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**AMENDED & RESTATED
DECLARATION OF RESTRICTIONS**

FOR

**THE PINNACLE
MUSEUM TOWER**

(A CONDOMINIUM COMMON INTEREST DEVELOPMENT)

TABLE OF CONTENTS

	<u>PAGE</u>
RECITALS	1
ARTICLE I DEFINITIONS	2
Section 1.1. Architectural Committee	2
Section 1.2. Articles	2
Section 1.3. Association	2
Section 1.4. Board	2
Section 1.5. Bylaws	2
Section 1.6. City	2
Section 1.7. Commercial Condominium	2
Section 1.8. Commercial Unit	3
Section 1.9. Common Area	3
Section 1.10. Common Expenses	3
Section 1.11. Condominium	3
Section 1.12. Condominium Plan	3
Section 1.13. Cost Center	3
Section 1.14. Cost Center Assessments	3
Section 1.15. Cost Center Costs	4
Section 1.16. Cost Center Units	4
Section 1.17. County	4
Section 1.18. Declarant	4
Section 1.19. Declaration	4
Section 1.20. Encroachment Agreements	4
Section 1.21. Encroachment Area	4
Section 1.22. Entire Property	5
Section 1.23. Exclusive Use Area	5
Section 1.24. FHA	5
Section 1.25. Guest Suite	5
Section 1.26. Limited Exclusive Use Area	5
Section 1.27. Marina Development Permit	5
Section 1.28. Master Condominium Plan	5
Section 1.29. Member	5
Section 1.30. Mortgage	5
Section 1.31. Mortgagee	6
Section 1.32. Museum	6
Section 1.33. Museum Condominium	6
Section 1.34. Museum Easements	6
Section 1.35. Museum Elevator	6
Section 1.36. Museum Module	6
Section 1.37. Museum Module Allocable Operating Costs	6
Section 1.38. Museum Parking Spaces	6
Section 1.39. Museum Project	6
Section 1.40. Owner	6
Section 1.41. P-1 Spaces Access Control	6
Section 1.42. Parking Structure	6
Section 1.43. Parking Structure Operating Costs	7
Section 1.44. Permitted Users	7
Section 1.45. Project	7
Section 1.46. Redevelopment Agency	7
Section 1.47. Residential Condominium	7
Section 1.48. Residential Facilities	7
Section 1.49. Residential Unit	7
Section 1.50. Retail Purchaser	7
Section 1.51. Shopkeeper Condominium	7
Section 1.52. Shopkeeper Unit	8
Section 1.53. Tower Association Property	8
Section 1.54. Tower Module	9
Section 1.55. Unit	9
Section 1.56. VA	9

ARTICLE II PROPERTY RIGHTS IN TOWER ASSOCIATION PROPERTY AND COMMON AREA . . .	9
Section 2.1. Title to the Tower Association Property	9
Section 2.2. Owners' Easements of Enjoyment	9
Section 2.3. Delegation of Use	11
Section 2.4. Power of Attorney to Correct Errors	11
ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION	11
Section 3.1. Each Owner Is A Member	11
Section 3.2. Classes of Voting Membership	11
Section 3.3. Termination of Class B Membership	12
Section 3.4. Commencement of Voting Rights	12
ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION	12
Section 4.1. Covenant for Assessments	12
Section 4.2. Purpose of Assessments	12
Section 4.3. Maximum Regular and Special Assessments	12
Section 4.4. Non-Lien Assessments (Compliance)	13
Section 4.5. Schedule of Monetary Penalties	14
Section 4.6. Rate of Regular Assessments	14
Section 4.7. Cost Center Assessments	14
Section 4.8. Cost Center Accounting	14
Section 4.9. Special Assessments For Cost Center Costs	15
Section 4.10. Rate of Special Assessments for Repairs	15
Section 4.11. Rate of Other Special Assessments	15
Section 4.12. Date of Commencement of Regular Assessments	15
Section 4.13. Adjustment of Assessments; Due Dates	15
Section 4.14. Effect of Non-Payment of Assessments; Remedies of the Association	15
Section 4.15. Subordination of the Lien to First Deeds of Trust and First Mortgages	16
Section 4.16. Estoppel Certificate	16
Section 4.17. Non-Use of Tower Association Property or Common Area	16
Section 4.18. Taxation of Association	17
Section 4.19. Payment of Assessments By Declarant	17
Section 4.20. Uncompleted Facilities	17
Section 4.21. Change In The Size of Commercial Units or Shopkeeper Unit	17
Section 4.22. Code Sections Subject To Change	17
ARTICLE V POWERS AND DUTIES OF ASSOCIATION	17
ARTICLE VI USE OF COMMERCIAL, SHOPKEEPER AND RESIDENTIAL CONDOMINIUMS	17
Section 6.1. Lease of Condominium	17
Section 6.2. Use Not to Impair Insurance	17
Section 6.3. Nuisance	17
Section 6.4. No Owner Modification to Tower Association Property or Common Area	18
Section 6.5. Removal of Trash; Trash Drop Off Locations	18
Section 6.6. Right To Combine Units	18
Section 6.7. No Changes In Plumbing Without Board Approval	18
Section 6.8. Restrictions Against Attachment of Speakers, Etc. To Certain Walls	18
Section 6.9. No Alteration of Structural Improvements	18
Section 6.10. Other Prohibited Modifications	18
Section 6.11. Restrictions Against Uses, Improvements or Activities That Would Impair Structure.	19
Section 6.12. Owners Liable for Damage	19
Section 6.13. Decorating by Owner	19
Section 6.14. Outside Antennae	19
Section 6.15. No Impairment of Structures	19
Section 6.16. Exclusive Use Areas; Limited Exclusive Use Areas	19
Section 6.17. Parking Spaces; Storage Spaces	19
Section 6.18. Handicap Parking Spaces	20
Section 6.19. No Clothes Lines, Storage, Etc	20
Section 6.20. Board Permitted To Expand Vertical Limits	20
Section 6.21. Right of Access	20

Section 6.22.	Construction and Sales Activities	20
Section 6.23.	Post-Tensioned Slabs	20
Section 6.24.	City and Redevelopment Agency Requirements	21
Section 6.25.	Limitations on Modification - Marina Development Permit	21
ARTICLE VII	USE OF COMMERCIAL CONDOMINIUMS & SHOPKEEPER CONDOMINIUM	21
Section 7.1.	Commercial Purposes	21
Section 7.2.	Shopkeeper Purposes	21
Section 7.3.	Advertising	21
Section 7.4.	Leasing of a Commercial or Shopkeeper Condominium	21
Section 7.5.	Hazardous Materials	21
Section 7.6.	Customers, Guests and Lessees; Insurance	21
Section 7.7.	Restrictions on Commercial & Shopkeeper Condominiums	22
Section 7.8.	Restaurant Use	22
Section 7.9.	Restrictions on Amendments	22
Section 7.10.	Use of Commercial Exclusive Use Areas	22
Section 7.11.	Hold Harmless and Indemnity	22
Section 7.12.	Demising Walls - Adjoining Commercial Units	22
Section 7.13.	Right To Adjust Commercial Condominium Boundaries	22
Section 7.14.	Sign Control	23
Section 7.15.	Change in Commercial or Shopkeeper Status	23
ARTICLE VIII	USE OF RESIDENTIAL CONDOMINIUMS	23
Section 8.1.	Residential Purposes	23
Section 8.2.	Animals	23
Section 8.3.	Sign Control	24
Section 8.4.	Use of Exclusive Use Areas and Limited Exclusive Use Areas	24
Section 8.5.	Use of Tower Association Property and Common Area	25
Section 8.6.	Window Coverings	25
Section 8.7.	Limitations on Types of Bar-be-ques	25
Section 8.8.	Demising Walls - Adjoining Residential Units	25
Section 8.9.	Guest Suite	25
Section 8.10.	Post-Tensioned Slabs	25
ARTICLE IX	RESPONSIBILITIES OF MAINTENANCE	26
Section 9.1.	Maintenance by Owners	26
Section 9.2.	Failure to Maintain	26
Section 9.3.	Maintenance by Association	27
Section 9.4.	Association's Inspection of Commercial Units, Shopkeeper Unit and Residential Units	27
Section 9.5.	Wood-Destroying Pests	28
Section 9.6.	Maintenance Manuals	28
Section 9.7.	Mold; Mildew	28
Section 9.8.	Owner Responsible For Damages If Failure To Maintain	29
ARTICLE X	SEPARATION OF INTERESTS AND PARTITION PROHIBITED	29
Section 10.1.	No Separation of Interests	29
Section 10.2.	No Partition	29
Section 10.3.	Power of Attorney	29
ARTICLE XI	DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA OR TOWER ASSOCIATION PROPERTY	29
Section 11.1.	Damage or Destruction	29
Section 11.2.	Damage or Destruction of Parking Structure; Rights of and Obligations to the Owner of Museum Condominium	32
	(a) Insured Damage	32
	(b) Uninsured Damage	32
	(c) Costs for Alternate Parking During Reconstruction	32
Section 11.3.	Condemnation	32
	(a) Condemnation of Common Area or Tower Association Property	32

	<u>PAGE</u>
Section 11.4. (b) Condemnation of Museum Easements	33
Section 11.4. Insurance	33
Section 11.5. Project Liability Insurance	34
Section 11.6. Project Property Insurance	35
Section 11.7. Waiver of Subrogation	35
Section 11.8. Mortgagee Approval	35
Section 11.9. Association Represents Owners Re Common Area, Limited Exclusive Use Area and Tower Association Property	35
ARTICLE XII DAMAGE, DESTRUCTION AND CONDEMNATION OF RESIDENTIAL UNITS, SHOPKEEPER UNIT & COMMERCIAL UNITS	35
Section 12.1. Damage or Destruction	35
Section 12.2. Condemnation	36
Section 12.3. Mortgagee Approval	36
ARTICLE XIII ASSOCIATION'S RIGHT OF ENTRY	36
ARTICLE XIV ADDITIONAL EXCLUSIVE EASEMENTS AND LICENSES	36
Section 14.1. Common Area Licenses	36
Section 14.2. Tower Association Property	36
ARTICLE XV ENFORCEMENT	36
Section 15.1. Enforcement	36
Section 15.2. No Waiver	36
ARTICLE XVI EASEMENTS AND PROVISIONS AFFECTING MUSEUM	37
Section 16.1. Grant of Access Easement to Museum	37
Section 16.2. Grant of Parking Easement to Museum	37
Section 16.3. Ancillary Easement	37
Section 16.4. Use of Museum Easements	37
Section 16.5. Right to Control Tower Module	37
Section 16.6. Indemnity	38
(a) Museum Indemnity	38
(b) Declarant Indemnity	38
Section 16.7. Arbitration of Disputes with Museum	38
Section 16.8. Attorneys' Fees	38
Section 16.9. No Amendment Without the Consent of Museum	39
ARTICLE XVII ADDITIONAL PROVISIONS	39
Section 17.1. Severability	39
Section 17.2. Amendments Prior to Escrow Closings	39
Section 17.3. Amendments After Escrow Closings	39
Section 17.4. No Amendment Without Declarant's Consent	39
Section 17.5. Mortgagee Approval of Amendment	39
Section 17.6. Extension of Declaration	40
Section 17.7. Enforcement Litigation	40
Section 17.8. Encroachment Easements	40
Section 17.9. Application of Provisions	40
Section 17.10. Special Responsibilities of Association	40
Section 17.11. Limitation of Restrictions on Declarant	41
Section 17.12. Owners' Compliance	41
Section 17.13. Payments of Taxes or Premiums by First Mortgagees	41
Section 17.14. Mortgagee Curing Defaults	41
Section 17.15. Approval of First Mortgagees	42
Section 17.16. Termination of Legal Status	42
Section 17.17. Restoration of Project	42
Section 17.18. Third Party Proceeds for Claimed Defects	42
Section 17.19. Professional Management	42
Section 17.20. Notice to Mortgagees	43
Section 17.21. Notice to Mortgagees	43

Section 17.22.	Written Notification to Mortgagees, Insurers or Guarantors of First Mortgages	43
Section 17.23.	Documents to be Available to Mortgagees	43
Section 17.24.	Mortgagee Protection	43
Section 17.25.	Conflicts	43
Section 17.26.	Provisions of Civil Code § 1360	44
Section 17.27.	Documents to be Provided to Prospective Purchasers	44
	(a) By Owners	44
	(b) By the Association	45
Section 17.28.	Easement to Inspect and Test	45
Section 17.29.	Notice of Statutory Procedures for Certain Claims	45
Section 17.30.	Documents to be Provided by Owners to Subsequent Purchasers	45
ARTICLE XVIII	CONSTRUCTION DISPUTES	46
Section 18.1.	Definitions	46
Section 18.2.	Dispute Notification and Resolution Procedure	46
	(a) Notice	46
	(b) Right to Inspect and Right to Corrective Action	46
	(c) CIVIL CODE §§ 1368.5 and 1375	46
	(d) Mediation	46
Section 18.3.	Resolution of Construction Disputes by Arbitration	47
	(a) Applicable Rules	47
	(b) Selection of Arbitrator	48
	(c) Expenses of Arbitration	48
	(d) Preliminary Procedures Required by Law	48
	(e) Participation by Other Parties	48
	(f) Rules of Law	48
	(g) Written Decision of Arbitrator	48
	(h) Attorney's Fees and Costs	48
	(i) Federal Arbitration Act	48
	(j) WAIVER OF JURY TRIAL AND RIGHT TO APPEAL	48
	(k) Final and Binding Award	49
	(l) Cooperation by the Parties	49
	(m) Not Applicable Unless Declarant is a Party	49
	(n) No Amendment Without Declarant's Consent	49
Section 18.4.	Arbitration In Purchase Agreements	49
Section 18.5.	Application; Conflicts	49
Section 18.6.	Third Party Beneficiary: Affiliated Contractor	49

SUBORDINATION AGREEMENT(S)

Attachment A-1: Monthly Regular Assessments

Attachment A-2: Monthly Residential Cost Center Assessments

AMENDED & RESTATED
DECLARATION OF RESTRICTIONS
FOR
THE PINNACLE
MUSEUM TOWER

THIS AMENDED & RESTATED DECLARATION OF RESTRICTIONS FOR THE PINNACLE MUSEUM TOWER ("**Declaration**") is made this 22nd day of September 2005, by PINNACLE MARKET DEVELOPMENT (US), LLC, a California limited liability company (hereinafter called "**Declarant**").

This Declaration is made with reference to the following:

RECITALS:

A. **TOWER CONDOMINIUM.** Declarant is the owner of the "**Tower Condominium**," which is located in The City of San Diego, County of San Diego, California and described in the "**Children's Museum & Pinnacle Museum Tower Development Master Condominium Plan**" ("**Master Condominium Plan**") as being located within the "**Tower Module**."

B. **AMENDED & RESTATED DECLARATION.** This Declaration amends, restates and replaces in its entirety that certain Declaration of Restrictions for the Pinnacle Museum Tower which was recorded April 23, 2003 with the Office of the County Recorder of San Diego County, California, as Document No. 2003-0471014.

C. **CHILDREN'S MUSEUM & PINNACLE MUSEUM TOWER DEVELOPMENT.** The Tower Condominium is part of the Children's Museum & Pinnacle Museum Tower Development, is subject to the Master Declaration of Covenants, Conditions, Restrictions and Easements for the Children's Museum & Pinnacle Museum Tower Development recorded on April 23, 2003 as Document No. 2003-0471008 with the Office of the San Diego County Recorder, as it may be amended from time to time ("**Master Declaration**"). The owner of the Tower Condominium is the member of the Children's Museum & Pinnacle Museum Tower Association, a California nonprofit mutual benefit corporation ("**Master Association**"). The Children's Museum & Pinnacle Museum Tower Development consists of the "**Museum Condominium**," the Tower Condominium and "**Master Common Area**."

D. **MIXED USE PROJECT.** The Tower Module may be further subdivided to create up to one hundred eighty-two (182) "**Residential Condominiums**" and up to nine (9) "**Commercial Condominiums**." Subject to approvals of The City of San Diego, the Declarant or Owner of Commercial Unit 9 may convert such Unit to a "**Shopkeeper Condominium**". Declarant plans to construct the Pinnacle Museum Tower Condominium Project within the Tower Module ("**Project**"). The Project will consist of "**Common Area**" and "**Tower Association Property**" which includes, but is not limited to, a foundation system and surface area parking facility together with a high-rise tower and a podium. "**Commercial Units**" and, subject to approvals of The City of San Diego, a "**Shopkeeper Unit**" are planned for the podium, and "**Residential Units**" are planned for the high-rise tower (Tower Association Property, Common Area, Commercial Units, Shopkeeper Unit and Residential Units are defined in **Article I**). The Project is shown on that certain Condominium Plan (defined in **Article I**).

E. **ASSOCIATION.** The Owners of the Residential Condominiums, Commercial Condominiums and any Shopkeeper Condominium will be the Members of the PINNACLE MUSEUM TOWER ASSOCIATION, a California nonprofit mutual benefit corporation ("**Association**").

F. **CONDOMINIUMS.** This Project will be a condominium Common Interest Development, and Declarant intends to establish a condominium project under the provisions of the California CIVIL CODE.

G. **COST CENTER PROVISIONS.** This Declaration includes provisions which provide for expenses and reserves of certain amenities or services which generally benefit either the Commercial Condominiums and any Shopkeeper Condominium or Residential Condominiums to be assessed against only them. It is currently planned that there will be a Residential Cost Center only. However, the Association may set up a Commercial/Shopkeeper Cost Center at a later date with the consent of the Commercial Condominium and any Shopkeeper Condominium Owners.

H. **COMMON PLAN OF RESTRICTIONS; BINDING ON FUTURE OWNERS.** Before selling or conveying any interests within the Project, Declarant desires to subject the Tower Module, in accordance with the common plan, to all the covenants and restrictions set forth in this Declaration for the benefit of Declarant and any and all present and future owners of the Project.

I. **MANDATORY PROCEDURES FOR RESOLUTION OF CONSTRUCTION DEFECT DISPUTES. ARTICLE XVIII OF THIS DECLARATION REFERS TO MANDATORY PROCEDURES FOR THE RESOLUTION OF CONSTRUCTION DEFECT DISPUTES, INCLUDING THE WAIVER OF THE RIGHT TO A JURY TRIAL FOR SUCH DISPUTES.**

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

NOW, THEREFORE, Declarant hereby declares that all of Tower Module shall be held, sold and conveyed subject to the following easements, restrictions and covenants, which are enforceable equitable servitudes as described in California CIVIL CODE § 1354 and which are for the purpose of establishing a general plan for protecting the value and desirability of, and which shall run with the Tower Module and be binding on all parties having any right, title or interest in the Tower Module, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I **DEFINITIONS**

Section 1.1. "Architectural Committee" shall mean and refer to the person or persons which may be from time to time appointed by the Board to serve as the Architectural Committee. Except for two (2) members, the members of the Architectural Committee need not be members of the Board or the Association. Each member of the Architectural Committee shall serve until he or she resigns or is removed by the Board.

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

Section 1.3. "Association" shall mean and refer to PINNACLE MUSEUM TOWER ASSOCIATION, a California nonprofit mutual benefit corporation, its successors and assigns.

Section 1.4. "Board" shall mean and refer to the Board of Directors of the Association.

Section 1.5. "Bylaws" shall mean and refer to the Bylaws of the Association, as they may from time to time be amended.

Section 1.6. "City" shall mean and refer to The City of San Diego, California.

Section 1.7. "Commercial Condominium" shall mean and refer to each Condominium which includes the following Commercial Condominium elements:

- (a) A Commercial Unit airspace;

(b) The exclusive right to use and occupy any Commercial Exclusive Use Area which the Condominium Plan shows as being appurtenant to the Commercial Unit;

(c) An undivided interest as tenant-in-common to the Common Area;

(d) Easements to use the Tower Association Property, including, but not limited to, easements for access, utilities, and lateral support. Such easements are subject to the reasonable rules and regulations of the Association, provided such rules and regulations are not inconsistent with this Declaration; and

(e) Membership in the Association.

Section 1.8. "Commercial Unit" shall mean and refer to the Unit as shown on the Condominium Plan except for the Residential Units and any Shopkeeper Unit.

Section 1.9. "Common Area" shall refer to those areas shown on the Condominium Plan. The lateral boundaries of the Common Area shall be as designated on the Condominium Plan. The lower vertical boundary of the Common Area shall be the upper vertical boundary of the Tower Association Property. The upper vertical boundary of the Common Area shall extend one hundred feet (100') from the lower vertical boundary. Owners of the Condominiums shall receive an undivided ownership interest in the Common Area, with the undivided interest of each such Owner being equal to the reciprocal of the number of the total Condominiums within the Project.

Section 1.10. "Common Expenses" means and includes the actual and estimated expenses of operating the Project and any reasonable reserve for such purposes as found and determined by the Board and all sums designated common expenses by or pursuant to the condominium documents.

Section 1.11. "Condominium" shall mean and refer to a fee simple estate in the Project and shall consist of the elements described for the Commercial Condominium in **Section 1.7**, Shopkeeper Condominium in **Section 1.51** and Residential Condominium in **Section 1.47**.

Section 1.12. "Condominium Plan" shall mean and refer to the SUPERSEDING PINNACLE MUSEUM TOWER CONDOMINIUM PLAN recorded pursuant to California CIVIL CODE § 1351(e) covering the Tower Module, which has been made subject to this Declaration, including such amendments thereto, as may from time to time be recorded.

Section 1.13. "Cost Center" shall mean and refer to the process whereby the expenses and reasonable reserves for replacement of certain amenities or services are separately accounted for and assessed against some, but not all of the Condominiums. This Project could have two Cost Centers:

(a) The Residential Cost Center – A Cost Center applicable to all Residential Units; and

(b) The Commercial/Shopkeeper Cost Center – A Cost Center applicable only to the Commercial Units and any Shopkeeper Unit.

It is currently planned that there will be only the Residential Cost Center, however, the Association with the consent of the Commercial Condominium and any Shopkeeper Condominium Owners may form a Commercial/Shopkeeper Cost Center.

Section 1.14. "Cost Center Assessments" shall mean and refer to an additional component of Association regular assessments or special assessments against the Cost Center Units for payment of the Cost Center Costs. Reference to "regular assessments" or "special assessments" in this Declaration shall also refer to the Cost Center Assessments with respect to the Cost Center Units. There may be two types of Cost Center Assessments:

(a) Residential Cost Center Assessments for the Residential Cost Center; and

- (b) Commercial/Shopkeeper Assessments for the Commercial/Shopkeeper Cost Center.

A Commercial/Shopkeeper Assessment will not be levied unless the Association, with the consent of the Commercial Condominium and any Shopkeeper Condominium Owners, forms a Commercial/Shopkeeper Cost Center.

Section 1.15. "Cost Center Costs" shall mean and refer to expenses and reasonable reserves for replacement of the following items applicable to the following two Cost Centers:

(a) Residential Cost Center Costs – refers to the maintenance costs for Limited Exclusive Use Areas for the Residential Condominiums including: (i) the Residential Facilities including all the furniture located therein, (ii) the Residential Corridor Spaces, and (iii) the expenses of utilities and reasonable reserves for replacement of mechanical equipment to provide space heating and cooling from common boilers and chiller units and water which serve only the Residential Units and which are not separately metered. Currently, gas and water utilities are not planned to be separately metered and will be a Residential Cost Center Costs. The cost for operation of the air conditioning system for the Residential Units is planned to be an expense of the Residential Cost Center Costs.

(b) Commercial/Shopkeeper Costs – Currently, there are no Commercial/Shopkeeper Costs.

Section 1.16. "Cost Center Units" shall mean and refer to the following Residential Units, any Shopkeeper Unit and Commercial Units for the following Cost Centers:

(a) Residential Cost Center – All Residential Units.

(b) Commercial/Shopkeeper Cost Center – All the Commercial Units and any Shopkeeper Unit.

Section 1.17. "County" shall mean and refer to the County of San Diego, California.

Section 1.18. "Declarant" shall mean and refer to PINNACLE MARKET DEVELOPMENT (US), LLC, a California limited liability company. Declarant shall also refer to (a) the assigns of Declarant who are expressly assigned the rights of Declarant, and (b) successors of Declarant who become successors by operation of law or by exercise of the remedies under a mortgage, deed of trust or deed in lieu of foreclosure.

Section 1.19. "Declaration" shall mean and refer to this enabling Amended & Restated Declaration of Restrictions for The Pinnacle Museum Tower, as it may from time to time be amended.

Section 1.20. "Encroachment Agreements" means such agreements as have been or may be entered into between Declarant and the City granting permission for portions of the Project to encroach into the Encroachment Area, as such agreements may be amended or supplemented from time to time as contemplated by **Section 1.21**. As of the date of recording of this Declaration, Declarant and the City have entered into Encroachment Agreement Nos. 420443-2, 420443-3, 420443-4 and 420443-5, each of which recorded on July 30, 2003, in the Office of the County Recorder of San Diego County, California, as Document No. 2003-912734, Document No. 2003-912755, Document No. 2003-912767 and Document No. 2003-912770, respectively; the Encroachment Agreements, among other things, permit the encroachment of a private awning, decorative sidewalks, tree grate and trees, sidewalk underdrains, private storm drain lateral, cleanout, irrigation, shotcrete wall, permanent tiebacks and the underground Parking Structure into the public right-of-ways adjacent to the Entire Property.

Section 1.21. "Encroachment Area" means the areas immediately adjacent to Tower Module shown and designated on the Condominium Plan as "Encroachment Area." It is anticipated that the Encroachment Area will be owned by the City. Underground portions of the Parking Structure, shotcrete wall, permanent tiebacks, private awning, decorative sidewalks, tree grate and trees, sidewalk underdrains, private 18" SD lateral, cleanout, irrigation, and portions of certain Balcony Exclusive Use Areas encroach into the

Encroachment Area, as shown on the Condominium Plan. The Owner of the Condominium to which the encroaching Exclusive Use Area is appurtenant (a) will have such rights (such as a license) as are granted in the applicable Encroachment Agreement(s) over the portion of the Exclusive Use Area situated within the Encroachment Area, subject to the terms of the applicable Encroachment Agreement(s); and (b) will have an exclusive easement over the balance of the Exclusive Use Area. Notwithstanding the foregoing, if the City agrees to grant an easement or other rights of use over the Encroachment Area, then the Owner shall have an easement or such other rights of use over such areas, and Declarant may record a supplementary declaration to evidence such easement or such other rights of use, but the failure of Declarant to record a supplementary declaration shall not impair any easement rights or such other rights of use which may be granted.

Section 1.22. "Entire Property" shall mean and refer to that real property consisting of the Children's Museum & Pinnacle Museum Tower Development located in the City of San Diego, County of San Diego, California, described as follows:

Lot 1 of Pinnacle Museum Tower Condominium, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 14577, filed with the County Recorder of San Diego County, California, on April 23, 2003.

Section 1.23. "Exclusive Use Area" shall mean and refer to those portions of the Tower Association Property shown and described on the Condominium Plan to which an exclusive right to use is or may be granted to an Owner. **"Balcony," "Deck," "Parking Space," "Storage Space" and "Commercial Trash Storage Space"** are currently planned for the Project. The Residential Units to which Balcony and Deck Exclusive Use Areas are appurtenant are shown on the Condominium Plan. The Commercial Units to which the Commercial Trash Storage Space Exclusive Use Areas are appurtenant are shown on the Condominium Plan. The Units to which Parking Space and Storage Space Exclusive Use Areas are appurtenant will be designated in the initial condominium grant deed to the Residential Condominium, Commercial Condominium or any Shopkeeper Condominium or in later easement deeds of any Parking Space and Storage Space Exclusive Use Areas not previously conveyed in a condominium grant deed.

Section 1.24. "FHA" shall mean and refer to the Federal Housing Administration.

Section 1.25. "Guest Suite" shall mean and refer to the guest suite described in **Section 8.9**.

Section 1.26. "Limited Exclusive Use Area" shall mean and refer to those portions of the Tower Association Property shown and described on the Condominium Plan to which a limited exclusive right to use is or may be granted to certain Owners. **"Residential Corridor Spaces"** and **"Residential Facilities"** are currently planned for the Project. The Residential Units to which Residential Corridor Spaces are appurtenant are shown on the Condominium Plan. The Residential Facilities are appurtenant to all of the Residential Units.

Section 1.27. "Marina Development Permit" shall mean the Marina Development Permit No. 41-0232A Children's Museum Tower recorded April 23, 2003 as Document Number 2003-0471004, Official Records of San Diego County, as the same may be amended from time to time.

Section 1.28. "Master Condominium Plan" shall mean and refer to the Children's Museum & Pinnacle Museum Tower Development Master Condominium Plan recorded pursuant to California CIVIL CODE § 1351(e) covering the Entire Property which has been made subject to the Master Declaration, including such amendments thereto as may from time to time be recorded. The Master Condominium Plan for the Entire Property describes the Tower Module, the Museum Module and Master Common Area.

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

Section 1.30. "Mortgage" shall mean and refer to a mortgage or deed of trust which encumbers a Condominium.

Section 1.31. "Mortgagee" shall mean and refer to a beneficiary under a deed of trust which encumbers a Condominium as well as a mortgagee under a Mortgage.

Section 1.32. "Museum" shall mean and refer to The Children's Museum, a California nonprofit public benefit corporation.

Section 1.33. "Museum Condominium" shall mean and refer to the Condominium, which includes the following Museum Condominium elements:

- (a) The Museum Module;
- (b) An undivided one-half (½) interest as tenant-in-common to the Master Common Area;
- (c) Museum Easements described in **Section 1.34**; and
- (d) Membership in the Master Association.

Section 1.34. "Museum Easements" shall mean and refer to the Access Easement, the Parking Easement, the Surface Parking Easement, the Utility & Drainage Easement, the Support Easement and the Ancillary Easement granted to Museum over portions of the Parking Structure and as further described in **Article XVI** of this Declaration and **Article XII** of the Master Declaration.

Section 1.35. "Museum Elevator" shall mean and refer to the separate elevator to be operated and maintained by Museum at its sole expense for the use of Museum and the Permitted Users.

Section 1.36. "Museum Module" shall mean and refer to a three-dimensional portion or portions of the Entire Property shown on the Master Condominium Plan and established pursuant to GOVERNMENT CODE § 66427.

Section 1.37. "Museum Module Allocable Operating Costs" shall mean and refer to those Parking Structure Operating Costs that are allocable to Museum pursuant to **Sections 1.31 and 7.1** of the Master Declaration.

Section 1.38. "Museum Parking Spaces" shall mean and refer to those sixty-eight (68) parking spaces located in the Parking Structure and the two (2) parking spaces located on the level 1 parking area as shown on Exhibit "A" to the Master Declaration for use by Museum and Permitted Users pursuant to the terms of this Declaration and the Master Declaration.

Section 1.39. "Museum Project" shall mean and refer to the new Children's Museum project developed by Museum within the Museum Module.

Section 1.40. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any Condominium, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.41. "P-1 Spaces Access Control" shall mean and refer to an automated parking arm or gate or similar device, installed, controlled and operated by Museum, at its sole expense, for the purpose of controlling access to the Museum Parking Spaces located on P-1 and reserving their use to Permitted Users.

Section 1.42. "Parking Structure" shall mean and refer to a portion of the Tower Association Property which consists of the three (3) level subterranean parking structure with approximately five hundred fifty (550) parking spaces some of which will be Exclusive Use Area Parking Spaces and Exclusive Use Area Storage Spaces for Owners of Condominiums within the Project, guest parking spaces, elevator(s), stairways, maintenance and utility rooms, trash storage area, and a driveway ramp with a gate for the Project. Exclusive easements for Museum Parking Spaces within the Parking Structure have been granted to the owner of the Museum Condominium.

Section 1.43. "Parking Structure Operating Costs" are defined in Sections 1.31 and 7.1 of the Master Declaration.

Section 1.44. "Permitted Users" shall mean and refer to Museum and its assigns and successors in interest to the fee title ownership of the Museum Module or to the operation of the improvements located on the Museum Module, and their agents, principals, officers, directors, shareholders, partners, members, employees, licensees, permittees, invitees, contractors, customers and guests. Permitted Users exclude any person not using the Museum Parking Spaces primarily in connection with that person working at, visiting, patronizing or otherwise conducting business on or in the improvements located on the Museum Module (i.e. the Museum Parking Spaces shall not be leased, rented, licensed or otherwise made available for use for members of the public other than in connection with the uses, operations, programs, and other related activities conducted on the Museum Module).

Section 1.45. "Project" shall mean and refer to the Pinnacle Museum Tower located within the Tower Module.

Section 1.46. "Redevelopment Agency" shall mean and refer to the Redevelopment Agency of the City.

Section 1.47. "Residential Condominium" shall mean and refer to each Condominium which includes the following Residential Condominium Elements:

- (a) A Residential Unit airspace;
- (b) The exclusive right to use and occupy any Exclusive Use Area which (i) the Condominium Plan shows as being appurtenant to the Residential Unit, or (ii) are designated as appurtenant to such Residential Unit in the initial condominium grant deed for the Residential Unit or a later easement deed of such Exclusive Use Area (the residential Exclusive Use Areas presently planned for the Project include Decks, Balconies, Storage Spaces and Parking Spaces);
- (c) The limited exclusive right to use and occupy any Limited Exclusive Use Area which the Condominium Plan shows as being appurtenant to the Residential Unit (the Limited Exclusive Use Areas presently planned for the Project for Residential Units include Residential Corridor Spaces and Residential Facilities);
- (d) An undivided interest as tenant-in-common to the Common Area;
- (e) Easements to use the Tower Association Property, including, but not limited to, easements for access, utilities, and lateral support; and
- (f) A membership in the Association.

Section 1.48. "Residential Facilities" shall mean the lobby, a Guest Suite, a pool, roof deck area with barbecue, workout facility, spa and restrooms.

Section 1.49. "Residential Unit" shall mean and refer to the Unit as shown on the Condominium Plan except for the Commercial Units and any Shopkeeper Unit.

Section 1.50. "Retail Purchaser" shall mean and refer to anyone other than a successive Declarant who purchases a Condominium from Declarant through authority of a Final Subdivision Public Report issued by the California Department of Real Estate.

Section 1.51. "Shopkeeper Condominium" shall mean and refer to the Condominium which includes the following Shopkeeper Condominium elements:

- (a) A Shopkeeper Unit airspace;

(b) The exclusive right to use and occupy any Shopkeeper Exclusive Use Area which the Condominium Plan shows as being appurtenant to the Shopkeeper Unit;

(c) An undivided interest as tenant-in-common to the Common Area;

(d) Easements to use the Tower Association Property, including, but not limited to, easements for access, utilities, and lateral support. Such easements are subject to the reasonable rules and regulations of the Association, provided such rules and regulations are not inconsistent with this Declaration; and

(e) Membership in the Association.

Section 1.52. "Shopkeeper Unit" shall mean and refer to the Unit as shown on the Condominium Plan except for the Commercial Units and Residential Units.

Section 1.53. "Tower Association Property" shall mean:

(a) The remainder of the Tower Module, after excluding the Units and the Common Area, is planned to include: (i) the foundation system subject to a nonexclusive easement for lateral support of the Museum Module; (ii) a high rise tower for the Residential Units; (iii) a podium for the Commercial Units and any Shopkeeper Unit; (iv) surface area Exclusive Use Area Parking Spaces; (v) surface area parking spaces; (vi) a Parking Structure; (vii) promenade with benches, trash cans, planters, elevator(s), landscaping, street trees, perimeter fencing and walls; (viii) Project monumentalization; (ix) walkways; (x) gates; (xi) drainage systems; (xii) Limited Exclusive Use Area Residential Facilities; (xiii) surface area and Museum Parking Spaces, and (xiv) a fountain;

(b) All real property and easements owned by the Association from time to time for the common use and enjoyment of the Owners;

(c) Easements for the Association to maintain the structure and the exterior surface areas of certain walls and fences and exterior surface areas of the Exclusive Use Area Storage Spaces as further described in this Declaration;

(d) Easements for the Association to maintain the Limited Exclusive Use Area Residential Corridor Spaces as further described in this Declaration;

(e) Any pipes, drainage facilities, wires or other utility installations which serve more than one Unit but which are not owned and maintained by the City or a public utility, will also be Tower Association Property (e.g., there are private water, storm drain and sewer systems within the Project). The Tower Association Property is subject to nonexclusive easements for utilities for the benefit of and appurtenant to the Museum Module;

(f) Any building support columns, walls or air conveyance ducts not located within any Unit are Tower Association Property regardless of whether the same may be located within or intrude within the airspace envelope of an Exclusive Use Area or Limited Exclusive Use Area;

(g) Portions of real property located outside the Project, including, but not limited to, certain public areas (i.e., parkways), that the Association is obligated to maintain as provided in this Declaration by easement or by agreement; and

(h) Portions of the Project which encroach into the Encroachment Area, unless the context implies otherwise.

Declarant shall have the right to convey property to the Association at any time.

Section 1.54. "Tower Module" shall mean and refer to a three-dimensional portion or portions of the Entire Property shown on a Master Condominium Plan and established pursuant to GOVERNMENT CODE § 66427. The Condominium Plan covers the Tower Module.

Section 1.55. "Unit" shall mean and refer to a separate interest in space as defined in CIVIL CODE § 1351(f) and as shown and described as such on the Condominium Plan. The following are Tower Association Property and not a part of any Unit bearing walls, columns, floors, roofs, foundations, central heating, central refrigeration and central air conditioning equipment, reservoir tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located in the Unit. Each Unit shall include any door or window within a perimeter wall, the interior undecorated surfaces of bearing walls and perimeter walls, floors and ceilings, the outlets of all utility installations in the Unit including the fire box of any electric fireplace located in the Residential Unit. In interpreting deeds and plans, the then-existing physical boundaries of a Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, or, with respect to a Commercial Unit or any Shopkeeper Unit, re-configured with demising walls pursuant to an amendment to the Condominium Plan, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed and those of the building.

Section 1.56. "VA" shall mean and refer to the Veterans Administration.

ARTICLE II

PROPERTY RIGHTS IN TOWER ASSOCIATION PROPERTY AND COMMON AREA

Section 2.1. Title to the Tower Association Property. Declarant covenants for itself, its successors and assigns, that Declarant will convey to the Association any Tower Association Property free and clear of all encumbrances and liens, except non-delinquent taxes, easements, covenants, conditions and reservations then of record, including those set forth in this Declaration, prior to the conveyance of the first Condominium to a Retail Purchaser.

Section 2.2. Owners' Easements of Enjoyment. Every Owner of a Condominium shall have a right and easement of ingress and egress and of enjoyment in and to the Common Area and Tower Association Property which is not Exclusive Use Area or Limited Exclusive Use Area. These rights and an Owner's undivided interest in the Common Area and Tower Association Property shall be appurtenant to and shall pass with the title of each Condominium, subject to the following provisions:

(a) The right of the Board to make rules and regulations relating to the operation and use of the Tower Association Property and Common Area, including the right of the Board to restrict use of the Residential Facilities to those in possession of Residential Units, to control the hours of such use and to determine whether such facilities may be used by guests. The Association shall have no right to restrict reasonable access to a Condominium by the persons who have the right to possession of the Condominium.

(b) Unless the Board resolves otherwise, ownership of a Commercial Condominium or any Shopkeeper Condominium shall not allow its Owner, occupant or customers to use any Limited Exclusive Use Areas designated as Residential Corridor Spaces or Residential Facilities.

(c) The right of the Board to suspend the voting rights of an Owner and right to suspend use of Residential Facilities, other than the lobby, by the Owner and occupants of a Condominium:

(i) During the period of time any Association assessment against the Condominium remains delinquent; and/or

(ii) For a period of not more than thirty (30) days for any infraction of the Board's published rules and regulations after reasonable written notice and an opportunity for a hearing before the Board, which satisfies the minimum requirements of California CORPORATIONS CODE § 7341 as set forth in the Bylaws.

(d) The right of the Board, subject to the limitations stated in **Section 17.15** below and subject to the restrictions stated in California CORPORATIONS CODE § 8724, to transfer less than substantially all of the Tower Association Property. It is specifically intended that the Board have the right to cooperate with Declarant and any Owner in adjusting the boundaries of portions of the Project (e.g., boundaries of Exclusive Use Areas, Limited Exclusive Use Areas or boundaries between a Unit and the Tower Association Property or Common Area).

(e) The sole and exclusive right of the Association, acting through its Board, to operate, maintain and control the Tower Association Property and Common Area, except as otherwise stated in this Declaration.

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

(g) The right of the Board to grant easements and licenses over the Tower Association Property and the Common Area pursuant to **Article XIV** below.

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

(i) The right of access, ingress and egress over the Tower Association Property and Common Area and the right of installation and use of utilities on the Tower Association Property and Common Area for the benefit of the Condominiums.

(j) The right of the Board to adopt rules and regulations relating to the use of the Guest Suite referred to in **Section 8.9** and the right to charge fees for the usage of the Guest Suite.

(k) The right of Declarant to limit access to portions of the Project upon which construction of improvements has not been completed.

(l) Declarant and its sales agents, employees and independent contractors shall have the right to the nonexclusive use of the Tower Association Property and Common Area for the purpose of maintaining sales offices, parking, signs and flags reasonably necessary to market the Condominiums within the Project. Declarant shall have the right, during its marketing of the Project, to control those hours in which Declarant, its agents, contractors and potential buyers have access to the Project. These rights of Declarant may be exercised only until close of escrow to Retail Purchasers of all Condominiums planned for the Project.

(m) Declarant shall also have a nonexclusive easement over the Tower Association Property and Common Area to provide access and utilities thereto and for the purpose of constructing, marketing and utilizing portions of the Project owned by Declarant.

(n) Declarant shall have the right to temporarily close portions of the Tower Association Property during the course of construction of the Project for the period of time which Declarant reasonably believes it would be appropriate to do so to allow the Project to be constructed in an efficient manner or for reasons of safety. Declarant presently intends to close portions of the Tower Association Property during the course of construction of the Project for the use and maintenance of a tower crane, scaffolding, storage and staging of materials and equipment, and other purposes.

(o) Subject to the Museum Easements described in **Section 1.34**.

The use of the Common Area and the Tower Association Property by Declarant and its agents shall not unreasonably interfere with the use thereof by the Class A Members (as defined in **Section 3.2**) of the Association. Declarant shall repair any portion of the Tower Association Property or Common Area which may be damaged by Declarant.

Section 2.3. Delegation of Use. Subject to the restrictions stated in this Declaration, the Bylaws, and the rules and regulations of the Board, the Owner's right of enjoyment to the Tower Association Property and Common Area and facilities shall be delegated to the occupants of the Owner's Condominium (e.g., tenants or contract purchasers who reside in the applicable Residential Unit). Each Owner shall be responsible to the Association for any damage to the Tower Association Property and Common Area caused by such Owner or persons to whom Common Area or Tower Association Property rights have been delegated.

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

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

(b) Should correction of such error cause a Unit or Exclusive Use Area to become reduced in area, the applicable Owner and his or her Mortgagee must consent in writing to the recording of the instrument of correction, which consent shall not be unreasonably withheld or unreasonably delayed.

Exercise of this power of attorney shall be evidenced by an amendment to the Condominium Plan signed by either the Association or Declarant. The power hereby given is coupled with an interest and may not be revoked by an Owner but may be revoked by a Mortgagee. Any such revocation by a Mortgagee shall be by means of its signed statement of revocation recorded with the County Recorder of San Diego County.

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

Section 3.1. Each Owner Is A Member. Each Owner of a Condominium shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Condominium. Each Owner is obligated promptly, fully and faithfully to comply with and conform to this Declaration and the Bylaws and the rules and regulations adopted from time to time by the Board and officers of the Association. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of the Condominium to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such Condominium. Any attempt to make a prohibited transfer is void. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of his Condominium, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

Section 3.2. Classes of Voting Membership. The Association shall have two classes of voting membership:

(a) **Class A.** Class A Members shall be all Owners of the Condominiums with the exception of Declarant. Class A Members shall be entitled to one (1) vote for each Condominium owned. When more than one person holds an interest in any Condominium, all such persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

(b) **Class B.** The Class B Member(s) shall be Declarant. The Class B Member(s) shall be entitled to three (3) votes for each Condominium owned.

Section 3.3. Termination of Class B Membership. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) The total outstanding votes held by Class A Members equal the total outstanding votes held by the Class B Members [*i.e.*, when one hundred forty-four (144) or more Condominiums have been conveyed of record by Declarant to Retail Purchasers]; or

(b) Four (4) years following the date of the first conveyance of record by Declarant of a Condominium to a Retail Purchaser.

Section 3.4. Commencement of Voting Rights. Voting rights shall be attributable to a Condominium commencing on the date the Association's regular assessments have commenced against the Condominium.

ARTICLE IV **COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION**

Section 4.1. Covenant for Assessments. Declarant, for each Condominium owned, covenants, and each Owner of any Condominium by acceptance of a deed to the Condominium, whether or not so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (a) regular assessments, which shall include an adequate reserve fund for periodic maintenance, repair and replacement of the Tower Association Property and Common Area; (b) special assessments; and (c) those other assessments provided for in this Article. Regular assessments shall include a Cost Center Assessment, if any, for those Cost Center Units. The regular and special assessments, together with interest, costs, late charges and reasonable attorneys' fees, shall, except as stated in **Section 4.4**, be a charge and continuing lien upon the Condominium against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment, together with interest, costs, late charges and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them; however, the assessment shall remain a lien on the Condominium.

Section 4.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the Owners in the entire Project; for the improvement and maintenance of the Tower Association Property and Common Area for the common good of the Project; to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Bylaws, this Declaration and the rules and regulations adopted by the Board; and for those other purposes described in this Declaration. The regular assessments shall be determined at least annually by the Board to meet the expenses of the Association, including the establishment of reserve accounts, based upon the annual budget adopted by the Board pursuant to the Bylaws. A special assessment is an assessment the Board, in its discretion, determines necessary if the Association's available funds are or will become inadequate to meet the estimated expenses of the Association for a fiscal year. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board determines appropriate. In addition, a special assessment against a particular Owner only may be levied by the Board as set forth in **Section 4.4**.

Section 4.3. Maximum Regular and Special Assessments. The Board shall levy regular and special assessments sufficient to perform the obligations of the Association as provided in this Declaration and the Bylaws. However, the Board shall not increase the assessments during any fiscal year unless the Board has complied with the requirements of CIVIL CODE § 1365(a) (regarding the Association's pro forma operating budget) for that fiscal year or unless the Board has obtained the approval of Owners casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with § 7510) of Part 3 of Division 2 of Title 1 of the California CORPORATIONS CODE and § 7613

of the California CORPORATIONS CODE at which a quorum was present or participated. For purposes of this Section, "quorum" means more than fifty percent (50%) of the Owners.

Except for assessment increases necessary for emergency situations, the Board may not impose annual increases in regular assessments that are in aggregate more than twenty percent (20%) greater than the regular assessments for the Association's preceding fiscal year nor special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expense of the Association for the fiscal year, without the approval of Owners casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with § 7510) of Part 3 of Division 2 of Title 1 of the California CORPORATIONS CODE and § 7613 of the California CORPORATIONS Code at which a quorum was present or participated. An emergency situation is any one of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety in the Project is discovered;
- (c) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the proforma operating budget under § 1365 of the California CIVIL CODE. However, prior to the imposition or collection of an assessment under this **Subsection (c)**, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members of the Association with the notice of assessment.

Notwithstanding the above stated limitation against increases in regular assessments:

- (i) The Board may increase regular assessments more than twenty percent (20%) if such increase was shown on an Association budget approved by the California Department of Real Estate and if such increase is allowed by California law;
- (ii) The Board may levy special assessments pursuant to the Section in the Bylaws entitled "**Limitation on Expenditure of Reserve Funds**"; and
- (iii) Sums assessed against Owners pursuant to **Section 4.4** below shall not be considered in calculating the increases in assessments.

The due dates of assessments shall be as the Board establishes them. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

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

assessments, interest and other charges to reimburse the Association for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments.

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

Section 4.6. Rate of Regular Assessments. This Section applies to all components of regular assessments other than Cost Center Assessments. For purposes of this Section, regular assessments consist of the "Base Assessment" and "Variable Assessment" items described in the "Base Budget - Pinnacle Museum Tower" ("Base Budget"). The amount of the Base Assessment portion shall be assessed equally against all Condominiums. The amount of the Variable Assessment portion to be assessed against a particular Condominium shall be equal to the total Variable Assessment portion of the Base Budget to be assessed times the Variable Assessment Percentage for the Condominium interest as set forth on Attachment "A-1" to this Declaration.

In addition, should the Board determine that the use of any particular Condominium(s) or its (their) appurtenant Exclusive Use Area(s) or Limited Exclusive Use Areas will cause an increase in the premium(s) for any insurance policy which the Association is obligated to obtain pursuant to Section 11.4 below, the Board shall assess the amount of the increased premium only to those particular Condominium(s). Any assessment pursuant to this Section 4.6 must be based on a written statement from the insurer, or insurance agent, which provided the insurance, which details: (i) the amount of the premium increase, (ii) which particular uses of which particular Condominiums (or their appurtenant Exclusive Use Areas or Limited Exclusive Use Areas) caused the increase, and (iii) the allocation of the increase to each of those particular Condominiums.

This Section does not apply to the sums payable by reason of Sections 4.4, 4.7, 4.9 and 4.10.

Section 4.7. Cost Center Assessments. In addition to other components of the regular and special assessments, the assessments levied against Cost Center Units shall include the applicable Cost Center Assessments. The Cost Center Assessments component of the regular assessments levied by the Association against the Cost Center Units shall be used exclusively for the Cost Center Costs and the Cost Center Costs shall be included only in the Cost Center Assessments. As currently planned, there is no Commercial/Shopkeeper Cost Center.

The Residential Cost Center Assessments consist of the "Cost Center Base Assessment" and "Cost Center Variable Assessment" items described in the "Residential Budget - Pinnacle Museum Tower" ("Residential Cost Center Budget"). The amount of the Cost Center Base Assessment portion shall be assessed equally against all Residential Condominiums. The amount of the Cost Center Variable Assessment portion to be assessed against a particular Residential Condominium shall be equal to the total Cost Center Variable Assessment portion of the Residential Cost Center Budget to be assessed times the Cost Center Variable Assessment Percentage for the Residential Condominium interest as set forth on Attachment "A-2" to this Declaration.

Section 4.8. Cost Center Accounting. The Association shall provide for separate accounting for Cost Center Assessment funds which are collected and expended. The Association shall also provide for the reserve study and the annual review and disclosure of the reserves applicable to the Tower Association Property included within the applicable Cost Center Costs.

Section 4.9. Special Assessments For Cost Center Costs. Special assessments may also be levied against the Cost Center Units when they are directly related to the Cost Center Costs. Such special assessments shall be levied upon the basis as set forth in **Section 4.7** to this Declaration.

Section 4.10. Rate of Special Assessments for Repairs. Any special assessment to raise funds for the rebuilding or major repair of a portion of the structural Tower Association Property shall be levied against each Condominium in the Project against which the Association's regular assessments have commenced. Such special assessments shall be levied upon the basis of the applicable Variable Assessment Percentage as set forth in **Attachment "A-1"** to this Declaration.

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

Section 4.12. Date of Commencement of Regular Assessments. The regular assessments shall commence as to all Condominiums in the Project on the first day of the month following the conveyance of the first Condominium to a Retail Purchaser in the Project.

Section 4.13. Adjustment of Assessments; Due Dates. The Board shall fix the amount of the regular assessments against each Condominium at least thirty (30) days in advance of each fiscal year but may change the assessment amount on any subsequent occasion. The amount of regular assessments (other than special assessments) shall be determined at least annually. Unless otherwise determined by the Board, regular assessments shall be due and payable in monthly installments on the first day of each calendar month. No notice of regular assessments shall be required except for notices of changes in assessment amount or changes in due dates. Written notice of changes in the regular assessments or of any special assessment shall be sent by first-class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days prior to the change in assessments or the special assessment becoming due.

Section 4.14. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment made in accordance with this Declaration (including lien and non-lien assessments) shall be a debt of the Owner of a Condominium from the time the assessment is due. Any assessment not paid within fifteen (15) days after the due date shall be delinquent. If an assessment is delinquent, the Association may recover any of the following: (i) reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees, (ii) a late charge on unpaid assessments in an amount not exceeding the greater of Ten Dollars (\$10.00) or ten percent (10%) of each assessment, and (iii) commencing thirty (30) days after the assessment becomes due until paid, interest at the rate of twelve percent (12%) per annum on the delinquent assessment and all sums imposed by this Section, including reasonable fees and costs of collection and reasonable attorney's fees. After any assessments levied by the Association affecting any Condominium have become delinquent, the Board may, after giving notice to the delinquent Owner pursuant to CIVIL CODE § 1367.1 (as more fully described below), file for recording in the Office of the County Recorder of the County of San Diego a notice of delinquency as to such Condominium. The notice of delinquency shall state all amounts which have become delinquent with respect to such Condominium and the costs (including attorney's fees), interest and late charges which have accrued thereon, the amount of any assessments relating to such Condominium which is due and payable although not delinquent, a description of the Condominium with respect to which the delinquent assessments are owed, the name of the record or reputed record Owner of such Condominium, and the name and address of the trustee authorized by the Association to enforce the lien by sale. Such notice of delinquency shall be signed by an officer of the Association or its authorized agent.

Pursuant to CIVIL CODE § 1367.1, the Association shall provide the delinquent Owner with written notice by certified mail at least thirty (30) days prior to filing a notice of delinquency with the Office of the County Recorder of San Diego. The precise form and content of the notice is set forth in CIVIL CODE § 1367.1, but includes, without limitation, the following information: (i) a general description of the collection and lien enforcement procedures of the Association; (ii) a statement that the Owner has the right to inspect Association records pursuant to CORPORATIONS CODE § 8333; (iii) the following statement in 14-point boldface type if printed, or in capital letters, if typed:

"IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION";

(iv) an itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any; (v) a statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the Association; and (vi) a statement that the Owner has the right to request a meeting with the Board as provided in subdivision (c) of CIVIL CODE § 1367.1.

Immediately upon recording of any notice of delinquency pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such notice, together with the costs (including attorney's fees), late charges and interest accruing thereon, shall (except as provided in **Section 4.4**) be and become a lien upon the Condominium described therein, which lien shall also secure all other payments and/or assessments which shall become due and payable with respect to said Condominium following such recording, and all costs (including attorney's fees), late charges and interest accruing thereon. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Condominium prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any first Mortgage of record.

Any payments toward sums due under this Article shall be first applied to the delinquent assessments owed, and only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it.

In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Condominium, together with all costs (including attorney's fees), late charges and interest which have accrued on such amounts, are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and releasing of such lien.

Each assessment lien may be foreclosed in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to §§ 2924, 2924(b), 2924(c) and 1367 of the California CIVIL CODE, and all other applicable statutes, and to that end a power of sale is hereby conferred upon the Association. The Association, acting on behalf of the Condominium Owners, shall have the power to bid for the Condominium at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien.

Section 4.15. Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien of the assessments, interest, costs, attorneys' fees and late charges shall be subordinate to the lien of any first Mortgage upon any Condominium. Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or transfer of any Condominium pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. However, the Association may treat as Common Expenses, assessable against all the Condominiums, any unpaid assessments for which lien rights have terminated. No sale or transfer shall relieve such Condominium from lien rights for any assessments thereafter becoming due.

Section 4.16. Estoppel Certificate. The Association shall furnish, upon demand 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 executed certificate of the Association as to the status of assessments on a Condominium is binding upon the Association as of the date of its issuance.

Section 4.17. Non-Use of Tower Association Property or Common Area. No Owner shall be exempt from personal liability for assessments levied by the Association, nor shall any Condominium be

released from the liens and charges of assessments because of the non-use of the Tower Association Property or Common Area nor because of abandonment of the Condominium.

Section 4.18. Taxation of Association. In the event that any taxes are assessed against the Common Area, Tower Association Property or the personal property of the Association, rather than against the individual Condominiums, the taxes shall be added to the regular assessments and, if necessary, a special assessment may be levied against the Condominiums in an amount equal to the taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

Section 4.19. Payment of Assessments By Declarant. Except as specifically stated otherwise in this Article, Declarant shall pay all assessments levied by the Association against any Condominium owned by Declarant at the same time, in the same manner and in the same amount as any other Owner.

Section 4.20. Uncompleted Facilities. The Board may, but shall have no obligation to, exclude from Association regular assessments those portions of budgeted assessments which are for the purpose of defraying expenses and reserves directly attributable to the existence of improvements to be maintained by the Association but which are not complete at the time of the assessment. Any such exemption from assessments shall be in effect only until completion of the improvements, which may be evidenced by recordation of a notice of completion for the same.

Section 4.21. Change In The Size of Commercial Units or Shopkeeper Unit. A change in the size of a Commercial Unit or any Shopkeeper Unit pursuant to **Section 6.6** below may not result in any change to **Exhibit "A"** and therefore a change in the size of a Commercial Condominium may not result in a change in the rate of assessment applicable to that Condominium.

Section 4.22. Code Sections Subject To Change. This Article relies on provisions of California statutory law which have been revised frequently. The Board is cautioned to have its legal consultant carefully review statutes in effect as of the date any notices or other actions are taken pursuant to this Article.

ARTICLE V **POWERS AND DUTIES OF ASSOCIATION**

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

ARTICLE VI **USE OF COMMERCIAL, SHOPKEEPER AND RESIDENTIAL CONDOMINIUMS**

Section 6.1. Lease of Condominium. Each Owner of a Condominium shall have the right to lease the Owner's Condominium provided that such lease is in writing. Each tenant shall be bound by and obligated to the provisions of this Declaration, the Bylaws and the rules and regulations of the Board, and a tenant's failure to do so shall be deemed a default under the lease. The rules and regulations of the Board may require a tenant to deliver to the Association a security deposit, in an amount established by the Board from time to time, as security for the cost of cleaning or repairing damage to the Common Area or Tower Association Property. No Owner shall lease a Condominium for transient or hotel purposes and no Condominium shall be leased for a term less than six (6) months. Should the Board so request an Owner to do so, the Owner shall forward an executed copy of a lease to the Owner's Condominium to the Board together with the telephone number and street address of the residence of the Owner. Other than as provided in this Section, there shall be no restriction on the right of any Owner to lease a Condominium.

Section 6.2. Use Not to Impair Insurance. No Condominium shall be occupied, improved or used for any purpose or in any manner which shall cause such Condominium or any Condominium to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any such policy or policies representing such insurance to be cancelled or suspended, or the company issuing the same to refuse renewal thereof or to increase the premium therefor.

Section 6.3. Nuisance. No Condominium shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other such areas or annoy them by unreasonable noise or otherwise, nor

shall any nuisance be committed or permitted to occur in any portion of the Project. Neither ordinary and usual commercial uses of the Commercial Units or any Shopkeeper Unit allowed by zoning or ordinary and usual techniques of construction of improvements permitted hereunder shall be deemed a nuisance. Any violation of **Section 8.2** below or ordinances or regulations of the City is hereby declared to be a nuisance.

Section 6.4. No Owner Modification to Tower Association Property or Common Area. Except as otherwise specifically provided in this Declaration, no Owner shall have the right to alter, paint, decorate, remodel, landscape or adorn any part of the Tower Association Property or Common Area without the written consent of the Board.

Section 6.5. Removal of Trash; Trash Drop Off Locations. All rubbish, trash or garbage shall be regularly removed from each Condominium and shall not be allowed to accumulate in the Project. Certain portions of the Tower Association Property may be designated as trash drop off locations by the Board. The Board may adopt rules and regulations regarding the trash drop off and pick-up policies, and each Owner shall comply with such regulations and policies.

Section 6.6. Right To Combine Units. One or more Condominiums may be combined to comprise a single Unit provided the Owner wishing to do so gives written notice to the Association and the Association reasonably determines that the combination of Condominiums will not diminish the structural integrity of the Project. The combination of Condominiums shall not result in any reduction of regular assessments or voting rights which would have otherwise applied to the Units so combined. The area from which a Tower Association Property wall or portion of a Tower Association Property wall is removed by reason of the combining of Condominiums shall be deemed a part of the combined Condominium after such removal, unless and until the wall is re-installed and the two Condominiums are no longer owned by the same Owner. Each Owner who so combines Condominiums indemnifies and holds harmless the Association and each other Owner from any loss, claim or liability that might arise from the combining of the Condominiums.

Section 6.7. No Changes In Plumbing Without Board Approval. No internal plumbing or plumbing fixtures shall be revised in any Condominium without Board approval if such revision would result in increased water consumption that is not separately metered or negative acoustical impact to the other Condominiums.

Section 6.8. Restrictions Against Attachment of Speakers, Etc. To Certain Walls. No Owner shall attach any speaker, television or similar device to a wall that adjoins another Condominium unless sound insulation is installed behind the device so that its location on the wall would not result in increased transmission of sound to another Condominium.

Section 6.9. No Alteration of Structural Improvements. Neither the Association nor any Owner shall alter any structural improvements in the Project in any manner which could damage the structural improvement. For example, any attempt by an Owner or other person to alter the foundation (e.g., saw cutting or drilling to install a floor safe) could damage the integrity of the floor and/or cause serious injury or damage to persons and property.

Section 6.10. Other Prohibited Modifications. No Owner shall cause any penetration, cutting or other modifications to any doors that provide entrance to a Condominium, windows, window frames or the building exterior plaster walls, perimeter or bearing walls, ceilings or floors without the prior written consent of the Board. The Board may provide guidelines with respect to those modifications that it allows or disallows. The Board shall not give its consent to any modification to any doors that provide entrance to a Condominium, windows, window frames or the building exterior plaster walls, perimeter or bearing walls without first obtaining the advice and recommendations of an expert such as a licensed architect whose practice is regularly involved with the types of projects similar to the Project.

Penetrations, cutting or other modifications to the areas referred to above can result in water intrusion, loss of fire protection and increased transmission of sound. For example, and not by way of limitation, Owners shall not attach window covering hardware to any window framing system as penetration of the window framing system may result in water intrusion into the Unit, the Tower Association Property and other Units. Neither Declarant nor any contractor of Declarant shall be responsible for any damage or injury

resulting from or arising in connection with any alteration of any portion of the Project. The Association and each Owner shall hold Declarant harmless from and indemnify Declarant against all claims, demands, losses, costs (including attorney's fees), obligations and liabilities arising out of or in connection with the failure of the Association or an Owner, respectively, to comply with the provisions of this Section.

Section 6.11. Restrictions Against Uses, Improvements or Activities That Would Impair Structure. The Board shall have the right to restrict the uses, improvements or activities of any Owner that the Board reasonably believes would have adverse structural impacts to the Project.

Section 6.12. Owners Liable for Damage. Each Owner shall be legally liable to the Association for all damages to the Project, including, but not limited to, the buildings, Residential Facilities and landscaping caused by such Owner, such Owner's guests, customers (or other licensees) or any occupant of such Owner's Unit as such liability may be determined under California law. Each Owner shall be responsible for compliance with the provisions of this Declaration, the Bylaws, and rules and regulations of the Board by such Owner's licensees and occupants of such Owner's Condominium.

Section 6.13. Decorating by Owner. Each Owner shall have the right, at the Owner's sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim and perimeter walls of the Owner's Unit, and the surfaces of the bearing walls and partitions located within the Unit. Such Owner shall have the right to substitute new finished surfaces in place of those existing on the ceiling, floors, walls and doors of his or her Unit. Each Owner shall comply with any acoustical standards for flooring, ceiling and other surface materials installed within a Unit as provided in the rules and regulations of the Board. No Owner shall penetrate the ceiling of the Owner's Unit for any purpose (including, e.g., installation of window coverings) without the prior written approval of the Board.

Section 6.14. Outside Antennae. There shall be no outside television or radio antennae, masts, satellite dishes, transmitter tower or facility, poles or flag poles (other than poles or flag poles installed and maintained by Declarant in connection with its sales program constructed, installed or maintained in the Project) for any purpose whatsoever without approval of the Board. However, in considering whether to approve an antenna or to impose requirements on such approval, the Board shall not violate any applicable law or regulation, including, but not limited to, any applicable regulations of the Federal Communications Commission.

Section 6.15. No Impairment of Structures. No Owner shall make any change to his or her Condominium which would adversely affect the structural integrity of the building.

Section 6.16. Exclusive Use Areas; Limited Exclusive Use Areas. Each Exclusive Use Area and Limited Exclusive Use Area shall be appurtenant to the Unit it serves. Conveyance of a Unit will automatically convey all appurtenant Exclusive Use Areas and Limited Exclusive Use Areas.

Section 6.17. Parking Spaces; Storage Spaces. Each Owner of an Exclusive Use Area Parking Space or Exclusive Use Area Storage Space shall have the right to use the parking space ("Parking Space") for parking of automotive vehicle(s) and the storage space ("Storage Space") for non-hazardous materials provided therefor. No Owner shall rent or otherwise allow the use of a Parking Space or Storage Space by anyone other than an Owner or occupant of a Unit and their guests, unless the Board allows an Owner to do so. Unless the Board agrees otherwise, no Owner shall convert a Parking Space to any use which prevents its use for vehicular parking. It is the intention of Declarant to grant easements over the Exclusive Use Area Parking Spaces and the Exclusive Use Area Storage Space, including all of the handicap and regular Parking Spaces, at the time title to the Units is conveyed to the Retail Purchasers; however, Declarant may sell and grant easements over Exclusive Use Area Parking Spaces and Exclusive Use Area Storage Spaces which have not previously been conveyed to Owners of Units which have previously been conveyed. Owners of Units may transfer easements over Exclusive Use Area Parking Spaces or Exclusive Use Area Storage Spaces among themselves by deeds recorded in the Official Records of the County; however, easements over Exclusive Use Area Parking Spaces or Exclusive Use Area Storage Spaces may not be transferred to or owned by anyone other than an Owner of a Unit, Declarant or the owner of the Museum Condominium, and any attempt to do so shall be null and void. Upon any transfer of an easement over an Exclusive Use Area

Parking Space or Exclusive Use Area Storage Space, the transferee Owner shall notify the Board of the transfer. Declarant shall have the right to temporarily obstruct Parking Spaces and Storage Spaces and provide the use of alternate Parking Spaces and Storage Spaces during construction of the Project. In addition, Declarant shall have the right to permanently relocate Parking Spaces and Storage Spaces to comparable spaces if the relocation is required for the installation or maintenance of building systems.

Section 6.18. Handicap Parking Spaces. The Project will contain handicap parking spaces (which may be designated on the Condominium Plan), easements for the exclusive use of which shall be granted by Declarant to the Owners of particular Residential Units.

The Owner of a Parking Space Exclusive Use Area which was designed as a handicap parking space and who is not, himself, handicapped shall assign to the Owner or occupant of another Residential Unit in the Project who is or becomes handicapped for an extended and continuous period (regardless whether the handicapped Owner is a new Owner) the exclusive right to use such handicap Parking Space; provided such handicapped person makes available to such Owner the exclusive use of the Parking Space Exclusive Use Area the handicapped person would otherwise be entitled to use, as set forth in the deed for such other Residential Unit. Such rights to use the handicap Parking Space shall terminate when such person ceases to be handicapped. Evidence of handicap status shall be by distinguishing license plate or placard issued by the California Department of Motor Vehicles.

The Association shall have the authority and be responsible for coordinating the exchange of Parking Spaces pursuant to this Section and shall adopt rules and regulations with respect thereto, including the procedure to be followed should an Owner or occupant be handicapped and wish to use a handicap Parking Space, notice to be given to the Association and Owner, and review of the required evidence of handicap. The Association shall maintain appropriate records of such exchanges, including a copy of the evidence provided. There is no guarantee that there will be sufficient handicapped Parking Spaces to meet the needs of all Owners, and neither the Association nor Declarant shall have any liability if the Association is unable to assign a handicap Parking Space to a handicapped Owner because all handicapped Parking Spaces have been assigned to handicapped Owners. In the event the Association is required to commence litigation to enforce the exchange of a Parking Space between the handicapped and non-handicapped person, the Association shall be entitled to costs of suit and such attorneys' fees as the Court may adjudge reasonable and proper, should the Association prevail.

Section 6.19. No Clothes Lines, Storage, Etc. No exterior clothes lines shall be erected or maintained, and there shall be no outside drying or laundering of clothes in an Exclusive Use Area or other portion of the Tower Association Property or on the Common Area except in areas (if any) which may be approved by the Board. No Exclusive Use Areas shall be used for storage except for those areas designated as Storage Space Exclusive Use Areas on the Condominium Plan. No bicycles or unsightly articles shall be kept on any Deck or Balcony.

Section 6.20. Board Permitted To Expand Vertical Limits. The Board shall have the right to allow Owners to exclusively use portions of the Tower Association Property or Common Area above or below the vertical limits of any Exclusive Use Area or Limited Exclusive Use Area.

Section 6.21. Right of Access. Each Owner shall have the right of reasonable access for egress and ingress to and from such Owner's Unit, Exclusive Use Areas and Limited Exclusive Use Areas.

Section 6.22. Construction and Sales Activities. The development, construction, marketing and sales activities of Declarant are exempt from the covenants, restrictions and limitations set forth in this Article and the two Articles which follow. None of the covenants, restrictions and limitations set forth in this Article or elsewhere in this Declaration shall be applied to the development, construction, marketing or sales activities of Declarant or construed in such a manner as to prevent or limit development, construction, marketing or sales activities by such Declarant.

Section 6.23. Post-Tensioned Slabs. The Parking Structure will be constructed with post-tensioned concrete slabs ("System") because of soils conditions. The System involves placing steel cables under high tension in the concrete slab located beneath the Parking Structure. Any attempt by the Association

or an Owner or other person to alter or pierce the foundation could damage the integrity of the System and/or cause serious injury or damage to persons and property. No Owner shall cut into or otherwise disturb the System. Neither Declarant nor any contractor of Declarant shall be responsible for any damage or injury resulting from or arising in connection with any alteration or piercing of the slab or the foundation of the Parking Structure. Each Owner and the Association shall hold Declarant harmless from and indemnify Declarant against all claims, demands, losses, costs (including attorney's fees), obligations and liabilities arising out of or in connection with the failure of the Association or Owner to comply with the provisions of this Section.

Section 6.24. City and Redevelopment Agency Requirements. The Association and each Owner shall at all times comply with the City and Marina Development Permit requirements.

Section 6.25. Limitations on Modification - Marina Development Permit. All modifications must be consistent with the Marina Development Permit.

ARTICLE VII

USE OF COMMERCIAL CONDOMINIUMS & SHOPKEEPER CONDOMINIUM

Section 7.1. Commercial Purposes. A Commercial Unit shall not be occupied and used except for commercial purposes by the Owner or his or her lessee. For purposes of this Article, "**commercial purposes**" shall include retail sales and businesses, offices, service and/or sales, and, with respect to a particular Commercial Unit, the use allowed pursuant to **Section 7.8** below. All uses must comply with applicable federal, state and local laws and regulations.

Section 7.2. Shopkeeper Purposes. Any Shopkeeper Unit may be used for any use(s) allowed by applicable zoning ordinances and the Marina Development Permit; however, the street level floor of the Shopkeeper Unit shall not be used for residential purposes.

Section 7.3. Advertising. No Owner or lessee shall employ an advertising medium which can be heard or experienced outside of the Commercial Unit or any Shopkeeper Unit, including, without limiting the generality of the foregoing, flashing lights, searchlights, loudspeakers, phonographs, compact disk players, radios or television. Identification and other signage shall be governed by **Section 7.14** below. No Owner, or his lessee, shall distribute, or cause to be distributed, any handbill or other advertising device in the Tower Association Property or on the public sidewalks or streets adjacent to the Project.

Section 7.4. Leasing of a Commercial or Shopkeeper Condominium. Except for the restrictions contained in this Section, there shall be no restriction on the right of an Owner to lease his or her Commercial Condominium or any Shopkeeper Condominium. An Owner may lease his or her Commercial Condominium or any Shopkeeper Condominium for the uses allowed by this Article. Any lease shall provide that it is subject, in all respects, to the provisions of this Declaration, the Articles, the Bylaws, and any rules made by the Board.

Section 7.5. Hazardous Materials. An Owner shall not use or keep in a Commercial Unit, any Shopkeeper Unit, Tower Association Property or the Common Area any kerosene, gasoline or other inflammable or combustible fluid or material or other hazardous materials, other than those required or necessary to operate the business for which the Commercial Unit or any Shopkeeper Unit is used and for normal cleaning and landscaping work.

Section 7.6. Customers, Guests and Lessees; Insurance. An Owner of a Commercial Condominium and any Shopkeeper Condominium shall be responsible for compliance by his customers, guests and lessees, and his lessees' customers and guests, with the provisions of this Declaration, the Bylaws, and any rules made by the Board. The Owner of a Commercial Condominium or any Shopkeeper Condominium or such owner's lessee shall maintain a policy or policies of public liability insurance in an amount which is reasonable for the use, and shall demonstrate proof of such insurance to the Board upon request.

Section 7.7. Restrictions on Commercial & Shopkeeper Condominiums. Except as stated in Section 6.15, the Board may not restrict the reasonable use of a Commercial Condominium or any Shopkeeper Condominium as provided for herein. All uses shall be in conformity with the zoning ordinances of the City. Commercial and shopkeeper uses by their nature create a variety of impacts that would not occur, or would occur to a lesser degree, in a project with only residential uses. Such impacts include, without limitation, vehicular and pedestrian traffic, light, noise, odors and pests. The benefits of living in a mixed-use project with commercial and shopkeeper uses are deemed to outweigh the additional impacts from such uses.

Section 7.8. Restaurant Use. Commercial Condominiums used for restaurant use are subject to the following additional restrictions:

(a) Noise and odors caused from the operation of the restaurant shall be sufficiently controlled such that neither would cause an unreasonable nuisance to the other owners or occupants, or unreasonably disturb any occupant's right to the quiet enjoyment of their premises, subject to Section 7.7.

(b) All utilities serving the restaurant shall be provided independent from the Project utilities, except for the sprinkler system and life-safety systems.

Section 7.9. Restrictions on Amendments. No amendments to this Declaration which further restrict the use of a Commercial Condominium or any Shopkeeper Condominium or increase the rate of assessments on a Commercial Condominium or any Shopkeeper Condominium shall be effective unless the Owner of such Commercial Condominium or any Shopkeeper Condominium has given its written consent to such amendment.

Section 7.10. Use of Commercial Exclusive Use Areas. Each Owner shall be entitled to use the Commercial Trash Storage Space Exclusive Use Area, if any, which is appurtenant to the Owner's Commercial Unit for the usual and ordinary trash storage and removal purposes. The Owner must take adequate steps to keep such area clean and prevent unsightly conditions.

Section 7.11. Hold Harmless and Indemnity. Each Owner of a Commercial Condominium and any Shopkeeper Condominium assumes all risks which may result from improvements he or she makes to his or her Commercial Unit, any Shopkeeper Unit or Commercial Exclusive Use Area and each Owner indemnifies and holds harmless the Association, Declarant and each other Owner from any claim, demands, liabilities, judgments, attorneys' fees and other obligations which arise out of or are incurred in connection with the installation, existence or removal of improvements.

Section 7.12. Demising Walls - Adjoining Commercial Units. In the event Declarant conveys two or more adjoining Commercial Units to the same Owner, Declarant shall have no obligation to install the demising walls between such adjoining Commercial Units. Should the Owner convey any such Commercial Unit(s) separate from the adjoining Commercial Unit(s), it shall be the Owner's responsibility to install the demising wall(s).

Section 7.13. Right To Adjust Commercial Condominium Boundaries. Notwithstanding any provisions herein to the contrary, the Owners of Commercial Condominiums shall have the right to adjust the boundaries between two or more Commercial Condominiums pursuant to the following procedures:

(a) The Owners and Mortgagees of any Commercial Condominium the boundaries of which are to be adjusted must each sign and acknowledge an amendment to the Condominium Plan which shows the adjusted boundaries; each Commercial Condominium shall be deemed to be covered by a separate Condominium Plan, which for convenience purposes was recorded as one document and no other Owners' or Mortgagees' signatures will be required;

(b) The amended Condominium Plan shall expressly state that it covers and affects only the Commercial Condominium (i.e., Commercial Unit or Exclusive Use Areas) which are being adjusted and that no other Commercial Unit, Exclusive Use Area, Common Area or Tower Association Property is affected by the amendment to the Condominium Plan;

(c) The Owners of any Commercial Condominium or the boundaries of which are to be adjusted shall each adjust the boundaries by deeds which describe the adjusted boundaries shown on the amended Condominium Plan;

(d) The Mortgagees of any Commercial Condominium the boundaries of which are to be adjusted shall each amend their respective Mortgages to revise the legal description of the Commercial Condominium being adjusted to those boundaries shown on the amended Condominium Plan; such amendment shall include appropriate partial reconveyances and conveyances from the trustee under any deed of trust which encumbers a Commercial Condominium the boundaries of which are being adjusted;

(e) The adjustment of the boundaries of a Commercial Condominium may result in changes to the amounts assessable by the Association for any Condominium.

Section 7.14. Sign Control. Identification and other signs may be placed or displayed by Owners or tenants of Commercial Condominiums and any Shopkeeper Condominium on or in such Condominium only in accordance with all applicable federal, state and local laws and regulations. All identification and other signs for Commercial Condominiums or any Shopkeeper Condominium (and any changes thereto) are subject to the prior written approval of Declarant; after Declarant no longer owns any interest in the Project, Declarant shall have the right, but no obligation, to transfer this approval right to the Board. Notwithstanding the foregoing, an Owner of a Commercial Condominium or any Shopkeeper Condominium may place one (1) sign of reasonable and customary dimensions in the place designated by the Board to advertise the Condominium for sale or rent. The Board may adopt rules and regulations regarding the size and location of "for sale" and "for rent" signs. Anything contained in this Declaration to the contrary notwithstanding, Declarant shall have the right to install and maintain signs in any Condominium owned or leased by it, on the Tower Association Property and Common Area prior to the sale of all the Condominiums in the Project.

Section 7.15. Change in Commercial or Shopkeeper Status. Except as stated herein, no change in the commercial status of a Commercial Condominium or any Shopkeeper Condominium shall be effective unless approved by a unanimous vote of all Owners of Commercial Condominiums and any Shopkeeper Condominium and permitted by all applicable federal, state and local laws and regulations.

ARTICLE VIII

USE OF RESIDENTIAL CONDOMINIUMS

Section 8.1. Residential Purposes. Each Residential Condominium shall be improved, used and occupied for private, single-family dwelling purposes only, and shall be not be used for any commercial purposes other than home businesses which are allowed by City zoning ordinances. However, Declarant may use any of the Condominiums owned by Declarant as model homes, design centers, construction offices and sales offices until all the Condominiums in the Project are sold and conveyed by Declarant to Retail Purchasers.

Section 8.2. Animals. No animals of any kind shall be raised, bred or kept in any portion of the Project except that a reasonable number of dogs, cats or other household pets may be kept within Residential Units, provided that they are not kept, bred or maintained for any commercial purpose, nor in violation of any other provision of this Declaration. A "reasonable number" as used in this Section shall ordinarily include no more than an aggregate of two (2) dogs and cats per household; provided, however, a reasonable number in any instance may be more or less depending on whether the pets constitute a nuisance to other Owners. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Project must be kept within the Owner's Residential Unit, or on a leash being held by an individual capable of controlling the animal, or in an appropriate carrier from which the animal cannot escape. Each Owner shall be liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Project by the Owner or by members of his or her family, his or her tenants or his or her guests; and it shall be the duty and responsibility of each Owner to immediately clean up any waste from his or her animals.

Section 8.3. Sign Control. An Owner of a Residential Condominium may place one (1) sign of reasonable and customary dimensions in the place designated by the Board to advertise the Condominium for sale or rent. The Board may adopt rules and regulations regarding the size and location of "for sale" and "for rent" signs. No other signs may be placed anywhere in the Project without the prior written permission of the Board. All signs must conform with applicable federal, state and local laws and regulations. Anything contained in this Declaration to the contrary notwithstanding, Declarant shall have the right to install and maintain signs in any Condominium owned or leased by it, on the Tower Association Property and Common Area prior to the sale of all the Condominiums in the Project.

Section 8.4. Use of Exclusive Use Areas and Limited Exclusive Use Areas. Each Owner shall be entitled to use any Exclusive Use Area and Limited Exclusive Use Areas appurtenant to the Owner's Residential Unit for usual and ordinary residential purposes for which such area was designed.

(a) Each Owner shall be entitled to use the Balcony or Deck Exclusive Use Areas, if any, which is appurtenant to the Owner's Residential Unit for balcony or deck purposes subject to the rights of the Association to store and use any window washing equipment thereon in accordance with **Section 9.3** below. These Owners shall not remove or damage the window washing equipment or storage facilities located on their Deck Exclusive Use Areas or Balcony Exclusive Use Areas. Should potted plants be placed on a Balcony or Deck, the Owner must take adequate steps to capture water from such potted plants and to prevent any damage to the Tower Association Property or unsightly conditions. The Board shall have the right to restrict pots or other items from being placed on top of any fence or railing, or to disallow the potted plants to grow on the exterior of a Balcony or Deck or other portions of the building. Each Owner shall be responsible to pay for the repairs of any damage which may be caused by the placing of potted plants on the Balcony or Deck.

(b) Each Owner shall be entitled to use the Residential Corridor Space Limited Exclusive Use Area shown on the Condominium Plan, which is appurtenant to the Owner's Residential Unit for purposes of access to and from his or her Residential Unit to the Tower Association Property including the Parking Structure and Residential Facilities and his or her Parking Space or Storage Space Exclusive Use Areas.

(c) Each Owner or occupant of a Residential Condominium and his or her guests shall be entitled to use the Recreational Facilities for recreational use, subject to rules established by the Board;

(d) No Owner of a Residential Condominium shall make any improvements to his or her Exclusive Use Area or Limited Exclusive Use Areas unless and until the Architectural Committee has approved plans of such improvements showing such detail as the Architectural Committee or its consultant deems appropriate. Any such approval may be conditional. The Architectural Committee shall have sixty (60) days to approve or disapprove such plans from the date the plans, in form required by the Architectural Committee, are received by the Architectural Committee. Failure of the Architectural Committee to approve or disapprove the plans within such sixty (60) day period shall be deemed an approval. The Architectural Committee shall have the right to hire a civil engineer, landscape architect or other expert consultant as the Architectural Committee deems appropriate to evaluate plans and inspect the improvements. The Owner shall be required to pay the cost of such consultant. The Architectural Committee may require an Owner to deposit the estimated cost of such consultant at the time plans are submitted for Architectural Committee approval.

(e) Each Owner assumes all risks which may result from improvements he or she makes to his or her Residential Condominium and each Owner indemnifies and holds harmless the Association, the Architectural Committee, Declarant and each other Owner from any claim, demands, liabilities, judgments, attorneys' fees and other obligations which arise out of or are incurred in connection with the installation, existence or removal of improvements.

(f) The Board or Architectural Committee shall have the right to restrict those activities and improvements of Owners or occupants of Residential Condominiums which it believes would

have adverse structural, drainage or maintenance impacts or adverse visual or noise impacts on other Owners.

Section 8.5. Use of Tower Association Property and Common Area. Except as otherwise provided in this Declaration, the Tower Association Property and Common Area shall be improved and used only for the following purposes:

- (a) Affording vehicular passage and pedestrian movement within the Project, including access to the Condominiums;
- (b) Beautification of the Project and providing privacy to the residents of the Project through landscaping and such other means as the Board shall deem appropriate;
- (c) Parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board by such persons, upon such terms and conditions as may from time to time be determined by the Board; the rules and regulations of the Board may be enforced by the Board, which shall have the right and power to remove vehicles from the Project at the cost of the vehicle owner and to levy monetary penalties as provided in this Declaration;
- (d) As Exclusive Use Areas to be used in the manner described in this Declaration;
- (e) As Limited Exclusive Use Areas to be used in the manner described in this Declaration;
- (f) By Declarant for marketing and construction activities; and
- (g) Those additional purposes which may be allowed by the Board.

No Owner shall use or interfere with use of the Common Area or Tower Association Property in any manner which shall result in cancellation of insurance or making insurance unavailable.

Section 8.6. Window Coverings. Unless Declarant has done so, each Owner of a Residential Condominium shall, within thirty (30) days after close of escrow for his Condominium, install window coverings on all windows of his Residential Unit which are visible from any public or private street. The exterior appearance of such window coverings must be neutral or white in color and otherwise consistent with any requirements promulgated by the Architectural Committee. Window tinting shall not be allowed. No flashing lights or other window lights which are visible from any public or private street or any other Condominium shall be permitted.

Section 8.7. Limitations on Types of Bar-be-ques. No charcoal bar-be-ques shall be placed on any Deck or Balcony. Propane bar-be-ques shall be allowed unless they cause a nuisance or constitute a fire hazard.

Section 8.8. Demising Walls - Adjoining Residential Units. In the event Declarant conveys two or more adjoining Residential Units to the same Owner, Declarant shall have no obligation to install the demising walls between such adjoining Residential Units. Should the Owner convey any such Residential Unit(s) separate from the adjoining Residential Unit(s), it shall be the Owner's responsibility to install the demising wall(s).

Section 8.9. Guest Suite. The Guest Suite is part of the Recreational Facilities and is a Limited Exclusive Use Area for the Residential Condominiums. The Association shall maintain the Guest Suite as temporary guest quarters for the benefit of the Residential Condominium Owners and their guests. The cost for maintaining the Guest Suite shall be part of the Residential Cost Center Cost. The Board may adopt rules and regulations on use of the Guest Suite by the Residential Condominium Owners.

Section 8.10. Post-Tensioned Slabs. The Residential Units and their appurtenant Decks and/or Balconies located on the 34th, 35th and 36th floors of the high-rise tower will be constructed with post-tensioned

concrete slabs ("**System**") for slab reinforcement purposes. The System involves placing steel cables under high tension in the concrete slab located beneath the Residential Unit and balconies and/or decks. Any attempt by an Owner or other person to alter or pierce the slab (e.g., saw cutting or drilling to install a floor safe, pool or spa) could damage the integrity of the System and/or cause serious injury or damage to persons and property. No Owner shall cut into or otherwise disturb the System. Neither Declarant nor any contractor of Declarant shall be responsible for any damage or injury resulting from or arising in connection with any alteration or piercing of the slab of any of these Residential Units or their appurtenant balconies and/or decks. Each Owner shall hold Declarant harmless from and indemnify Declarant against all claims, demands, losses, costs (including attorney's fees), obligations and liabilities arising out of or in connection with the failure of the Owner to comply with the provisions of this Section.

ARTICLE IX **RESPONSIBILITIES OF MAINTENANCE**

Section 9.1. Maintenance by Owners. Each Owner of a Condominium shall be responsible for the maintenance and repair of:

(a) The windows and the interior surfaces of doors enclosing the Unit, including the metal frames, tracks and exterior screens of glass doors and windows. Commercial Unit and any Shopkeeper Unit Owners shall be obligated to maintain, repair and replace their store windows.

(b) The interior of the Unit and all appliances, whether "built-in" or freestanding, within the Unit.

(c) The plumbing, electrical, cable television, water heating systems, heating systems and air conditioning systems (if any), and other systems servicing the Owner's Condominium and located either within or without the outside perimeter of the exterior walls, floors and ceilings thereof, so long as those systems are used exclusively by such Owner and not in common. Declarant hereby reserves an easement to allow such systems to be located within the Tower Association Property and Common Area in those locations where installed by Declarant.

(d) The maintenance and repair of the interior surfaces and drainage systems of any Balcony or Deck which the Owner has the exclusive right to use. For example, the Owner shall be responsible for re-surfacing his or her Balcony or Deck, but the structure of the Balcony or Deck would be the responsibility of the Association. All drainage systems for a Balcony or Deck shall be in good working condition at all times. The Association shall be responsible to paint and maintain both the exterior and interior surfaces of any open railings such as iron or tubular steel railings.

(e) The routine maintenance (for example, sweeping and cleaning) of any Balcony or Deck Exclusive Use Area appurtenant to the Condominium and the removal of any oil stains within the Parking Space, if any, including the removal of any oil stains on any Balcony which the Owner has the exclusive right to use. An Owner shall also be responsible to maintain, repair and replace when appropriate any improvements which the Owner makes to his or her Exclusive Use Area.

(f) The interior of any fences which separate the Owner's Deck from another Deck or other portion of the Project. The Association shall be responsible to maintain the exterior of building walls, and "fences" does not refer to the exterior building walls.

(g) The Owners of Residential Unit 3501 and Residential Unit 3502 shall each maintain, repair and replace the pool and spa and any other improvements located within the Deck Exclusive Use Area appurtenant to these Residential Units.

Section 9.2. Failure to Maintain. In the event an Owner defaults in his or her maintenance or repair obligations, the Board may give written notice of such default, stating with particularity the work of maintenance or repair the Board finds to be required and requesting the same be completed in a reasonable period of time as specified in the notice. In the event the Owner fails to complete such maintenance or repair

within the period specified in the notice, the Board may cause such work to be completed and assess the Owner the cost thereof.

Section 9.3. Maintenance by Association. Upon commencement of the Association's regular assessments, the Association shall maintain the Tower Association Property, Limited Exclusive Use Areas and Common Area (except for those items of maintenance which the Owner is required to perform pursuant to **Section 9.1** above). Except for the Museum Elevator and the P-1 Spaces Access Control which shall be operated and maintained solely by the Museum, the Parking Structure, including but not limited to, the Parking Spaces and Storage Spaces, shall be maintained by the Association subject to the Master Declaration. The cost for maintenance of the Parking Structure, referred to as the Parking Structure Operating Costs, shall be part of the Common Expenses of the Association; provided, however, a portion of these costs, referred to as the Museum Module Allocable Operating Costs, shall be reimbursed by Museum subject to the terms of the Master Declaration. Each Owner shall reimburse the Association for those costs incurred which result from the Condominium occupants' excessive or neglectful use of the Exclusive Use Area, Limited Exclusive Use Area, or other portions of the Common Area or Tower Association Property.

The Association shall annually inspect the heat pump unit located within the Residential Units. Should the Association determine more frequent inspections are required to adequately maintain the heat pump unit, the Association may perform the additional inspections. Subject to **Section 9.4**, the Association may maintain the heat pump unit located within a Residential Unit.

The Association shall periodically wash the exterior windows of the Condominiums using the window washing equipment located on certain Deck Exclusive Use Areas and Balcony Exclusive Use Areas. The Association shall have the right to enter the Deck Exclusive Use Area and Balcony Exclusive Use Areas in accordance with the notice provisions provided for in **Section 9.4**.

The Association shall maintain any parkways or other public areas within or adjoining the Project which the City requires to be maintained by the Association, including, without limitation, water and sewer laterals located within the public right of way.

Section 9.4. Association's Inspection of Commercial Units, Shopkeeper Unit and Residential Units. Because improper functioning of the heat pump unit is detrimental to the overall operation of the common loop system which provides heating and cooling to the Project and each Condominium, the Board shall:

(a) Annually inspect the heat pump unit located within each Unit and prepare a report as to the condition of the inspected heat pump unit which includes recommendations, if any, for any remedial work needed to ensure the proper functioning of the heat pump unit ("**Inspection Report**").

(b) Have copies of the Inspection Report mailed to each Owner(s) of the Unit for which a report has been prepared.

The Association shall have the right through its agents and employees to enter into and inspect the Owner's Unit. Entry may only be made after not less than seven (7) days notice has been given to the Owner. Entry by the Association shall be made with as little inconvenience to the Owner as possible and any damage caused by the Association shall be repaired by the Association.

If the Inspection Report indicates that remedial work is recommended to ensure the proper functioning of the heat pump unit, the Board shall send notice to the Owner along with a copy of the Inspection Report. The Owner of such Condominium shall have thirty (30) days to complete the recommended remedial work at Owner's cost from the date of the notice unless a shorter or longer time period is specified in the notice. Upon completion of any work, the Owner shall provide proof satisfactory to the Board that the recommended remedial work has been completed. In the event an Owner of a Condominium fails to make the recommended remedial repairs in a manner satisfactory to the Board, the Association, after approval by two-thirds (2/3) vote of the Board, shall have the right through its agents and employees, to enter into the Unit and to make the necessary remedial repairs. The cost of such repairs shall be added to and become a part of the assessment to which the Condominium is subject, but the cost shall not be a lien on the Condominium.

There is hereby created an easement in favor of the Association to enter into the Unit which is subject to assessment by the Association to inspect and provide maintenance, if necessary, as provided in this Section, subject to the foregoing notice and consent requirements.

Section 9.5. Wood-Destroying Pests. The Association shall be responsible for the repair and maintenance of the Tower Association Property and Common Area occasioned by the presence of wood-destroying pests or organisms; provided, however, it shall be the responsibility of each Owner to maintain and repair any improvements which may have been added by such Owner to the Owner's Unit, Limited Exclusive Use Area and/or Exclusive Use Area. The Association may cause the temporary, summary removal of any occupant of the Project for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms. The costs of temporary relocation during the repair and maintenance by the Association shall be borne by the affected Owners and not the Association.

The Association shall give notice of the need to temporarily vacate a residence to the occupants and to the Owner, not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Notice by the Association shall be deemed complete upon either:

- (a) Personal delivery of a copy of the notice to the occupants, and sending a copy of the notice to the Owner, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association; or
- (b) By sending a copy of the notice to the occupants at the residence address and a copy of the notice to the Owner, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association.

Section 9.6. Maintenance Manuals. Declarant may provide its original purchasers and/or the Association with manuals ("Maintenance Manuals") which outline Declarant's or manufacturers' recommended homeowner and/or Association maintenance obligations and schedules.

- (a) Each Owner who receives a Maintenance Manual shall provide the same to any purchaser or other transferee of his or her Condominium.
- (b) The Association shall keep and make available to any Owner the Maintenance Manual(s) provided by Declarant (including any Maintenance Manual which pertains to Association or Owner maintenance). The Association shall have the right to require an Owner to reimburse the Association for its costs of copying any such Maintenance Manual which the Association provides to an Owner.
- (c) The Association and each Owner, respectively, shall follow the recommendations set forth in the applicable Maintenance Manual provided by Declarant, as the same may be updated from time to time.

Section 9.7. Mold; Mildew. The Association, with respect to the Tower Association Property and Common Area and each Owner, with respect to his or her Condominium, shall take all reasonable and appropriate steps to prevent conditions that may cause mold or mildew to develop, including following any recommendations contained in the Maintenance Manual or in any applicable publications of the California Department of Health Services ("DHS") or the United States Environmental Protection Agency ("EPA"). As of the date of this Declaration, the EPA and DHS have Web sites containing information and publications regarding mold and other biological pollutants. For example, see "Biological Pollutants in Your Home" and "Mold Resources" on the EPA Web site (<http://www.epa.gov/iaq/molds/moldresources.html>); and "Indoor Air Quality Info Sheet: Mold in My Home: What Do I Do" on the DHS Web site (<http://www.dhs.ca.gov>). An Owner shall agree promptly to report to the Association any evidence the Owner may discover of moisture accumulation or mold in the Project. Should an Owner fail promptly to report to the Association any evidence of moisture accumulation or mold in the Owner's Unit that may affect the Common Area or Tower Association

Property or should an Owner fail promptly to report to another Owner any evidence of such moisture accumulation or mold that may affect another Unit, such Owner shall be obligated to reimburse the Association and the other Owner for all costs incurred by the Association or other Owner as a result of the unreasonable delay in reporting the condition to the Association or other Owner.

Section 9.8. Owner Responsible For Damages If Failure To Maintain. Any Owner who fails to fulfil his or her maintenance obligations or to follow the recommended maintenance to his or her Condominium set forth in a Maintenance Manual shall be responsible for any damage which results to his or her Condominium, the Tower Association Property, the Common Area or any other Condominium.

ARTICLE X

SEPARATION OF INTERESTS AND PARTITION PROHIBITED

Section 10.1. No Separation of Interests. No Owner may sell, assign, lease or convey any portion of his or her Condominium separate or apart from the entire Condominium. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of any portion of his or her Condominium separate or apart from the entire Condominium shall be void.

Section 10.2. No Partition. There shall be no termination of the Project and the Common Area of the Project shall remain undivided with no judicial partition thereof except:

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

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

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

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

Nothing in this Section shall be deemed to prohibit partition of a cotenancy in a Condominium.

Section 10.3. Power of Attorney. The Association is hereby granted an irrevocable power of attorney to sell the Project for the benefit of all the Owners thereof when partition of the Owners' interests in the Project may be had pursuant to this Article. The power of attorney herein granted may be exercised upon the vote or written consent of Owners who own at least fifty percent (50%) of the Condominiums in the Project. Such power of attorney may be exercised by any two (2) Members of the Board who are hereby authorized to record a certificate of exercise in the Office of the County Recorder of the County, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

ARTICLE XI

DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA OR TOWER ASSOCIATION PROPERTY

Section 11.1. Damage or Destruction.

(a) Subject to **Section 11.2** below, if any portion of the Common Area, Limited Exclusive Use Area or Tower Association Property is damaged or destroyed by fire or other casualty, then the

improvements shall be rebuilt or repaired substantially the same as the improvements existed prior to the fire or other casualty, subject to local building codes and other applicable governmental regulations, unless either of the following occurs:

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

(ii) Available insurance proceeds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board, a special assessment fails to receive the requisite approval (if such approval is required) as provided herein, and the Board is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

(b) The following procedures shall be employed for disposition of insurance proceeds and guidance in reconstruction:

(i) Minor Casualty. If the cost to repair or reconstruct does not exceed the sum of Seventy-Five Thousand Dollars (\$75,000), the Board shall thereupon contract to repair and rebuild the damaged portions of the Project, in accordance with the conditions existing immediately prior to damage (modified at the discretion of the Board to comply with building codes and construction standards in effect at the time of the rebuilding) and the funds held in the insurance trust fund shall be used for that purpose. If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Owners of Units affected shall pay for the portion of the insufficiency attributed to their Unit by the Board and the Board shall levy a special assessment on all Condominiums to make up any deficiency attributed to the Common Area and Tower Association Property. The special assessment shall be subject to the provisions of this Declaration governing membership approval of special assessments and shall be levied pursuant to **Section 4.10** above for purposes of raising funds for the rebuilding or repair and to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Association to be used for such rebuilding.

(ii) Major Casualty. If the cost to repair or reconstruct does exceed the sum of Seventy-Five Thousand Dollars (\$75,000), then:

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

(B) The Board shall obtain firm bids from two (2) or more responsible contractors to rebuild the Project in accordance with the conditions existing immediately prior to damage and destruction (modified at the direction of the Board to comply with building codes and construction standards in effect at the time of the rebuilding). The Board may also obtain an estimate from the insurance carrier of the scope of work included within the amount of the insurance coverage. To be

considered, any contractor's bid shall include the premium payable for performance, labor and material payment bonds from a reputable bonding company.

(C) The Board shall, as soon as reasonably possible after receipt of such contractors' bids or insurance estimate, call a special meeting of the Owners to consider such bids or insurance estimate. Failure to call such a meeting, or to repair such casualty damage within twelve (12) months from the date such damage occurred shall be deemed, for all purposes, a decision not to rebuild the damaged or destroyed improvements.

(D) At such meeting, the Owners may elect to reject all such bids or estimates and thus not to rebuild. A vote in excess of seventy-five percent (75%) of each class of Association Members shall be required to reject all bids or estimates; provided, however, that a vote in excess, of fifty percent (50%) shall be sufficient to reject any bid or estimate requiring more than Fifteen Thousand Dollars (\$15,000) over and above insurance proceeds for such reconstruction, repair or rebuilding. Failure of the Owners to reject all bids and estimates shall authorize the Board to accept the unrejected bid it considers most favorable; provided, however, that if acceptance of any such bid would require the levy of a special assessment, such acceptance shall only be granted following membership approval of such special assessment, as required by this Declaration. If such membership approval is not obtained, the bid shall be deemed to have been rejected.

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

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

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

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

Section 11.2. Damage or Destruction of Parking Structure; Rights of and Obligations to the Owner of Museum Condominium.

(a) **Insured Damage.** If there is a partial or total destruction of the Parking Structure and there are available proceeds from insurance maintained by the Association to cover at least eighty percent (80%) of the costs of repair and reconstruction (or such proceeds would have been available except for the Association's failure to maintain the insurance set forth in **Section 11.6** below), then the Association shall repair and reconstruct the Parking Structure to its condition immediately prior to the damage or destruction unless, within ninety (90) days after the date of destruction, Museum and the Association agree in writing that such repair and reconstruction not take place. The Association shall commence any such repair and reconstruction within ninety (90) days of its receipt of the insurance proceeds. The Association and Museum shall share the costs and expenses of such repair and reconstruction, after a reduction of such costs and expenses by the amount of the insurance proceeds; provided, however, the Association shall be liable for any insurance proceeds that would have been available except for the Association's failure to maintain the insurance set forth in **Section 11.6** below. Museum's share of the costs and expenses shall be determined by multiplying the costs and expenses by the Museum's Ratio, and the Association's share shall be the balance of such costs and expenses.

(b) **Uninsured Damage.** If there is a partial or total destruction of the Parking Structure and the Association has maintained the insurance set forth in **Section 11.6** below but there are not available proceeds from insurance maintained by the Association to cover at least eighty percent (80%) of the costs of repair and reconstruction, then the Association shall have no duty to repair and reconstruct the Parking Structure. If the Association elects not to so repair and reconstruct the Parking Structure, then Museum shall have the following rights: (i) Museum may elect to use the Tower Association Property for parking without the repaired or reconstructed Parking Structure; or (ii) Museum may elect to reconstruct the Parking Structure with a design sufficient to accommodate seventy (70) Parking Spaces, in which case any insurance proceeds paid to the Association for such destruction shall be made available to Museum in order to pay for such reconstruction. Museum's rights under this Section shall be subject to the ongoing and continuing right of the Association to reconstruct the Project on the Tower Module any time.

(c) **Costs for Alternate Parking During Reconstruction.** During the period of any repair or reconstruction of the Parking Structure performed by the Association pursuant to this Section that would prevent Museum from parking within the Parking Structure, Museum shall pay at its sole cost the expenses incurred by Museum for alternate parking to the extent not covered by insurance. Notwithstanding the foregoing, in the event such off-site alternate parking is due to the failure of the Association to provide adequate preventative maintenance and repair, or is due to the failure of the Association to maintain and repair the Parking Structure in a timely manner, the costs and expenses of such alternate parking for Museum shall be paid solely by the Association.

Section 11.3. Condemnation.

(a) **Condemnation of Common Area or Tower Association Property.** Subject to **Section 11.3(b)** below, if any portion of the Common Area, Limited Exclusive Use Area, or Tower Association Property is taken by condemnation, eminent domain or any proceeding in lieu thereof, then all the Owners of the Project, 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 **Subsection 11.1(b)(ii)(E)** above; provided, however, that should it be determined to repair or rebuild any portion of the Common Area, Limited Exclusive Use Area, or Tower 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, Limited Exclusive Use Area or Tower 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.

(b) **Condemnation of Museum Easements.** In the event that all or any part of the Museum Easements is taken by the right of eminent domain or any similar authority of law, or is sold under threat thereof, each party shall be entitled to receive so much of the award therefor as may reasonably be attributable to the value of its estate therein, including the Museum Easements.

Section 11.4. Insurance. Subject to Sections 11.5 and 11.6 below:

(a) The Association shall obtain and continue in effect at least the following insurance:

(i) A master fire insurance policy with glass coverage and extended coverage endorsement for one hundred percent (100%) of the current replacement cost of all of the Common Area, Limited Exclusive Use Area and Tower Association Property improvements within the Project, excluding land, foundations, excavations and other items that are usually excluded from insurance coverage. The master fire policy shall also cover standard improvements installed in the Residential Units, *i.e.*, those appliances, cabinets, mirrors, utility fixtures and other improvements located within the Residential Units provided by Declarant to the initial Owners of Condominiums, but excluding upgrades to any of the foregoing and further excluding items not supplied by Declarant to initial purchasers; neither appliances nor improvements in any Shopkeeper Unit or Commercial Units shall be covered by the master policy, other than doors and interior walls. The maximum deductible amount shall be the lesser of \$10,000 or one percent (1%) of the policy face amount. The form and content of such policy must satisfy the requirements of the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") and shall contain the following endorsements:

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

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

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

(ii) A comprehensive general liability and property damage insurance policy with cross liability endorsement, if available, insuring the Association, any manager, Declarant, and the Owners against liability incident to ownership or use of the Tower Association Property, Limited Exclusive Use Area and Common Area. The limits of such insurance shall not be less than Three Million Dollars (\$3,000,000) covering all claims for death, personal injury and property damage arising out of a single occurrence or such other minimum amount which meets the requirements of CIVIL CODE § 1365.9. The form and content of the comprehensive general liability policy must satisfy the requirements of FNMA and FHLMC.

(iii) A policy insuring the Association's officers and directors against liability for their negligent acts or omissions while acting in their capacity as officers and directors. The limits of such insurance shall be not less than One Million Dollars (\$1,000,000) for all claims arising out of a single occurrence or such other minimum amount which meets the requirements of CIVIL CODE § 1365.7.

(iv) Section 1365.7 of the California CIVIL CODE provides for a partial limitation on the liability of volunteer officers and directors of the Association who reside in a

Residential Unit, provided that certain requirements, as set forth in that CIVIL CODE section, are satisfied. The requirements include that general liability insurance and insurance covering individual liability of officers and directors for negligent acts or omissions be carried by the Association in specified amounts. The Association shall maintain general liability insurance and insurance covering individual liability of officers and directors for negligent acts or omissions in amounts which satisfy the requirements of the CIVIL CODE to limit the liability of volunteer officers and directors of the Association.

(v) A fidelity bond covering members of the Board, officers and employees of the Association and employees of any manager or managing agent, whether or not such persons are compensated for their services, naming the Association as obligee and written in an amount equal to at least three (3) months' aggregate regular assessments (including reserves) by the Association against all Condominiums then subject to assessment.

(vi) Workers' compensation insurance covering any employees of the Association.

(vii) A policy covering all loss to personalty owned by the Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for improvements in the Tower Association Property, Limited Exclusive Use Area and personalty owned by the Association shall be payable to the Association.

(b) Insurance premiums for the master policy and other insurance obtained by the Association (other than the cost of indorsements which cover only particular Owners) shall be a Common Expense to be included in the regular assessments levied by the Association. Each Owner shall be responsible to pay any deductible amount for any loss to his Condominium. Each Owner may separately insure the improvements not covered by the master fire insurance policy and personal property within the Owner's Condominium. However, no Owner shall insure a Condominium in any manner which would cause any diminution in insurance proceeds from the master policy. Should any Owner violate this provision the Owner shall be responsible to the Association for any such diminution.

(c) All insurance policies shall provide that they shall not be cancelable by the insurer without first giving at least ten (10) days' prior notice in writing to the Association and the servicer of each first Mortgage which requests such notice, and shall contain a waiver of subrogation by the insurers against the Association, Board and Owners.

(d) The Association shall maintain such insurance coverage as may be required by FNMA or FHLMC so long as either FNMA or FHLMC, respectively, holds a Mortgage on or owns any Condominium.

(e) Nothing herein stated shall prevent the Association from obtaining additional amounts of insurance or from adding to the items covered by a master policy.

Section 11.5. Project Liability Insurance. Declarant shall obtain and maintain at its sole cost and expense a broad form policy of commercial general liability insurance naming Museum as an additional insured and insuring against any liability arising out of the ownership and use of the Parking Structure (but excluding the ownership and use of the Museum Easements) and including, if obtainable, a cross-liability and severability of interest endorsement insuring each insured party against liability to each other insured party. The limits of such insurance shall be not less than Two Million Dollars (\$2,000,000) adjusted every five (5) years to reflect increases in coverage carried for comparable facilities, covering all claims for death, personal injury, and property damage arising out of a single occurrence. Each such policy shall be from a company reasonably acceptable to Museum and shall contain an endorsement or provision requiring not less than thirty (30) days' prior written notice to be given to Museum prior to cancellation or reduction in coverage or amount. Declarant shall provide certificates of each such insurance policy to Museum upon written request.

The Tower Association shall have the obligations under this Section upon becoming the owner of the Parking Structure.

Section 11.6. Project Property Insurance. Declarant shall obtain and maintain property insurance in an amount not less than the full insurable replacement cost of the Parking Structure with a "special causes of loss form," with coverage for (a) all obligations of Declarant to reconstruct or demolish all or any portion of the Parking Structure (including building ordinance coverage), and (b) the following perils: flood, earthquake, loss or damage by fire, windstorm, cyclone, tornado, hail, explosion, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, aircraft, vehicle, smoke damage and sprinkler leakage and such other perils commonly covered by such form; provided, however, that the earthquake and flood insurance carried need not cover the full replacement cost of such improvements but shall provide for such coverage as is available from time to time at a commercially reasonable cost. Each such policy shall be from a company having a rating of not less than A:VII in Best's Key Rating Guide and licensed to do business in the State of California and is otherwise reasonably acceptable to Museum and shall contain an endorsement or provision requiring not less than thirty (30) days' prior written notice to be given to Museum prior to cancellation or reduction in coverage or amount. Museum shall be named as an additional insured under such policy. Declarant shall provide certificates of each such insurance policy to Museum upon request. The cost of such property insurance shall be a Parking Structure Operating Cost. The Tower Association shall have the obligations under this Section upon becoming the owner of the Parking Structure.

Section 11.7. Waiver of Subrogation. To the extent it does not invalidate any insurance coverage, each party hereby waives any and all rights or recovery against the other party and the other party's successors in interest, officers, directors, shareholders, principals, members, employees, agents, successors, assigns, tenants, guests, licensees, invitees and permittees ("**Released Parties**") on account of loss or damage to the property of such waiving party or the property of others under its control caused by fire or other casualty or loss due to liability for personal injuries to others to the extent that any such loss or damage is insured against under any insurance policy in force at the time of such loss or damage, regardless of whether such loss or damage results from the negligence or fault of any of the Released Parties or otherwise. Each party shall, upon obtaining the policies of insurance required under this Declaration, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Declaration.

Section 11.8. Mortgagee Approval. Any restoration or repair of the Project after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with original plans and specifications, unless other action is approved by first Mortgagees who represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to Mortgages.

Section 11.9. Association Represents Owners Re Common Area, Limited Exclusive Use Area and Tower Association Property. The Association is hereby designated to represent each Owner with respect to proceedings, negotiations, settlements or agreements pertaining to condemnation, destruction or repair of the Common Area, Limited Exclusive Use Area and the Tower Association Property and any proceeds from settlement shall be payable to the Association for the benefit of the Owners and their Mortgagees and are to be used as set forth in this Declaration. Each Owner hereby grants the Association a power of attorney to so represent each Owner. Any condemnation proceeds that are wholly due to severance damages to a particular Unit shall belong to the Owner or Mortgagee of that Unit, as their respective interests then appear.

ARTICLE XII **DAMAGE, DESTRUCTION AND CONDEMNATION** **OF RESIDENTIAL UNITS, SHOPKEEPER UNIT & COMMERCIAL UNITS**

Section 12.1. Damage or Destruction. In the event of damage or destruction to any Unit, or Exclusive Use Area improvements which the Owner is obligated to maintain, the Owner shall reconstruct the same as soon as reasonably practicable (unless the Association is not required to repair surrounding damaged Tower Association Property or Common Area pursuant to the terms of **Article XI** above. The Owner shall be entitled to the benefit from an equitable distribution of the master policy of casualty insurance referred to in **Article XI** above to the extent the distribution covers the damage or destruction of elements of the Condominium which are the obligation of the Owner to repair as provided in this Section.

Section 12.2. Condemnation. In the event of any taking of a Unit or Exclusive Use Area, the Owner of the Condominium (and such Owner's Mortgagees as their interests may appear) shall be entitled to receive the award for such taking and after acceptance thereof the Owner and the Owner's Mortgagee shall be divested of all further interest in the Project and membership in the Association if such Owner shall vacate the Condominium as a result of such taking of the Unit. In such event the Owner shall grant the Owner's remaining interest in the Common Area appurtenant to the Unit so taken, if any, to the other Owners owning a fractional interest in the Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

Section 12.3. Mortgagee Approval. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved by first Mortgagees who represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to Mortgages.

ARTICLE XIII **ASSOCIATION'S RIGHT OF ENTRY**

For the purpose of performing the maintenance of the Limited Exclusive Use Area, Tower Association Property and Common Area or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association's agents or employees shall have the right to enter any Unit, Exclusive Use Area, Limited Exclusive Use Area or upon any portion of the Tower Association Property and Common Area to effect repairs, improvements, replacements or maintenance as necessary; provided, however, except in case of an emergency, there shall be no entry into a Unit, Limited Exclusive Use Area or Exclusive Use Area without (a) a court order allowing such entry or (b) the Owner's consent, which consent shall not unreasonably be withheld and shall be presumed if the Owner makes no objection to such entry within three (3) days after the Board delivers notice of its intent to enter. When there is an entrance into any Unit, Limited Exclusive Use Area, or Exclusive Use Area such entrance shall be made with as little inconvenience to the Owner as possible and any damage caused shall be repaired by the Association.

ARTICLE XIV **ADDITIONAL EXCLUSIVE EASEMENTS AND LICENSES**

The Board shall have the right to grant the following additional easements and licenses:

Section 14.1. Common Area Licenses. The Board shall have the right to grant irrevocable licenses for Owners to exclusively use portions of the Common Area adjoining the Owner's Unit or Exclusive Use Area, provided that the granting of such licenses would not materially and adversely affect any Owner's use of the Common Area.

Section 14.2. Tower Association Property. The Board shall have the right to grant easements for Owners to exclusively use portions of the Tower Association Property adjoining the Owner's Unit or Exclusive Use Area, provided that the granting of such easements would not materially and adversely affect any Owner's use of the Tower Association Property.

ARTICLE XV **ENFORCEMENT**

Section 15.1. Enforcement. The Association, Declarant, and/or any Owner shall have the right to enforce against one another, by any proceeding at law or in equity, all restrictions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration.

Section 15.2. No Waiver. Failure by the Association, Declarant, the City or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XVI
EASEMENTS AND PROVISIONS AFFECTING MUSEUM

Section 16.1. Grant of Access Easement to Museum. Declarant has granted to Museum for the benefit of Museum and Permitted Users a non-exclusive, perpetual easement appurtenant to the Museum Module and across portions of the Tower Association Property: (a) for vehicular ingress and egress to and from the Museum Parking Spaces over those areas designated for vehicular traffic over level 1 as shown on Exhibit "A" of the Master Declaration and P-1 of the Parking Structure, (b) emergency pedestrian ingress and egress from and to the Museum Module, and (c) for pedestrian ingress and egress from the Museum Parking Spaces to the Museum Elevator, public sidewalks and the Museum Module ("**Access Easement**"). The Access Easement for pedestrian emergency ingress and egress is shown on Exhibit "A" of the Master Declaration as "Access Easement for Emergency Access."

Section 16.2. Grant of Parking Easement to Museum. Declarant has granted to Museum for the benefit of Museum and Permitted Users appurtenant to the Museum Module and located on the Tower Association Property an exclusive, perpetual easement: (a) in the Museum Parking Spaces for the purpose of the parking of the vehicles of Permitted Users in the Parking Structure and level 1 parking area, (b) to the P-1 Spaces Access Control, and (c) to the Museum Elevator for the purpose of accommodating the installation, maintenance, replacement, operation and use of each easement and for ingress and egress (together the "**Parking Easement**"). The location of the Parking Easement is shown on Exhibit "A" to the Master Declaration.

Section 16.3. Ancillary Easement. To the extent necessary to accommodate the utilization of the previously described easements, Declarant has granted to Museum for the benefit of Museum and Permitted Users appurtenant to the Museum Module and located on the Tower Association Property an exclusive, perpetual easement for ingress and egress over those portions of the Tower Association Property necessary and appropriate in order to provide access to and otherwise reach those areas and places on the Tower Association Property which are the subject of the previously described easements ("**Ancillary Easement**").

Section 16.4. Use of Museum Easements. Museum and Permitted Users shall have no right of use or enjoyment of the Museum Easements until Declarant has received all necessary legal approvals and permits for the use and occupancy of the Parking Structure, the Museum Parking Spaces and/or the Museum Elevator ("**Use Approval**"). Upon receipt of Use Approval, Permitted Users shall have the following rights concerning the Museum Easements, subject to the reasonable right of the Association to maintain and make repairs to the Parking Structure, and further subject to the Association's right to impose reasonable rules and regulations for the operation and use of the Parking Structure, provided that such rules and regulations are not inconsistent with the rights of Museum hereunder and are consistently imposed: (a) Permitted Users shall have access to the Parking Structure seven (7) days a week, twenty-four (24) hours a day; (b) the Association shall not have the right to relocate any of the Museum Parking Spaces for more than two (2) days in any sixty (60) day period, and such relocation shall be solely for reasonable maintenance and repairs to the Parking Structure; (c) Museum shall have the right to control access to the Museum Parking Spaces through the installation of the Museum Parking Spaces Access Control, marking the Museum Spaces "reserved" or any other reasonable mechanism, provided, however, that (i) Museum shall be solely responsible for all costs and expenses associated with the maintenance, repair, replacement and insurance of the Museum Parking Spaces Access Control, and (ii) Museum shall make all necessary arrangements and take all necessary actions to provide the Association with access to the Museum Parking Spaces to allow the Association to perform any reasonably necessary maintenance, repair or replacement of the Parking Structure.

Section 16.5. Right to Control Tower Module. At all times, Association shall have the right to control, manage and operate, and impose reasonable rules and regulations regarding the operation and use of, the Parking Structure (including the Museum Parking Spaces) in its reasonable discretion, provided that such rules and regulations are not inconsistent with the rights of Museum hereunder and are consistently imposed. Such rights shall include, without limitation, the following: (a) the right to control access to the Parking Spaces, provided such control does not unreasonably interfere with access to the Museum Parking Spaces; (b) the right to grant from time to time to other persons and entities rights to use parking spaces within the Parking Structure other than the right to use the Museum Parking Spaces; and (c) the right to construct additional improvements on the Tower Module, provided such improvements do not unreasonably

interfere with or reduce the use of the Museum Easements. The Association shall give Museum seventy-two (72) hours notice of any maintenance activity by the Association which will interfere with the use of the Museum Parking Spaces, including any painting or power washing of the Parking Structure; provided, however, that no notice shall be required in the event of an emergency.

Section 16.6. Indemnity.

(a) **Museum Indemnity.** Declarant and Association shall not be liable for any loss, liability, damage or injury of any kind or character suffered by any person or property arising from any entry or use of the Museum Easements by Museum or the Permitted Users after the permit sign off date. Museum shall protect, defend, indemnify and hold Declarant and Association and their successors in interest, officers, directors, shareholders, principals, employees, agents, tenants, guests, licensees, invitees, and permittees ("**Project Released Parties**") harmless from and against any and all losses, liabilities, claims, damages, injuries, actions, costs, and expenses of any nature, including, but not limited to, attorneys' fees ("**Claims**") arising from or attributable to or in connection with any entry or use by Museum or the Permitted Users of the Museum Easements after the Permit Sign Off, except for any Claims arising out of the negligence or wilful misconduct of the Project Released Parties. Notwithstanding the foregoing, Museum shall not be obligated to indemnify the Project Released Parties against any Claims for which and to the extent that Declarant or Association receives insurance proceeds for such Claims.

(b) **Declarant Indemnity.** Museum shall not be liable for any loss, liability, damage or injury of any kind or character suffered by any person or property arising from the use of the Parking Structure by Declarant and Association and their successors in interest, assigns, agents, principals, officers, directors, shareholders, partners, members, employees, agents, tenants and subtenants, guests, licensees, invitees, and permitted, or of any building located on the Tower Module ("**Project Parties**"). Declarant and Association shall protect, defend, indemnify and hold Museum and its successors-in-interest, officers, directors, shareholders, principals, employees, agents, tenants, guests, licensees, invitees and permittees ("**Museum Released Parties**") harmless from and against any and all Claims arising from or attributable to or in connection with the use of the Parking Structure or any building located on the Tower Module by the Museum Released Parties except for any Claims arising out of the negligence or willful misconduct of the Museum Released Parties. Notwithstanding the foregoing, Declarant and Association shall not be obligated to indemnify the Museum Released Parties against any claim for which and to the extent that Museum receives insurance proceeds for such Claim.

Section 16.7. Arbitration of Disputes with Museum. In the event of any breach, violation, or failure to perform or satisfy any of the duties or obligations contained in this Agreement, any party to which such duty or obligation is owed shall have the right to provide written notice to the affecting party describing in reasonable detail the nature of the breach, violation or failure. If such breach, violation or failure is not cured within thirty (30) days after delivery of such notice or if there is any other controversy or claim between the parties under this Agreement ("**Dispute**"), the Dispute shall be determined by arbitration under the commercial arbitration rules of the American Arbitration Association, including the rules for selecting an arbitrator. Any controversy concerning whether an issue is arbitrable shall be determined by the arbitrator. The arbitration award shall be binding on the parties. Judgment upon the arbitration award may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief. No provision of this Section shall limit the right of any party to exercise self-help remedies, to the extent permitted by law, or to obtain provisional or ancillary remedies from a court of competent jurisdiction before, after or during the pendency of any arbitration or other proceeding. The exercise of a remedy does not waive the right of any party to resort to arbitration. The notice and cure periods set forth in this Section shall not apply to any monetary obligations of either party. No breach of this provision by Museum shall entitle the Association to cancel, rescind, or terminate the Museum Easements.

Section 16.8. Attorneys' Fees. In the event arbitration or legal proceedings are commenced regarding the enforcement of this Agreement, the prevailing party in any such action shall recover, in addition

to any relief granted therein, reasonable attorneys' fees and costs and expenses from the other party or parties, which fees and costs shall be included in any judgment rendered in such proceedings.

Section 16.9. No Amendment Without the Consent of Museum. No amendments to this Declaration which further restrict Museum's or Permitted User's rights to exercise the Museum Easements or other rights provided herein to Museum shall be effective unless Museum has given its written consent to such amendment.

ARTICLE XVII **ADDITIONAL PROVISIONS**

Section 17.1. Severability. Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

Section 17.2. Amendments Prior to Escrow Closings. Prior to the date escrow closes for any sale of a Condominium to a Retail Purchaser, this Declaration may be unilaterally amended by Declarant.

Section 17.3. Amendments After Escrow Closings. The following provisions shall apply after the close of the first escrow for a sale of a Condominium to a Retail Purchaser. During the period of time prior to conversion of the Class B membership to Class A membership, this Declaration may be amended by an instrument in writing signed by the President or Secretary of the Association certifying that at least sixty-seven percent (67%) of the voting power of each class of Members of the Association have approved the amendment. After conversion of the Class B membership in the Association to Class A membership, the Declaration may be amended by an instrument in writing signed by the President or Secretary of the Association certifying that the following have approved the amendment: (a) at least sixty-seven percent (67%) of the total voting power of the Association, and (b) at least sixty-seven percent (67%) of the voting power of Members of the Association other than Declarant. The percentage of voting power necessary to amend a specific clause or provision of this Declaration shall not be less than any percentage of affirmative votes prescribed for action to be taken under that clause. An amendment shall become effective upon the recording thereof by the Office of the County Recorder of the County.

Section 17.4. No Amendment Without Declarant's Consent. No amendment may be made to any provision regarding Declarant's rights without the written consent of Declarant, including, but not limited to, the following provisions of this Declaration:

- (a) **Subsections 2.2(k), (l), (m), (n) and (o);**
- (b) **Sections 3.2, 3.3 and 3.4;**
- (c) **Sections 6.17, 6.18, 6.22 and 6.23;**
- (d) **Section 7.14;**
- (e) **Section 8.1;**
- (f) **Sections 11.2, 11.3(b), 11.5, 11.6 and 11.7;**
- (g) **Article XVI;**
- (h) **This Section and Sections 17.11 and 17.28; and**
- (i) **Article XVIII.**

Section 17.5. Mortgagee Approval of Amendment. Anything contained herein to the contrary notwithstanding, no amendment that is of a material adverse nature to Mortgagees may be made to this Declaration without the prior written consent of first Mortgagees who represent at least fifty-one percent (51%)

of the votes of Condominiums that are subject to Mortgages. A Mortgagee who receives a written request to approve amendments (including additions) who does not deliver or mail to the requesting party a negative response within sixty (60) days, shall be deemed to have approved such request provided that such written request was delivered by certified mail or registered mail with "return receipt" requested.

Section 17.6. Extension of Declaration. Each and all of these covenants, conditions and restrictions shall terminate sixty (60) years following the recordation of this Declaration with the Office of the County Recorder of the County, after which date they shall automatically be extended for successive periods of ten (10) years unless all the Owners have executed and recorded at any time within six (6) months prior to said sixty (60) year period, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a writing in which it is agreed that said restrictions shall terminate at the end of said sixty (60) year period or at the end of any such ten (10) year period.

Section 17.7. Enforcement Litigation. Except as provided otherwise in this Declaration, in the event the Association, Declarant or any Owner shall commence litigation to enforce any of the covenants or restrictions contained in this Declaration, the prevailing party in such litigation shall be entitled to costs of suit and such attorneys' fees as the Court may adjudge reasonable and proper. The "prevailing party" shall be the party in whose favor a final judgment is entered.

Section 17.8. Encroachment Easements. Easements are hereby reserved in favor of the Owner of each Condominium and the Association over all adjoining Condominiums, the Tower Association Property and Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, repair, settlement or shifting of any building, or any other cause. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner if the encroachment occurred due to the willful misconduct of any Owner. In the event any portion of a structure in the Project is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Condominiums, Tower Association Property or Common Area shall be easements for the maintenance of said encroachments so long as they shall exist.

Section 17.9. Application of Provisions. The provisions of this Declaration apply to all Condominiums which have been made subject to this Declaration, including any unsold Condominiums within the Project which may be owned by Declarant. Declarant shall have the same rights and assumes the same duties as any other Owner with respect to unsold Condominiums, except as expressly stated otherwise.

Section 17.10. Special Responsibilities of Association. In the event that the improvements to be installed by Declarant to the Tower Association Property or Common Area have not been completed prior to the issuance by the California Department of Real Estate of a Final Subdivision Public Report for the Project and in the further event that the Association is the obligee under a bond to secure performance by Declarant to complete such improvements, then if such improvements have not been completed and a Notice of Completion filed within sixty (60) days after the completion date specified in the Planned Construction Statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such improvement then the Board shall consider and vote on said question if such improvements have not been completed and a Notice of Completion filed within thirty (30) days after the expiration of the extension period. In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of the Members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting a vote of a majority of the voting power of the Members of the Association, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

Section 17.11. Limitation of Restrictions on Declarant. Declarant is undertaking the work of construction of Condominiums and incidental improvements within the Project. The completion of that work, and the sale, rental and other disposal of said Condominiums is essential to the establishment and welfare of the Project as a community. In order that Declarant's work may be completed and the Project may be established as a fully occupied community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- (a) Prevent Declarant, its contractors or subcontractors from doing in the Project whatever is reasonably necessary or advisable in connection with the completion of such work; or
- (b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part of the Project such structures as may be reasonable and necessary for the conduct of its business of completing such work and establishing the Project as a community and disposing of the same in parcels by sale, lease or otherwise; or
- (c) Prevent Declarant from conducting on any part of the Project its business of completing such work, and of establishing a plan of condominium ownership and of disposing of Condominiums in the Project by sale, lease or otherwise; or
- (d) Prevent Declarant from maintaining such signs within the Project as may be necessary for the sale, lease or disposition of Condominiums; provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of such Owner's Condominium.

The rights of Declarant provided in **Subsections (a) through (d)** above may be exercised during the period of time commencing when the Condominiums are first sold or offered for sale to the public and ending when all Condominiums have closed escrow, or ten (10) years following the date of conveyance of the first Condominium in the Project to a Retail Purchaser, whichever shall first occur.

Section 17.12. Owners' Compliance. Each Owner, tenant or occupant of a Condominium shall comply with the provisions of this Declaration, the Bylaws, decisions and resolutions of the Association or its duly authorized representative, as lawfully amended from time to time, and failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due for damages or for injunctive relief.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Bylaws, shall be deemed to be binding on all Owners of Condominiums, their successors and assigns.

Section 17.13. Payments of Taxes or Premiums by First Mortgagees. First Mortgagees may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Tower Association Property, unless such taxes or charges are separately assessed against the Owners, in which case, the rights of first Mortgagees shall be governed by the provisions of their deeds of trust. First Mortgagees may, jointly or severally, also pay overdue premiums on casualty insurance policies, or secure a new casualty insurance coverage on the lapse of a policy for the Tower Association Property, and first Mortgagees making such payments shall be owed immediate reimbursement thereof from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any first Mortgagee who requests the same to be executed by the Association.

Section 17.14. Mortgagee Curing Defaults. A Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is non-curable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is non-curable or not feasible to cure shall be final and binding on all Mortgagees.

Section 17.15. Approval of First Mortgagees. Except as provided by statute in case of condemnation or substantial loss to Condominiums, Tower Association Property and/or Common Area, unless at least sixty-seven percent (67%) of the first Mortgagees (based on one vote for each Condominium encumbered by a Mortgage) have given their prior written approval or at least sixty-seven percent (67%) of Owners other than Declarant have given their prior written approval, the Association shall not be entitled to do any of the following:

- (a) By act or omission seek to abandon or terminate the Project.
- (b) Change the pro rata interest or obligations of any Condominium in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Condominium in the Common Area.
- (c) Partition or subdivide any Condominium.
- (d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Tower Association Property (this requirement does not apply to areas which are Tower Association Property only for maintenance purposes). The granting of easements for public utilities or for other public purposes and other easements allowed by this Declaration shall not be deemed a transfer within the meaning of this Subsection nor shall non-material boundary adjustments be deemed a transfer within the meaning of this Subsection.
- (e) Use hazard insurance proceeds for losses to any portion of the Tower Association Property or Common Area for other than the repair, replacement or reconstruction of such Tower Association Property or Common Area.

Section 17.16. Termination of Legal Status. Except as provided by statute, any action to terminate the legal status of the Project after substantial destruction or condemnation occurs must be approved by at least sixty-seven (67%) of the total voting power of the Association and first Mortgagees who represent at least fifty-one percent (51%) of the votes of Condominiums which are subject to Mortgages. When Owners are considering termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Project, first Mortgagees who represent at least sixty-seven percent (67%) of the votes of Condominiums that are subject to Mortgages must approve. Any Mortgagee shall be deemed to have approved a termination if such Mortgagee fails to submit a written response to any written proposal for termination within sixty (60) days after such Mortgagee receives proper notice of the proposal, provided the notice was delivered by certified mail or registered mail with "return receipt" requested.

Section 17.17. Restoration of Project. Any restoration or repair of the Tower Association Property or Common Area after partial condemnation or damage due to an insurable event, shall be performed substantially in accordance with this Declaration and original plans and specifications unless other action is approved by the first Mortgagees who represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to Mortgages.

Section 17.18. Third Party Proceeds for Claimed Defects. The Association shall not be entitled to use proceeds from third parties for claimed defects in any portion of the Tower Association Property or Common Area for other than the repair, replacement or reconstruction of such Tower Association Property or Common Area unless at least sixty-seven (67%) of the first Mortgagees (based on one vote for each Condominium encumbered by a Mortgage) have given their prior written approval and at least sixty-seven percent (67%) of Owners other than Declarant have given their prior written approval.

Section 17.19. Professional Management. When professional management has been previously required by any first Mortgagee, whether such entity become a first Mortgagee at that time or later, any decision to establish self-management by the Association shall require the prior consent of at least sixty-seven percent (67%) of the voting power of the Association and the approval of first Mortgagees who represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to Mortgages.

Section 17.20. Notice to Mortgagees. For so long as FHA and/or VA blanket loan approvals are in effect for the Project and while any FHA/VA loan encumbers any Condominium in the Project, the FHA and VA guidelines and regulations shall have applicability to the Project to the extent that such regulations and guidelines are not in conflict with California law or with the requirements of the California Department of Real Estate. At such time as the blanket loan approvals are no longer in effect and no FHA or VA loans encumber any Condominium in the Project, the FHA and VA guidelines and regulations shall have no further applicability with respect to the Project.

Section 17.21. Notice to Mortgagees. Any Mortgagee, insurer or guarantor of a first Mortgage will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a Mortgage held, insured or guaranteed by such Mortgagee, insurer or guarantor.
- (b) Any delinquency in the payment of assessments or other default by an Owner subject to a Mortgage held, insured or guaranteed by such Mortgagee, insurer or guarantor which remains uncured for a period of sixty (60) days.
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (d) Any proposed action which would require the consent of a specified percentage of Mortgagees, insurers or guarantors of a first Mortgage as specified above.

Section 17.22. Written Notification to Mortgagees, Insurers or Guarantors of First Mortgages. Whenever this Declaration or the Bylaws requires or permits a written notice or proposal to be given to a Mortgagee, insurer or guarantor of a Mortgage, such written notice or proposal shall be deemed properly given if deposited in the United States mail, postage prepaid, and addressed to the Mortgagee, insurer or guarantor at its address appearing of record in the first Mortgage (or assignment thereof, if applicable) unless such Mortgagee, insurer or guarantor has previously notified the Association in writing of a different address for purposes of notices under this Declaration or in the Bylaws.

Section 17.23. Documents to be Available to Mortgagees. The Association shall make available to Owners and Mortgagees, and holders, insurers or guarantors of any Mortgage, current copies of this Declaration, the Bylaws, Articles, other rules concerning the Project and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. If the Project consists of fifty (50) or more Condominiums, the Association must provide an audited statement for the preceding fiscal year if a Mortgagee of a first Mortgage submits a written request for it.

Section 17.24. Mortgagee Protection. A breach by an Owner of any of the covenants, conditions and restrictions contained herein shall not affect, impair, defeat or render invalid the lien, charges or encumbrance of any first Mortgage made for value which may then exist on any Condominium; provided, however, that in the event of a foreclosure of any such first Mortgage, or if the holder of the note secured by such first Mortgage acquires title to a Condominium in any manner whatsoever in satisfaction of the indebtedness, then the purchaser at the foreclosure sale shall, upon acquiring title, become subject to each and all of the covenants, conditions and restrictions contained herein, but free from the effects of any breach occurring prior thereto.

Section 17.25. Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

Section 17.26. Provisions of Civil Code § 1360. As of the date of this Declaration, § 1360 of the California CIVIL CODE provides as follows:

"(a) Subject to the provisions of the governing documents and other applicable provisions of law, if the boundaries of a Residential Unit are contained within a building, the owner of a Residential Unit may do the following:

(1) Make any improvements or alterations within the boundaries of his or her Residential Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.

(2) Modify a unit in a condominium project, at the owner's expense, to facilitate access for persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the unit for the purposes of this paragraph if the unit is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this paragraph is subject to the following conditions:

(A) The modifications shall be consistent with applicable building code requirements.

(B) The modifications shall be consistent with the intent of otherwise applicable provisions of the governing documents pertaining to safety or aesthetics.

(C) Modifications external to the dwelling shall not prevent reasonable passage by other residents, and shall be removed by the owner when the unit is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf or physically disabled.

(D) Any owner who intends to modify a unit pursuant to this paragraph shall submit his or her plans and specifications to the association of the condominium project for review to determine whether the modifications will comply with the provisions of this paragraph. The association shall not deny approval of the proposed modifications under this paragraph without good cause.

(b) Any change in the exterior appearance of a Residential Unit shall be in accordance with the governing documents and applicable provisions of law."

Section 17.27. Documents to be Provided to Prospective Purchasers.

(a) **By Owners.** As of the date of this Declaration, Civil Code § 1368(a) requires that each Owner shall, as soon as practicable before transfer of title to his Condominium or execution of a real property sales contract therefor (as defined in CIVIL CODE § 2985), provide to the prospective purchaser the following items:

(i) A copy of this Declaration, the Association's Articles and Bylaws, and the Condominium Plan for the Project;

(ii) The statement required by CIVIL CODE § 1368(2), if applicable (i.e., if an age restriction becomes applicable);

(iii) A copy of the Association's most recent financial statement distributed pursuant to CIVIL CODE § 1365;

(iv) A true statement, in writing, from an authorized representative of the Association, as to the respective amounts levied upon the Owner's Condominium which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest and costs of collection which, as of the date of the statement, are or may be made a lien upon the Owner's Condominium pursuant to CIVIL CODE § 1367.

(v) A copy of the preliminary list of defects provided to each Owner pursuant to CIVIL CODE § 1375, if that Section requires the list to be provided.

(vi) A copy of the latest information regarding alleged defects provided for in CIVIL CODE § 1375.1, if that Section requires the information to be provided.

(vii) Any change in the Association's current regular and special assessments and fees which have been approved by the Board but have not become due and payable as of the date of the disclosure required by this Section.

(b) **By the Association.** As of the date of this Declaration, CIVIL CODE § 1368(b) requires that, upon written request, the Association shall, within ten (10) days of mailing or delivery of the request, provide an Owner with a copy of the requested Association items specified above. The Association may charge a fee for this service which may not exceed the cost to prepare and reproduce the requested items.

Section 17.28. Easement to Inspect and Test. Declarant reserves easements to enter any portion of the Project, including the interior of any residence, Exclusive Use Area and Limited Exclusive Use Area to inspect those areas and to conduct destructive testing referred to in California CIVIL CODE § 1375(d). However, Declarant shall notify the Association, with respect to Tower Association Property which is to be inspected and the Owner of the Limited Exclusive Use Area, Exclusive Use Area or Residential Unit to be inspected of at least three (3) alternative dates and times when such inspection can take place (the earliest of which shall not be less than ten (10) days after the notification is given) and Declarant shall give the Association and Owner, respectively, the opportunity to specify which date and time is acceptable to the Association and Owner. Should the Association or Owner not respond affirmatively with respect to one of the dates and times within five (5) days, then Declarant may decide which of the dates and times the inspection and testing shall take place and so notify the Association or Owner, respectively. Alternatively, Declarant may seek a judicial order allowing such inspection and testing to take place. Declarant shall be entitled to its reasonably incurred attorney's fees and be deemed the "prevailing party" should such a court order be sought and obtained. Declarant shall be obligated to fully repair any damage caused by any such destructive testing.

Section 17.29. Notice of Statutory Procedures for Certain Claims. Pursuant to California CIVIL CODE § 912(f), Declarant notifies each Owner and the Association that Chapter 4 (commencing with § 910) of Title 7 of Part 2 of Division 2 of the California CIVIL CODE sets forth non-adversarial procedures and remedies that may apply to claims for construction defect which may arise in connection with the Project or improvements constructed within the Project. The non-adversarial procedures impact the legal rights of Owners and the Association. The statute allows Declarant to elect not to use its procedures. The statute also allows Declarant, by contract with Owners or the Association, to provide alternative non-adversarial procedures and remedies in lieu of the procedures and remedies contained in CIVIL CODE §§ 910, *et seq.*

Section 17.30. Documents to be Provided by Owners to Subsequent Purchasers. The first Retail Purchaser of each Condominium shall be provided with certain documents ("**Homeowner Documents**"), which may include the following: (i) a Maintenance Manual and/or other maintenance or preventive maintenance information; (ii) manufactured products' maintenance and limited warranty information; and (iii) a fit and finish warranty or other contractual warranty. Each Owner shall maintain a full and completed copy of the Homeowner Documents and provide the Homeowner Documents to any subsequent purchaser of the Owner's Condominium.

ARTICLE XVIII
CONSTRUCTION DISPUTES

Section 18.1. Definitions. The following words will have the following meanings for purposes of this Article:

(a) **"Affiliated Contractor"** shall mean and refer to each general contractor and contractor who, as of the time of sale of the portion of the Project that is the subject of a Dispute: (i) is in the business of building, developing or constructing the Project for public purchase; and (ii) is a partner, member of, subsidiary of, or otherwise similarly affiliated with Declarant.

(b) **"Construction Dispute"** shall mean and refer to any dispute between an Owner or the Association and Declarant or between an Owner or the Association and any employee, agent, partner, contractor, subcontractor or material supplier of Declarant which dispute relates to the use or condition of the Project or any improvements to the Project. Construction Disputes include, but are not limited to, disputes regarding boundaries, surveys, soils conditions, grading, design, specifications, construction, installation of improvements or disputes which allege breach of implied or express warranties as to the condition of the Project.

(c) **"Construction Party"** shall mean and refer to Declarant or any director, officer, partner, employee, subcontractor or agent of Declarant or any Affiliated Contractor.

(d) **"Claimant"** refers to any party (including any Owner or the Association) who intends to make a claim for Construction Dispute against a Construction Party.

Section 18.2. Dispute Notification and Resolution Procedure. Any Construction Dispute shall be subject to the following provisions:

(a) **Notice.** Any Claimant with a claim against a Construction Party shall notify the Construction Party in writing of the claim, which writing shall describe the nature of the claim and the proposed remedy (the **"Claim Notice"**).

(b) **Right to Inspect and Right to Corrective Action.** Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, each Construction Party and the Claimant shall meet at a mutually-acceptable place within the Entire Property to discuss the claim. At such meeting or at such other mutually-agreeable time, each Construction Party and its/their representatives shall have full access to the property that is subject to the claim for the purposes of inspecting the same. The parties shall negotiate in good faith in an attempt to resolve the claim. If a Construction Party elects to take any corrective action, the Construction Party and its representatives and agents shall be provided full access to the property subject to the claim to take and complete corrective action.

(c) **CIVIL CODE §§ 1368.5 and 1375.** Nothing contained herein shall be deemed a waiver or limitation of the provisions of California CIVIL CODE § 1368.5. If the claim is subject to the provisions of CIVIL CODE § 1375 as it may be amended from time to time, compliance with the procedures of CIVIL CODE §§ 1375 (b), (d) and (e) shall satisfy the requirements of **Sections 18.2(a) and 18.2(b)** above.

(d) **Mediation.** If the parties cannot resolve the Construction Dispute pursuant to the procedures described in **subsection (b)** above, (including, if applicable, CIVIL CODE § 1375 procedures) the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other entity offering mediation services that is acceptable to the parties. No person shall serve as a mediator in any Construction Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

(i) Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Project is located or such other place as is mutually acceptable to the parties.

(ii) The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Construction Dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Construction Dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

(iii) Prior to the commencement of the mediation session, the mediator and all parties to the mediation shall execute an agreement pursuant to California EVIDENCE CODE § 1152.5(e) or successor statute in order to exclude the use of any testimony or evidence produced at the mediation in any subsequent Construction Dispute resolution forum, including, but not limited to, court proceedings, reference proceedings or arbitration hearings. Pursuant to California EVIDENCE CODE § 1152.5(a), the agreement shall specifically state that evidence of anything said or of any admission made in the course of the mediation is not admissible evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. Unless the document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence; and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given.

(iv) Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of the parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

(v) The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the expenses of any witnesses, or the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. Each Owner covenants that each shall forbear from commencing any litigation against the Construction Party without complying with the procedures described in this Section.

Section 18.3. Resolution of Construction Disputes by Arbitration. It is the desire and intention of the Declarant, Owners and Association (referred in this Section as "**parties**") to agree upon a mechanism and procedure under which any controversy, breach or dispute between Declarant and an Owner or the Association will be resolved in a prompt and expeditious manner. If the parties cannot resolve the Construction Dispute pursuant to the procedures described in **Section 18.2** above, the matter shall be submitted and resolved exclusively through binding arbitration in the county in which the Project is located.

(a) **Applicable Rules.** All arbitrations shall be conducted by Judicial Arbitration and Mediation Services ("**JAMS**") in accordance with the JAMS rules then applicable to the claims presented, as supplemented by the provisions of this Section.

(b) **Selection of Arbitrator.** The arbitrator to preside over the Construction Dispute shall be neutral and impartial and either a retired judge of the California Superior Court, a California Court of Appeal or the California Supreme Court. The arbitrator shall be selected in accordance with the JAMS rules and shall be selected no later than sixty (60) days after a notice of claim is filed.

(c) **Expenses of Arbitration.** Unless otherwise agreed by the parties or required by law, neither the Association nor any Owner shall be required to pay any fee for the arbitration or arbitrator in excess of the costs that would be imposed on the Association or Owner, as applicable, if the Construction Dispute had been filed as a suit in court. The arbitrator may not award against the Association or any Owner any expenses in excess of those that would be recoverable as costs if the Construction Dispute had been litigated to a final judgment in court.

(d) **Preliminary Procedures Required by Law.** If state or federal law requires any of the parties to take steps or follow procedures before commencing an action in court, the such party must take the steps or follow the procedures, as applicable, before commencing the arbitration. For example, the non-adversarial procedures contained in California CIVIL CODE §§ 910 through 938, inclusive, must be followed with respect to any Construction Dispute governed by California CIVIL CODE §§ 895, *et seq.* Nothing contained in this Section shall be deemed to be a waiver or limitation of the provisions of California CIVIL CODE § 1368.4, § 1375, § 1375.05 or § 1375.1.

(e) **Participation by Other Parties.** Any of the parties defending a claim in the arbitration may have all necessary and appropriate parties included as parties to the arbitration.

(f) **Rules of Law.** The arbitrator must follow California substantive law (including statutes of limitations) but may receive hearsay evidence. The arbitrator is authorized to provide all recognized remedies available at law or in equity for any cause of action.

(g) **Written Decision of Arbitrator.** The arbitrator must issue a written decision within thirty (30) days after the hearing is closed. If any of the parties so requests, the arbitrator must also issue a reasoned award.

(h) **Attorney's Fees and Costs.** Each of the parties shall bear its own attorney's fees and costs (including expert witness costs) in the arbitration.

(i) **Federal Arbitration Act.** Because many of the materials and products incorporated into the residences and other improvements constructed within the Project are manufactured in other states, this Declaration involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 U.S.C. § 1, *et seq.*) now in effect and as the same may from time to time be amended. Accordingly, Federal Arbitration Act shall govern the interpretation and enforcement of the arbitration provisions of this Article.

(j) **WAIVER OF JURY TRIAL AND RIGHT TO APPEAL.** DECLARANT, AND BY ACCEPTING A DEED FOR ANY PORTION OF THE TOWER ASSOCIATION PROPERTY, THE ASSOCIATION AND EACH OWNER, AGREE (i) TO HAVE ANY CONSTRUCTION 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; (ii) TO GIVE UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE THE CONSTRUCTION DISPUTE LITIGATED IN A COURT OR JURY TRIAL; (iii) TO GIVE UP THEIR RESPECTIVE RIGHTS TO APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE APPLICABLE ARBITRATION RULES OR STATUTES. IF ANY PARTY REFUSES 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.

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

(l) **Cooperation by the Parties.** The parties shall promptly and diligently cooperate with one another and the arbitrator, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the or controversy in accordance with the terms of this Section.

(m) **Not Applicable Unless Declarant is a Party.** This Article does not apply to any Construction Dispute in which Declarant has not been named as a party.

(n) **No Amendment Without Declarant's Consent.** No amendment may be made to this Article without the written consent of Declarant.

Section 18.4. Arbitration In Purchase Agreements. The limitation of **Section 18.3** above to certain controversies, claims or disputes shall not be deemed to supersede any written agreement (e.g., purchase agreement) between Declarant and an Owner which may provide for the arbitration of additional controversies, claims or disputes.

Section 18.5. Application; Conflicts. This Article shall apply only with respect to Construction Disputes in which either: (a) Declarant or any director, officer, partner, employee, subcontractor or agent of Declarant or an Affiliated Contractor is a party, or (b) the Association or any director, officer, partner, employee, subcontractor or agent of the Association is a party. In the event of a conflict between this Article and any other alternative dispute resolution procedures, this Article shall prevail.

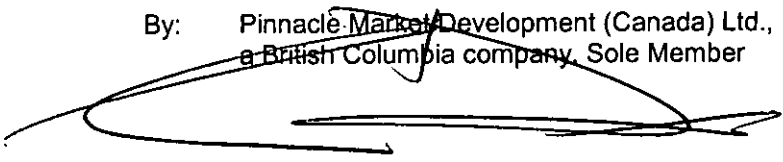
Section 18.6. Third Party Beneficiary: Affiliated Contractor. The Parties intend and agree that any entity that falls within the definition of "Affiliated Contractor" is an intended third party beneficiary of the provisions of this Article.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument the day and year first hereinabove written.

PINNACLE MARKET DEVELOPMENT (US), LLC,
a California limited liability company

By: Pinnacle International (US), LLC,
a California limited liability company,
Sole Member

By: ~~Pinnacle Market Development (Canada) Ltd.,~~
~~a British Columbia company, Sole Member~~

By: 
Michael De Cotiis, President

STATE OF CALIFORNIA)
) ss.
 COUNTY OF SAN DIEGO)

On September 22, 2005, before me, Shirley L. Woodson, Notary Public, personally appeared Michael De Cotiis, 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

Shirley L. Woodson

(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: Shirley L. Woodson

Commission Number: 1327764

Manufactures/Vendor ID #: NNA1

Notary Public State: California

County: San Diego

My Comm. Expires: November 28, 2005

Signature of Declarant: _____

Print Name of Declarant: Shirley L. Woodson

City & State of Execution: San Diego, California

Date Signed: Shirley L. Woodson

Attachment "A-1"
Monthly Regular Assessments

UNITS W/ SAME UNIT SIZE	UNIT SIZE	VARIABLE ASSESSMENT PERCENTAGE	BASE ASSESSMENT ²	VARIABLE ASSESSMENT ³	REGULAR ASSESSMENT ⁴
RUs: 16	737	.0026			
RUs: 16	1,012	.0036			
RUs: 6	1,045	.0037			
RUs: 20	1,290	.0045			
RUs: 6	1,294	.0046			
RUs: 16	1,297	.0046			
RUs: 6	1,492	.0053			
RUs: 16	1,509	.0053			
RUs: 8	1,587	.0056			
RUs: 20	1,596	.0056			
RUs: 20	1,675	.0059			
RUs: 12	1,913	.0067			
RUs: 1	1,999	.0070			
RUs: 2	2,075	.0073			
RUs: 1	2,079	.0073			
RUs: 8	2,144	.0076			
RUs: 1	2,640	.0093			
RUs: 1	2,650	.0093			
RUs: 2	2,961	.0104			

¹Variable Assessment Percentage = square footage of each Unit ÷ total square footage of all the Units (283,747s.f.). Should the square footage of any Residential Unit, any Shopkeeper Unit or Commercial Unit change due to alteration of the Residential Unit, any Shopkeeper Unit or Commercial Unit, the Variable Assessment Percentages shall be recalculated.

²Base Assessment = total Base Assessment portion of the Base Budget ÷ total number of Units (191).

³Variable Assessment = Variable Assessment Percentage x Variable Assessment portion of the Base Budget.

⁴Regular Assessment = Variable Assessment + Base Assessment.

RUs: 2	2,967	.01 05			
RUs: 2	3,756	.0132			
C1	1,697	.0060			
C2	384	.0014			
C3	1,141	.0040			
C4	735	.0026			
C5	1,909	.0067			
C6	942	.0033			
C7	927	.0033			
C8	1,229	.0043			
C9	2,007	.0071			
	Total Square Footage of Residential Units, any Shopkeeper Unit & Commercial Units (283,747)				

Attachment "A-2"
Monthly Residential Cost Center Assessments

RESIDENTIAL UNITS W/ SAME UNIT SIZE	UNIT SIZE	COST CENTER VARIABLE ASSESSMENT PERCENTAGE ⁵	COST CENTER BASE ASSESSMENT ⁶	COST CENTER VARIABLE ASSESSMENT ⁷	RESIDENTIAL COST CENTER ASSESSMENT ⁸
RUs: 16	737	.0027			
RUs: 16	1,012	.0037			
RUs: 6	1,045	.0038			
RUs: 20	1,290	.0047			
RUs: 6	1,294	.0047			
RUs: 16	1,297	.0048			
RUs: 6	1,492	.0055			
RUs: 16	1,509	.0055			
RUs: 8	1,587	.0058			
RUs 20	1,596	.0059			
RUs: 20	1,675	.0061			
RUs: 12	1,913	.0070			
RUs: 1	1,999	.0073			
RUs: 2	2,075	.0076			
RUs: 1	2,079	.0076			
RUs: 8	2,144	.0079			
RUs: 1	2,640	.0097			
RUs: 1	2,650	.0097			

⁵Cost Center Variable Assessment Percentage = square footage of the Residential Unit ÷ total square footage of all the Residential Units (272,776). Should the square footage of any Residential Unit change due to alteration of the Residential Unit, the Cost Center Variable Assessment Percentages shall be recalculated.

⁶Cost Center Base Assessment = total Cost Center Base Assessment portion of the Residential Cost Center Budget ÷ total number of Residential Units (182).

⁷Cost Center Variable Assessment = Cost Center Variable Assessment Percentage x Cost Center Variable Assessment portion of the Residential Cost Center Budget.

⁸Residential Cost Center Assessment = Cost Center Base Assessment + Cost Center Variable Assessment.

RUs: 2	2,961	.0109			
RUs: 2	2,967	.0109			
RUs: 2	3,756	.0138			
	Total Square Footage of Residential Units (272,776)				

DRAFT

SUBORDINATION AGREEMENT

The undersigned being the beneficiary under that certain deed of trust recorded on April 23, 2003 as Document No. 2003-0471015 with the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said deed of trust are and shall be subordinate and inferior to the Amended & Restated Declaration of Restrictions to which this Subordination Agreement is attached.

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

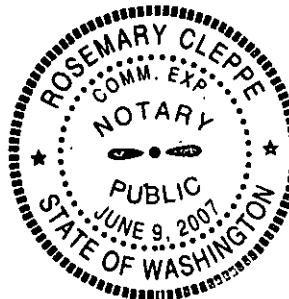
By: Jolene Tingelstad
 Name: Jolene Tingelstad
 Title: Vice President

Washington
 STATE OF ~~CALIFORNIA~~)
) ss.
 COUNTY OF King)

On September 23, 2005, before me, Rosemary Clespe, Notary Public, personally appeared Jolene Tingelstad, 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 Rosemary Clespe



(Seal)