Total:		8,745	6.3958166%

Building H	Address/Ste	SF	
H1	2803 Lakeview Ct	1,866	1.3647334%
H2	2807 Lakeview Ct	2,299	1.6814159%
H3	2811 Lakeview Ct	1,791	1.3098808%
Bldg H Total:		5,956	4.3560301%

Building J	Address/Ste	SF	
J1	2843 Lakeview Ct	3,253	2.3791414%
J2	2847 Lakeview Ct	3,018	2.2072698%
J3	2853 Lakeview Ct	3,056	2.2350618%
J4	2857 Lakeview Ct	3,253	2.3791414%
Bldg J Total:		12,580	9.2006143%

Building K	Address/Ste	SF	
K1	2863 Lakeview Ct	3,253	2.3791414%
K2	2867 Lakeview Ct	3,018	2.2072698%
K3	2871 Lakeview Ct	3,056	2.2350618%
K4	2875 Lakeview Ct	3,253	2.3791414%
Bldg K Total:		12,580	9.2006143%

Project Total:	136,730	100.0000000%
-----------------------	----------------	---------------------



RANDICK O'DEA
&
TOOLIATOS LLP
ATTORNEYS AT LAW

November 2, 2009

VIA FEDERAL EXPRESS

Opus West Corporation, et al.
c/o BMC Group
18750 Lake Drive East
Chanhassen, MN 55317

***In re: Opus West Corporation, et al. (Debtors) (and O.W. Commercial, Inc.)
U.S. Bankruptcy Court, Northern Dist. of Texas, Case No. 09-34356***


ENCLOSURE(S): Two original/separate PROOF OF CLAIMS and two copies

- ☐ Enclosed for your information and records.
- ☐ Enclosed pursuant to your request.
- ☐ Please telephone me after reviewing the enclosed.
- ☐ Please contact me if you have any questions.
- ☐ Please telephone for an appointment.
- ☐ Please sign and return in the enclosed envelope.
- ☒ Please file original and return endorsed filed copies.
- ☐ Please record and return conformed copies.
- ☐ Please have Judge sign original, file with court, and return endorsed-filed copies.
- ☒ Return envelope is enclosed.
- ☐ Other:

Thank you for your courtesy in this matter.

Very truly yours,

RANDICK O'DEA & TOOLIATOS, LLP

By 
Sue Betti, CCLS
Assistant to Phillip G. Vermont

Enclosures

5000 Hopyard Road, Suite 400
Pleasanton, California 94588-3348
Telephone 925-460-3700
Fax 925-460-0969
RandickLaw.com