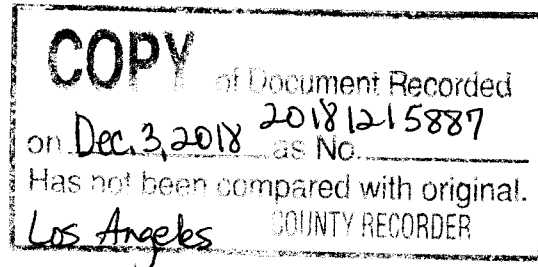


RECORDING REQUESTED BY:

FIRST AMERICAN TITLE-HSD

**WHEN RECORDED MAIL TO:
MAIL TAX STATEMENTS TO:**

NEXT CENTURY PARTNERS, LLC
1999 Avenue of the Stars, Suite 2850
Los Angeles, CA 90067
Attention: Chief Executive Officer



**MASTER DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS, RESERVATION OF EASEMENTS AND OPERATING AGREEMENT**

(Title of Document)

RECORDING REQUESTED BY:

First American Title Company - HSD

WHEN RECORDED RETURN TO:

NEXT CENTURY PARTNERS, LLC
1999 Avenue of the Stars, Suite 2850
Los Angeles, CA 90067
Attention: Chief Executive Officer

5469861

APN: 4319-004-161 TRA: 00067

Mail Tax Statements To:
SAME AS ABOVE

The Undersigned declares that
Documentary Transfer Tax is \$ -0-. The value of the
property in this conveyance, exclusive of liens and
encumbrances is \$100.00 or less, and there is no additional
consideration received by the grantor, R & T 11911.

**MASTER DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS, RESERVATION OF EASEMENTS AND OPERATING AGREEMENT
FOR CENTURY PLAZA**

made by

**NEXT CENTURY PARTNERS, LLC,
a Delaware limited liability company**

**NOTE: AS MORE FULLY DESCRIBED IN SECTION 16.21 OF THIS DECLARATION,
EXCEPT FOR SPECIFIC DISPUTES DESCRIBED THEREIN, ALL DISPUTES
ARISING HEREUNDER SHALL BE SUBMITTED TO ARBITRATION IN
ACCORDANCE WITH THE FEDERAL ARBITRATION ACT, A FORM OF
ALTERNATIVE DISPUTE RESOLUTION WHICH INCLUDES THE WAIVER OF A
RIGHT TO A TRIAL BY JURY.**

Mail Tax Statements To:
SAME AS ABOVE

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**MASTER DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS, RESERVATION OF EASEMENTS AND OPERATING AGREEMENT
FOR CENTURY PLAZA**

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, RESERVATION OF EASEMENTS AND OPERATING AGREEMENT FOR CENTURY PLAZA (this "**Declaration**") is made as of November 27, 2018 (the "**Effective Date**"), by NEXT CENTURY PARTNERS, LLC, a Delaware limited liability company ("**Declarant**").

RECITALS:

A. Declarant is the owner of certain real property located in the City of Los Angeles, County of Los Angeles, State of California more particularly described as follows:

Lots 1 through 57, inclusive, of Tract No. 71688 (the "**Project**") as described on that certain Tract Map recorded on October 30, 2017 in Book 1400 at Pages 60 to 94, inclusive, of Maps in the Official Records of Los Angeles County, California (the "**Map**").

B. The Project is a mixed-use project consisting of:

(i) a sixteen (16) story existing building (the "**Hotel Building**") originally constructed in 1966 that formerly housed the Century Plaza Hotel. Declarant is re-developing the Hotel Building into a mixed-use hotel and residential condominium project which contains (1) a hotel, consisting of a hotel lobby, commercial areas and related facilities located on the first (1st) floor of the Hotel Building, three hundred ninety-four (394) hotel rooms located on the third (3rd) through eleventh (11th) floors of the Hotel Building, a portion of the Hotel Building's roof containing a pool deck and a mechanical room, and certain portions of the Hotel Building below ground level which contain a ballroom and other hotel amenities and facilities (the "**Hotel**"), and (2) sixty-three (63) residential condominium units and related common areas, amenities and facilities located on the second (2nd) and the twelfth (12th) through sixteenth (16th) floors of the Hotel Building and a portion of the Hotel Building's roof (the "**Hotel Condominium Project**");

(ii) a condominium project consisting of (1) a newly constructed forty-four (44) story condominium tower containing one hundred forty-three (143) condominium units (the "**North Tower**"), (2) a driveway and other common facilities adjacent to the North Tower, (3) five (5) housekeeping units located on the northern half of the second (2nd) floor of the West Pavilion (as defined below) and (4) a pool deck located on the northern half of the roof of the West Pavilion (the "**North Tower Project**");

(iii) a condominium project consisting of (1) a newly constructed forty-four (44) story condominium tower containing one hundred twenty-five (125) condominium units (the "**South Tower**"), (2) a driveway and other common facilities adjacent to the South Tower, (3) five (5) housekeeping units located on the southern half of the second (2nd) floor of the West Pavilion (as defined below) and (4) a pool deck located on the southern half of the roof of the West Pavilion (the "**South Tower Project**");

(iv) a two (2) story building containing retail area on the first (1st) floor, housekeeping units for the North Tower Project and the South Tower Project on the second (2nd) floor and pool decks for the North Tower Project and the South Tower Project on the building's roof (the "**West Pavilion**");

(v) approximately 94,000 square feet of retail areas; and

(vi) an underground Parking Garage (as hereinafter defined).

C. The Lots (as hereinafter defined) identified on the Map have the following associated uses:

Lot Numbers	Use	Defined Term(s)
1, 2, 9, 10, 11, 13, 20, 21, 25, 28, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 56 and 57	Master Common Area	Common Facilities; Parking Garage
9, 13, 21, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 56 and 57	Parking	Parking Garage
3, 8, 14, 50 and 53	Hotel	Hotel Property
4, 5, 16, 17, 29, 30, 31, 32, 33, 34, 40, 54 and 55	Retail	Retail Areas
6, 7, 12, 26 and 27	Hotel Condominium Residential Units and Common Area	Hotel Residential Units; Hotel Residential Common Area; Hotel Condominium Project; Hotel Residential Property
15, 18, 22 and 51	South Tower Condominium Residential Units and Common Area	South Tower Residential Units; South Tower Residential Common Area; South Tower Project; South Tower Property
19, 23, 24 and 52	North Tower Condominium Residential Units and	North Tower Residential Units; North Tower

	Common Area	Residential Common Area; North Tower Project; North Tower Property
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D. The Project is expected to be developed in Phases. Phase 1 of the Project will be subject to this Declaration upon its recordation and consists of Lots 1-8, 10-12, 14, 16, 17, 20, 26-29, 34, 36, 39, 40, 44, 48-50 and 53-55. Phase 2 and Phase 3 will be subject to this Declaration upon the recordation of a Declaration of Annexation applicable to each such Phase upon annexation by Declarant as provided in Section 16.10. It is anticipated that Phase 2 will consist of Lots 9, 13, 19, 23, 24, 25, 31, 32, 33, 35, 37, 38, 41, 42, 43, 45, 46, 47, 52 and 56 and Phase 3 will consist of Lots 15, 18, 21, 22, 30, 51 and 57, however such Phases are subject to change.

E. Concurrently herewith, the Hotel Residential Units (as hereinafter defined) and Hotel Residential Common Area (as hereinafter defined), are being created on Lots 6, 7 and 12 pursuant to and as more particularly shown on a Condominium Plan to be recorded in the Official Records of Los Angeles County, California (the "**Hotel Residential Condominium Plan**").

F. Concurrently with the annexation of Phase 2, Declarant intends that (i) the North Tower Residential Units (as hereinafter defined) and North Tower Residential Common Area (as hereinafter defined) shall be created on Lots 19 and 23, and (ii) "Deeded Parking Spaces" (as defined in the North Tower CC&Rs) shall be created on a portion of Lots 19 and 41, pursuant to a Condominium Plan to be recorded in the Official Records of Los Angeles County, California (the "**North Tower Residential Condominium Plan**").

G. Concurrently with the annexation of Phase 3, Declarant intends that (i) the South Tower Residential Units (as hereinafter defined) and South Tower Residential Common Area (as hereinafter defined) shall be created on Lots 15 and 18 and (ii) "Deeded Parking Spaces" (as defined in the South Tower CC&Rs) shall be created on Lot 57, pursuant to a Condominium Plan to be recorded in the Official Records of Los Angeles County, California (the "**South Tower Residential Condominium Plan**").

H. Development and operation of the Project is subject to the rights, covenants and restrictions set forth in the Development Agreement by and between the City of Los Angeles and Declarant, recorded on April 24, 2013 as Instrument No. 2013-0618132 in Official Records of Los Angeles County, California (the "**Development Agreement**") and the other Project Approvals (as hereinafter defined).

I. The purpose of this Declaration is to implement and carry out the Project Approvals, to impose upon the Project mutually beneficial restrictions, agreements, obligations and easements, and to provide for the use, maintenance and operation of the Project as an integrated mixed-use development. The Project shall be held, improved, developed, sold, conveyed, hypothecated, encumbered, leased, rented, used, operated and occupied subject to the limitations, restrictions, reservations, agreements, rights, easements, conditions and covenants set forth herein, all and each of which are intended to be in furtherance of the protection, maintenance, improvement and operation of the Project and for the purpose of enhancing and

preserving the value, desirability and attractiveness of the Project as a whole. All provisions of this Declaration shall be enforceable equitable servitudes upon the Project. The provisions of this Declaration shall run with and burden the Project, and shall be binding upon and, as applicable, inure to the benefit of all of the Project and each Person having or acquiring any right, title or interest in the Project or any part thereof, or any Improvements thereon, and upon and to the benefit of their respective successors and assigns.

ARTICLE I. DEFINITIONS

Unless the context clearly indicates otherwise, the following terms used in this Declaration, are defined as follows:

1.1 **"Account"** has the meaning set forth in Section 5.4.

1.2 **"Additional Property Insurance"** has the meaning set forth in Section 11.1.5(a).

1.3 **"Affiliate"** means, as to any Owner, (a) any individual or entity who directly or indirectly holds a twenty-five percent (25%) or greater interest in such Person; (b) any Person in whom such Owner or any one or more of the individuals or entities described in the foregoing (a) directly or indirectly hold a twenty-five percent (25%) or greater interest or a managing or controlling interest; (c) any Person who succeeds to all or substantially all of the assets or business of such Owner as a result of a merger or consolidation; or (d) any Person who acquires all or substantially all of such Owner's assets, membership or other interests or capital stock.

1.4 **"Annexation Property"** means Lots 9, 13, 15, 18, 19, 21, 22, 23, 24, 25, 30, 31, 32, 33, 35, 37, 38, 41, 42, 43, 45, 46, 47, 51, 52, 56 and 57.

1.5 **"Arbitration Agreement"** has the meaning set forth in Section 16.21.2.

1.6 **"Arbitration Provider"** has the meaning set forth in Section 16.21.2(a).

1.7 **"Architectural Guidelines"** has the meaning set forth in Section 6.12.6.

1.8 **"Articles"** means the Articles of Incorporation of the Master Association filed or to be filed in the Office of the Secretary of State of the State of California, as said Articles may be amended from time to time.

1.9 **"Assessment" or "Assessments"** means the following:

1.9.1 **"Regular Assessment"** means a charge which the Board may from time to time levy against the Hotel Owner, the Retail Owner and each Residential Owner to pay for the costs of Common Expenses, in the manner and proportions provided in Sections 5.3, 5.6 and 5.10. Regular Assessments are further classified in Section 5.3 as **"General Regular Assessments"** or **"Garage Regular Assessments."**

1.9.2 **"Emergency Assessment"** means any charge designated as an Emergency Assessment in this Declaration, the Articles, Bylaws, the Project Rules and Regulations or the

Parking Garage Rules and Regulations. Unless otherwise provided herein, Emergency Assessments shall be allocated against the Hotel Owner, the Retail Owner and each Residential Owner in the same manner, and in the same proportion, as Regular Assessments.

1.9.3 **“Remedial Assessment”** means any charge or fine that the Board may from time to time levy against a particular Owner and its respective Lot or Residential Unit, as applicable, who fails to comply with this Declaration, the Articles, the Bylaws, the Project Rules and Regulations or the Parking Garage Rules and Regulations, together with attorneys’ fees and other charges payable by such Owner pursuant to the provisions of this Declaration, plus interest thereon from the date of such levy at the Default Rate.

1.9.4 **“Capital Improvement Assessment”** means a charge that the Board may from time to time levy against the Hotel Owner, the Retail Owner and each Residential Owner to pay for the costs for the installation or construction of capital improvements on the Common Facilities.

1.9.5 **“Cost Center Assessments”** shall mean those Assessments charged to and collected from certain Owners in accordance with Sections 5.8 and 5.16 for the purpose of financing the expenses incurred or to be incurred in connection with certain special services and/or facilities for such Owners.

1.9.6 **“Reconstruction Assessment”** means a charge which the Board may from time to time levy against the Hotel Owner, the Retail Owner and each Residential Owner to pay for the costs of any reconstruction following a Casualty or Condemnation as provided in Article XII.

1.9.7 **“Reimbursement Assessment”** means a charge that the Board may from time to time levy against a particular Owner and its respective Lot or Residential Unit to pay or reimburse the Master Association for the costs of any materials or services provided by the Master Association which materials or services benefit such Owner and its Lot or Residential Unit and not the Project generally, including reimbursement for costs incurred in repairing any damage to the Common Facilities for which the Owner, its Occupant or Permittees is responsible.

1.9.8 **“Special Assessment”** means a charge that the Board may from time to time levy against the Hotel Owner, the Retail Owner and each Residential Owner to pay for any budgetary shortfall or to restore any funds transferred from the Master Association’s reserve funds. Special Assessments may also be levied by the Board against the Owners and the Lots and Residential Units to pay for any other charge designated in this Declaration, the Articles, Bylaws, the Project Rules and Regulations or the Parking Garage Rules and Regulations as a Special Assessment.

1.10 **“Authorized Vehicles”** has the meaning set forth in Section 8.3.4(a).

1.11 **“Benefited Interest”** means the dominant Lot (or portions thereof as the case may be) for whose benefit and appurtenant to which a particular easement, license or similar right in, on, over, upon or through another Lot is granted or exists, and includes the Buildings and Improvements on such Lot.

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- 1.12 **"Benefited Owner"** means any Owner having title to a Benefited Interest.
- 1.13 **"Board"** means the board of directors of the Master Association, appointed from time to time in accordance with the Governing Documents.
- 1.14 **"Budget"** shall mean a written, itemized estimate of the income and Common Expenses of the Master Association in performing its functions under this Declaration.
- 1.15 **"Buildings"** means all single or multi-story buildings located within the Project together with all changes and additions thereto made in accordance with this Declaration. For purposes of this definition, the Parking Garage shall be deemed to be a Building.
- 1.16 **"Burdened Interest"** means the servient Lot (or portions thereof as the case may be) in, on, over, upon or through which an easement or similar right in favor of a Benefited Interest is granted or exists, and includes the Buildings and Improvements on such Lot.
- 1.17 **"Burdened Owner"** means any Owner having title to a Burdened Interest.
- 1.18 **"Business Day"** means a day of the week (but not a Saturday, Sunday or holiday) on which the offices of financial institutions in the State of California are open to the public for carrying on substantially all of their business functions. Unless specifically referenced in this Declaration as a Business Day, all references to "days" shall be to calendar days.
- 1.19 **"Bylaws"** means the Bylaws of the Master Association as same may be amended from time to time.
- 1.20 **"Capped Oil Wells"** has the meaning set forth in Section 15.9.
- 1.21 **"Casualty"** means any damage of or destruction to the Project or the Improvements located thereon, or any portion thereof, by fire or any other casualty.
- 1.22 **"Casualty Consultant"** has the meaning set forth in Section 12.7.1.
- 1.23 **"Casualty Retainage"** has the meaning set forth in Section 12.7.1.
- 1.24 **"Cell Site Leases"** means (i) that certain Enhancer License effective as of September 29, 1994, between Century Plaza Hotel Limited Partnership, an Illinois limited partnership, as licensor and Los Angeles SMSA Limited Partnership as licensee, as amended (ii) that certain Communications Lease Agreement dated June 23, 2003, between Pivotal Century Plaza Hotel, L.L.C., a Delaware limited liability company, as landlord and AB Cellular LA LLC, a Delaware limited liability company d/b/a AT&T Wireless, as tenant, as amended and (iii) that certain Communications Lease Agreement between Pivotal Century Plaza Hotel, L.L.C., a Delaware limited liability company, as landlord and Pacific Bell Wireless, LLC, a Nevada limited liability company, d/b/a Cingular Wireless, as tenant, as amended.
- 1.25 **"Century Woods Agreement"** means that certain the Covenant and Agreement, dated July 19, 2016, made by Declarant in favor of Century Woods Condominium Association, Inc., a California non-profit corporation.
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1.26 **"City"** means the City of Los Angeles and any departments of the City of Los Angeles having or exercising jurisdiction over the Property, or any portion thereof, whether in existence at the date of recordation of this Declaration or thereafter formed or created.

1.27 **"Close of Escrow"** means the date on which a deed is recorded conveying a Residential Unit pursuant to a transaction requiring the issuance of a Public Report by the DRE.

1.28 **"Common Expenses"** means, without duplication, those expenses for which the Master Association is responsible under this Declaration, including, without limitation, the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Facilities; unpaid Assessments of any particular Owner; the cost of any and all utilities metered or attributable to the Common Facilities; the costs of trash removal and any waste management plan adopted by the Master Association from time to time; costs to be paid by the Master Association as successor in interest to Declarant under the Community Agreements; costs paid by the Master Association for maintenance and management of the Loading Dock and the Shared Walkway; the costs of management and administration of the Master Association, including, without limitation, compensation paid by the Master Association to managers, accountants, attorneys, any Casualty Consultant or other professionals and employees; the costs of all gardening, landscaping, Security Costs and other services benefiting the Common Facilities; the costs of bonding members of the Board; Common Facility Taxes; the amounts paid by the Master Association to discharge any lien or encumbrance levied against the Common Facilities or any portion thereof; the costs of any other item or items incurred by or on behalf of the Master Association, for any reason whatsoever in connection with the rights, powers and obligations of the Master Association under this Declaration, whether similar or dissimilar to the foregoing, and for the common benefit of the Owners. "Common Expenses" shall not include the costs of the initial construction of the Common Facilities. The Common Expenses shall be further classified as:

1.28.1 **"General Common Expenses"** means Common Expenses other than Garage Expenses, Insurance Expenses and Cost Center Expenses (if any). As set forth in Section 5.10.1(a) General Common Expenses shall be further classified as **"Fixed General Common Expenses"** and **"Variable General Common Expenses."**

1.28.2 **"Garage Expenses"** means the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Parking Garage and any and all utilities metered or attributable to the Parking Garage. As set forth in Section 5.10.2(a) Garage Expenses shall be further classified as **"Fixed Garage Expenses"** and **"Variable Garage Expenses."**

1.28.3 **"Insurance Expenses"** means, without duplication, the costs of all property (including fire and casualty) and liability insurance, earthquake insurance, workers' compensation insurance, errors and omissions insurance, directors and officers insurance, and any other insurance maintained at any time by the Master Association whether or not specifically mentioned herein; the costs of any deductible paid in connection with any such policy; and the costs of any insurance consultant retained at any time by the Master Association in connection with any insurance policies to be maintained at any time by the Master Association (including,

without limitation, with respect to amounts, type or scope of coverages, deductibles, any increase, decrease or modification to any policy).

1.28.4 **“Cost Center Expenses”** means, as to each Cost Center, the actual and estimated Common Expenses to be paid by the Master Association that are allocable only to the Owners of Lots and/or Residential Units included within that Cost Center.

1.29 **“Common Facilities”** means Lots 1, 2, 9, 10, 11, 13, 20, 21, 25, 28, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 56 and 57 which Lots include the Parking Garage (other than those portions of the Parking Garage located in North Tower Residential Common Area on Lot 19 which consist of Parking Spaces that shall be maintained by the Master Association) and Improvements located thereon, and which, in accordance with the terms of this Declaration are (or, if such Lots are in Phase 2 or Phase 3, upon recordation of a Declaration of Annexation, will be) owned by the Master Association and are made available for the common use, convenience and benefit of all Owners and their respective Permittees. “Common Facilities” includes the Exclusive Use Areas, but the use of the Exclusive Use Areas shall be subject to the applicable provisions of Section 2.13. Subject to the first sentence of this definition, “Common Facilities” includes the Parking Garage and the Loading Dock and shall include certain (to the extent located on the Common Facilities) landscaped and planted areas, retaining walls, irrigation systems and controllers, drains, grease traps, sewers, lighting fixtures, wiring, electrical panels and automatic control systems, entrances, exits, driveways, delivery passages, loading docks, sidewalks, interior pedestrian corridors and walkways, other stairways, elevators, escalators, vehicular and pedestrian ramps, traffic signals, traffic signal controllers, traffic control signs, flagpoles, gating, and central identification signs. Notwithstanding the foregoing, “Common Facilities” excludes (i) all Residential Units, (ii) any Buildings on a Lot otherwise designed and available for the exclusive use of an Owner and/or its Occupants and (iii) all common areas shown on the North Tower Residential Condominium Plan, the South Tower Residential Condominium Plan or the Hotel Residential Condominium Plan unless expressly provided otherwise in such condominium plan(s).

1.30 **“Common Facility Taxes”** means any Taxes that are imposed, levied or assessed upon or with respect to (a) the Master Association (including, without limitation, income taxes), or (b) all or a portion of the Common Facilities, to the extent such Taxes are apportioned to the Common Facilities.

1.31 **“Community Agreements”** means (i) the Loading Dock/Shared Walkway Restrictions, (ii) the Century Woods Agreement, (iii) the Vehicular/Pedestrian Bridge Easement Agreement, and (iv) the Mutual Support and Cooperation Agreement, dated July 11, 2012, between Century City Mall, LLC, a Delaware limited liability company, 1801 Avenue of the Stars Limited Partnership, a Delaware limited partnership, CC Building, LP, a Delaware limited partnership, and Next Century Associates, LLC, a Delaware limited liability company, as predecessor in interest to Declarant.

1.32 **“Condemnation”** means any taking of the Project, or any portion thereof, by exercise of the right of condemnation or eminent domain (direct or inverse), or requisitioning by military or other public authority for any purpose arising out of a temporary emergency or other

temporary circumstances, or a sale or conveyance in lieu of or under threat of condemnation or eminent domain.

1.33 **“Condition to Reconstruction”** has the meaning set forth in Section 12.1.3.

1.34 **“Constant Dollars”** means November, 2018 dollars. The inflation factor used to adjust back to Constant Dollars shall be the Consumer Price Index-All Items, Los Angeles-Riverside-Orange County, All Urban Wage Earners and Clerical Workers, 1982-1984 = 100, as published by the Bureau of Labor Statistics, United States Department of Labor (the “**Index**”) or, if the Index is no longer available, or if the method of compiling such Index is changed, a reasonably comparable replacement or successor Index or other mechanism to adjust Constant Dollars shall be designated by the then chief officer of the Los Angeles Regional Office of the Bureau of Labor Statistics, upon the request of any party, as the index which is most comparable to the Index. Further, if the base of the Index is changed, the new base shall be converted to the 1982- 1984 base in accordance with tables issued by said Bureau.

1.35 **“Construction Loan”** means the loan secured by the *Construction Deed of Trust, Security Agreement, Assignment of Leases and Fixture Filing* recorded in the Official Records on July 6, 2016 as Instrument No. 20160784439, as amended by that certain *First Amendment to Construction Deed of Trust, Security Agreement, Assignment of Leases and Fixture Filing* recorded in the Official Records on July 5, 2018 as Instrument No. 20180667746.

1.36 **“Construction Loan Documents”** means “Loan Documents” as defined in that certain *Amended and Restated Construction Loan and Security Agreement*, dated as of July 2, 2018, by and between Declarant and JPMorgan Chase Bank, National Association, as administrative agent (together with its successors and assigns, **“Administrative Agent”**) thereunder, as the same may be amended or otherwise modified.

1.37 **“Construction Work”** means any construction, reconstruction, demolition, replacement, alteration, erection, installation, remodeling, rebuilding, repair, razing or restoration of any Improvement in accordance with the provisions of this Declaration.

1.38 **“Cost Center”** means and refers to any portion of the Project (which may or may not be a Phase of the Project) which has a facility, Improvement or service that significantly disproportionately or exclusively benefits (and is paid for by) those Owners within such Cost Center.

1.39 **“Cost Center Common Facilities”** means and refers to any portion of the Common Facilities maintained by the Master Association, but to be utilized by Owners of Lots and/or Residential Units within a particular Cost Center (and the maintenance of which shall be funded through Cost Center Assessments collected from such Owner(s)).

1.40 **“Declarant”** means Next Century Partners, LLC, a Delaware limited liability company, and its successors, and any Person to which it shall have assigned or delegated any of its rights or duties hereunder by an express written assignment (it being acknowledged that Declarant has collaterally assigned its rights and duties hereunder to Administrative Agent pursuant to the Construction Loan Documents). Any such assignment may be to all or any

portion of the Project, may include only certain specific rights and/or duties of Declarant, and may be subject to such conditions as Declarant may impose in its sole and absolute discretion.

1.41 **"Declaration of Annexation"** means an instrument executed, acknowledged and recorded by Declarant that imposes covenants, conditions or restrictions or reserves easements for all or a portion of the Annexation Property in addition to the covenants, conditions, restrictions and easements established by this Declaration. A Declaration of Annexation may modify this Declaration as it applies to the real property encumbered by the Declaration of Annexation.

1.42 **"Default"** means any breach of any covenant, provision or condition hereof, or other event that, with the giving of notice or passage of time, or both, would become an Event of Default.

1.43 **"Default Rate"** means the lesser of (a) twelve percent (12%), or (b) the highest rate permitted by law.

1.44 **"Delinquency Notice"** has the meaning set forth in Section 14.7.4.

1.45 **"Development Agreement"** has the meaning set forth in Recital H.

1.46 **"Disputes"** has the meaning set forth in Section 16.21.

1.47 **"DRE"** means the California Department of Real Estate or any successor agency that is responsible for administering the sale of subdivided lands pursuant to Sections 11000, *et seq.* of the California Business and Professions Code.

1.48 **"East Plaza"** has the meaning set forth in Section 8.5.1.

1.49 **"Effective Date"** has the meaning set forth in the Preamble hereto.

1.50 **"Emergency"** means a condition requiring immediate repair, replacement or other action: (a) to prevent material damage to any portion of the Property or the Improvements; (b) to prevent damage to any neighboring property or portion thereof; (c) for the safety of Occupants or any other Person; (d) to avoid the suspension of any necessary service in the Project; or (e) to comply with Environmental Laws.

1.51 **"Emergency Situation"** has the meaning set forth in Section 5.7.3.

1.52 **"Environmental Disclosure Laws"** has the meaning set forth in Section 7.2.2.

1.53 **"Environmental Laws"** means any federal, state or local law, ordinance, rule, regulation, requirement, order, directive, guideline or permit conditions in existence as of the date of this Declaration or as later enacted, promulgated, issued or adopted, regulating or relating to Hazardous Substances, and all applicable judicial, administrative and regulatory decrees, judgments and orders and common law, including, without limitation, those relating to industrial hygiene, safety, property, health or environmental protection or the reporting, licensing,

permitting, use, analysis, generation, manufacture, storage, discharge, release, disposal, transportation, investigation or Remediation of Hazardous Substances.

1.54 **"Event of Default"** means the occurrence of a Default that is not cured within any applicable notice or cure period given therefor.

1.55 **"Exclusive Use Area"** means, individually or collectively, as the context may require, (a) the Hotel Condominium Exclusive Parking Area, (b) the North Tower Exclusive Parking Area, (c) the South Tower Exclusive Parking Area, (d) the Hotel Storage Area and (e) the Hotel Patio Area.

1.56 **"Family"** means one or more natural persons related to each other by blood, marriage or adoption, or one or more natural persons not all so related, but who maintain a common household.

1.57 **"Federal Agencies"** means and refers to, collectively, one or more of the following agencies and the following letter designation of such agencies shall mean and refer to respectively the agency specified within the parentheses following such letter designation: "VA" (United States Department of Veterans Affairs), "FHLMC" (Federal Home Loan Mortgage Corporation), "FNMA" (Federal National Mortgage Association), and "GNMA" (Government National Mortgage Association).

1.58 **"Final Sale Date"** means the later of (i) the date on which Declarant closes escrow on the sale of the last Residential Unit in the Project to a Residential Owner or (ii) the date on which Declarant closes escrow on the sale of the last Lot in the Project.

1.59 **"First Mortgage"** means a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Lot or Residential Unit.

1.60 **"First Mortgagee"** means the holder of a First Mortgage.

1.61 **"First-Class Project"** means an integrated mixed-use, project which may contain, without limitation, residential, hotel, retail, office, health club, dining establishments and other improvements constructed, operated, maintained, restored and replaced in accordance with quality standards comparable to those used in other major, "destination" mixed-use projects in cities or metropolitan areas with populations in excess of three million people.

1.62 **"Governing Documents"** means the Articles, the Bylaws and this Declaration, in each case, as the same may be amended from time to time.

1.63 **"Governmental Authority"** means any federal, state, county, municipal and local governmental and quasi-governmental body or authority, including the United States of America, the State of California, the City of Los Angeles, the County of Los Angeles and any political subdivision, public corporation, district or other political or public entity or departments thereof having or exercising jurisdiction over the Property, or such portions thereof as the context indicates. All references to a Governmental Authority, agency or agencies shall mean and include any successor agency.

1.64 **"Hazardous Substances"** means any chemical, substance, material, object, condition, waste or combination thereof (a) the presence of which requires investigation or remediation under any applicable statute, regulation, ordinance, order, action, policy or common law; (b) that is defined as a "hazardous waste," "hazardous substance," "hazardous material," pollutant, toxic or contaminant under any statute, regulation, rule or ordinance or amendments thereto of any Governmental Authority; (c) that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and is regulated by any Governmental Authority; or (d) the presence of which on the Project causes or threatens to cause a nuisance or injury upon the Project, to adjacent properties or to the environment or poses or threatens to pose a hazard to the health or safety of persons on or about the Project.

1.65 **"Hotel"** has the meaning set forth in Recital B.

1.66 **"Hotel Ballroom Drop-off Area"** has the meaning set forth in Section 2.12.1.

1.67 **"Hotel Building"** has the meaning set forth in Recital B.

1.68 **"Hotel Building Reciprocal Easement Agreement"** means the *Declaration of Reciprocal Easements for the Century Plaza Hotel and Residences* to be executed by Declarant and to be recorded concurrently herewith in the Official Records of Los Angeles County, California. The Hotel Building Reciprocal Easement Agreement sets forth the rights and obligations of the Hotel Owner, the Hotel Residential Association and the Hotel Residential Owners with respect to the use and maintenance of the Hotel Building.

1.69 **"Hotel Condominium Exclusive Parking Area"** means a portion of the Parking Garage, in the initial locations depicted on *Exhibit "B"* attached to this Declaration, containing Assigned Parking Spaces and General Use Parking Spaces which shall be designated as an exclusive parking area for the use of the Hotel Condominium Project in accordance with Section 8.3, subject to modification as provided herein.

1.70 **"Hotel Condominium Project"** has the meaning set forth in Recital B.

1.71 **"Hotel Entrance Area"** has the meaning set forth in Section 2.12.2.

1.72 **"Hotel Operator"** means the entity engaged by Hotel Owner to operate and manage the Hotel Property. The Hotel Operator shall be an Occupant of the Hotel Property.

1.73 **"Hotel Owner"** means the owner of the Hotel Property.

1.74 **"Hotel Patio Area"** has the meaning set forth in Section 2.12.4.

1.75 **"Hotel Property"** means Lots 3, 8, 14, 50 and 53.

1.76 **"Hotel Residential Association"** means the "Association" as defined in the Hotel Residential CC&Rs. If the Hotel Residential Association is terminated or dissolved, then all references in this Declaration to the Hotel Residential Association, and all rights and obligations of the Hotel Residential Association, shall mean and refer to the Hotel Residential Owners, jointly and severally.

1.77 **"Hotel Residential CC&Rs"** means that certain *Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Century Plaza Hotel Residences* dated as of even date herewith, executed by Declarant and recorded concurrently herewith in the Official Records of Los Angeles County, California, and pertaining to Lots 6, 7, 12, 26 and 27.

1.78 **"Hotel Residential Common Area"** means the Hotel Residential Property, excepting the Hotel Residential Units.

1.79 **"Hotel Residential Condominium Plan"** has the meaning set forth in Recital E.

1.80 **"Hotel Residential Owner(s)"** individually or collectively, as the context may require, has the same meaning as "Residential Owner(s)" in the Hotel Residential CC&Rs.

1.81 **"Hotel Residential Property"** means all of Lots 6, 7, 12, 26 and 27.

1.82 **"Hotel Residential Units"** means the sixty-three (63) Residential Units located on Lots 6, 7 and 12.

1.83 **"Hotel Storage Area"** has the meaning set forth in Section 2.12.3.

1.84 **"Impacted Owner"** has the meaning set forth in Section 16.21.1(c).

1.85 **"Impacting Owner"** has the meaning set forth in Section 16.21.1(c).

1.86 **"Improvement Plans"** has the meaning set forth in Section 6.11.

1.87 **"Improvements"** means all Buildings, structures, outbuildings, parking or loading areas, driveways or walkways, display or storage areas, arcades, stairs, decks, Utility Facilities, fences, walls, screening walls, retaining walls, barriers, poles, signs, canopies, supports, loading docks, truck ramps and other outward extensions of a Building, and all other structures, installations, systems and landscaping of any kind (whether above or below the ground) within the boundaries of the Project, including the Residential Units, the Common Facilities, the Parking Garage and any replacements, additions, repairs or alterations thereto of any kind whatsoever.

1.88 **"Indemnify"** means, with respect to any provision of this Declaration that requires one Person to Indemnify any other Person, that the Person upon whom the indemnification obligation is imposed (the **"Indemnifying Person"**) shall be obligated to defend, protect, indemnify and hold such other Person and such other Person's partners, members, officers, directors, shareholders, employees, project managers, agents and representatives (collectively, the **"Indemnified Persons"**) harmless from and against any and all Loss arising directly or indirectly, in whole or in part, out of the act, omission, event, occurrence or condition with respect to which the Indemnifying Person is required to Indemnify such Indemnified Persons, whether such act, omission, event, occurrence or condition is caused by the Indemnifying Person or its partners, members, officers, directors, shareholders, employees, agents, representatives or contractors, and whether such act, omission, event, occurrence or condition is caused by any natural cause, foreseen or unforeseen; *provided, however*, that no

Indemnified Person shall be Indemnified against any Loss to the extent such Loss arises from the gross negligence or willful misconduct of such Indemnified Person (or of such Indemnified Person's partners, members, officers, directors, shareholders, employees, agents, representatives or contractors). Any Indemnified Person may demand that the Indemnifying Person defend, on behalf of the Indemnified Person, any claim, lawsuit or other proceeding lodged or filed against the Indemnified Person by a third party relating to an Indemnified Loss, or may elect instead to conduct its own defense using counsel approved by the Indemnifying Person (which approval shall not be unreasonably withheld or delayed), but in either such case the indemnification provisions hereof shall be fully applicable, and the Indemnifying Person shall be responsible for paying all costs of the Indemnified Person's defense, including attorneys' fees and court costs.

1.89 **"Initial Budgets"** means, collectively, (i) that certain "*Master HOA – Phase 1 Budget*" for the Project dated June 4, 2018 which shall serve as the initial "Master Association Budget" (as defined in Section 5.3) prior to the annexation of Phase 2, (ii) that certain "*Master HOA – Phase 2 Budget*" for the Project dated June 4, 2018 which shall serve as the Master Association Budget after the annexation of Phase 2 and prior to the annexation of Phase 3, (iii) that certain "*Master HOA – Phase 3 Budget*" for the Project dated June 4, 2018 which shall serve as the Master Association Budget after the annexation of Phase 3, (iv) that certain "*Garage Cost Center - Phase 1 Budget*" dated October 9, 2018 which shall serve as the initial "Garage Cost Center Budget" (as defined in Section 5.3) prior to the annexation of Phase 2, (v) that certain "*Garage Cost Center - Phase 2 Budget*" dated October 9, 2018 which shall serve as the Garage Cost Center Budget after the annexation of Phase 2 and prior to the annexation of Phase 3, and (vi) that certain "*Garage Cost Center - Phase 3 Budget*" dated October 9, 2018 which shall serve as the Garage Cost Center Budget after the annexation of Phase 3, each of which has been reviewed by the DRE.

1.90 **"Institutional Mortgagee"** means a First Mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, any pension fund or trust, group trust, real estate investment trust or savings fund society, any federal or state agency, or any other institution regulated by federal or state law. Without limiting the foregoing, any successors and assigns of JPMorgan Chase Bank, National Association, as lender under the Construction Loan, shall be Institutional Mortgagees hereunder.

1.91 **"Involuntary Transfer"** means the conveyance or foreclosure of fee or leasehold title to a Lot (or portion thereof, including without limitation a Residential Unit) from an Owner (the "**Involuntary Transferor**") to a Mortgagee or ground lessor, as the case may be (the "**Involuntary Transferee**"), resulting from any of the following: (a) the judicial or non-judicial foreclosure of a Mortgage, (b) the grant of a deed in lieu of such foreclosure, or (c) the termination or surrender of a ground lease with respect to a Lot or portion thereof; *provided, however*, that in the event of such an Involuntary Transfer, the Involuntary Transferor shall be conclusively deemed to have assigned all of its rights, powers, title and interest in its Lot or Residential Unit and this Declaration to the Involuntary Transferee, who shall be conclusively deemed to have assumed all of the Involuntary Transferor's covenants and obligations thereunder accruing from and after the date of such Involuntary Transfer.

1.92 **"Landscaping Guidelines"** has the meaning set forth in Section 7.8.

1.93 **"Legal Requirements"** means all applicable (a) laws, ordinances, orders, judgments, rules, regulations, mandatory guidelines and other requirements of Governmental Authorities; (b) requirements of public and private utilities providing service to the Project, or any portion thereof, to the extent that the same shall impose any duty upon or grant any right or power to any Owner or Occupant with respect to its Lot(s) or Residential Unit(s) or the use or occupancy thereof, including with respect to each of the foregoing laws or regulations that require alterations or improvements to the Improvements on any Lot or to any Residential Unit, whether foreseen or unforeseen, ordinary or extraordinary; and (c) any conditions set forth in the Project Approvals.

1.94 **"Loading Dock"** means the loading dock located on Lots 11 and 28 and depicted on *Exhibit "A"* hereto.

1.95 **"Loading Dock Committee"** has the meaning set forth in Section 8.4.2.

1.96 **"Loading Dock/Shared Walkway Restrictions"** has the meaning set forth in Section 8.4.1.

1.97 **"Loss"** means all costs and expenses arising out of any claim, demand, loss, damage, lien, liability, injury, death, penalty, relocation or disruption of use, fine, lawsuit and other proceeding, judgment or award rendered therein, including attorneys' fees and court costs, and all other costs and expenses.

1.98 **"Lot"** means any one of Lot 1 through Lot 57, or any portion thereof, as shown on the Map. The term **"Lot"** also includes any real property that, after the Effective Date, becomes part of or forms a legal lot or parcels in connection with an addition of property or a reconfiguration or split of any existing Lot pursuant to Section 7.10.

1.99 **"Major Construction Work"** shall mean any Construction Work that would (a) involve the relocation or construction of Utility Facilities by an Owner on such Owner's Lot(s) or Residential Unit(s), to the extent that such Utility Facilities serve any portion of the Project outside of the Building located on such Owner's Lot(s) or outside of the Building in which such Owner's Residential Unit(s) are located, (b) materially increase the load imposed on the Common Facilities, including the Parking Garage, beyond that contemplated by the final construction documents or the specifications or, if less, beyond that imposed by the Improvements as actually constructed, (c) alter or demolish in any material way the building shell (including foundation, curtain wall, floor, roof or other structural elements) of any Improvement, (d) alter or demolish in any way any ingress or egress ways, to, from or through any of the Buildings or Improvements (except for minor and non-structural alterations through interior portions of a Building, for example, in connection with tenant improvements, in accordance with all applicable Legal Requirements), or (e) alter any portion of any common element of the Project or the exterior of the Building located on such Owner's Lot(s) or containing such Owner's Residential Unit(s) (or any portion of the interior of such Building to the extent visible from the exterior of such Building). Notwithstanding the foregoing, **"Major Construction Work"** shall not include the initial construction of Improvements on the Project by Declarant whether or not completed on or prior to the Effective Date.

1.100 “**Major Tenant**” means any tenant of a Building located on the Project who leases (whether pursuant to a direct lease or a sublease) or occupies ten percent (10%) or more of such Building.

1.101 “**Management Contract**” has the meaning set forth in Section 4.10.

1.102 “**Map**” has the meaning set forth in Recital A hereto.

1.103 “**Master Association**” means Century Plaza Master Association, a California nonprofit mutual benefit corporation.

1.104 “**Master Association Personnel**” has the meaning set forth in Section 4.3.4.

1.105 “**Member**” means any Person holding membership in the Master Association as set forth in Section 3.2.

1.106 “**Mortgage**” means any recorded mortgage or deed of trust or other conveyance of one or more Lots or Residential Units or other portion of the Property to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance.

1.107 “**Mortgagee**” means a Person to whom a Mortgage is made and shall include the beneficiary of a deed of trust.

1.108 “**North Tower**” has the meaning set forth in Recital B.

1.109 “**North Tower Association**” means the “Association” as defined in the North Tower CC&Rs. If the North Tower Association is terminated or dissolved, then all references in this Declaration to the North Tower Association, and all rights and obligations of the North Tower Association, shall mean and refer to the North Tower Residential Owners, jointly and severally.

1.110 “**North Tower CC&Rs**” means that certain *Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Century Plaza Residences - North Tower* to be executed by Declarant and to be recorded concurrently with the annexation of Phase 2 in the Official Records of Los Angeles County, California, and pertaining to Lots 19, 23, 24 and 52.

1.111 “**North Tower Exclusive Parking Area**” means a portion of the Parking Garage, in the initial locations depicted on *Exhibit “C”* attached to this Declaration, containing Assigned Parking Spaces and General Use Parking Spaces which shall be designated as an exclusive parking area for the use of the North Tower Project in accordance with Section 8.3, subject to modification as provided herein. Declarant shall have the right to designate and depict Assigned Parking Spaces within the North Tower Exclusive Parking Area as “Deeded Parking Spaces” (as defined in the North Tower CC&Rs) on the North Tower Residential Condominium Plan.

1.112 “**North Tower Project**” has the meaning set forth in Recital B.

1.113 **"North Tower Property"** means all of Lots 19, 23, 24 and 52.

1.114 **"North Tower Residential Common Area"** means all of the North Tower Property excepting the North Tower Residential Units.

1.115 **"North Tower Residential Condominium Plan"** has the meaning set forth in Recital F.

1.116 **"North Tower Residential Owner(s)"** individually or collectively, as the context may require, has the same meaning as "Owner(s)" in the North Tower CC&Rs.

1.117 **"North Tower Residential Units"** means the one hundred forty-three (143) Residential Units located on Lot 19.

1.118 **"Notice and Hearing"** shall mean written notice and a hearing before the Board, at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at the Owner's expense, in the manner further provided in the Bylaws, and in accordance with Section 7341 of the California Corporations Code.

1.119 **"Notice of Lien"** has the meaning set forth in Section 5.13.

1.120 **"Occupant"** means any Person from time to time entitled to use and occupy all or any portion of a Building or Residential Unit pursuant to a lease (including any sublease or other occupancy arrangement), an operating agreement or a management agreement.

1.121 **"Off-Site Parking Agreements"** means (a) the *Covenant and Agreement Regarding Parking*, dated August 5, 1988, executed by AP Properties, Ltd., an Illinois limited partnership, as predecessor in interest to Century City Garage Partners, L.P., a Delaware Limited Partnership ("Garage Owner") and Century Plaza Hotel Limited Partnership, an Illinois limited partnership, as predecessor in interest to Next Century Associates, LLC and recorded on August 5, 1988, in the Official Records of Los Angeles County, California as Instrument No. 88-1238397, as amended by that certain *Amendment to Covenant and Agreement Regarding Parking*, dated July 1, 1999, executed by Garage Owner and Pivotal Century Plaza Hotel, L.L.C., a Delaware limited liability company, and recorded on January 6, 2000, in the Official Records of Los Angeles County, California as Instrument No. 00-0018009 and as further amended by that certain *Second Amendment to Covenant and Agreement Regarding Parking*, dated April 15, 2016, executed by Garage Owner and Next Century Associates, LLC, a Delaware limited liability company, as predecessor in interest to Declarant and recorded on April 18, 2016, in the Official Records of Los Angeles County, California as Instrument No. 2016-0432882, as the same may be further amended from time to time and (b) that certain *Covenant and Agreement Regarding Parking Spaces*, dated June 28, 2016, executed by Garage Owner and Declarant, as the same may be amended from time to time.

1.122 **"Off-Site Parking Spaces"** means the parking spaces that are available for the benefit of the Project pursuant to the Off-Site Parking Agreements.

1.123 **"Operating Fund"** has the meaning set forth in Section 5.4.

1.124 **"Operator"** means, (a) as of the Effective Date, Declarant and (b) upon the creation of the Master Association pursuant to Section 3.1, either the Master Association or another Person or Persons contracted by the Master Association to perform the responsibilities of the Operator hereunder, and their respective successors and assigns with respect thereto.

1.125 **"Owner"** means each Person who (a) owns fee simple title to any Lot or any portion thereof which is not ground leased to another Owner hereunder, or any Residential Unit, or any portion thereof, or (b) owns a ground leasehold interest in any Lot which is not further sub-ground leased, but shall not include any Person having an interest in a Lot, the Improvements thereon or any portion thereof merely as security for the performance of an obligation (including a Mortgagee except to the extent such Mortgagee has acquired the fee interest to any Lot or any portion thereof pursuant to a foreclosure under the applicable Mortgage). The fee owner of any Lot that is ground leased to an Owner shall not be considered an Owner for the purposes of performing the obligations of the Owner with respect to such Lots during the term of such ground lease, but the ground lessee under such ground lease shall be considered the Owner of such Lot and shall be responsible for all of the obligations of the Owner of such Lot hereunder; *provided, however*, that upon the expiration of such ground lease or earlier termination pursuant thereto, such fee owner shall again be considered an Owner hereunder with respect to such Lot and shall be responsible to perform the obligations of an Owner pursuant to this Declaration with respect thereto. For purposes of the foregoing, the term **"ground lease"** shall also include sub-ground leases, sub-subground leases and other agreements by which a party obtains a leasehold interest in possession of a Lot and assumes responsibility for performance of all of its respective obligations as a lessor under this Declaration with respect to such Lot. From time to time, herein, the term **"Owner"** may be deemed to apply to a Residential Association acting on behalf of the Owners of Residential Units.

1.126 **"Owner Taxes"** means all Taxes that are imposed, levied or assessed upon or with respect to (a) any individual Owner or its Occupants, or (b) all or a portion of any individual Lot or Improvements, to the extent such Taxes are apportioned to the land or to the Improvements located in, on or under such Lot.

1.127 **"Parking Garage"** means the parking garage located on Lots 9, 13, 21, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 56 and 57, as well as portions of Lot 19 which consist of Parking Spaces that shall be maintained by the Master Association, including accessible parking and loading spaces, incidental and interior walkways, stairways, elevators, tunnels, curbs, ramps and drive aisles therein. The **"Parking Garage"** includes certain Exclusive Use Areas, but the use of such Exclusive Use Areas shall be subject to the applicable provisions of Section 2.13.

1.128 **"Parking Garage Rules and Regulations"** means the rules and regulations adopted by the Board from time to time governing the use and enjoyment by the Owners and their respective Occupants and Permittees of the Parking Garage, as the same may be amended or supplemented from time to time by the Board. The Owners hereby acknowledge and agree that the Parking Garage Rules and Regulations may limit or restrict access to the Parking Garage.

1.129 **"Parking Spaces"** shall mean the parking spaces which are located in the Parking Garage. A limited number of Parking Spaces shall be deemed to be **"Assigned Parking Spaces"**

which may be assigned by Declarant to a Residential Unit and/or deeded by Declarant to the Owner of a Residential Unit. Assigned Parking Spaces shall be reserved for the use of the Owner of such Residential Unit. Declarant shall have the right to collect additional consideration for each Assigned Parking Space which has been deeded by Declarant to an Owner of a Residential Unit. The Parking Spaces that are not Assigned Parking Spaces shall be referred to as the **"General Use Parking Spaces."** Use of the Parking Spaces shall be subject to the restrictions and requirements set forth in Section 8.3.

1.130 **"Percentage Share (Insurance Expenses)"** means the share of Insurance Expenses to be levied against each Residential Project, the Hotel Property and the Retail Areas to pay for Insurance Expenses, which shall be levied against the Residential Projects, the Hotel Property and the Retail Areas in the following percentages (each percentage shown for a Residential Project is equal to the percentage of Insurance Expenses levied against all Residential Units in such Residential Project collectively):

Percentage Share (Insurance Expenses) prior to annexation of Phase 2:

Hotel Condominium Project:	17.47%
Hotel Property:	65.66%
Retail Areas:	16.87%

Percentage Share (Insurance Expenses) following annexation of Phase 2 and prior to annexation of Phase 3:

North Tower Project:	39.64%
Hotel Condominium Project:	10.55%
Hotel Property:	39.64%
Retail Areas:	10.17%

Percentage Share (Insurance Expenses) following annexation of Phase 3:

South Tower Project:	27.44%
North Tower Project:	28.76%
Hotel Condominium Project:	7.65%
Hotel Property:	28.76%
Retail Areas:	7.39%

1.131 **"Percentage Share (Variable Garage Expenses)"** means the share of Variable Garage Expenses to be levied against each Residential Project, the Hotel Property and the Retail Areas to pay for Variable Garage Expenses, which shall be levied against the Residential Projects, the Hotel Property and the Retail Areas in the following percentages (each percentage shown for a Residential Project is equal to the percentage of Variable Garage Expenses levied against all Residential Units in such Residential Project collectively):

Percentage Share (Variable Garage Expenses) prior to annexation of Phase 2:

Hotel Condominium Project:	8.80%
Hotel Property:	72.94%
Retail Areas:	18.26%

Percentage Share (Variable Garage Expenses) following annexation of Phase 2 and prior to annexation of Phase 3:

North Tower Project:	32.60%
Hotel Condominium Project:	5.90%
Hotel Property:	49.20%
Retail Areas:	12.30%

Percentage Share (Variable Garage Expenses) following annexation of Phase 3:

South Tower Project:	21.10%
North Tower Project:	25.70%
Hotel Condominium Project:	4.70%
Hotel Property:	38.80%
Retail Areas:	9.70%

1.132 **"Percentage Share (Variable General Common Expenses)"** means the share of Variable General Common Expenses to be levied against each Residential Project, the Hotel Property and the Retail Areas to pay for Variable General Common Expenses, which shall be levied against the Residential Projects, the Hotel Property and the Retail Areas in the following percentages (each percentage shown for a Residential Project is equal to the percentage of Variable General Common Expenses levied against all Residential Units in such Residential Project collectively):

Percentage Share (Variable General Common Expenses) prior to annexation of Phase 2:

Hotel Condominium Project:	2.70%
Hotel Property:	54.80%
Retail Areas:	42.50%

Percentage Share (Variable General Common Expenses) following annexation of Phase 2 and prior to annexation of Phase 3:

North Tower Project:	6.90%
Hotel Condominium Project:	2.60%
Hotel Property:	51.00%
Retail Areas:	39.50%

Percentage Share (Variable General Common Expenses) following annexation of Phase 3:

South Tower Project:	6.00%
North Tower Project:	6.51%
Hotel Condominium Project:	2.41%
Hotel Property:	47.94%
Retail Areas:	37.14%

1.133 **"Percentage Shares (Proceeds)"** means the share of any Proceeds to be allocated to the Hotel Owner, the Retail Owner and each Residential Association (on behalf of the Residential Owners who are members of such Residential Association) in the event of a Condemnation of the entire Project or a Casualty following which the Project is not restored as provided in Article XII of this Declaration:

Percentage Shares (Proceeds) prior to annexation of Phase 2:

Hotel Condominium Project: 17.47%
Hotel Owner: 65.66%
Retail Owner: 16.87%

Percentage Shares (Proceeds) following annexation of Phase 2 and prior to annexation of Phase 3:

North Tower Project: 39.64%
Hotel Condominium Project: 10.55%
Hotel Owner: 39.64%
Retail Owner: 10.17%

Percentage Shares (Proceeds) following annexation of Phase 3:

South Tower Project: 27.44%
North Tower Project: 28.76%
Hotel Condominium Project: 7.65%
Hotel Owner: 28.76%
Retail Owner: 7.39%

1.134 “**Permittees**” means, as to each Owner and its respective Occupants, the Family, officers, directors, employees, project managers, agents, patrons, guests, customers, invitees, contractors, visitors, licensees, vendors, suppliers, tenants and concessionaires of such Person.

1.135 “**Person**” means an individual, partnership, firm, association, corporation, limited liability company, trust and any other form of governmental or business entity.

1.136 “**Phase**” means an increment of the Project that is subject to this Declaration, including Phase 1, Phase 2 and/or Phase 3, and/or any subsequent Phase or Phases added to the Project by annexation.

1.137 “**Phase 1**” means Lots 1-8, 10-12, 14, 16, 17, 20, 26-29, 34, 36, 39, 40, 44, 48-50 and 53-55.

1.138 “**Phase 2**” means Lots 9, 13, 19, 23, 24, 25, 31, 32, 33, 35, 37, 38, 41, 42, 43, 45, 46, 47, 52 and 56.

1.139 “**Phase 3**” means Lots 15, 18, 21, 22, 30, 51 and 57.

1.140 “**Plaza Areas**” has the meaning set forth in Section 8.5.1.

1.141 “**Proceeds**” means, with respect to Casualty, the net amount of insurance proceeds received by the Master Association on account of a Casualty, or, with respect to a Condemnation, the net amount of any compensation or award received on account of a Condemnation, in either case net of the reasonable costs and expenses incurred by the Master Association in collecting said amounts (including attorneys’ fees).

1.142 “**Proceeds Deficiency**” has the meaning set forth in Section 12.7.1.

1.143 **"Prohibited Vehicles"** has the meaning set forth in Section 8.3.4(b).

1.144 **"Project"** means, collectively, the Property and all of the Improvements from time to time constructed thereon.

1.145 **"Project Approvals"** means the "Project Approvals" defined in the Development Agreement, including any amendments or modifications thereto.

1.146 **"Project Rules and Regulations"** means the rules and regulations adopted by the Board from time to time governing the use and enjoyment by the Owners, Occupants and their respective Permittees of the Common Facilities (except as to the Parking Garage, to the extent that the Parking Garage shall be subject to the Parking Garage Rules and Regulations), as the same may be amended or supplemented from time to time by the Board. The Owners hereby acknowledge and agree that the Project Rules and Regulations may limit or restrict access to certain of the Common Facilities.

1.147 **"Property"** means all of the Lots, all of the Residential Units and all real property, and easements from time to time subject to and created by this Declaration, including any additional real property or easement which becomes subject to this Declaration pursuant to Section 16.10, together with all Improvements thereon and excluding any real property released from the effect of this Declaration in accordance with Section 16.10.

1.148 **"Public Report"** means a final subdivision public report issued by the DRE pursuant to Section 11018.2 of the California Business and Professions Code or any similar statute hereafter enacted.

1.149 **"Released Party"** has the meaning set forth in Section 4.8.1.

1.150 **"Remediation"** means any of those actions with respect to Hazardous Substances constituting a response or remedial action as defined under Section 101(25) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("**CERCLA**") (42 U.S.C. §9601 *et seq.*), and similar actions with respect to Hazardous Substances as defined under comparable state and local laws or other investigation, analysis, cleanup, removal, containment, abatement, recycling, transfer, monitoring, storage, treatment, disposal, closure, restoration or other mitigation or remediation of Hazardous Substances required pursuant to this Declaration including, but not limited to, any such actions required or requested by the California Environmental Protection Agency and all of its sub-entities including the Regional Water Quality Control Board, the State Water Resources Control Board, the Department of Toxic Substances Control and the California Air Resources Board; the City, the County of Los Angeles; the United States Environmental Protection Agency; and/or any other federal, state or local governmental agency or Governmental Authority or entity that has jurisdiction in connection with the use, storage, transfer, disposal, treatment or presence of Hazardous Substances in, on, under, about or affecting the Project.

1.151 **"Reserve Fund"** has the meaning set forth in Section 5.4.

1.152 **"Residential Association"** means each of the North Tower Association, the South Tower Association and the Hotel Residential Association.

1.153 “**Residential CC&Rs**” means, collectively, the North Tower CC&Rs, the South Tower CC&Rs and the Hotel Residential CC&Rs.

1.154 “**Residential Common Area**” means, collectively, the Hotel Residential Common Area, the North Tower Residential Common Area and the South Tower Residential Common Area.

1.155 “**Residential Lots**” means Lots 6, 7, 12, 15, 18, 19, 22, 23, 24, 26, 27, 51 and 52.

1.156 “**Residential Owner(s)**” individually or collectively, as the context may require, means the Hotel Residential Owners, the North Tower Residential Owners and the South Tower Residential Owners.

1.157 “**Residential Project(s)**” individually or collectively, as the context may require, means the Hotel Condominium Project, the North Tower Project and/or the South Tower Project.

1.158 “**Residential Unit(s)**” individually or collectively, as the context may require, has the same meanings as “Unit(s)” in each of the Residential CC&Rs.

1.159 “**Restrictions**” means this Declaration, the Articles, the Bylaws, the Project Approvals, the Landscaping Guidelines from time to time in effect, any Architectural Guidelines from time to time in effect, the Project Rules and Regulations from time to time in effect and the Parking Garage Rules and Regulations from time to time in effect.

1.160 “**Retail Areas**” means Lots 4, 5, 16, 17, 29, 30, 31, 32, 33, 34, 40, 54 and 55.

1.161 “**Retail Outdoor Seating Areas**” has the meaning set forth in Section 8.5.3 hereto.

1.162 “**Retail Owner**” means the owner of the Retail Areas. In the event an association is formed to govern the Retail Areas, the “Retail Owner” shall mean such association.

1.163 “**Review Amount**” has the meaning set forth in Section 6.12.4 hereto.

1.164 “**Security Costs**” means the following costs incurred by or on behalf of the Master Association in the performance of its obligations under Article VIII: (a) the acquisition, installation, maintenance, repair and replacement of security equipment, including, without limitation, motor vehicles, cameras, alarms systems, monitors, speakers, radios and other communication devices; (b) utility services necessary for the operation of security equipment; and (c) the costs of employing security personnel, including, without limitation, wages, salary, benefits, vacation, overtime, payroll taxes and training for patrol officers and supervisory personnel as the Board determines in its discretion, to be sufficient to provide security consistent with other First-Class Projects.

1.165 “**Shared Walkway**” means the “Relocated Pedestrian Walkway” described in the Loading Dock/Shared Walkway Restrictions. A portion of the Shared Walkway is located on Lots 2 and 28 and the remainder of the Shared Walkway is located on the property of an adjacent condominium project known as The Century.

1.166 **"South Tower"** has the meaning set forth in Recital B.

1.167 **"South Tower Association"** means the "Association" as defined in the South Tower CC&Rs. If the South Tower Association is terminated or dissolved, then all references in this Declaration to the South Tower Association, and all rights and obligations of the South Tower Association, shall mean and refer to the South Tower Residential Owners, jointly and severally.

1.168 **"South Tower CC&Rs"** means that certain *Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Century Plaza Residences - South Tower* to be executed by Declarant and to be recorded concurrently with the annexation of Phase 3 in the Official Records of Los Angeles County, California, and pertaining to Lots 15, 18, 22 and 51.

1.169 **"South Tower Exclusive Parking Area"** means a portion of the Parking Garage, in the initial locations depicted on *Exhibit "D"* attached to this Declaration, containing Assigned Parking Spaces and General Use Parking Spaces which shall be designated as an exclusive parking area for the use of the South Tower Project in accordance with Section 8.3, subject to modification as provided herein. Declarant shall have the right to designate and depict Assigned Parking Spaces within the South Tower Exclusive Parking Area as "Deeded Parking Spaces" (as defined in the South Tower CC&Rs) on the South Tower Residential Condominium Plan.

1.170 **"South Tower Project"** has the meaning set forth in Recital B.

1.171 **"South Tower Property"** means all of Lots 15, 18, 22 and 51.

1.172 **"South Tower Residential Common Area"** means all of the South Tower Property excepting the South Tower Residential Units.

1.173 **"South Tower Residential Condominium Plan"** has the meaning set forth in Recital G.

1.174 **"South Tower Residential Owner(s)"** individually or collectively, as the context may require, has the same meaning as "Owner(s)" in the South Tower CC&Rs.

1.175 **"South Tower Residential Units"** means the one hundred twenty-five (125) Residential Units located on Lot 18.

1.176 **"Submitting Person"** has the meaning set forth in Section 6.11.

1.177 **"Taxes"** means, except as expressly limited below, all taxes, assessments, fees, impositions and charges imposed, levied or assessed upon or with respect to: (a) any Improvements or any part of such Improvements or any personal property used in connection therewith; (b) the ownership, leasing, operation, management, maintenance, repair or occupancy of all or any portion of any Lot or Improvement or any personal property located thereon or therein; or (c) any Lot or portion thereof or any Improvements or personal property located on or within any Lot. Taxes shall include, whether now existing or hereafter enacted or imposed, all general real and personal property taxes and general and special assessments (including special

assessments for off-site improvements and improvement district assessments), all increased real estate taxes resulting from a change of ownership or new construction in the Project (including construction of the initial improvements located on the Project), or portion thereof, all charges, fees and assessments for or with respect to transit, housing, job training, police, fire or other governmental or quasi-governmental services or purported benefits to or burdens attributable to the Project or any Lot or any of the property described in the preceding sentence, all service payments in lieu of taxes, possessory interest taxes, and any tax, fee or excise on the act of entering into any lease or ground lease or on the use or occupancy of the Project, or any part thereof, or on the rent payable under any lease or ground lease or in connection with the business of renting space in the Project that are now or hereafter levied or assessed against the Project, any Owner or Occupant or any Improvements, by any Governmental Authority and shall also include any other tax, fee or other excise, however described, that may now or hereafter be levied or assessed as a substitute for, or as an addition to, as a whole or in part, any other Taxes, whether or not now customary or in the contemplation of the Owners as of the date of this Declaration, whether ordinary or extraordinary, foreseen or unforeseen. Other than any income taxes imposed upon the Master Association, Taxes shall not include any franchise, transfer, inheritance or capital stock taxes or any income taxes measured by the net income of any Owner or Occupant from all sources, unless, due to a change in the method of taxation, any such taxes are levied or assessed against any Owner or Occupant as a substitute for, directly or indirectly, as a whole or in part, any other tax or imposition that would otherwise constitute a Tax.

1.178 **“Transfer”** means any voluntary transaction in which a Person (the **“Transferor”**) shall sell, ground lease, transfer or assign (other than for security purposes) all or substantially all of its interest in its Lot or Residential Unit to a Person or Persons (the **“Transferee”**). Each Transferee shall be bound by the terms of this Declaration, and deemed to have assumed the obligations of the assignor under this Declaration with respect to the period from and after such assignment, whether or not such Transferee assumes in writing the provisions hereof. The execution and delivery of any space lease within any Building or any management or operating agreement or lease with any Person acting as the Operator or the Operator shall not be deemed a Transfer.

1.179 **“Turnover Date”** has the meaning set forth in Section 3.2.2(a).

1.180 **“Unavoidable Delays”** means delays beyond the reasonable control of the Person claiming the same and shall include the following: (a) delay attributable to acts of God, strikes or labor disputes; (b) delay attributable to governmental laws or restrictions, delay in permit processing or litigation relating to (i) entitlements, (ii) delays in compliance with or challenges to the Project pursuant to the California Environmental Quality Act, California Public Resources Code §§ 21000 *et seq.* and the CEQA Guidelines interpreting such Act, codified at 14 C.C.R. §§ 15000 *et seq.* or the National Environmental Protection Act, or (iii) delays in the development or use of the Project for the purposes described herein; (c) delay attributable to inclement weather or earthquake resulting in suspension of site work for safety purposes, *e.g.*, unusually heavy rainfall; (d) delay attributable to inability to procure or general shortage of labor, equipment, materials or supplies in the open market, or failure of transportation (but not attributable to a mere increase in price); (e) delay caused by acts of a public enemy, insurrections, riots, mob violence, sabotage, terrorism or malicious mischief, casualty or earthquake causing substantial damage to previously constructed improvements; (f) delay in performance of any term, covenant,

condition or obligation under this Declaration for reasons beyond the reasonable control of the Person obligated to perform such term, covenant, condition or obligation, including default or delays of third parties and of any Owner whether in rendering approvals or otherwise; and (g) delay caused by pending mediation, arbitration or litigation. For the purpose hereof, a cause shall be beyond the reasonable control of the Person whose performance would otherwise be obligated only if such cause would prevent or hinder the performance of an obligation by any reasonable Person similarly situated and shall not apply to causes peculiar to the Person claiming the benefit of an Unavoidable Delay (such as the failure to order materials in a timely fashion).

1.181 **"Unit Percentage Share"** means, (i) with respect to each Hotel Residential Unit, the percentage set forth on *Exhibit "L"* (ii) with respect to each North Tower Residential Unit, the percentage set forth on *Exhibit "M"* and (iii) with respect to each South Tower Residential Unit, the percentage set forth on *Exhibit "N."* A Residential Unit's Unit Percentage Share is computed by dividing the Square Footage (as defined in the applicable Residential CC&Rs) of such Residential Unit as set forth in the Initial Budgets by the total Square Footage of all of the Residential Units in the applicable Residential Project as set forth in the Initial Budgets. Except as otherwise set forth herein or in the applicable Residential CC&Rs, the Unit Percentage Shares shall not be modified from the Unit Percentage Shares set forth on *Exhibits "L," "M" and "N."*

1.182 **"Utility Facilities"** means any utility or service line or system now existing or hereafter located in the Project, serving the Project or portion thereof, including chilled water lines; grease traps; sewers; ejector pumps; domestic and fire water pipes and systems; Department of Water and Power vaults; fire pumps and fire protection systems; intake and exhaust vents; gas pipes and systems; sprinkler pipes and systems; drainage lines and systems; switching gear; electrical power conduits, lines and wires; cable television lines; microwave communication systems; cellular communication systems; telephone conduits, lines and wires; security lines and systems; any utilities required for teleconferencing facilities; and other service or utility lines necessary or convenient to operate the Project as a First-Class Project.

1.183 **"Vehicular/Pedestrian Bridge Easement Agreement"** means that certain agreement between Next Century Associates, LLC, a Delaware limited liability company, as predecessor in interest to Declarant, and Century City Garage Partners, L.P., a Delaware limited partnership recorded on August 25, 2015 in the Official Records of Los Angeles County, California as Instrument No. 2015-1043763 (the **"Original Bridge Agreement"**), as amended by that certain letter agreement re: the Original Bridge Agreement dated May 19, 2017, as referred to in that certain Memorandum of Amendment to Vehicular/Pedestrian Bridge Easement Agreement recorded on June 8, 2017 as in the Official Records of Los Angeles County, California as Instrument No. 2017-0631090.

1.184 **"West Pavilion"** has the meaning set forth in Recital B.

1.185 **"West Pavilion Reciprocal Easement Agreement"** means the *Declaration of Reciprocal Easements and Mutual Covenants for the Century Plaza West Pavilion and Plaza Retail Areas* to be executed by Declarant and to be recorded concurrently with the annexation of Phase 2 in the Official Records of Los Angeles County, California. The West Pavilion Reciprocal Easement Agreement set forth the rights and obligations of the Retail Owner, the North Tower Association and the South Tower Association with respect to the use and

maintenance of the West Pavilion, certain building facade shared by Lots 30 and 22 and certain building facade shared by Lots 32 and 24.

1.186 **"West Plaza"** has the meaning set forth in Section 8.5.1.

ARTICLE II.

EASEMENTS AND EXCLUSIVE USE AREAS

2.1 **Easements For Ingress, Egress and Access.** Subject to the provisions of this Declaration, Declarant hereby establishes, for the benefit of each Lot the following non-exclusive, perpetual, mutually reciprocal, elevated, surface and subsurface easements upon, across, in, over and under the Common Facilities and the Exclusive Use Areas: (a) easements for pedestrian ingress, egress, access, passage and accommodation in, on, around, over, under, through and between the sidewalks, plaza areas, bridges, walkways, stairways, elevators and all such other portions of the Common Facilities; (b) easements for vehicular ingress, egress, access, passage and accommodation in, on, around, over, under and through any private streets or driveways and all such other portions of the Common Facilities; and (c) easements for uses incidental to pedestrian and vehicular ingress and egress in, on, around, over, under, through and between the aforesaid portions of the Common Facilities and Exclusive Use Areas. Each Owner may allow its respective Occupants and Permittees to use the foregoing easements for the purposes they are provided and subject to the limitations set forth in this Declaration. The easement granted herein shall not limit the right of the Board to restrict the use of, or vehicular and pedestrian access to, the Common Facilities and the Exclusive Use Areas as provided in Article VII and Article VIII hereof. Use of the Common Facilities and the Exclusive Use Areas described in this Section 2.1 shall be subject to the Project Rules and Regulations and the Parking Garage Rules and Regulations.

2.2 **Utility Facility Easements.** Subject to the provisions of this Declaration, including, without limitation, the Master Association's rights and obligations under Article III hereof, Declarant hereby establishes for the benefit of each Lot, a non-exclusive, perpetual, mutually reciprocal, elevated, surface and subsurface easement upon, across, in, over and under each Lot for ingress to, egress from, and the construction, installation, operation, maintenance, repair, removal and replacement of, the Utility Facilities. Each Owner may allow its respective Occupants and Permittees to use the foregoing easement for the purposes and subject to the limitations set forth in this Declaration. In exercising such easement rights, the Benefited Owner may, subject to the provisions of Section 2.13, install and maintain Utility Facilities on a Burdened Interest and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of Buildings on such Burdened Lot. Such Utility Facilities shall in all events be subject to the terms and conditions of Section 7.11 hereof. Following the initial construction of the Improvements on the Project, any relocation of or construction of additional Utility Facilities by one Owner on another Owner's Lot shall constitute Major Construction Work.

2.3 **Parking Garage Easements.** Subject to the provisions of this Declaration, Declarant hereby establishes, for the benefit of each Lot, non-exclusive, perpetual, mutually reciprocal, elevated, surface and subsurface easements upon, across, in, over and under the Parking Garage and the Exclusive Use Areas therein, for the purpose of parking of vehicles in designated Parking Spaces, and for pedestrian and vehicular ingress, egress, access, passage and

accommodation in, on, around, over, under, through, to and from such Parking Spaces, sufficient to satisfy parking requirements of applicable Legal Requirements for the Property as in effect on the date of this Declaration and each individual component Lot contained therein. The easement granted herein shall not (i) limit the right of the Board to restrict the use of vehicular and pedestrian access to the Parking Garage as provided in Article VII and Article VIII hereof or (ii) be construed to allow parking in Exclusive Use Areas by any persons not entitled to park therein. Use of the Parking Garage described in this Section 2.3 shall be subject to the Parking Garage Rules and Regulations.

2.4 Easement for Maintenance of Common Structural Supports. Subject to the provisions of this Declaration, Declarant hereby establishes, for the benefit of each Lot that has shared any foundations, footings, girders, columns, braces, temporary or permanent tie-backs, party walls or load-bearing walls, non-exclusive, perpetual, mutually reciprocal, elevated, surface and subsurface easements upon, across, in, over and under such other Lots for the benefit of such Lot on the other Lots to the extent necessary for structural integrity and enclosure of adjacent or subjacent buildings, adjacent, lateral and subjacent support for so long as necessary for the support of any Improvements located on the Project. Without limiting the generality of the foregoing, (a) Declarant hereby establishes for the benefit of the Hotel Residential Property, an elevated, surface and subterranean easement upon, across, in, over and under the Hotel Property for the benefit of the Hotel Residential Property to the extent necessary for structural integrity and enclosure of adjacent or subjacent buildings, adjacent, lateral and subjacent support for so long as necessary for the support of the Hotel Residential Property, (b) Declarant hereby establishes for the benefit of the North Tower, an elevated, surface and subterranean easement upon, across, in, over and under the Retail Areas for the benefit of the North Tower to the extent necessary for structural integrity and enclosure of adjacent or subjacent buildings, adjacent, lateral and subjacent support for so long as necessary for the support of the North Tower, (c) Declarant hereby establishes for the benefit of the South Tower, an elevated, surface and subterranean easement upon, across, in, over and under the Retail Areas for the benefit of the South Tower to the extent necessary for structural integrity and enclosure of adjacent or subjacent buildings, adjacent, lateral and subjacent support for so long as necessary for the support of the South Tower and (d) Declarant hereby establishes for the benefit of the Retail Areas, an elevated, surface and subterranean easement upon, across, in, over and under the Parking Garage for the benefit of the Retail Areas to the extent necessary for structural integrity and enclosure of adjacent or subjacent buildings, adjacent, lateral and subjacent support for so long as necessary for the support of the Retail Areas.

2.5 Drainage Easement. Subject to the provisions of this Declaration, Declarant hereby establishes, for the benefit of each Lot a non-exclusive, perpetual, mutually reciprocal, elevated, surface and subsurface drainage easement upon, over, under and across each other Lot and the Common Facilities (including the Exclusive Use Areas) to permit the drainage of water flowing or pumped from a Benefited Interest or Improvements thereon across the Project; *provided, however*, that no Burdened Owner or its Lot or the Common Facilities (or any portion thereof) shall be materially and adversely affected thereby in any manner which would interfere with the operation or maintenance thereof. In no event shall any Benefited Owner cause or allow any water, mud or debris to accumulate on any Burdened Interest at any time. The Benefited Owner shall utilize the surface of the Burdened Interest for exercise of such easement where reasonably feasible or, if not reasonably feasible, shall utilize drainage conduits for drainage to

the streets or drainage system adjacent to the Project. Use of the foregoing easement shall be in accordance with any and all on-site grading and drainage plans (if any) approved by the Governmental Authorities and any and all on-site grading and drainage permits issued by the Governmental Authorities, as such plans and permits may be amended or modified from time to time. No Improvements, grading or other alteration of any Burdened Interest shall be undertaken which would have the effect of impeding the proper surface drainage of the Project to the detriment of any Lot or the Common Facilities, except in any such case upon the prior written approval of the Benefited Owner, the Master Association and all applicable Governmental Authorities.

2.6 Maintenance Access Easements.

2.6.1 *Master Association Access.* Declarant hereby reserves to the Master Association easements and rights upon, over, under and across the Project, including, without limitation, each Lot (including the Buildings and Improvements located thereon) and the Common Facilities (including the Exclusive Use Areas), for the purpose of permitting the Master Association to discharge its obligations and exercise its duties as described in this Declaration, including, without limitation, the operation, repair, removal, construction, use, maintenance, replacement, management and control of the Common Facilities and installation, testing, replacement, repair, removal and monitoring of fire and other life safety systems located within any portion of the Project.

2.6.2 *Hotel Owner Access.* Subject to the provisions of Sections 2.13, Declarant hereby reserves to the Hotel Owner easements and rights upon, over, under and across the Common Facilities, for the purpose of permitting the Hotel Owner to (i) maintain, repair and replace equipment and systems which serve the Hotel Property and are maintained by the Hotel Owner and (ii) inspect systems which serve the Hotel Property and are maintained by the Master Association.

2.6.3 *Retail Owner Access.* Subject to the provisions of Section 2.13, Declarant hereby reserves to the Retail Owner easements and rights upon, over, under and across the Common Facilities, for the purpose of permitting the Retail Owner to (i) maintain, repair and replace equipment and systems which serve the Retail Areas and are maintained by the Retail Owner and (ii) inspect systems which serve the Retail Areas and are maintained by the Master Association.

2.6.4 *Hotel Residential Association Access.* Subject to the provisions of Section 2.13, Declarant hereby reserves to the Hotel Residential Association easements and rights upon, over, under and across the Common Facilities, for the purpose of permitting the Hotel Residential Association to (i) maintain, repair and replace equipment and systems which serve the Hotel Residential Property and are maintained by the Hotel Residential Association and (ii) inspect systems which serve the Hotel Residential Property and are maintained by the Master Association.

2.6.5 *North Tower Association Access.* Subject to the provisions of Section 2.13, Declarant hereby reserves to the Hotel Residential Association easements and rights upon, over, under and across the Common Facilities, for the purpose of permitting the North Tower

Association to (i) maintain, repair and replace equipment and systems which serve the North Tower Property and are maintained by the North Tower Association and (ii) inspect systems which serve the North Tower Property and are maintained by the Master Association.

2.6.6 *South Tower Association Access.* Subject to the provisions of Section 2.13, Declarant hereby reserves to the South Tower Association easements and rights upon, over, under and across the Common Facilities, for the purpose of permitting the South Tower Association to (i) maintain, repair and replace equipment and systems which serve the South Tower Property and are maintained by the South Tower Association and (ii) inspect systems which serve the South Tower Property and are maintained by the Master Association.

2.7 **Encroachment Easements.** Declarant hereby reserves for the benefit of each Lot, together with the right to grant and transfer same, the reciprocal rights and easements for the purposes of encroachments resulting from the construction, reconstruction, repair, shifting, settlement or other movement of any Improvements upon the Benefited Interest, and for the maintenance of such encroachments, including, without limitation, the terraces and balconies shown on the North Tower Residential Condominium Plan, the South Tower Residential Condominium Plan and the Hotel Residential Condominium Plan, canopies, overhangs, door swings, signs, light standards or other similar encroachments.

2.8 **Easement for General Integration, Maintenance and Development.** Declarant hereby reserves for the benefit of each Lot, together with the right to grant and transfer same, non-exclusive, mutually reciprocal, elevated, surface and subsurface easements and rights in, over and through the Project, including, without limitation, each Lot (including the Buildings and Improvements located thereon) and the Common Facilities (including the Exclusive Use Areas), at any level above or below the ground to the extent to which such easements may be required (i) to comply with the Project Approvals, (ii) to comply with any applicable Legal Requirement with respect to ingress or egress in the event of fire or other emergency, (iii) for maintenance of a Benefited Interest as allowed herein, or (iv) as otherwise may be reasonably necessary to carry out the construction, repair, operation and restoration of a Benefited Interest as allowed herein; *provided, however*, that the location of any such additional easements shall be governed by the provisions of this Article II pertaining to the location or relocation of easements; *and provided, further*, that with respect to any such additional easements, this Section 2.8 is not intended to relieve any Benefited Owner of the obligation to comply with the specific requirements of and specific protections provided for in the other sections of this Declaration applicable to similar easements. The foregoing rights and easements include and are not limited to the right of a Benefited Owner to enter upon a Burdened Interest for the purpose of testing, maintaining and operating sprinkler systems, water supplies, fire alarm systems and other life safety systems to the extent that the alarm panels, control valves or other controls to any such system serving a Benefited Interest are located on or within a Burdened Interest; *provided, however*, that the exercise of the rights and easements granted in this Section 2.8 shall be made in accordance with the provisions of Section 2.13, below. Subject to any express limitations otherwise set forth herein, Declarant hereby reserves for the benefit of the Master Association, its agents and employees, easement rights over the Common Facilities and the other portions of the Project (including Exclusive Use Areas) for the purpose of permitting the Master Association to discharge its rights, powers and obligations under this Declaration.

2.9 **Easement for Air Space.** Declarant hereby establishes for the benefit of each Lot non-exclusive, mutually reciprocal air space easements over the Project for the construction, maintenance, repair, replacement and/or removal, at Benefited Owner's sole cost and expense, and subject to and in accordance with all applicable Legal Requirements, of (a) such telecommunication equipment as may be reasonably necessary or required for the benefit of Benefited Owner's Lot, and (b) installation of heating, ventilating and air conditioning fixtures and equipment, plumbing and other similar systems and such other facilities as may be necessary or desirable.

2.10 **Driveway Easements.** Declarant hereby establishes for the benefit of the Hotel Residential Association, each Hotel Residential Owner and their respective Permittees, a non-exclusive easement and right-of-way for ingress, egress and pedestrian and vehicular access, upon and across the driveway areas located on Lots 22 and 24 for the purpose of accessing the entrances to the Hotel Condominium Project located adjacent to such driveway areas.

2.11 **Exclusive Parking Areas.** Declarant hereby establishes, to facilitate the efficient use of the Common Facilities and Parking Garage for the Project as a whole, and subject to the Project Approvals and any City rights applicable thereto, for the benefit of the Benefited Owners and the applicable Lots, easements for the following Exclusive Use Areas in the Parking Garage; *provided, however*, that each of the Exclusive Use Area easements are granted subject to all of the rights of the Master Association and any other rights set forth herein:

2.11.1 *General Limitations.* The easements granted in Sections 2.11.2 and 2.11.4, inclusive, below, shall be limited to the specific purposes for which such Exclusive Use Area easements are granted, as provided in such Sections, and shall not be construed otherwise to limit the other easement rights described in this Article II or the rights and obligations of the Master Association or any Owner otherwise granted pursuant to this Declaration, including, without limitation, easements for pedestrian and vehicular ingress, egress, access, passage and accommodation in, on, around, over, under and through the Common Facilities.

2.11.2 *Hotel Condominium Exclusive Parking Area.* Subject to any express limitations set forth in this Declaration, an easement for the exclusive benefit and use of the Hotel Condominium Project upon, across, in over and under the Hotel Condominium Exclusive Parking Area for the purposes of parking of vehicles in designated Parking Spaces in the initial locations more particularly shown as the "Hotel Condominium Exclusive Parking Area" on *Exhibit "B"* attached to this Declaration, together with the non-exclusive easement for pedestrian and vehicular access to and from such Parking Space. The easement for the exclusive use by the Hotel Condominium Project of the Hotel Condominium Exclusive Parking Area shall include the right of the Hotel Residential Association (or its designated Permittee) to erect signs (which signs shall be subject to the approval requirements as provided in Section 8.7 of this Declaration) indicating that the Parking Spaces located in Hotel Condominium Exclusive Parking Area shall be available solely to residents and Permittees of residents of the Hotel Condominium Project.

2.11.3 *North Tower Exclusive Parking Area.* Subject to any express limitations set forth in this Declaration, an easement for the exclusive benefit and use of the North Tower upon, across, in over and under the North Tower Exclusive Parking Area for the purposes of

parking of vehicles in designated Parking Spaces in the initial locations more particularly shown as the "North Tower Exclusive Parking Area" on *Exhibit "C"* attached to this Declaration, together with the non-exclusive easement for pedestrian and vehicular access to and from such Parking Spaces. The easement for the exclusive use by the North Tower of the North Tower Exclusive Parking Area shall include the right of the North Tower Association (or its designated Permittee) to erect signs (which signs shall be subject to the approval requirements as provided in Section 8.7 of this Declaration) indicating that the Parking Spaces located in North Tower Exclusive Parking Area shall be available solely to residents and Permittees of residents of the North Tower.

2.11.4 *South Tower Exclusive Parking Area.* Subject to any express limitations set forth in this Declaration, an easement for the exclusive benefit and use of the South Tower upon, across, in over and under the South Tower Exclusive Parking Area for the purposes of parking of vehicles in designated Parking Spaces in the initial locations more particularly shown as the "South Tower Exclusive Parking Area" on *Exhibit "D"* attached to this Declaration, together with the non-exclusive easement for pedestrian and vehicular access to and from such Parking Spaces. The easement for the exclusive use by the South Tower of the South Tower Exclusive Parking Area shall include the right of the South Tower Association (or its designated Permittee) to erect signs (which signs shall be subject to the approval requirements as provided in Section 8.7 of this Declaration) indicating that the Parking Spaces located in South Tower Exclusive Parking Area shall be available solely to residents and Permittees of residents of the South Tower.

2.11.5 *Applicability of Rules and Regulations.* The Hotel Condominium Exclusive Parking Area, the North Tower Exclusive Parking Area and the South Tower Exclusive Parking Area are subject to the Project Rules and Regulations and the Parking Garage Rules and Regulations.

2.12 **Hotel Owner Use and Maintenance Areas.** Declarant hereby establishes, to facilitate the efficient use of the Common Facilities, the Parking Garage and the Project as a whole, and subject to the Project Approvals and any City regulations applicable thereto, for the benefit of the Hotel Owner and the Hotel Property, easements for the following areas; *provided, however*, that each of the easements are granted subject to all of the rights of the Master Association and any other rights set forth herein:

2.12.1 *Hotel Ballroom Drop-off Area.* Subject to any express limitations set forth in this Declaration, an easement for the non-exclusive benefit and use of the Hotel Property upon, across, in, over and under the that portion of the Common Facilities in the initial location as more particularly shown as the "Hotel Ballroom Drop-off Area" on *Exhibit "E"* attached to this Declaration (the "**Hotel Ballroom Drop-off Area**"), for the purposes of maintaining a valet drop-off area and entrance to the Hotel's ballroom.

2.12.2 *Hotel Entrance Area.* Subject to any express limitations set forth in this Declaration, an easement for the non-exclusive benefit and use of the Hotel Property upon, across, in, over and under the that portion of the Common Facilities in the initial location as more particularly shown as the "Hotel Entrance Area" on *Exhibit "F"* attached to this

Declaration (the "**Hotel Entrance Area**") for the purposes of maintaining a valet drop-off area and entrance to the Hotel.

2.12.3 *Hotel Storage Area.* Subject to any express limitations set forth in this Declaration, an easement for the exclusive benefit and use of the Hotel Property upon, across, in, over and under the that portion of the North Tower Property in the initial location as more particularly shown as the "Hotel Storage Area" on *Exhibit "G"* attached to this Declaration (the "**Hotel Storage Area**") for the purposes of maintaining a storage room adjacent to the Hotel's ballroom.

2.12.4 *Hotel Patio Area.* Subject to any express limitations set forth in this Declaration, an easement for the exclusive benefit and use of the Hotel Property upon, across, in, over and under the that portion of the Common Facilities in the initial location as more particularly shown as the "Hotel Patio Area" on *Exhibit "H"* attached to this Declaration (the "**Hotel Patio Area**"), for the purposes of maintaining an outdoor patio and dining area adjacent to the Hotel's lobby.

2.12.5 *Applicability of Rules and Regulations.* The Hotel Ballroom Drop-off Area is subject to the Project Rules and Regulations and the Parking Garage Rules and Regulations. The Hotel Entrance Area, the Hotel Patio Area and the Hotel Storage Area are subject to the Project Rules and Regulations.

2.13 **Performance of Work.** In addition to the construction work obligations set forth in Article VI hereof, an Owner, Occupant or any Permittee entering any Burdened Interest pursuant to the rights granted under this Article II shall, at its sole cost and expense: (a) take all measures reasonably required to protect the Burdened Interest, the Burdened Owner and its Occupants and Permittees and the property and business of each from injury or damage arising out of or caused by such entry; (b) perform any work at a time, for a duration and in such manner so as not to unreasonably impair or unreasonably interfere with the development, construction, use, occupancy, operation of, or ingress to and egress from, the Burdened Interests or any Improvements located on any Burdened Interest; (c) undertake all reasonable efforts and utilize all reasonable diligence so that the period of construction on or affecting the Burdened Interest is as short as reasonably practicable (without incurring any obligations for payment of overtime or premium, unless reasonably necessary to prevent disruption or material inconvenience to the Owners or their Occupants); (d) do all things reasonably necessary and proper consistent with the requirement that the Project be a First-Class Project and in accordance with the standards of the building construction industry in the City to keep that portion of the Burdened Interest which is subject to such easement in a safe and clean condition and comply with all applicable Legal Requirements; and (e) upon completion of such work, replace and restore the Burdened Interest and all Improvements thereon (and any other portion of the Project which may have been damaged by or in conjunction with such work) to their condition prior to the performance of such work unless otherwise agreed in writing by the Burdened Owner. The Benefited Owner of any easement and/or license herein shall Indemnify the Burdened Owner under such easement or license from all Loss arising from or as a result of the exercise of such easement or license by such Benefited Owner (or its Occupant or Permittee). Notwithstanding anything to the contrary contained in this Declaration, any easements or licenses described in this Declaration that give an Owner the right to enter upon the Common Facilities or any other Lot for the performance of any

construction, repair or maintenance, may be used on any Burdened Interest only if the Burdened Owner (i) is given at least ten (10) Business Days' prior written notice, and (ii) gives its approval thereto (which will not be unreasonably withheld or delayed), provided that neither (i) nor (ii) shall apply in the case of Emergency, in which event such notice, whether written or oral, as is practicable under the circumstances shall be given, but in all cases prompt written notice shall be given thereafter. Said approval shall not be unreasonably withheld or delayed; *provided, however*, that it shall be reasonable for a Burdened Owner to refuse to consent to or grant any such easement or license, as appropriate, which may be requested by any Benefited Owner (or by the City or any utility company on behalf of any Benefited Owner) if such easement or license, as the case may be, would (A) materially affect or interfere with the development or operation of any Improvements (including the Parking Garage and Common Facilities necessary for the operation of the Parking Garage) then constructed or to be constructed on or contemplated under development plans for the Burdened Interest, (B) violate any Legal Requirements; (C) materially adversely affect the design, development, use or operation of the Burdened Interest; (D) materially increase the costs of owning, maintaining, insuring, designing, developing or operating the Burdened Interest; or (E) impose additional material obligations or burdens upon the Burdened Owner with respect to the Burdened Interest. The Benefited Owner shall, at its sole cost and expense, be obligated to repair and maintain any Improvements installed in exercising any easement, and repair and restore any damage to the Burdened Interest and the Improvements thereon resulting from the construction, repair, ongoing use and maintenance of such easement or license, as the case may be. The Owners will cooperate in good faith in exercising and consenting to the use of easements and licenses under this Declaration.

2.14 Certain Rights and Easements Reserved to Declarant.

2.14.1 *Utilities.* There are hereby reserved to Declarant, together with the right to grant and transfer same, easements and rights over the Project for the installation, maintenance, and repair of electric, telephone, cable, fiber optic, security, television, water, gas, sanitary sewer, drainage, and other utility lines and facilities as are needed to service the Project; *provided, however*, such easements and rights shall not unreasonably interfere with the use and enjoyment by the Owners of their Lots or Residential Units or the Hotel Residential Common Area, the North Tower Residential Common Area or the South Tower Residential Common Area.

2.14.2 *Construction and Sales.* There are hereby reserved to Declarant, together with the right to grant and transfer the same to others, including Declarant's sales agents, representatives and assigns, over the Project as the same may from time to time exist, easements and rights for construction, display (including the use of Residential Units as models), maintenance, sales and exhibit purposes (including the use of signs and other advertising devices) in connection with the construction, marketing and sale or lease of Lots and Residential Units within the Project; *provided, however*, that such easements and rights shall terminate upon the Final Sale Date. In connection with each of the foregoing purposes Declarant shall have the right to: (i) perform any and all architectural, engineering, construction, excavation, blasting, landscaping or related work and activities; (ii) store and use materials, equipment, vehicles, tools and machines which may be necessary or desirable in connection with such construction; (iii) perform maintenance, repair and replacement work on, and to make custom improvements, alterations and additions to uncompleted Improvements; and (iv) take such other action

consistent with such easements. No Owner (other than Declarant) shall enter any construction area within the Property or cross any fence or other barricade constructed to prevent such entry or otherwise impede or interfere with such development and construction.

2.14.3 *Ventilation and other Systems.* There is hereby reserved to Declarant, together with the right to grant and transfer same, easements and rights in, on, over, under, along and across all portions of the Common Facilities for the installation, maintenance, repair and replacement of ventilation and/or other systems and related Improvements, including, without limitation, electrical, communication and ventilation improvements, necessary or appropriate for the operation of permitted businesses within the Project.

2.15 **Additional Instruments.**

2.15.1 *General.* The easements granted under this Article II are subject to certain restrictions on their use by the Benefited Owner and effect on the Burdened Owner and Burdened Lot. Any Benefited Owner, subject to the approval of any applicable Burdened Owners, (which approval shall not be unreasonably withheld or delayed, provided that such Burdened Owners shall have a reasonable period of time to review and consider whether or not to grant their approval) and the Board, and further subject to the terms and conditions of this Section 2.15, shall have the right to negotiate, enter into, approve and create or join in the creation of any of the following (collectively, the "**Additional Instruments**"): (a) any subdivision conditions necessary to effectuate the reconfigurations, lot splits and other subdivisions described in Section 7.10 which are consistent with the Project Approvals; and (b) any dedication, conveyance, easement or right of access or use with respect to all or a portion of its Lot, in favor of any public utility or Governmental Authority which is not inconsistent with the terms of this Declaration. No such Additional Instrument shall materially interfere with the use and operation of the Project as a First-Class Project. The Benefited Owner seeking approval shall have the burden of proving that a reviewing Burdened Owner has acted unreasonably (*i.e.*, the Benefited Owner seeking approval will have the burden of proving that there is no material interference or material adverse impact). If such approval is granted by all necessary parties, then following such approval, each Burdened Owner shall, within thirty (30) Business Days after written request therefor from the Benefited Owner requesting approval, execute an instrument in form and content reasonably acceptable to each Benefited Owner, consenting to the Additional Instrument, and subjecting its Lot thereto, to the extent provided in such Additional Instrument.

2.15.2 *Residential CC&Rs and Reciprocal Easement Agreements.* Except to the extent expressly provided in this Declaration, (i) the North Tower CC&Rs and, as applicable, the West Pavilion Reciprocal Easement Agreement shall govern the use, maintenance and easements and reservations applicable to the North Tower, the North Tower Residential Common Area and the North Tower Residential Owners, (ii) the South Tower CC&Rs and, as applicable, the West Pavilion Reciprocal Easement Agreement shall govern the use, maintenance and easements and reservations applicable to the South Tower, the South Tower Residential Common Area and the South Tower Residential Owners and (iii) the Hotel Residential CC&Rs and, as applicable, the Hotel Building Reciprocal Easement Agreement shall govern the use, maintenance and easements and reservations applicable to the Hotel Residential Property, the Hotel Residential Common Area and the Hotel Residential Owners.

2.16 **Owners Not Liable**. Nothing contained in this Article II shall obligate an Owner to cause any Owner (other than itself) to honor or respect any easement or right provided for in this Article II, or to enforce, by legal action or otherwise, the provisions of this Article II as against any other Owner, and no Owner shall incur any liability whatsoever for its failure to do so. The foregoing shall in no way alter the Master Association's duty and obligation to enforce the Restrictions pursuant to Section 4.2.1.

2.17 **No Public Dedications, Additional Easements**. Nothing contained in this Declaration shall be deemed a dedication of any portion of the Project to the general public or for any public use or purpose. The Board shall have the right to close temporarily all or any portion of the Common Facilities to perform maintenance, repair or reconstruction work or as legally necessary and sufficient to prevent a dedication thereof or an accrual of any rights in any person other than the Owners and the Master Association.

2.18 **No Waste**. No Owner shall commit or suffer any waste or damage to, or impairment of, the value of any other Lot, Residential Unit or the Common Facilities, or any portion thereof, in the exercise and use of the easements created in this Article II or otherwise.

2.19 **Partition**. Except as provided in this Declaration, there shall be no judicial partition of the Common Facilities, or any part thereof, for the term of the Project, nor shall Declarant, any Owner or any other Person acquiring any interest in any Lot or Residential Unit in the Project seek any such judicial partition.

2.20 **Amendment to Eliminate Easements**. Until the Final Sale Date, (i) this Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant and any attempts to do so shall have no effect, and (ii) any attempt to modify or eliminate this Article or any provision hereof shall likewise require the prior written approval of Declarant.

ARTICLE III.

THE MASTER ASSOCIATION

3.1 **Organization of Master Association**. The Master Association is or shall be incorporated under the name of Century Plaza Master Association, as a nonprofit corporation under the Nonprofit Mutual Benefit Corporation Law of the California Corporations Code. In conducting its activities, exercising its rights and carrying out its responsibilities under this Declaration, except when the Master Association collects Assessments from Residential Owners directly, the Master Association shall deal with the Residential Associations acting on behalf of the Residential Owners, and shall not be required to deal with the Residential Owners, or any of them, individually. All notices required or otherwise given by the Master Association to any Owner shall be given solely to the Residential Associations acting on behalf of all of the Residential Owners, and any notice sent to the Residential Associations shall be deemed to be notice given to all of the Residential Owners for all purposes of this Declaration.

3.2 Membership/Voting

3.2.1 Membership.

(a) Each of the following shall be Members of the Master Association: (i) the North Tower Association (on behalf of the North Tower Residential Owners collectively) or, prior to the first Close of Escrow of the sale of a Residential Unit in the North Tower Project to a Residential Owner other than Declarant, the Owner of the North Tower Property, (ii) the South Tower Association (on behalf of the South Tower Residential Owners collectively) or, prior to the first Close of Escrow of the sale of a Residential Unit in the South Tower Project to a Residential Owner other than Declarant, the Owner of the South Tower Property, (iii) the Hotel Residential Association (on behalf of the Hotel Residential Owners collectively), or, prior to the first Close of Escrow of the sale of a Residential Unit in the Hotel Condominium Project to a Residential Owner other than Declarant, the Owner of the Hotel Residential Property, (iv) the Retail Owner and (v) the Hotel Owner.

(b) All membership rights and obligations relating to the Residential Units shall be undertaken by the applicable Residential Association's board of directors, who shall collectively constitute a single Member of the Master Association. Each Residential Association's voting rights shall be cast and voted by the President of such Residential Association as directed by such Residential Association's board of directors, and in his or her absence the voting rights shall be cast and voted by the Vice-President of such Residential Association. Each Residential Association's President shall be the representative of such Residential Association and its board of directors at all meetings of the Members of the Master Association; *provided, however*, that if the President is not able to attend at such meeting and act as such representative, then the Vice-President of such Residential Association shall act and serve as such representative. If neither the President nor the Vice-President is able to so act and serve, then such Residential Association's board of directors shall appoint the representative to so serve and act until and unless either the President or Vice-President of such Residential Association shall attend the meeting and so serves and acts.

(c) In the event the Retail Owner forms an association to govern the Retail Lots, the Retail Owner shall promptly notify the Board of the formation of such association and such association (and not any individual Owner of the Retail Areas) shall be a Member of the Master Association, shall be responsible for all obligations of the Retail Owner hereunder, including without limitation, payment of Assessments (provided that each Owner of the Retail Areas shall remain personally liable for Assessments as set forth in Article V), and shall be entitled to exercise the voting rights of the Retail Owner hereunder. Such association's voting rights shall be cast and voted by the President of such association as directed by such association's board of directors, and in his or her absence the voting rights shall be cast and voted by the Vice-President of such association. Such association's President shall be the representative of such association and its board of directors at all meetings of the Members of the Master Association; *provided, however*, that if the President is not able to attend at such meeting and act as such representative, then the Vice-President of such association shall act and serve as such representative. If neither the President nor the Vice-President is able to so act and serve, then such association's board of directors shall appoint the representative to so serve and act until and unless either the President or Vice-President of such association shall attend the meeting and so serves and acts.

3.2.2 *Voting Membership.* The Master Association shall have a single class of voting membership. The voting rights described in Sections 3.2.2(a) and 3.2.2(b) below shall constitute the voting power of the Master Association:

(a) The Hotel Owner, the Retail Owner and each Residential Association shall each have one (1) vote prior to the date which is the earlier of the following dates (which earlier date shall be the "Turnover Date"):

(i) the date on which 248 Residential Units (which number is equal to seventy-five percent (75%) of the total number of 331 Residential Units currently proposed for the Project; *provided, however* that nothing herein shall limit the rights of Declarant to modify the actual number of Residential Units within the Project) assuming annexation and development of the Annexation Property, have been conveyed pursuant to a Public Report to Residential Owners other than Declarant; or

(ii) the date on which Declarant is no longer entitled to Class B voting rights in any Residential Association.

(b) On and after the Turnover Date, the Hotel Owner and the Retail Owner shall each have two (2) votes and each Residential Association shall have one (1) vote; *provided, however* that when the approval of Members is required pursuant to California Civil Code Section 5605 in order for the Board to increase Regular Assessments or to impose Special Assessments, Capital Improvement Assessments, Reconstruction Assessments or Cost Center Assessments, the Hotel Owner, the Retail Owner and each Residential Association shall each have one (1) vote.

The vote or votes for each Member must be cast as a unit; fractional votes shall not be allowed.

3.2.3 *Board of Directors.*

(a) Pursuant to Section 5.3 of the Bylaws, the Master Association's Board shall have five (5) directors prior to the Turnover Date and seven (7) directors on and after the Turnover Date. Each Residential Association shall be entitled to designate one (1) director and the Hotel Owner and the Retail Owner shall each be entitled to designate one (1) director prior to the Turnover Date and two (2) directors on and after the Turnover Date.

(b) Each Residential Association's board of directors shall agree among themselves on the appointment to the Board of the one (1) director representing such Residential Association. No Residential Association may transfer its membership in the Master Association.

(c) If there is more than one Owner of the Retail Areas, the director or directors representing the Retail Owners shall be chosen pursuant to the procedures set forth in any recorded declaration governing the Retail Areas, or if no such declaration exists, such Owners shall vote to choose the director or directors representing the Retail Owners, with each such Owner allocated one (1) vote per square foot of Retail Area owned by such Owner. For example if the various Lots in the Retail Areas comprise 94,000 square feet of Retail Area, and

such Lots are owned by four (4) separate Owners, with the first Owner owning 40,000 square feet, the second Owner owning 30,000 square feet, the third Owner owning 20,000 square feet and the fourth Owner owning 4,000 square feet, the first Owner shall have 40,000 votes, the second Owner shall have 30,000 votes, the third Owner shall have 20,000 votes and the fourth Owner shall have 4,000 votes.

3.2.4 ***Transfer of Membership.*** Membership in the Master Association is appurtenant to each of (i) the Hotel Property, (ii) the Retail Areas, (iii) the Hotel Residential Property, (iv) the North Tower Property and (v) the South Tower Property and may not be separated therefrom. No Residential Association may transfer its membership in the Master Association.

3.3 **Joint Owners Disputes.** In the event that the joint Owners of the Hotel Property, the joint Owners of the Retail Areas or the board of directors of any Residential Association are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner of the Hotel Property or Retail Areas or any board member of a Residential Association casts a vote representing the Hotel Property, Retail Areas or Residential Association, as applicable, it will thereafter be conclusively presumed for all purposes that the Owner(s) or board member(s) were acting with the authority and consent of all other Owners of the Hotel Property or Retail Areas and/or all other board members of the Residential Association, as applicable. In the event more votes are cast than are allocated to a Member, none of said votes shall be counted and said votes shall be deemed void.

3.4 **Commencement of Voting Rights.** Voting rights shall not vest until Assessments have been levied in accordance with the provisions of this Declaration or otherwise covered by a maintenance or subsidy program.

ARTICLE IV. MANAGEMENT OF PROJECT

4.1 **Duties and Powers.** The duties and powers of the Master Association and the Board are those set forth in this Declaration, together with its general and implied powers of a nonprofit mutual benefit corporation, generally to do any and all things that a corporation organized under the laws of the State of California may lawfully do and which are necessary or proper in operating the Project for the peace, health, comfort, safety and general welfare of the Owners, subject only to the limitations upon the exercise of such powers as are expressly set forth in this Declaration.

4.2 **General Duties of the Master Association.** The Master Association through the Board shall have the duty and obligation to:

4.2.1 enforce the provisions of the Restrictions, by appropriate means and carry out the obligations of the Master Association hereunder;

4.2.2 maintain in good and attractive condition and repair, and otherwise manage the following:

- (a) the Common Facilities and the Parking Garage; and

(b) all personal property in which the Master Association holds an interest, subject to the terms of any instrument transferring such interest to the Master Association;

4.2.3 pay all Common Expenses and any other charges assessed to or payable by the Master Association;

4.2.4 obtain, for the benefit of the Common Facilities, water, gas and electric, refuse collections and other services;

4.2.5 keep the Common Facilities clean and free of debris and rubbish and promptly remove any graffiti from walls and other surfaces;

4.2.6 pursuant to the Vehicular/Pedestrian Bridge Easement Agreement, maintain and repair, as successor-in-interest to Declarant, a portion of the Existing Vehicular Bridge (as defined in the Vehicular/Pedestrian Bridge Easement Agreement), the Existing Pedestrian Walkway (as defined in the Vehicular/Pedestrian Bridge Easement Agreement) and, if constructed, the Additional Pedestrian Walkway (as defined in the Vehicular/Pedestrian Bridge Easement Agreement);

4.2.7 comply with all contractual obligations applicable to the Project including, but not limited to, the Cell-Site Leases, the Project Approvals, the Off-Site Parking Agreements, the Community Agreements and all recorded documents on title for the Property;

4.2.8 in the event the Master Association is appointed manager of the Loading Dock, operate and maintain the Loading Dock and the Shared Walkway subject to the Loading Dock/Shared Walkway Restrictions and the direction of the Loading Dock Committee;

4.2.9 employ and maintain security personnel (or retain a single alarm and security patrol company) to patrol the Project as provided in Section 8.1.4 and correct false alarms expeditiously;

4.2.10 maintain a valet parking program for the Project (subject to the rights of the Hotel Owner, the Retail Owner and each Residential Association to collect valet parking service fees as set forth in Section 7.1.3); and

4.2.11 undertake well-informed decisions based on fair and objective information, and engage in actions which achieve objectives without unnecessary controversy and/or disruption to the Project.

4.3 **General Powers of the Master Association.** The Master Association through the Board shall have the power but not the obligation to:

4.3.1 install or construct capital Improvements on the Common Facilities;

4.3.2 reconstruct, replace or refinish any Improvement or portion thereof upon the Common Facilities;

4.3.3 cause vehicles to be removed from the Property pursuant to California Vehicle Code Section 22658;

4.3.4 employ personnel necessary for the effective operation and maintenance of the Common Facilities, including the employment of maintenance, engineering, security and valet personnel ("**Master Association Personnel**"). Notwithstanding the foregoing, certain Master Association Personnel may be employed by third party vendors hired by the Master Association. The Master Association may also engage the services of outside consultants and professionals, including the Operator, and legal, engineering, management and accounting firms as provided herein;

4.3.5 convey easements over all or any portion of the Common Facilities;

4.3.6 acquire interests in real or personal property for offices or other facilities that may be necessary or convenient for the management of the Project, the administration of the affairs of the Master Association or for the benefit or enjoyment of the Members; and

4.3.7 borrow money in a total amount not to exceed ten percent (10%) of the then existing estimated annual Common Expenses, as may be needed in connection with the discharge by the Master Association of its powers and duties.

4.4 **Limitation on Powers of the Board.** Notwithstanding the powers of the Master Association as set forth in Sections 4.1 and 4.3 hereof, the Board shall not take any of the following actions without the prior vote or written consent of a majority of the Members in the Master Association, including a majority of the voting power residing in Members other than Declarant:

4.4.1 Enter into a contract with a third person or entity wherein such person or entity will furnish goods or services for the Common Facilities or the Master Association for a term longer than one (1) year with the following exceptions:

(a) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; *provided, however*, the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(b) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured.

(c) Lease agreements for laundry room fixtures and equipment of not to exceed five (5) years duration provided that the lessor under the agreement is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(d) An agreement for cable television services and equipment of not to exceed five (5) years duration provided that the supplier is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(e) An agreement for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five (5) years duration provided that the supplier or suppliers are not entities in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(f) A contract reviewed by the DRE.

(g) A contract for a term not to exceed three (3) years that is terminable by the Master Association after no longer than one (1) year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

4.4.2 Incur aggregate expenditures for capital improvements to the Common Facilities in any accounting year in excess of five percent (5%) of the gross expenses of the Master Association for that accounting year (as set forth in the Budget).

4.4.3 Pay compensation to members of the Board, or to officers of the Master Association, for services performed in the conduct of the Master Association's business; *provided, however*, the Board may cause a director or an officer to be reimbursed for expenses incurred in carrying on the business of the Master Association.

4.4.4 Sell during any accounting year property of the Master Association having an aggregate fair market value greater than five percent (5%) of the gross expenses of the Master Association for that accounting year (as set forth in the Budget).

4.5 **Limited Right of Entry.** The Master Association, or its agents shall have the right, when necessary in the performance of its duties hereunder to enter any Lot, including the Improvements located thereon, to perform the Master Association's obligations under this Declaration, including, without limitation: (i) exterior maintenance or repair obligations; (ii) obligations to enforce any architectural standards promulgated by the Board, and use restrictions contained in Article VII and Article VIII hereof; (iii) any obligations with respect to construction, maintenance and repair of the Common Facilities, or portion thereof; (iv) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, or make or leave in a condition violative of any applicable Legal Requirement the Project or the Owners in common; or (v) or actions necessary to comply with the Project Approvals, including fire and life safety violations. The Master Association's rights of entry under this Section shall be immediate in case of an Emergency originating in or threatening any Lot where entry is required, or any adjoining Lot or Common Facilities, and the Master Association's work may be performed under such circumstances whether or not the Owner or its Occupant is present. In all non-Emergency situations, the Master Association or its agents shall furnish the Owner or its Occupant with at least 48 hours' written notice of its intent to enter the Lot, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform its work and schedule its entry in a manner that does not unreasonably interfere with the business conducted on such Lot.

4.6 **Association as Attorney-in-Fact for Owners.** The Master Association is hereby irrevocably appointed as the attorney-in-fact for the Owners of each and every Lot to: (i) manage, control and deal with the interest of such Owners in the Common Facilities so as to

permit the Master Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder; (ii) deal with any portion of the Property following a Casualty or Condemnation as and to the extent such powers are delegated to the Master Association in Article XII; and (iii) deal with and handle insurance and insurance proceeds, as and to the extent such powers are delegated to the Master Association in Article XI hereof, and Condemnation awards, as provided in Article XII hereof. The acceptance or receipt by any Person of any interest in any Lot or Residential Unit shall constitute an appointment of the Master Association as the Owner's attorney-in-fact as provided above. Without limiting the generality of the foregoing, the Master Association shall have the right and power, acting by a majority vote of the members of the Board, to resolve and settle any boundary line dispute that may arise between any Owners regarding the stated lot line and the metes and bounds description of the Owners' respective Lots (including any changes or discrepancies that may arise as a result of normal settlement, structural movement or any casualty event affecting the Project). In resolving any such boundary line dispute, the Board, acting in its reasonable discretion, shall: (A) adopt a lot line interpretation that most closely conforms to the final Map and the Project Approvals; (B) allow stated boundary lines to govern rebuilding and lot line determinations due to changes arising from normal settlement and structural movement, and (C) allow metes and bounds descriptions to govern rebuilding and lot line determinations following a Casualty event.

4.7 Rule-Making Power; Common Facilities Rules and Regulations. The Board shall, by a majority vote of the members thereof, from time to time and subject to the provisions of this Declaration and applicable Legal Requirements, propose, enact and amend the Project Rules and Regulations and the Parking Garage Rules and Regulations. Such rules and regulations may address, but shall not be limited to: (i) the use of the Common Facilities (including the Parking Garage) by Owners, Occupants; and their respective Permittees, or any other Persons who have rights of use and enjoyment of such Common Facilities; (ii) architectural control and related rules; (iii) the conduct of disciplinary proceedings in accordance with Article XIII and Section 16.1 hereof; (iv) regulation and enforcement of parking rules and regulations; (v) collection and disposal of refuse and other waste management issues (subject to the Loading Dock/Shared Walkway Restrictions); and (vi) any other subject or matter within the jurisdiction of the Master Association as provided in the Governing Documents. Any duly adopted rule or amendment to the Project Rules and Regulations or the Parking Garage Rules and Regulations shall become effective immediately following the date of adoption thereof by the Board, or at such later date as the Board may deem appropriate. Notwithstanding the foregoing grant of authority, the Project Rules and Regulations and the Parking Garage Rules and Regulations shall not be inconsistent with or materially alter any provision of the Governing Documents and shall not unreasonably and adversely discriminate among Owners. Under no circumstances shall the Project Rules and Regulations or the Parking Garage Rules and Regulations affecting (i) the Hotel Property be implemented, modified or amended without the consent of the Hotel Owner, (ii) the Retail Areas be implemented, modified or amended without the consent of the Retail Owner or (iii) a Residential Project be implemented, modified or amended without the consent of the applicable Residential Association. If there is any material conflict between any provision of the Project Rules and Regulations or the Parking Garage Rules and Regulations and any provision of the Governing Documents, the conflicting provisions contained in the Governing Documents shall be deemed to prevail. Copies of the Project Rules and Regulations and the Parking Garage Rules and Regulations, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. Copies of the Project Rules and

Regulations and the Parking Garage Rules and Regulations shall also be available and open for inspection during normal business hours at the principal office of the Master Association.

4.8 **Claims Against Association: Personal Liability.**

4.8.1 *Claims Regarding Breach of Duty.* No member, director or officer of the Board (collectively and individually referred to as the "**Released Party**") shall be personally liable to the Master Association, to any Owner, Permittee, Occupant or to any other Person, for any error or omission in the discharge of its duties and responsibilities or for its failure to provide any service required hereunder or under the Governing Documents, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Master Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Master Association's annual financial budget, the funding of Master Association capital replacement and reserve accounts, repair and maintenance of Common Facilities and enforcement of this Declaration and the Governing Documents.

4.8.2 *Other Claims Involving Tortious Acts and Property Damage.* No Released Party shall be responsible to the Master Association, any Owner, Permittee, Occupant or to any other Person for any loss or damage suffered by reason of theft or otherwise of any article, vehicle or other item of personal property which may be stored by any Owner, Occupant or other Person on any Lot within any portion of the Common Facilities, or for any injury to or death of any Person or loss or damage to the property of any person caused by fire, explosion, the elements or any other Owner, Occupant or Person within the Project, or by any other cause, unless the same is attributable to such Released Party's own willful or wanton act or gross negligence. It is the intent of this Section to provide volunteer directors and officers with protection from liability to the full extent permitted by California Civil Code Section 5800, or comparable superseding statute, and to the extent this provision is inconsistent with said section, the Civil Code shall prevail.

4.9 **Books and Records.** The Master Association shall make available books, records and financial statements of the Master Association at the offices of the Master Association for inspection by each Owner and, if requested in writing, any Mortgagee. The Master Association shall maintain in its files copies of the Project Approvals, and shall make such copies of the Project Approvals available for review and inspection by any Owner or Occupant upon request.

4.10 **Use of Operator.** The Board, on behalf of the Master Association, may contract with one or more Persons to act as the Operator for the performance of all or a portion of the Master Association's maintenance and repair obligations, enforcement of the Project Rules and Regulations or the Parking Garage Rules and Regulations with respect to the Common Facilities or the Parking Garage, and for conducting any other activities on behalf of the Master Association (each, a "**Management Contract**"), all as may be determined to be necessary or desirable by the Board from time to time. No Management Contract shall be entered into with an Affiliate of any Owner or Board member unless such Affiliate relationship has been disclosed in

writing to the Board, such Management Contract has thereafter been approved by a vote of the majority of the Board, and the affiliated Board member has not participated in the meeting to approve such Management Contract.

ARTICLE V. ASSESSMENTS

5.1 **Covenant to Pay Assessments.** Declarant, for each Lot or Residential Unit owned by it, hereby covenants and agrees to pay, and the Hotel Owner, the Retail Owner and each Residential Owner, by acceptance of a deed or other conveyance of a Lot or Residential Unit (whether or not it shall be so expressed in such deed or conveyance), is deemed to covenant and agree to pay to the Master Association: (1) Regular Assessments, (2) Special Assessments, (3) Reconstruction Assessments, (4) Capital Improvement Assessments, (5) Emergency Assessments, (6) Reimbursement Assessments, (7) Remedial Assessments and (8) Cost Center Assessments. Each of the foregoing shall be established and collected as hereinafter provided. The Master Association shall not levy or collect any Assessment that exceeds the amount necessary (or reasonably estimated to be necessary) for the purpose for which it is levied. All Assessments, together with interest, costs and attorneys' fees for the collection thereof, shall be the personal obligation of the Owner of the Lot or Residential Unit at the time when the Assessment is levied. No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Master Association, or effect the release of his or her Lot or Residential Unit from the liens and charges thereof, by waiving use and enjoyment of the Common Facilities or by abandoning his or her Lot or Residential Unit. The personal obligation to pay delinquent Assessments, together with interest, costs and attorneys' fees for the collection thereof shall not pass to a new Owner following a Transfer of a Lot or Residential Unit unless expressly assumed in writing by such new Owner.

5.2 **Creation of Lien.** All Assessments (excepting Remedial Assessments), together with interest, costs and attorneys' fees for the collection thereof shall be a charge on the Lot or Residential Unit upon which they are levied and shall be a continuing lien upon the Lot or Residential Unit against which such Assessment is made. Any lien for unpaid Assessments created pursuant to the provisions of this Article V may be subject to foreclosure as provided in Section 5.14 hereof.

5.3 **Preparation of Annual Budget.** The Budget for the Master Association shall reflect all of the Common Expenses for the Project. There shall be two (2) components of the Budget: (1) the "**Master Association Budget**" which establishes "**General Regular Assessments**" for the maintenance of the Common Facilities other than the Parking Garage and for Insurance Expenses for the Project and (2) the "**Garage Cost Center Budget**" which establishes "**Garage Regular Assessments**" for the maintenance of the Parking Garage; *provided, however* that additional components of the Budget may be added as a result of adding Cost Centers pursuant to Section 5.16. Not less than thirty (30) and not more than ninety (90) days prior to the beginning of each fiscal year of the Master Association, the Board (or, if such duty is delegated by the Board to the Operator, then the Operator) shall estimate the total amount required to fund the Master Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any Reserve Fund established to defray the costs of future repairs, replacement or additions to the Common Facilities) by preparing and distributing to all

Members of the Board a Budget satisfying the requirements of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this Section 5.3, or if a majority of the Board fails to approve a proposed budget, then the Board shall not be permitted to increase Regular Assessments except in compliance with California Civil Code Section 5600 *et seq.*, and during any interim period following the end of any fiscal year when there is no approved budget, the Budget for such period shall be deemed to be the Budget for the prior year, increased by the greater of three percent (3%) and the increase in the Consumer Price Index published by the Bureau of Labor Statistics for All Urban Consumers (Los Angeles-Riverside-Orange County) over the prior fiscal year. Within fifteen (15) days after the Board delivers the proposed budget for the next succeeding fiscal year, the members of the Board shall vote on the proposed budget as provided in the Bylaws. A proposed budget shall be adopted by the majority vote of the members of the Board subject in any event to the requirements of Section 5.7, and upon such approval, shall become the Budget for such fiscal year.

5.4 **Maintenance Funds of Master Association.** The Board shall establish no fewer than two (2) separate Master Association maintenance fund accounts (each, an "**Account**"), into which shall be deposited all Assessments paid to the Master Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Master Association under this Declaration. The Accounts may be established as trust accounts at a banking or savings institution selected by the Board and shall include: (a) a fund for current Common Expenses and (if applicable) Cost Center Expenses of the Master Association (the "**Operating Fund**"); and (b) an adequate fund for capital improvements, maintenance, replacements, painting and repair obligations of the Master Association which cannot normally be expected to occur on an annual or more frequent basis, and for payment of deductible amounts for policies of insurance which the Master Association obtains as provided in Article XI hereof (the "**Reserve Fund**"). The Board may establish and maintain other Accounts for such purposes that the Board deems reasonable or necessary in the exercise of the rights, powers and obligations of the Master Association hereunder so long as the amounts assessed to, deposited into, and disbursed from any such Accounts are earmarked for specified purposes authorized by this Declaration. Notwithstanding the foregoing, in the event that the amount in either the Operating Fund and/or the Reserve Fund exceeds any FDIC deposit insurance limits, then any and all such excess portions of the Operating Fund and/or the Reserve Fund shall be deposited into different banking or savings institutions so as to provide the greatest protection for both the Operating Fund and the Reserve Fund.

5.5 **Purpose of Assessments.** The Assessments levied by the Master Association shall be used exclusively to: (a) promote the recreation, health, safety and welfare of the Owners, (b) operate, replace, repair, improve and maintain the Common Facilities and (c) discharge all other rights, powers and obligations of the Master Association under this Declaration. All Assessments deposited into the Accounts shall be used solely for the purposes for which such Assessments were levied. Disbursements from the Operating Fund and/or the Reserve Fund shall be made or authorized by the Board, for such purposes as are necessary for the discharge of its responsibilities herein.

5.6 **Establishment of Regular Assessments.** The Board shall levy Regular Assessments in compliance with Section 5600 *et seq.* of the California Civil Code to cover the total annual expenses estimated in the Master Association's Budget for any fiscal year (less

projected income from sources other than Assessments), which shall become the aggregate Regular Assessment for such fiscal year. The Board shall authorize and levy the amount of the Regular Assessments upon the Hotel Property, the Retail Areas and the Residential Units for the maintenance of the Common Facilities and payment of the Common Expenses, as provided herein, by majority vote of the Board.

5.7 Limitation on Regular Assessment Increases.

5.7.1 *Maximum Authorized Regular Assessment.* The Board may only levy Regular Assessments if they have complied with the provisions of Sections 5600 and 5605 of the California Civil Code; which provisions include a requirement that the Board may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Master Association's preceding fiscal year without the approval of a majority of a quorum of the Members. Notwithstanding the foregoing, this Section does not limit Regular Assessment increases necessary for addressing an Emergency Situation as provided in Section 5610 of the California Civil Code.

5.7.2 *Supplemental Regular Assessments.* If the Board, by majority vote, determines that the important and essential functions of the Master Association may be properly funded by a Regular Assessment in an amount less than the maximum authorized Regular Assessment described above, it may levy such lesser Regular Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all applicable Common Expenses for the Property for any reason, it shall immediately determine the approximate amount of the inadequacy. Subject to the limitations described in Section 5.7.1 above and Section 5.7.3 below, the Board shall have the authority to levy, at any time by a majority vote, a supplemental Regular Assessment reflecting a revision of the total charges to be assessed against each Lot or Residential Unit.

5.7.3 *Emergency Situations.* Notwithstanding any limitations in the foregoing sections, but subject to compliance by the Board with the provisions of Section 5600 *et seq.* of the California Civil Code, the Board may levy Emergency Assessments to cover expenses arising due to the following situations (each an "**Emergency Situation**"):

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to repair or maintain the Common Facilities, or any portion thereof, for which the Master Association is responsible in a situation in which a threat to personal safety thereon is discovered or believed to be imminent; or
- (c) An extraordinary expense necessary to repair or maintain the Common Facilities, or any portion thereof, for which the Master Association is responsible that could not have been reasonably foreseen by the Board or the Operator, as applicable, when preparing the Budget or the summary thereof, pursuant to Section 5300 of the California Civil Code. Prior to the imposition or collection of an Assessment pursuant to this subparagraph (c), the Board, as applicable, 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. The resolution shall be distributed to the Owners with the notice of Assessment.

5.8 Commencement of Regular Assessments and Cost Center Assessments.

Regular Assessments and Cost Center Assessments (if any) shall commence on all Lots and Residential Units in a particular Phase on the earlier of (i) the first day of the first calendar month following the first Close of Escrow for the sale of a Residential Unit within such Phase or (ii) as set forth in Section 16.10.3, to the extent a Phase has been annexed and Residential Units therein are leased but not sold, the first day of the first calendar month following the execution of the first lease of a Residential Unit within such Phase. Regular Assessments and Cost Center Assessments (if any) for fractions of any month involved shall be prorated based on the actual number of days in such month. Declarant shall pay its full pro rata share of the Regular Assessments and any applicable Cost Center Assessments on all unsold Lots or Residential Units for which Regular Assessments and such Cost Center Assessments have commenced. The Board shall fix the monthly amount of the Regular Assessments to be paid by the Hotel Owner, the Retail Owner and each Residential Owner at least thirty (30) days in advance of each fiscal year of the Master Association. Written notice of any change in the amount of any Regular Assessment, Special Assessment, Capital Improvement Assessment, Reconstruction Assessment or Cost Center Assessment shall be sent via first-class mail or, in the case of Owners that have elected pursuant to the Bylaws to receive notices from the Master Association by electronic transmission, by electronic transmission to every Owner subject thereto, not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due. From time to time the Board may determine that there are excess funds in the Operating Fund or the Reserve Fund which may be used to reduce the following year's Regular Assessments. Upon dissolution of the Master Association incident to the abandonment or termination of this Declaration, any amounts remaining in any of the Accounts shall be distributed to or for the benefit of the then Owners of the Lots and Residential Units in the same proportions as such monies were collected from the Owners of such Lots and Residential Units.

5.9 Other Assessments.

5.9.1 *Capital Improvement Assessments.* The Board, following a vote of a majority of the members thereof, may levy upon the Hotel Owner, the Retail Owner and each Residential Owner and its Lot or Residential Unit, in any fiscal year, a Capital Improvement Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement or other addition to the Common Facilities, including in each case fixtures and personal property related thereto.

5.9.2 *Remedial Assessments.* The Board may levy a Remedial Assessment against the Hotel Owner, the Retail Owner and/or any individual Residential Owner and its Lot or Residential Unit to reimburse the Master Association for costs incurred as a result of any Default or Event of Default by such Owner or Residential Owner, as applicable, its Occupant or their respective Permittees under this Declaration, the Project Rules and Regulations or the Parking Garage Rules and Regulations. Remedial Assessments shall be due ten (10) days after the Board gives written notice thereof to the Owner or Residential Owner, as applicable, and subject thereto.

5.9.3 *Reimbursement Assessments.* The Board may levy a Reimbursement Assessment against the Hotel Owner, the Retail Owner and/or any individual Residential Owner and its Lot or Residential Unit following a determination by the Board that such Reimbursement Assessment is appropriate to pay or reimburse the Master Association for materials or services provided by the Master Association to the extent that such materials or services benefit such individual Owner or its Lot or Residential Unit and not the Project generally, including, without limitation, reimbursement for the costs incurred in repairing damage to Common Facilities for which the Owner, its Occupant, or their respective Permittees were responsible. The Board shall provide notice by first class mail or, in the case of Owners that have elected pursuant to the Bylaws to receive notices from the Master Association by electronic transmission, by electronic transmission to the Hotel Owner, the Retail Owner or the Residential Owner, as applicable, subject to a Reimbursement Assessment of any decision to levy such Reimbursement Assessment, not less than thirty (30) nor more than sixty (60) days prior to such Reimbursement Assessment becoming due.

5.9.4 *Special Assessments.* The Board may levy a Special Assessment against the Hotel Owner, the Retail Owner and the Residential Owners and their Lots or Residential Units to fund any budgetary shortfall, to restore any funds transferred from the Reserve Fund or for any other assessment or cost designated in this Declaration to be levied as a Special Assessment. The Board shall provide notice by first class mail or, in the case of Owners that have elected pursuant to the Bylaws to receive notices from the Master Association by electronic transmission, by electronic transmission to the Owners subject to Special Assessments of any decision to levy such Special Assessments, not less than thirty (30) nor more than sixty (60) days prior to such Special Assessment becoming due. Notwithstanding the foregoing, the Board shall not impose Special Assessments without first complying with the provisions of California Civil Code Section 5605. The foregoing limitation shall be subject to exception for Emergency Situations.

5.9.5 *Cost Center Assessments.* Cost Center Assessments shall be levied by the Master Association against the Owners of Lots and/or Residential Units included within a Cost Center to fund the applicable Cost Center Expenses. During the period of time that any of the Lots within the Cost Center is owned by Declarant and subject to a Public Report, the Cost Center Assessments shall be as set forth in the most recent Budget reviewed by the DRE. Thereafter, the Board shall determine the amount of the Cost Center Assessment to be paid by each Owner of a Lot and/or Residential Unit within such Cost Center after consultation with the applicable Cost Center Committee. The Master Association shall be subject to the same procedural rules (e.g., notice, approval of increase, etc.) with respect to the Cost Center Assessments as are applicable to Regular Assessments except that any required vote of the Owners (or, in the case of Residential Lots in a Cost Center, Residential Associations) to approve an increase of a Cost Center Assessment a similar matter shall be made only by the Owners of Lots (or, in the case of Residential Lots, Residential Associations) in such Cost Center. All amounts collected as Cost Center Assessments may be commingled with other funds of the Master Association, but shall be shown as separate items on the Master Association's financial statements and shall be used solely for the Cost Center for which such amounts were collected and solely for the purpose for which such funds were collected.

5.10 **Allocation of Assessments.**

5.10.1 *General Regular Assessments.*

(a) *Calculation of General Regular Assessments.* The Master Association Budget shall have the following three (3) components which collectively comprise the General Regular Assessments:

(i) The costs attributable to estimated income tax, electricity, refuse, elevators/escalator maintenance, pest control, emergency generator service, mechanical systems maintenance, personnel expense and reserves for mechanical systems, lighting and exterior plaza improvements ("**Variable General Common Expenses**"). The Variable General Common Expenses shall be allocated to the Hotel Property and the Retail Areas as set forth in Section 5.10.1(b) below and to each annexed Residential Project as set forth in Section 5.10.1(d) below. The Variable General Common Expenses attributable to each annexed Residential Project shall be further allocated to each Residential Unit therein pursuant to Section 5.10.1(d) below.

(ii) All Insurance Expenses. The Insurance Expenses shall be allocated to the Hotel Property and the Retail Areas as set forth in Section 5.10.1(c) below and to each annexed Residential Project as set forth in Section 5.10.1(d) below. The Insurance Expenses attributable to each annexed Residential Project shall be further allocated to each Residential Unit therein pursuant to Section 5.10.1(d) below.

(iii) All other costs set forth in the Master Association Budget (the "**Fixed General Common Expenses**"). The Fixed General Common Expenses shall be allocated to the Hotel Property, the Retail Areas and to each annexed Residential Project as set forth in Section 5.10.1(e)(i) below. The Fixed General Common Expenses attributable to each annexed Residential Project shall be further allocated to each Residential Unit therein pursuant to Section 5.10.1(e)(ii) below.

(b) *Allocation of Variable General Common Expenses to Hotel Property and Retail Areas.* The Variable General Common Expenses shall be allocated to the Hotel Property and the Retail Areas as follows:

(i) The portion of the Variable General Common Expenses to be paid by the Hotel Owner shall be calculated by multiplying (x) the total Variable General Common Expenses by (y) the Percentage Share (Variable General Common Expenses) for the Hotel Property.

(ii) The portion of the Variable General Common Expenses to be paid by the Retail Owner shall be calculated by multiplying (x) the total Variable General Common Expenses by (y) the Percentage Share (Variable General Common Expenses) for the Retail Areas.

(c) *Allocation of Insurance Expenses to Hotel Property and Retail Areas.* The Insurance Expenses shall be allocated to the Hotel Property and the Retail Areas as follows:

(i) The portion of the Insurance Expenses to be paid by the Hotel Owner shall be calculated by multiplying (x) the total Insurance Expenses by (y) the Percentage Share (Insurance Expenses) for the Hotel Property.

(ii) The portion of the Insurance Expenses to be paid by the Retail Owner shall be calculated by multiplying (x) the total Insurance Expenses by (y) the Percentage Share (Insurance Expenses) for the Retail Areas.

(d) *Allocation of Variable General Common Expenses and Insurance Expenses to Residential Projects and Residential Units.* The Variable General Common Expenses and the Insurance Expenses attributable to each annexed Residential Project and allocated to each Residential Unit therein shall be allocated as follows:

(i) first, the share of the Variable General Common Expenses attributable to the applicable Residential Project (the "Project Variable General Common Expenses") shall be derived by multiplying (x) the total Variable General Common Expenses by (y) the Percentage Share (Variable General Common Expenses) for such Residential Project;

(ii) second, the share of the Insurance Expenses attributable to the applicable Residential Project (the "Project Insurance Expenses") shall be derived by multiplying (x) the total Insurance Expenses by (y) the Percentage Share (Insurance Expenses) for such Residential Project;

(iii) third, the Project Variable General Common Expenses and the Project Insurance Expenses shall be added together, resulting in the "Combined Variable Expenses"; and

(iv) fourth, the Combined Variable Expenses shall be multiplied by the Unit Percentage Share of the applicable Residential Unit resulting in the "Variable Unit Assessment." The Variable Unit Assessment represents the portion of the Variable General Common Expenses and Insurance Expenses attributable to such Residential Unit and to be paid by the Owner of such Residential Unit.

(e) *Allocation of Fixed General Common Expenses.* The Fixed General Common Expenses shall be allocated as follows:

(i) Fixed General Common Expenses shall be allocated to the Hotel Property, the Retail Areas and each Residential Project as follows:

a. Prior to the annexation of Phase 2, thirty-three and one-third percent (33.333%) to each of (i) the Hotel Property, (ii) the Retail Areas and (iii) the Hotel Condominium Project.

b. After the annexation of Phase 2 and prior to the annexation of Phase 3, twenty-five percent (25%) to each of (i) the Hotel Property, (ii) the Retail Areas, (iii) the Hotel Condominium Project and (iv) the North Tower Project.

c. After the annexation of Phase 3, twenty percent (20%) to each of (i) the Hotel Property, (ii) the Retail Areas, (iii) the Hotel Condominium Project, (iv) the North Tower Project and (v) the South Tower Project.

The Fixed General Common Expenses to be paid by the Hotel Owner and the Retail Owner shall be calculated as set forth above (*i.e.*, after the annexation of Phase 3, each of the Hotel Owner and the Retail Owner shall be responsible to pay twenty percent (20%) of the Fixed General Common Expenses). Each Residential Unit's share of the Fixed General Common Expenses shall be determined as set forth in Section 5.10.1(e)(ii) below.

(ii) Fixed General Common Expenses shall be allocated to each Residential Unit in an annexed Residential Project by dividing (x) the Fixed General Common Expenses allocated to all Residential Units in such Residential Project pursuant to Section 5.10.1(e)(i) above by (y) the number of Residential Units in such Residential Project. For example, after the annexation of Phase 3, the share of Fixed General Common Expenses to be paid by the Owner of one (1) Residential Unit in the Hotel Condominium Project would be calculated by dividing the total Fixed General Common Expenses by five (5) and then dividing the resulting amount by sixty-three (63).

The following is a hypothetical calculation for one month's General Regular Assessments paid by the Hotel Owner, the Retail Owner and the Owner of one (1) Residential Unit in the Hotel Condominium Project (assuming that the Unit Percentage Share of such Residential Unit is 0.793%) pursuant to the Master Association Budget to be used following the annexation of Phase 3 to the Project:

Amount of Total Monthly Master Association Budget for Entire Project

Budget Component	Budgeted Expenses
Total Variable General Common Expenses:	\$100,000
Total Insurance Expenses:	\$160,000
Total Fixed General Common Expenses:	\$60,000
Total Budgeted Expenses:	\$320,000

Amount of Monthly General Regular Assessments Paid by Hotel Owner

Budget Component	Budgeted Expenses	Hotel Owner Applicable Allocated Percentage	Hotel Owner Share
Variable General Common Expenses:	\$100,000	47.94% (See <u>Section 5.10.1(b)(i)</u>)	\$47,940
Insurance Expenses:	\$160,000	28.76% (See <u>Section 5.10.1(c)(i)</u>)	\$46,016
Fixed General Common	\$60,000	20% (See <u>Section 5.10.1(e)(i)c</u>)	\$12,000

Expenses:			
Total Budgeted Expenses:	\$320,000	33.111%	\$105,956

Amount of Monthly General Regular Assessments Paid by Retail Owner

Budget Component	Budgeted Expenses	Retail Owner Applicable Allocated Percentage	Retail Owner Share
Variable General Common Expenses:	\$100,000	37.14% (See Section 5.10.1(b)(ii))	\$37,140
Insurance Expenses:	\$160,000	7.39% (See Section 5.10.1(c)(ii))	\$11,824
Fixed General Common Expenses:	\$60,000	20% (See Section 5.10.1(e)(i)c)	\$12,000
Total Budgeted Expenses:	\$320,000	19.051%	\$60,964

Amount of Monthly General Regular Assessments Paid by All Residential Owners in Hotel Condominium Project

Budget Component	Budgeted Expenses	Hotel Condominium Project Applicable Allocated Percentage	Hotel Condominium Project Share
Variable General Common Expenses:	\$100,000	2.41% (See Section 5.10.1(d))	\$2,410
Insurance Expenses:	\$160,000	7.65% (See Section 5.10.1(d))	\$12,240
Fixed General Common Expenses:	\$60,000	20% (See Section 5.10.1(e)(i)c)	\$12,000
Total Budgeted Expenses:	\$320,000	6.894%	\$22,060

Amount of Monthly General Regular Assessments Paid by Owner of a Residential Unit in Hotel Condominium Project with a Unit Percentage Share of 0.793%

The Hotel Condominium Project's share of the Variable General Common Expenses (\$2,410) and the Insurance Expenses (\$12,240) are first added together resulting in Combined Variable Expenses of \$14,650. The Combined Variable Expenses are then multiplied by the Unit Percentage Share of the Residential Unit (0.793%) to calculate the Residential Owner's share of the Variable General Common Expenses and Insurance Expenses (\$116.17). The Residential Owner's share of the Fixed General Common Expenses (\$190.48) is derived dividing the Hotel Condominium Project's share of the total Fixed General Common Expenses (\$12,000) by the number of Residential Units in the Hotel Condominium Project (63).

Budget Component	Budgeted Expenses	Residential Owner Applicable Allocated Percentage	Residential Owner Share
Combined Variable General Common Expenses and Insurance Expenses:	\$260,000	0.045% (See <u>Section 5.10.1(d)</u>)	\$116.17
Fixed General Common Expenses:	\$60,000	0.317% (See <u>Section 5.10.1(e)(ii)</u>)	\$190.48
Total Budgeted Expenses:	\$320,000	0.096%	\$306.65

5.10.2 *Garage Regular Assessments.*

(a) *Calculation of Garage Regular Assessments.* The Garage Cost Center Budget shall have the following two (2) components which collectively comprise the Garage Regular Assessments:

(i) The costs attributable to electricity, garage sweeping, access control, mechanical systems maintenance, fire suppression monitoring, garage operator expense and reserves for garage improvements, mechanical systems and lighting ("**Variable Garage Expenses**"). The Variable Garage Expenses shall be allocated to the Hotel Property and the Retail Areas as set forth in Section 5.10.2(b) below and to each annexed Residential Project as set forth in Section 5.10.2(c) below. The Variable Garage Expenses attributable to each annexed Residential Project shall be further allocated to each Residential Unit therein pursuant to Section 5.10.2(c) below.

(ii) All other costs set forth in the Garage Cost Center Budget (the "**Fixed Garage Expenses**"). Fixed Garage Expenses shall be allocated to the Hotel Property, the Retail Areas and to each annexed Residential Project as set forth in Section 5.10.2(d)(i) below. The Fixed Garage Expenses attributable to each annexed Residential Project shall be further allocated to each Residential Unit therein pursuant to Section 5.10.2(d)(ii) below

(b) *Allocation of Variable Garage Expenses to Hotel Property and Retail Areas.* The Variable Garage Expenses shall be allocated to the Hotel Property and the Retail Areas as follows:

(i) The portion of the Variable Garage Expenses to be paid by the Hotel Owner shall be calculated by multiplying (x) the total Variable Garage Expenses by (y) the Percentage Share (Variable Garage Expenses) for the Hotel Property.

(ii) The portion of the Variable Garage Expenses to be paid by the Retail Owner shall be calculated by multiplying (x) the total Variable Garage Expenses by (y) the Percentage Share (Variable Garage Expenses) for the Retail Areas.

(c) *Allocation of Variable Garage Expenses to Residential Projects and Residential Units.* The Variable Garage Expenses attributable to each annexed Residential Project and allocated to each Residential Unit therein shall be allocated as follows:

(i) first, the Variable Garage Expenses attributable to the applicable Residential Project (the "**Project Variable Garage Expenses**") shall be derived by multiplying (x) the total Variable Garage Expenses by (y) the Percentage Share (Variable Garage Expenses) for such Residential Project; and

(ii) second, the Project Variable Garage Expenses shall be multiplied by the Unit Percentage Share of the applicable Residential Unit resulting in the "**Garage Variable Unit Assessment**." The Garage Variable Unit Assessment represents the portion of the Variable Garage Expenses attributable to such Residential Unit and to be paid by the Owner of such Residential Unit.

(d) *Allocation of Fixed Garage Expenses.* The Fixed Garage Expenses shall be allocated as follows:

(i) Fixed Garage Expenses shall be allocated to the Hotel Property, the Retail Areas and each Residential Project as follows:

a. Prior to the annexation of Phase 2, thirty-three and one-third percent (33.333%) to each of (i) the Hotel Property, (ii) the Retail Areas and (iii) the Hotel Condominium Project.

b. After the annexation of Phase 2 and prior to the annexation of Phase 3, twenty-five percent (25%) to each of (i) the Hotel Property, (ii) the Retail Areas, (iii) the Hotel Condominium Project and (iv) the North Tower Project.

c. After the annexation of Phase 3, twenty percent (20%) to each of (i) the Hotel Property, (ii) the Retail Areas, (iii) the Hotel Condominium Project, (iv) the North Tower Project and (v) the South Tower Project.

The Fixed Garage Expenses to be paid by the Hotel Owner and the Retail Owner shall be calculated as set forth above (*i.e.*, after the annexation of Phase 3, each of the Hotel Owner and the Retail Owner shall be responsible to pay twenty percent (20%) of the Fixed Garage Expenses). Each Residential Unit's share of the Fixed Garage Expenses shall be determined as set forth in Section 5.10.2(d)(ii) below.

(ii) Fixed Garage Expenses shall be allocated to each Residential Unit in an annexed Residential Project by dividing (x) the Fixed Garage Expenses allocated to all Residential Units in such Residential Project pursuant to Section 5.10.2(d)(i) above by (y) the number of Residential Units in such Residential Project. For example, after the annexation of Phase 3, the share of Fixed Garage Expenses to be paid by the Owner of one (1) Residential Unit in the Hotel Condominium Project would be calculated by dividing the total Fixed Garage Expenses by five (5) and then dividing the resulting amount by sixty-three (63).

The following is a hypothetical calculation for one month's Garage Regular Assessments paid by the Hotel Owner, the Retail Owner and the Owner of one (1) Residential Unit in the Hotel Condominium Project (assuming that the Unit Percentage Share of such Residential Unit is 0.793%) pursuant to the Garage Cost Center Budget to be used following the annexation of Phase 3 to the Project:

Amount of Total Monthly Garage Cost Center Budget for Entire Project

Budget Component	Budgeted Expenses
Total Variable Garage Expenses:	\$447,000
Total Fixed Garage Expenses:	\$48,000
Total Budgeted Expenses	\$495,000

Amount of Monthly Garage Regular Assessments Paid by Hotel Owner

Budget Component	Budgeted Expenses	Hotel Owner Applicable Allocated Percentage	Hotel Owner Share
Variable Garage Expenses:	\$447,000	38.80% (See Section 5.10.2(b)(i))	\$173,436
Fixed Garage Expenses:	\$48,000	20% (See Section 5.10.2(d)(i)c)	\$9,600
Total Budgeted Expenses:	\$495,000	36.685%	\$181,590.75

Amount of Monthly Garage Regular Assessments Paid by Retail Owner

Budget Component	Budgeted Expenses	Retail Owner Applicable Allocated Percentage	Retail Owner Share
Variable Garage Expenses:	\$447,000	9.70% (See Section 5.10.2(b)(ii))	\$43,359
Fixed Garage Expenses:	\$48,000	20% (See Section 5.10.2(d)(i)c)	\$9,600
Total Budgeted Expenses:	\$495,000	10.859%	\$53,752.05

Amount of Monthly Garage Regular Assessments Paid by All Residential Owners in Hotel Condominium Project

Budget Component	Budgeted Expenses	Hotel Condominium Project Applicable Allocated Percentage	Hotel Condominium Project Share
Variable Garage Expenses:	\$447,000	4.70% (See Section 5.10.2(c))	\$21,009
Fixed Garage Expenses:	\$48,000	20% (See Section 5.10.2(d)(ii))	\$9,600
Total Budgeted Expenses:	\$495,000	6.894%	\$34,125.30

Amount of Monthly General Regular Assessments Paid by Owner of a Residential Unit in Hotel Condominium Project with a Unit Percentage Share of 0.793%

The Variable Garage Expenses (\$21,009) are then multiplied by the Unit Percentage Share of the Residential Unit (0.793%) to calculate the Residential Owner's share of the Variable Garage Expenses (\$166.60). The Residential Owner's share of the Fixed Garage Expenses (\$152.38) is derived dividing the Hotel Condominium Project's share of the total Fixed Garage Expenses (\$9,600) by the number of Residential Units in the Hotel Condominium Project (63).

Budget Component	Budgeted Expenses	Residential Owner Applicable Allocated Percentage	Residential Owner Share
Variable Garage Expenses:	\$447,000	0.037% (See Section 5.10.2(c))	\$166.60
Fixed Garage Expenses:	\$48,000	0.317% (See Section 5.10.2(d)(ii))	\$152.38
Total Budgeted Expenses:	\$495,000	0.064%	\$318.98

5.10.3 Future Modification of Initial Budgets and Allocations. Notwithstanding any other provisions of this Declaration to the contrary, the Master Association may not recharacterize any Variable General Common Expenses, Variable Garage Expenses or Insurance Expenses or modify the proration/allocation formulas and/or assumptions from those set forth in the Initial Budgets without the consent of each of the Hotel Owner, the Retail Owner and each Residential Association. Without limiting the foregoing, the Master Association may not (i) modify the percentage allocations set forth in the definitions of "Percentage Share (Insurance Expenses)," (other than a reallocation permitted pursuant to Section 11.3.6(c)) "Percentage Share (Variable Garage Expenses)," "Percentage Share (Variable General Common Expenses)" or "Percentage Share (Proceeds)," (other than a reallocation permitted pursuant to Section 11.3.6(c)) (ii) reallocate General Common Expenses, Garage Expenses or Insurance Expenses, or (iii) reallocate Fixed General Common Expenses and Variable General Common Expenses or Fixed Garage Expenses and Variable Garage Expenses without the consent of each of the Hotel Owner, the Retail Owner and each Residential Association.

5.10.4 Remedial Assessments and Reimbursement Assessments. All Remedial Assessments and Reimbursement Assessments shall be levied one hundred percent (100%) against the Owner and its Lot or Residential Unit against whom the Remedial Assessment or Reimbursement Assessment is made. Any Remedial Assessments or Reimbursement Assessments levied against a Lot owned by a Residential Association shall further be assessed against each Residential Owner in such Residential Project and his or her Residential Unit in the same manner as General Regular Assessments.

5.10.5 Special Assessments. Any Special Assessments shall be levied against the Hotel Owner, the Retail Owner and each Residential Project in the same manner as General Regular Assessments. Any Special Assessments levied against a Residential Project shall further be assessed against each Residential Owner in such Residential Project and his or her Residential Unit in the same manner as General Regular Assessments.

5.10.6 *Other Assessments.* All Capital Improvement Assessments and Reconstruction Assessments shall be levied against the Hotel Owner, the Retail Owner and each Residential Project based upon the Hotel Owner's, the Retail Owner's and each Residential Project's respective Percentage Share (Variable General Common Expenses); *provided, however,* that with respect to Capital Improvement Assessments and Reconstruction Assessments related to the Parking Garage, such charge shall be levied based upon the Hotel Owner's, the Retail Owner's and each Residential Project's respective Percentage Share (Variable Garage Expenses). Capital Improvement Assessments and Reconstruction Assessments levied against a Residential Project shall further be assessed against each Residential Owner in such Residential Project and his or her Residential Unit based upon the Unit Percentage Share of such Residential Unit.

5.11 **Exemptions.**

5.11.1 *Exemption From Assessment Until Lot or Residential Unit Put To Use.* Declarant and any other Owner of a Lot or Residential Unit which has not been completed (*i.e.*, ready for use or occupancy) shall be exempt from payment of that portion of the Regular Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the Lot or Residential Unit. Any such exemption from the payment of Regular Assessments shall be in effect only until the earlier to occur of (1) the recordation of a notice of completion relating to such Lot or Residential Unit, or (2) the occupation or use of the Lot or Residential Unit.

5.11.2 *Exemption From Assessment Until Common Facilities Improvement Completed.* Notwithstanding any other provisions of this Declaration, until the earlier to occur of (1) the recordation of a notice of completion of an Improvement on the Common Facilities, or (2) the placement of such Improvement into use, each Owner (including Declarant) shall be exempt from paying that portion of any Regular Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of such Common Facilities Improvement.

5.11.3 *Exemption From Assessment Until Service Is Initiated.* During the initial stages of occupancy of the Project, certain services and Master Association Personnel may be phased-in as the Project becomes occupied. Accordingly, notwithstanding any other provisions of this Declaration to the contrary, until a particular service is initiated and/or particular Master Association Personnel are hired, each Owner (including Declarant) shall be exempt from paying that portion of any Regular Assessment which is for the purpose of paying for such service and/or Master Association Personnel.

5.11.4 *Maintenance Agreement.* Notwithstanding any other provisions of this Declaration or the Bylaws regarding the term and termination of contracts with Declarant for providing services to the Master Association, Declarant may enter into a written maintenance and/or subsidy agreement with the Master Association under which Declarant shall pay all or any portion of the operating Common Expenses and perform all or any portion of the Master Association's maintenance responsibilities in exchange for a temporary suspension of Regular Assessments. Such maintenance agreement shall extend for a term and shall be on such conditions as are reviewed by the DRE.

5.12 **Payment of Assessments; Delinquency.** Each of the Hotel Owner, the Retail Owner and the Residential Owners shall pay to the Master Association the Regular Assessments levied against each it and its Lot or Residential Unit in installments at such frequency and in such amounts as established by the Board. Any installment of an Assessment provided for in this Declaration shall be delinquent if not paid within fifteen (15) days of the due date as established by the Board. The Board shall be authorized to adopt a system pursuant to which any installment of Regular Assessments and any other Assessments not paid prior to the delinquency thereof, plus all reasonable costs of collection (including, without limitation, attorneys' fees) and late charges as provided herein and as provided in Section 5650 of the California Civil Code, shall bear interest commencing on the date such Assessment (or installment thereof) became delinquent until paid at the Default Rate. Any acceptance by the Master Association of any tender of a partial payment of an Assessment shall not be deemed to be an acceptance of such partial payment in satisfaction of the full amount due or a waiver of the Master Association's right to demand and receive full payments thereafter. Each Residential Association may act as agent on behalf of the Residential Owners who are members of such Residential Association and collect Assessments owed by such Residential Owners and pay such Assessments to the Master Association directly.

5.13 **Notice and Release of Lien.** All sums other than Remedial Assessments assessed in accordance with the provisions of this Declaration shall constitute a lien on the respective Lot or Residential Unit. The lien shall become effective upon recordation by the Board or its authorized agent of a notice (a "**Notice of Lien**") securing the payment of any Assessment or installment thereof, levied by the Master Association against any Owner and its Lot(s) or Residential Unit(s). The Notice of Lien shall state: (a) the amount of the Assessment or installment, as the case may be, and other authorized charges and interest (which may be estimated), including the cost of preparing and recording the Notice of Lien; (b) the expenses (which may be estimated) of collection in connection with any delinquent installments, including without limitation, attorneys' fees and costs; (c) a legal description of the Lot or Residential Unit against which the same has been assessed; (d) the name and address of the Master Association; (e) the name of the Owner thereof (which may be based upon a search of the title records); and (f) in order for the lien to be enforced by non-judicial foreclosure, the name and address of the trustee authorized by the Master Association to enforce the lien by sale. The Notice of Lien may be signed by any authorized officer or agent of the Master Association. The lien shall relate only to the individual Lot or Residential Unit against which the Assessment was levied, and not to the Project as a whole. Upon payment to the Master Association of the full amount claimed in the Notice of Lien, or other satisfaction thereof the Board shall cause to be recorded a notice (a "**Notice of Release**") stating the satisfaction and release of the amount claimed. The Board may demand and receive from the applicable Owner a reasonable charge, to be determined by the Board, for the preparation and recordation of the Notice of Release before recording it. Any purchaser or encumbrancer who has acted in good faith and extended value may rely upon the Notice of Release as conclusive evidence of the full satisfaction of the sums stated in the Notice of Lien.

5.14 **Enforcement of Liens.** It shall be the duty of the Board to enforce the collection of any amounts due under this Declaration by any of the alternative means of relief afforded by this Declaration or otherwise by applicable law. Subject to California Civil Code Sections 4040 and 5650 through 5740, the lien against a Lot or Residential Unit may be enforced by sale of the

Lot or Residential Unit by the Master Association, the Master Association's attorneys, any title insurance company authorized to do business in the State of California, or other Persons authorized to conduct the sale as a trustee, after failure of the Owner to pay any Assessment, or installment thereof, as provided herein. The sale shall be conducted in accordance with the provisions of the California Civil Code, applicable to the exercise of powers of sale in deeds of trust, or in any other manner permitted by law. An action may be brought to foreclose the lien of the Master Association by the Board after the expiration of at least thirty (30) days from the date on which the Notice of Lien was recorded, provided that at least ten (10) days have expired since the date when a copy of the Notice of Lien was mailed to the Owner affected thereby. The Master Association, through its agents, shall have the right and power to bid on the Lot or Residential Unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Master Association or the purchaser at the sale to secure occupancy of the defaulting Owner's Lot(s) or Residential Unit(s), and the defaulting Owner shall be required to pay the reasonable rental value for such Lot(s) or Residential Unit(s) during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. Suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving any lien securing the same, but this provision or any institution of suit to recover a money judgment shall not constitute an affirmation of the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section 5.14 may include attorneys' fees and costs as fixed by the court.

5.15 Priority of Assessment Lien. The lien of the Assessments provided for herein, including interest and costs (including attorneys' fees) shall be prior and superior to (a) any declaration of homestead recorded after the recordation of this Declaration, and (b) all other liens, except (i) all Taxes which, by law, are superior thereto, and (ii) the lien or charge of any First Mortgagee made in good faith and for value and recorded prior to the date on which a Notice of Lien against the respective Lot or Residential Unit was recorded. Sale or transfer of any Lot or Residential Unit shall not affect the Assessment lien; however, the sale or transfer of any Lot or Residential Unit pursuant to judicial or non-judicial foreclosure of a First Mortgage in favor of a First Mortgagee shall extinguish the lien of such Assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or Residential Unit from liens for any Assessments thereafter becoming due. When the First Mortgagee or other purchaser of a Lot or Residential Unit obtains title pursuant to a judicial or non-judicial foreclosure of a First Mortgage, or deed in lieu of foreclosure, such Person, its successors and assigns, shall not be liable for Assessments levied against such Lot or Residential Unit which became due prior to the acquisition of title to such Lot or Residential Unit by such Person.

5.16 Additional Cost Centers. The purpose of this Section is to provide Declarant and the Master Association with the right to establish and maintain Cost Centers, which include Cost Center Common Facilities and/or additional services which benefit the Lots and Residential Units located within such Cost Center. Notwithstanding any other provision(s) in this Declaration, in the event Declarant and/or the Master Association desire to establish an additional Cost Center, Declarant and/or the Master Association shall have the right to establish additional service(s) (including, but not limited to, employing security guards, manned security entrances, and custodians) or facility(ies) (including, but not limited to, entry driveway security

mechanisms, landscaping, shared driveways and shared walkways) for any portion of the Project subject to the following provisions:

(a) Declarant may establish a Cost Center Assessment for a particular Cost Center at any time prior to the sale of a Lot or a Residential Unit within such Cost Center to an Owner other than Declarant. Subsequent to the issuance of a Public Report for the portion of the Project proposed to become a Cost Center, each Owner of a Lot (or in the case of Residential Lots, each applicable Residential Association) within such proposed Cost Center must consent to the establishment and operation (including, without limitation, the initial budget and the Cost Center Assessments) for a particular service or facility for their proposed Cost Center. Such requisite consent must be in writing and may be obtained during a properly noticed regular or special meeting of the Master Association. For the avoidance of doubt, the Master Association, as Owner of the Common Facilities, shall have the power to consent to the establishment and operation of Cost Centers affecting Common Facilities.

(b) The full cost and expense (including reserves) relating to any Cost Center Common Facilities or any additional service benefiting a Cost Center shall be fully paid by all of the Owners in such Cost Center pursuant to Cost Center Assessments levied and collected by the Master Association.

(c) No additional service or facility shall be established which materially adversely affects any existing services and facilities then being provided for the overall Project.

(d) In the event a Cost Center is established, the Board shall manage such Cost Center or, alternatively, the Owners of Lots (or in the case of Residential Lots, the applicable Residential Associations) in such Cost Center may elect a committee ("Cost Center Committee") for their Cost Center. The Board may establish, from time to time, fair and reasonable procedures for the election of such Cost Center Committee. The Cost Center Committee for a particular Cost Center shall consist of the Owners of Lots (or in the case of Residential Lots, the applicable Residential Associations) in that Cost Center or representatives of Declarant. Each Cost Center Committee will be a committee of the Master Association, subject to the control of the Board, and each Cost Center Committee will meet, confer and work closely with the Board in order to coordinate the establishment and maintenance of the additional service(s) or facility(ies). Each Cost Center Committee will be primarily responsible for performing the necessary tasks, including such tasks established by the Board, for the proper establishment and maintenance of the Cost Center Common Facilities and/or the additional service(s) benefiting the Cost Center, and the appropriate assessments to be established. Such tasks shall include, without limitation the preparation of budgets (which shall include sufficient start up and reserve funds) and other financial information for the additional service(s) or facility(ies) including, without limitation, periodic reserve studies required pursuant to California Civil Code Section 5550.

(e) In the event any Cost Center Assessments are established for a particular Cost Center, such Cost Center Assessments may not be increased by more than twenty percent (20%) from the levels of the preceding fiscal year unless a majority of a quorum of the voting power of the Master Association within such Cost Center consents to such increase. Cost

Center Assessments may not be used to cover any operating expenses of the Master Association other than those for which the Cost Center Assessments are being collected. The Board shall have the authority to levy Special, Reconstruction and/or Capital Improvement Assessments against the Owners within such Cost Center which relate to the additional facilities or services provided to such Owners consistent with the provisions of this Article V of this Declaration; *provided* that any applicable Owner voting requirement shall only apply to the Owners of Lots (or in the case of Residential Lots, Residential Associations) in the applicable Cost Center.

(f) In the event any Cost Center Assessments are established for a particular Cost Center, the Cost Center Committee, or if no Cost Center Committee is formed for such Cost Center, the Board, shall establish and maintain for such Cost Center maintenance and reserve accounts, which accounts shall be separate from the general accounts of the Master Association, and separate from those accounts maintained for any other Cost Center. The maintenance and reserve accounts for any particular Cost Center shall also be segregated pursuant to the terms generally set forth in Section 5.4 of this Declaration.

ARTICLE VI.

CONSTRUCTION ACTIVITIES

6.1 **Construction Work Generally.** All Construction Work undertaken by any Owner (including any Occupant or Permittee of an Owner) upon any part of the Project shall be performed (and any construction license pursuant to Section 2.13 shall be exercised): (a) at the sole expense of the Owner causing such Construction Work; (b) in as short a time as reasonably practicable, at a time and in a manner that does not unreasonably impair or unreasonably interfere with the use, operation, occupancy or enjoyment or ingress to and egress from any portion of the Project or any Improvements located thereon by any other Owner or its Occupants or Permittees; (c) in a good and workmanlike manner using new materials; (d) in conformity with this Declaration and all Legal Requirements; (e) in a manner so that all safety measures reasonably required to protect the Master Association, the Owners and their respective Occupants and Permittees from injury or damage that may be caused by or result from such construction are taken; (f) so as not to cause any material increase in the cost of any subsequent construction by any Owner, impose any material additional obligations upon any Owner, or unreasonably interfere with any construction performed by any other Owner or its Permittees; (g) as to Persons who are not Owners, only with the consent of the Owner of the Lot upon which the construction activities shall take place, which Owner shall, by giving such consent, agree to be responsible for all obligations under this Declaration relating to such work; and (h) so as to preserve access, ingress and egress to and from the Project and so as not to cause any unreasonable obstruction on any portion of the Project through the placement or operation of any equipment, construction materials, debris or loose dirt related to such work. The Owner performing the Construction Work (or on whose behalf such Construction Work is performed) shall provide and keep in force comprehensive general liability insurance with respect to such work, naming the Master Association as an additional insured, with limits of liability not less than those limits otherwise required to be maintained by such Person under this Declaration, together with such additional types of insurance as are available at commercially reasonable rates and as a prudent business person would maintain under like circumstances exercising reasonable

business judgment. In addition, the Owner causing such Construction Work shall Indemnify the Master Association and the other Owners against all Loss from or in connection with such work or any entry related thereto. No Owner shall permit any mechanics' liens or materialmen's liens, stop notices or other liens to stand against any portion of the Project for labor, material or services furnished to or on behalf of such Owner; *provided, however*, that each Owner shall have the right to contest the validity or amount of any such lien or stop notice, provided that such contest is made diligently and in good faith, and, with respect to liens, the contesting Owner either furnishes security reasonably acceptable to the Master Association, to ensure that the lien, plus applicable costs and charges, will be paid if the contest is unsuccessful, or secures a bond sufficient to release such lien.

6.2 **Permits.** Any Person undertaking any Construction Work shall secure and keep in force, at its sole cost and expense, all licenses and permits necessary for such work and shall complete all Construction Work in accordance with all Legal Requirements and all requirements of any necessary permits, including requisite construction permits, temporary and permanent certificates of occupancy and certificates of plumbing and electrical inspections.

6.3 **Fencing Off Construction.** Unless otherwise agreed in writing by the Board, any Person undertaking any Construction Work shall, at its sole cost and expense and subject to the prior written approval of the Board as to the location and duration thereof, fence off or cause to be fenced off any Construction Work performed by such Person on any Lot. Fencing shall be of such a material and of such a height reasonably necessary to protect existing Improvements in the Property from dust, debris and other inconveniences occasioned by such Construction Work and to protect the Owners and their respective Occupants and Permittees from safety hazards resulting from such Construction Work. Except as permitted by this Declaration and except for warning and safety signs, no signs or advertising materials shall be placed upon any fence without the prior written approval of the Board. The foregoing requirement shall not apply to Construction Work undertaken by a Residential Owner inside his or her Residential Unit.

6.4 **Dust.** Dust from all Construction Work shall be controlled at all times by watering down the construction site or by any other method permitted under Legal Requirements and approved by any Governmental Authority in connection with the issuance of a construction permit. Any sandblasting activities shall be restricted to the water-type method or any other state-of-the-art method permitted under Legal Requirements. The Owner on whose behalf such Construction Work is being performed shall be responsible at its sole cost and expense for keeping all portions of the Common Facilities (or causing the same to be kept) clean and free of dust and mud caused by such Construction Work on a daily basis.

6.5 **Orderly Site.** Any Owner (or its Occupant) performing any Construction Work shall keep the portions of the Project affected by such Construction Work in a neat and orderly condition during construction periods; however, normal construction activities and parking in connection with Construction Work on a Lot conducted in accordance with this Declaration and all applicable Legal Requirements shall not be considered a nuisance or otherwise prohibited by this Declaration. Trash and debris shall not be permitted to accumulate on any Lot. The Owners may store construction equipment and building materials only in areas established by the Board, who may require screening of the construction areas.

6.6 **No Walls, Fences or Barriers.** Except as expressly permitted by the Board, and in each case subject to obtaining approvals from Governmental Authorities pursuant to all applicable Legal Requirements, no permanent walls, fences or other physical barriers shall be constructed or erected in the Project or any portion thereof; *provided, however*, that the foregoing restriction shall not apply to the physical barriers approved and constructed as a part of the initial construction of Improvements upon, over, under and through the Project.

6.7 **Utility Connections.** All Utility Facilities erected, placed or maintained anywhere in or upon the Project shall be installed and maintained underground or concealed or contained within conduits in, under or on the Project unless an alternative location for such Utility Facilities, wires or devices shall have been approved by the Board. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures approved by the Board which are incident to Major Construction Work with respect to which improvement Plans shall have been approved pursuant to this Article VI. No Person shall interrupt, or cause any interruption of, any utilities if such interruption would interfere with the orderly development or operation of the business conducted by any other Owner or its Occupants or Permittees on the Project unless such Person gives the Master Association and the affected Owners not less than fifteen (15) Business Days' prior written notice of the work to be undertaken (except in the event of an Emergency, in which event Section 6.8 shall apply), setting forth the scope, nature and extent of the work, the duration of the work, and the area in which the work is to be performed. Any affected Owner may request that such work be carried on at such times and in such a manner as would reasonably minimize or prevent the disruption of the orderly development and operation of any business conducted on such affected Owner's Lot(s) and the Person performing such work shall comply with such request and shall bear the cost of any overtime or other additional expense incurred as a result of such request.

6.8 **Emergency Work.** Notwithstanding any other requirement for notice contained in this Article VI, in the event of an Emergency, the Master Association or an Owner may undertake any Construction Work reasonably necessary to remedy the Emergency, provided that, with respect to any action taken by an Owner, such Owner acts in good faith and in accordance with all applicable Legal Requirements, gives notice thereof to the Master Association and to any affected Owners upon the occurrence of the Emergency or as soon thereafter as reasonably possible, and otherwise conforms, to the extent practicable, to the applicable provisions of this Article VI.

6.9 **Indemnity.** As to Construction Work or materials ordered or contracted for by or on behalf of each Owner or an Occupant, or their respective agents, such Owner shall Indemnify the Master Association and the other Owners from (a) claims of lien of laborers, materialmen and others arising from such Construction Work performed or supplies furnished pursuant to such order or contract, and (b) all claims arising from or as a result of the death of, or any accident, bodily injury, loss or damage whatsoever caused to any natural Person, or to the property of any Person, as shall occur by reason of the performance of any Construction Work to be constructed or caused to be constructed by such Owner or its Occupant.

6.10 **Approval by Board.** Prior to the commencement of any Major Construction Work, the Person commencing such work shall obtain the written consent of the Board and all applicable Governmental Authorities to the Improvement Plans in accordance with the standards

and procedures hereinafter set forth. Any Improvements constituting Major Construction Work shall be designed and constructed in strict accordance with the Improvement Plans therefor as approved by the Board in writing and all applicable Governmental Authorities in accordance with the standards and procedures hereinafter set forth.

6.11 **Submission of Improvement Plans.** The plans, sections, elevations, details, specifications, schedules, renderings and documents described below (the "**Improvement Plans**"): (a) shall be submitted for approval in duplicate by the Person proposing to perform Major Construction Work (the "**Submitting Person**") to the Master Association at each of the schematic design, design development and construction document stages; (b) shall be prepared by a licensed architect or engineer, as applicable; and (c) shall conform to good and standard architectural or engineering practices. The Improvement Plans shall be in a form and contain a level of detail as may be reasonably required by the Board and consistent with a First-Class Project. Following approval of those Improvement Plans submitted at a particular planning stage, the Submitting Person shall submit such revised and/or refined Improvement Plans as are appropriate for each subsequent planning stage and which conform to Improvement Plans approved at prior stages.

6.12 **Design Review Generally.**

6.12.1 *Review.* The Board shall have a period of forty-five (45) days from its receipt of the complete Improvement Plans for each planning stage within which either to deliver its written approval of the Improvement Plans (with conditions, if any), or to deliver its written disapproval of or objection to the Improvement Plans, which may be given, without limitation, on the following grounds: (i) failure of proposed uses to comply with permitted uses under Article VII and the other requirements of this Article VI; (ii) non-conformance of the Improvement Plans to this Declaration; (iii) failure of the Improvement Plans to comply with all Legal Requirements, and all easements and all licenses granted pursuant to Article II hereof, (iv) adverse impact on foundations, structural elements or major mechanical electrical, plumbing, fire protection, water proofing or acoustical elements of the Project, (v) material adverse impact on the use of any portion of the Project by any Person and (vi) proposed materials or workmanship not consistent with a First-Class Project. If a Submitting Person shall submit Improvement Plans which the Board considers incomplete or for which it reasonably requests additional information, the Master Association shall promptly notify the Submitting Person of such fact, and said forty-five (45) day period shall not be deemed to have commenced until the complete information or Improvement Plans have been received. As a stipulation to its approval, the Board may require (1) that the amounts required under Section 6.12.4 be paid in advance, (2) that specified conditions of design, construction or operation conforming to Legal Requirements be met, and (3) delivery of a certificate of insurance evidencing insurance required by the Board in its reasonable discretion.

6.12.2 *Disapproval.* If the Board, acting in accordance with this Section 6.12, disapproves of, requires modification of or objects to any matter in a submission of Improvement Plans, the Board shall, within the time period set forth in Section 6.12.3 notify the Submitting Person (which notification may be accompanied by corrective alternatives acceptable to the Master Association describing the nature of the objection and a reasonably explicit narrative or illustrative suggestion of what would be acceptable) and the Submitting Person shall make such

changes or additions as are reasonably required to satisfy the objections raised by the Board and shall resubmit the affected Improvement Plans. Upon receipt of the revised Improvement Plans, the Board shall have forty-five (45) days within which to render its approval or disapproval thereof. Further disapprovals shall be governed by this Section 6.12.2. Any Improvement Plans submitted to and approved pursuant to Section 6.12.2 and 6.12.3 shall not be subject to subsequent disapproval except as to material changes in later design stages or failure to meet the requirements and conditions of approval set forth in this Section 6.12. Any change in an approved Improvement Plan which is not a material change and which is in conformance with that plan may not be disapproved so long as such Improvement Plan continues to meet the requirements of Section 6.12.1.

6.12.3 *Inaction*. Failure of the Board to approve or disapprove submitted Improvement Plans within forty-five (45) days after receipt thereof shall be deemed to be a disapproval thereof by the Board.

6.12.4 *Costs of Review*. The Submitting Person shall reimburse the Master Association with respect to any submission or resubmission of Improvement Plans, for the reasonable costs and expenses (including salaried staff and consultant expenses) incurred by the Master Association in reviewing the same (the "Review Amount") in respect of review of all Improvement Plans for a proposed Major Construction Work. Such reimbursement shall be made: (i) regardless of whether the Improvement Plans in question are approved; and (ii) within thirty (30) days of submission by the Master Association of estimates for such costs and expenses to the Submitting Person. Upon the initial submission of Improvement Plans pertaining to a project of work, the Submitting Person must pay a \$1,000.00 (measured in Constant Dollars) deposit to the Master Association into an account maintained by the Master Association and shall fund into said account on a monthly basis, upon receipt of monthly invoices or estimates, the amount in excess of the deposit estimated or invoiced by the Master Association to pay the Review Amount. Any approval of Improvement Plans shall be conditioned upon the payment in full by the Submitting Person of the Review Amount.

6.12.5 *Procedure*. The Board shall have the right from time to time to promulgate rules and procedures pertaining to the submission and approval of Improvement Plans, consistent with the provisions of this Section 6.12. Such rules, if any, shall insure that all time periods for review are fully accorded to the Persons entitled thereto.

6.12.6 *Architectural Guidelines*. The Board shall have the right from time to time to promulgate architectural guidelines for the Project (the "Architectural Guidelines").

6.13 Changes and Modifications. If the Submitting Person, either on its own initiative or in response to Legal Requirements, disapprovals or conditions of the Board, materially amends its Improvement Plans previously approved by the Board, the amended Improvement Plans shall be submitted in duplicate to the Board to obtain its approval or disapproval of the amendments in the manner provided in Section 6.12. Either on its own initiative or in response to Legal Requirements, disapprovals or conditions of the Board, the Submitting Person may depart from its final, approved Improvement Plans for the limited purpose of substituting qualities and types of workmanship, facilities, materials, equipment and supplies which are equal to or better than those specified in the approved Improvement Plans,

provided the departure substantially conforms to the requirements, the color scheme and architectural and aesthetic style of the Project as set forth in the Architectural Guidelines and is otherwise in conformance with approvals and conditions (if any) of the Board.

6.14 **Limitation of Liability.** None of the Master Association or any member of the Board shall be liable in damages to any Person by reason of mistake of judgment, negligence, nonfeasance or for any other acts or omissions of any nature whatsoever (except for willful or intentional misconduct or fraud) arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any Improvement Plans. No approval of Improvement Plans shall constitute assumption of responsibility or a representation or warranty by the Master Association or the Board with respect to the accuracy, sufficiency, propriety or legality of the Improvement Plans. The design and construction of any Improvements by the Submitting Person shall be the sole responsibility of the Submitting Person and any recommendation with respect to any Improvement Plans or the means or method of construction made by the Master Association shall not alter the Submitting Person's responsibility for the safe and proper design and construction of said Improvements, nor shall it give rise to any claim by any Person against the Master Association or the Board for any defect in design or construction of any Improvements.

6.15 **Enforcement.** In addition to any other remedy provided for in this Declaration, at law or in equity, the Master Association may bring suit to enjoin the commencement or continuance of construction of (a) any Major Construction Work for which the Master Association has not approved Improvement Plans or which is not being carried out in accordance with the Improvement Plans previously approved by the Board in accordance with the provisions of this Declaration; or (b) any Construction Work not carried out in accordance with this Declaration or any applicable Legal Requirement.

6.16 **Non-Applicability to Declarant.** The provisions of this Article shall not apply with respect to the installation or construction by Declarant of Improvements within the Project.

ARTICLE VII.

USES AND OPERATION OF THE PROJECT

7.1 Permitted Uses.

7.1.1 *General.* Subject to this Declaration, each portion of the Project shall be occupied, used and/or leased only for uses as are consistent with and allowed by the Project Approvals and otherwise commonly found in First-Class Projects and in accordance with all applicable Legal Requirements. All uses to which the Project is put shall be consistent with the requirement that the Project be a First-Class Project, as determined by the Board.

7.1.2 *Common Facilities.* Subject to this Declaration, and except as otherwise provided in Section 7.1.3, below, with respect to the Parking Garage, each portion of the Common Facilities shall be used for the construction, operation and maintenance of common areas of the Project, including, without limitation, patios, sidewalks, walkways, landscaping, benches and other common areas, consistent with a First-Class Project. The Master Association, acting by a majority vote of the Board and in compliance with all applicable Legal

Requirements, shall have the right from time to time to alter or reconfigure the Common Facilities as deemed reasonably necessary by the Master Association to carry out the purposes of this Declaration (subject to the rights of the Hotel Owner, the Hotel Operator and the Retail Owner and its Occupant(s) set forth in Sections 8.5 and 8.6) or to comply with applicable Legal Requirements. Without limiting the foregoing, the Master Association, acting through the Board, shall have the right to permit (upon prior written request of an Owner) from time to time, and for a term, in the locations and upon conditions determined by the Board (including, without limitation, any increased insurance requirements determined to be necessary or desirable in connection with such proposed use) subject in each case to all applicable Legal Requirements, restrictions, provisions, rules and regulations contained in this Declaration: (i) the non-exclusive use by an Owner (including its Occupants) of portions of the Common Facilities located in front of and adjacent to the Buildings located such Owner's Lot(s) for reasonable "**storefront**" uses consistent with the uses then in effect on such Owner's Lot(s) and (ii) uses of the Common Facilities as provided in any leases entered into by Declarant; *provided, however*, that (1) prior to approving any such use, the Owner requesting such approval shall submit to the Board evidence that such Owner has obtained all approvals required from any Governmental Authority and satisfied any applicable Legal Requirement (and the Owner's request shall so certify to the Master Association); (2) the proposed use shall not interfere with the purpose for which any Exclusive Use Area easement has been granted pursuant to this Declaration; and (3) any such use shall be and remain at all times subject to all of the terms and requirements of this Declaration, including, without limitation, the Project Rules and Regulations and Parking Garage Rules and Regulations. The Master Association shall not unreasonably withhold or delay approval of an Owner's request to use portions of the Common Facilities for such uses; *provided, however*, that such Owner's request shall specify the nature, location and duration of such proposed use.

7.1.3 *Parking Garage; Valet Services.* Subject to this Declaration and all applicable Legal Requirements, each portion of the Parking Garage shall be used solely for the construction, operation and maintenance of a parking garage with not less than the aggregate number of parking spaces required pursuant to the Project Approvals (it being understood that the use of Off-Site Parking Spaces in conjunction with the Parking Garage is required for the Project to meet the parking requirements of the Project Approvals), and uses incidental thereto, and which may include, without limitation (i) a management office; (ii) storage of maintenance supplies and equipment; (iii) car washing; (iv) valet parking service; and (v) provision of electric charging stations for electric vehicles. Such operation and maintenance shall be done in accordance with Section 8.3 hereof and consistent with a First-Class Project. Each of the Hotel Owner, the Retail Owner and each Residential Association shall have the right to collect and retain valet parking service fees from guests visiting the Hotel, the Retail Areas and such Residential Association's Residential Project, as applicable. The valet parking operator engaged by the Master Association shall use reasonable efforts to determine each guest's destination at the Project (*e.g.*, the Hotel, the Retail Areas or a Residential Project) in order to facilitate the allocation of such fees.

7.2 Compliance With Legal Requirements, Right to Contest.

7.2.1 *Compliance With Laws.* Except for any Improvements which encroach upon any Owner's Lot(s) pursuant to Section 2.7, and which shall be the sole responsibility and liability of the Owner of such Improvements, each Owner shall be responsible for the

compliance of all Improvements on its Lot and all activities thereon with all applicable Legal Requirements (including, without limitation, the Project Approvals). The Master Association shall be responsible for the compliance of all Improvements on the Common Facilities with all applicable Legal Requirements.

7.2.2 *Proposition 65 Notices.* Without limiting the generality of the requirements in Section 7.1.1, above or Section 7.14 below, the Master Association or each Owner, as applicable, shall post on the Common Facilities or its Lot, as applicable, all notices required to be posted by the State of California Proposition 65 and all laws, statutes, rules, regulations promulgated thereunder (collectively, the “**Environmental Disclosure Laws**”) with respect to the presence or use of Hazardous Substances on the Common Facilities or within its Lot, as applicable. The foregoing agreement to post such notices is solely for the benefit of the Master Association and the Owners and shall not be deemed an assumption by any such Person of responsibility, obligation or liability of any kind, to another Person, under such Environmental Disclosure Laws.

7.2.3 *Right to Contest.* Nothing shall be done or permitted in or about the Project, nor anything brought or kept therein by any Owner or its Occupants or Permittees, which shall in any way cause a cancellation of any insurance policy required by this Declaration to be maintained upon the Project or any part thereof. If it is conclusively established that a change in any use or activity by any Owner, its Occupant or Permittee shall have led to an increase in premiums for any insurance policy maintained by the Master Association or any other Owner pursuant to Article XI, then such Owner shall pay the increased cost thereof to the Master Association or the Owner affected by such increase, as applicable. Notwithstanding the foregoing, the Master Association or any Owner may, at its expense, defer compliance with and contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any Legal Requirement that affects only its ownership interest; in such event, the Master Association and any non-contesting Owners shall reasonably cooperate and participate, at the sole cost and expense of the contesting Owner, in such proceedings, provided that the Owner complies with each of the following requirements:

(a) such deferral of compliance shall not create a dangerous condition, or constitute a crime or an offense punishable by fine or imprisonment, or subject the Master Association or any Owner or Occupant to any civil or criminal penalty or liability, or any hindrance or interruption of the conduct of business by the Master Association or any Owner or Occupant in any portion of the Project other than the contesting Owner’s business, or subject any part of the Project to being condemned, vacated or damaged by reason of such contest or deferral of compliance, or create a lien on any portion of the Project unless adequate security reasonably acceptable to the Master Association shall have been provided by the contesting Owner to secure removal of such lien;

(b) the contesting Owner shall Indemnify the Master Association and the other Owners and their respective Occupants against any and all Loss which any of them may suffer by reason of such contest and any noncompliance with such Legal Requirement; and

(c) the contesting Owner shall keep the Master Association regularly advised in writing of the status of such proceedings.

7.3 Nuisances; Construction Activities. Except in connection with normal construction activities conducted in a good and workmanlike manner and in accordance with Article VI, no odors or loud noises shall be permitted to arise or emit from any Lot or the Common Facilities, so as to render such Lot or Common Facilities, or any portion thereof, or activity thereon, dangerous, unsanitary, unsightly, offensive or detrimental to any portion of the Project. No other nuisance shall be permitted to exist or operate upon any portion of the Project so as to be offensive or detrimental to any other portion of the Project, or property in the vicinity thereof. No oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon any Lot; nor shall oil wells, derricks, tunnels, mineral excavations or mining shafts be permitted upon the surface of any Lot or within 500 feet below the surface of any Lot other than the Capped Oil Wells. The foregoing shall not be construed to prohibit (a) the pumping of water to lower the water table or the processing or reinjecting of water underground, all as necessary for permitted construction activities on the Project, or (b) the installation and maintenance of permanent monitoring wells for Hazardous Substances (covered at grade); *provided*, that the foregoing are carried out in a manner consistent with this Declaration and all Legal Requirements. Nothing in this Section 7.3 is intended to create or give rights (as a third party beneficiary or otherwise) to any Person who is not an Owner or the Master Association.

7.4 Prohibited Uses. Without limiting the generality of any other provisions of this Article VII, the Owners shall not permit the use of their respective Lots or Residential Units, the Project or any portion thereof, and each Owner shall prohibit in all leases, subleases, and other occupancy agreements affecting the Project, the use of any portion of the Project: (a) for any unlawful purpose, or for any purpose which violates the terms of any recorded instrument affecting such Lot; (b) for the sale or display of any material which is obscene under the standards adopted for the community by the applicable Governmental Authority and held to be constitutional by a court of competent jurisdiction; (c) in a manner that would violate or permit a violation of the Community Agreements including, without limitation, the noise restrictions set forth in the Loading Dock/Shared Walkway Restrictions and the restrictions set forth in the Century Woods Agreement on bars and nightclubs located in the South Tower; or (d) in a manner that would violate or permit a violation of any law, ordinance or regulation applicable to the Project or the Improvements thereon including, without limitation, City noise ordinances. Without limiting the generality of the foregoing, no use or operation will be made, conducted or permitted on or with respect to all or any part of the Project (including any Building) which is in violation of an applicable Legal Requirement or is obnoxious to or out of harmony with the development or operation of the business conducted on any portion of the Project, or which is inconsistent with any Project Approval. Included among the uses or operations which are prohibited because of their obvious detrimental effect upon the general appearance of the Project and properties in the vicinity of the Project, and their conflict with the reasonable standards of appearance and maintenance required by Declarant, are uses or operations which produce or are accompanied by the following characteristics, which list is not intended to be all inclusive:

- (a) any vibration, noise, sound or disturbance, or the perception thereof, that is objectionable due to intermittence, beat, frequency, shrillness or loudness;
- (b) any lighting which does not comply with the Project Approvals or the requirements of Sections 7.15 and 15.14;

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- (c) any electromechanical or electromagnetic disturbance or radiation;
 - (d) any emission of odorous, noxious, caustic, or corrosive matter, whether toxic or non-toxic, gas or other substance;
 - (e) any litter, dust, dirt or fly ash in excessive quantities;
 - (f) any unusual firing, explosion or other damaging or dangerous hazard, including the storage, display, or sale of explosives or fireworks;
 - (g) any mobile home or trailer court;
 - (h) any drilling for excavation, refining and/or removal of earth materials, oil, gas, other petroleum substances, hydrocarbon substance, water, geothermal steam, and any other subsurface substances of any nature whatsoever, except as part of normal grading operations in connection with construction of approved Improvements;
 - (i) any dumping, disposal, incineration, or reduction of garbage or refuse of any nature whatsoever, other than handling or reducing any such waste matter if actually produced on the premises from authorized uses and if handled in a reasonably clean and sanitary manner;
 - (j) any auction, public sale, or other auction house operation;
 - (k) any commercial excavation of building or construction materials;
 - (l) any smelting of iron, tin, zinc, or other ores;
 - (m) junk yards and recycling facilities;
 - (n) any stock yard, distillation of bones, or animal raising, storage, slaughter, or disposition of any kind;
 - (o) cemeteries;
 - (p) cannabis dispensaries;
 - (q) jails and honor farms;
 - (r) labor camps and migrant worker camps;
 - (s) truck terminals;
 - (t) petroleum storage yards; and
 - (u) munitions-related and explosives-related manufacturing and storage activities.

7.5 **Diseases and Insects.** No Owner shall permit upon the Project or Improvements thereon it any thing or condition to exist which shall induce, breed or harbor infectious plant diseases or noxious insects. Each Owner shall be responsible for the repair and maintenance of the Improvements and landscaping located on its Lot as may be occasioned by the presence of wood-destroying pests or organisms, infectious plant diseases or noxious insects.

7.6 **Repair of Improvements.** No Owner shall permit any Improvement owned by it to fall into disrepair, including deterioration in exterior appearance. Each Owner shall maintain all Improvements owned by it in good condition and repair at all times, subject to the other terms and conditions of this Declaration, including the maintenance and operation of its Lot on the Project as a part of a First-Class Project.

7.7 **Antennas.** All antennas or other devices for the transmission or reception of television or radio signals or any other form of electromagnetic radiation erected, used or maintained outdoors on any Lot, shall comply in all respects with Legal Requirements, as the same may be amended from time to time, with the Project Approvals and with the Project Rules and Regulations. All such devices shall be screened from view to the maximum extent permitted by law. This Section is subject to Section 4725 of the California Civil Code and any applicable laws or regulations.

7.8 **Landscaping.** To preserve aesthetic harmony and uniformity throughout the Project and to ensure that all landscaping in the Project is installed and maintained in a manner that is consistent with a First Class Project, the Board shall adopt landscaping guidelines which shall be applicable to the entire Project (the "**Landscaping Guidelines**"). Prior to the commencement of any installation of any new landscaping, the Owner proposing to install such landscaping shall submit a written description of such new landscaping to the Board for review and approval. Failure of the Board to approve or disapprove such proposed new landscaping within forty-five (45) days of receipt of such written description shall be deemed to be disapproval thereof by the Board. All installation and maintenance of landscaping and plantings throughout the Project shall be consistent with and performed in accordance with the Landscaping Guidelines and applicable City ordinances.

7.9 **Trash Containers and Collection.** The Board shall adopt from time to time a waste management plan for the Project, a copy of which shall be distributed to the Owners and available at the offices of the Master Association for review and which waste management plan shall be in accordance with the covenants and restrictions set forth in the Loading Dock/Shared Walkway Restrictions. No garbage or trash shall be placed, kept or permitted to accumulate on any Lot except in covered containers of a type, size and style which are approved by the Board. The Master Association may also designate locations where such containers shall be stored between collection times in order to protect adjacent properties from noise or odors emitting from the use of such containers. All rubbish, trash, or garbage shall be removed by each Owner from all Improvements owned by such Owner and shall not be allowed to accumulate on any Lot. No outdoor incinerators shall be kept or maintained on any Lot. All rubbish, trash, and garbage for the Project shall be collected for removal from the Project at the Loading Dock.

7.10 Restriction on Further Subdivision, Property, Restrictions, Rezoning, and Creation of Leases, Easements, Licenses and Liens.

7.10.1 As of the Effective Date, the Project is comprised of fifty-seven (57) legally subdivided parcels conforming to the legal descriptions of the Lots set forth in Recital A to this Declaration. All further subdivisions, reconfigurations and lot line adjustments affecting the Project shall be accomplished in accordance with Legal Requirements and as provided in Section 2.13; *provided*, that the foregoing shall not limit Declarant's rights under Section 9.2. Nothing in this Section 7.10.1 shall release any Owner of its obligation arising under any other agreement to obtain the consent of such Owner's Mortgagee having a lien on its property affected by any subdivision, reconfiguration, lot split and/or Lot size adjustment described in this Section 7.10.1.

7.10.2 No rezoning, general plan or specific plan amendment of any Lot, and no variances or use permits, shall be obtained from any Governmental Authority unless the proposed use of the Lot has been approved in writing by the Board, acting by a majority of the Board, and the proposed rezoning, general plan, specific plan amendment, variance or use permit otherwise complies with this Declaration and all applicable Legal Requirements. No approval of any Person shall be required (i) for Declarant exercise its reserved rights pursuant to Article IX or to record condominium plans as contemplated under this Declaration, (ii) for an Owner to enter into leases consistent with a First-Class Project and, in the case of Residential Units permitted under such Owner's Residential CC&Rs, or (iii) for an Owner to grant Mortgages or other liens on such Owner's Lot(s).

7.11 **Utility Facilities.** All utilities serving a single Lot (except utilities serving any Common Facilities thereon, to the extent practicable) shall be separately metered to the Owner of such Lot, or, if not separately metered, then submetered, metered, allocated or prorated among the Owners of the Buildings served by such utilities. If any utilities serving any Lot or the Common Facilities are jointly metered with other utilities serving other Lots or Common Facilities, then the applicable utility costs shall be allocated among the Lots and Common Facilities served by such utilities, with such allocation based on submetering or other reasonable method of determination adopted by the Board.

7.12 **No Interference.** No Person shall keep or maintain anything or shall permit any condition to exist upon any Lot or cause any other condition on any Lot that materially impairs or materially interferes with any easement or right of any Owner, Occupant or Permittee or that otherwise materially impairs or materially interferes with the use and enjoyment by any Owner or its Occupants and Permittees of its respective Improvements or the Common Facilities.

7.13 **Storage and Loading Areas.** No materials, supplies or equipment shall be stored in any area on any Lot or other portion of the Project except inside a closed building or behind a visual barrier approved by the Board screening such areas from the view of adjoining portions of such Lot and adjoining public streets. All deliveries to any Buildings shall be made in service and loading areas designated for such use on plans for such Building approved pursuant to this Declaration.

7.14 Environmental Hazards.

7.14.1 *Prohibition.* No Owner shall use, or permit any Occupant, Permittee or other Person to use, any portion of any Lot or the Project (whether in the use of its own Lot or in the exercise of any of the easements granted under Article II on the Common Facilities or any other Owner's Lot) to generate, manufacture, refine, transport, treat, store, use, sell, recycle, handle, dispose of, transfer, produce or process any Hazardous Substances, except for such Hazardous Substances, in such quantities, as are useful and appropriate for the operation of a permitted use under Section 7.1, and in such event in a manner commensurate with the operation of a First-Class Project and in compliance with all applicable Legal Requirements. No Owner shall cause or permit the releasing, spilling, leaking, pumping, pouring, emitting, discharging, leaching, disposing or dumping of any Hazardous Substances on, in, under, about or from any portion of the Project. Nothing in this Section 7.14 shall be intended to (i) prohibit the incidental release of automobile exhaust fumes and the leakage of Hazardous Substances from automobile engines in a manner and quantity commensurate with the operation of other similarly sized public parking garages located in First-Class Projects and in compliance with all applicable Legal Requirements or (ii) apply to the installation or construction by Declarant of Improvements within the Project.

7.14.2 *Indemnification.* Each Owner shall Indemnify the Master Association and each other Owner against and in respect of any and all Loss which may be incurred by such Indemnified Persons, or imposed upon such Indemnified Persons by any other Person (including any Governmental Authority), arising out of or in connection with any breach of Section 7.14.1 or any Remediation required in connection with such breach by the Indemnifying Person. Nothing in this Declaration shall be construed, nor is it intended, to create or constitute an Indemnity in favor of any Owner with respect to Hazardous Substances that the Indemnifying Party proves were on, in, under or about the Project prior to the Effective Date.

7.14.3 *Notice.* Each Owner shall promptly advise the Master Association in writing of (i) such Owner's discovery of the presence or release of any Hazardous Substances in, on, under, about or from any portion of the Project (except for such Hazardous Substances permitted by Section 7.14.1), (ii) any Remediation required to be performed by such Owner pursuant to Section 7.14.4 below, and (iii) such Owner's discovery of any occurrence or condition in, on, under, about or from any portion of the Project, or any real property adjoining or in the vicinity of the Project, that could cause the Property or any portion thereof to be classified as "border-zone property" under the provisions of California Health and Safety Code, Sections 25220 *et seq.* or any regulation adopted in accordance therewith, or otherwise to be subject to any regulation of or restrictions on the ownership, occupancy, transferability or use of the Project or any portion thereof under any Legal Requirements. Each Owner shall provide to the Master Association copies of any notice received by such Owner from any Governmental Authority relating to the environmental condition of, or activity on or about, any portion of the Project within ten (10) Business Days after such Owner's receipt of same. In the case of written communication, each Owner shall provide the Master Association with copies within ten (10) Business Days of such written communication or earlier if required by law.

7.14.4 *Remediation.* The Master Association, with respect to the Common Facilities, and each Owner, with respect to its Lot, shall, at its sole cost and expense, make any

necessary submissions to, and provide any information required by, any Governmental Authority with respect to the presence of Hazardous Substances in, on, under or about the Common Facilities or any Lot, as applicable. If any Remediation is required to comply with any Legal Requirement, then the Master Association, with respect to the Common Facilities, and the Owner of the affected Lot, as applicable, shall promptly perform or cause to be performed such Remediation and provide any bonds or financial assurances required in connection therewith; *provided, however*, that the Master Association or such Owner, as applicable, may withhold commencement of such Remediation pending resolution of any contest maintained in compliance with Section 7.2 regarding the application, interpretation or validity of any Legal Requirement respecting such Remediation; *and provided, further*, that the Master Association or such Owner, as applicable, shall take immediate action to remediate any Emergency relating to Hazardous Substances. All Remediation shall be conducted (i) in a diligent and timely fashion by licensed contractors acting under the supervision of a qualified consulting environmental engineer or other environmental professionals; (ii) in accordance with all Legal Requirements, and first-class engineering/environmental science industry standards in Southern California; (iii) with respect to any Remediation by an Owner, pursuant to a detailed written plan for the Remediation approved by the Master Association; and (iv) in compliance with all requirements of Article VI. All costs and expenses of the Remediation (including any attorneys' fees, consultant and experts' fees, laboratory costs and Taxes assessed in connection with the Remediation) shall, if not subject to the Indemnity set forth in Section 7.14.2, (1) be paid by the Owner of the affected Lot, or (2) with respect to any Remediation undertaken by the Master Association, be levied against an Owner or the Owners as a Special Assessment or a Remedial Assessment, as appropriate.

7.15 Limitations on Exterior Illuminated Signage. Pursuant to certain agreements with neighboring property owners described in Section 15.14, (i) there shall be no exterior illuminated signage (except as required by a Governmental Authority), including flashing, blinking or electronically animated lights, located above the second floor of any structure (as measured from adjacent grade, with all structures located on the podium deck of the Project measured from the finish grade of the podium deck) and visible to neighbors to the west of the Project, (ii) there shall be no illuminated signage above fifty (50) feet on structures fronting Constellation Avenue and (iii) there shall be no offsite monument signage or billboards visible from any public right of way to the west of the Project.

ARTICLE VIII. MAINTENANCE AND OPERATION

8.1 Authority and Responsibility. The Master Association shall be responsible for: (i) the operation, maintenance, repair and replacement of the Common Facilities, the Parking Garage and the Exclusive Use Areas (except to the extent the Hotel Owner or the Retail Owner is responsible for such operation, maintenance, repair and replacement pursuant to Sections 8.5 or 8.6), (ii) the operation, maintenance, testing, repair and replacement of the utility systems, ventilation shafts, communications equipment (except to the extent such utility systems, ventilation shafts or communications equipment is contained wholly within, and serves solely, a particular Building) and life safety systems located within the Project, including, without limitation, the sprinkler and water supply systems, flood alarm systems and fire alarm systems serving the Project or any portion thereof (except to the extent such life safety systems are

contained wholly within, and serve solely, a particular Building) and (iii) the operation, maintenance, repair and replacement of all sump pits and sump pumps in the Project. Notwithstanding the foregoing, in the event components of utility systems, communications equipment and/or life safety systems that serve a particular Building are located on the Common Facilities, subject to and in accordance with Section 2.13, the Owner of such Building or Residential Association managing such Building (or such Owner's or Residential Association's employees or agents) may (i) operate, repair, maintain or replace such utility systems, communications equipment and/or life safety systems located on the Common Facilities which such Owner or Residential Association is responsible for maintaining and (ii) inspect such utility systems, communications equipment and/or life safety systems located on the Common Facilities which serve such Building and which the Master Association is responsible for maintaining. The Master Association may delegate its management and operation duties with respect to such areas to one or more Persons who shall act as an Operator hereunder. Without limiting the generality of the foregoing or the provisions of Section 8.3.1 below which relate specifically to the Parking Garage, the Master Association or the Operator, as the case may be, shall perform the following on the Common Facilities, all consistent with the operation of the Common Facilities as part of a First-Class Project and in accordance with all applicable Legal Requirements:

8.1.1 *Improvements.* Install, reconstruct, repair, replace or refinish any Improvements on the Common Facilities consistent with the applicable foregoing standard;

8.1.2 *Signs.* Place and maintain upon the Common Facilities such signs as the Master Association may deem appropriate for the proper identification, use and regulation thereof, in accordance with and subject to applicable Legal Requirements;

8.1.3 *Lighting.* Install and maintain lighting fixtures on the Common Facilities;

8.1.4 *Security.* Provide and maintain a security force, security equipment and other security measures for the Common Facilities consistent with security levels provided in other First-Class Projects. The Master Association shall exercise commercially reasonable efforts to maximize overall security for the Project, including, without limitation, adopting Project Rules and Regulations that are designed to maximize the overall security within the Project, consistent with other First-Class Projects. The Master Association's security force, if any, shall be responsible for the patrol of all areas of the Project to which Occupants or Permittees of the Owners have or obtain access other than the Hotel Property and the Residential Lots;

8.1.5 *Landscaping.* Maintain landscaping on or in the Common Facilities consistent with the Project Approvals and the applicable foregoing standard; and

8.1.6 *Other Maintenance.* Perform such other acts that are reasonably necessary or desirable to preserve and protect the Common Facilities and the beauty thereof in accordance with this Declaration and the applicable foregoing standard.

8.2 **Buildings.** Each Owner shall be responsible for maintaining the interior and exterior of all Buildings and other Improvements within its Lot; *provided, however*, that maintenance of the Hotel Building shall be subject to the Hotel Building Reciprocal Easement

Agreement and maintenance of the West Pavilion, stairways connecting the North Tower Project and the South Tower Project to the Retail Areas, certain service corridors in the North Tower and the South Tower and portions of building facade shared by the Retail Areas, the North Tower and the South Tower shall be subject to the West Pavilion Reciprocal Easement Agreement. Each Owner shall cause the exterior surfaces of the Buildings on its Lot to be periodically repainted, cleaned, reconditioned or resurfaced, as frequently as is consistent with Legal Requirements and the maintenance of a First-Class Project. Without limiting the generality of the foregoing, each Owner shall be responsible to maintain: (a) all fire-rated separations (including floor separations, wall separations, shafts, occupancy separations, exterior walls and rated construction protection) within the Buildings and Improvements located within its Lot; (b) the Buildings and Improvements located within its Lot in a safe, neat and clean manner and no Owner shall cause or allow any hazardous conditions to exist within the Buildings and Improvements located within its Lot; (c) all sprinkler, water supply and fire alarm systems to the extent located exclusively within the Buildings and Improvements on its Lot; and (d) in an unmodified, unblocked, safe and usable condition all exit and egress paths and ways located within the Buildings and Improvements on its Lot (including the integrity of the fire and smoke resistance capabilities of such exit ways), in all cases as required by the original building design of the Buildings and Improvements and/or applicable Legal Requirements.

8.3 Parking Garage.

8.3.1 *General.* From and after the initial commencement of operations of the Project, the Master Association shall operate, repair, maintain and replace the Parking Garage in good order, condition and repair, consistent with a First-Class Project, open to the general public for purposes of parking while visiting the Project and otherwise in accordance with this Declaration. The foregoing shall not prohibit the Master Association from designating certain areas within the Parking Garage for the use by particular Owners, Occupants or Permittees pursuant to separate agreement or otherwise, including, without limitation, the existing Exclusive Use Areas and/or assigned, valet, visitor and employee parking; *provided, however*, that any such designation shall be made in accordance with and subject to all applicable Legal Requirements and shall not interfere with the use of the existing Exclusive Use Areas. The Master Association, acting by a majority vote of the Board but subject to compliance with applicable Legal Requirements, shall have the right from time to time to alter or reconfigure the Parking Spaces and the Parking Garage as deemed reasonably necessary by the Master Association to carry out the purposes of this Declaration or to comply with applicable Legal Requirements; *provided, however*, that any alteration or reconfiguration of Parking Spaces located within the areas designated as the Hotel Condominium Exclusive Parking Area, the North Tower Exclusive Parking Area or the South Tower Exclusive Parking Area shall require the prior written consent of each Residential Association and each Residential Owner (*i.e.*, each Residential Owner with an Assigned Parking Space) that is benefited by the applicable Exclusive Use Area, which consent will not be unreasonably withheld or delayed so long as the Exclusive Use Area proposed to be altered or reconfigured is not materially and adversely affected thereby and contains the same number of Parking Spaces as existing immediately prior to such alteration or reconfiguration. Without limiting the generality of the foregoing and in addition to the general maintenance obligations set forth in Section 8.1 above, in its operation of the Parking Garage, the Master Association or the Operator, as the case may be, shall perform the following, all consistent with operation of the Parking Garage as part of a First-Class Project:

(a) Maintenance of the surfaces to keep the surfaces thereof level, smooth and evenly covered with the type of surfacing material originally installed thereon, or such substitute thereof as shall be in all respects at least equal thereto in quality, appearance and durability;

(b) Removing all papers, debris, filth, refuse and surface waters and washing or thoroughly sweeping paved areas as required;

(c) Maintenance, repair and replacement of such appropriate parking area entrance, exit and directional signs, markers and lights as shall be reasonably required or appropriate;

(d) Maintenance, repair, replacement and repainting of striping, markers and directional and similar signs as necessary to maintain the same in a condition commensurate with a First-Class Project; and

(e) In accordance with Section 12.1 below, repairing and reconstructing any damage or destruction to the Parking Garage as a result of any Casualty or Condemnation.

8.3.2 Minimum Parking Requirements. The Master Association shall maintain sufficient and adequate parking spaces to satisfy the Project Approvals and all applicable Legal Requirements for parking imposed on the Project as initially constructed. The Master Association shall not be responsible for providing additional parking which is required by applicable Legal Requirements as a result of any change in the use or density of the Project following initial completion thereof. In no event shall the Master Association be required to provide a greater number of Parking Spaces than were included in the Parking Garage as originally constructed. Each Owner, by its acceptance of a deed to any Lot or Residential Unit acknowledges that the parking available in the Parking Garage was approved for the Project as a whole, without regard to the specific Exclusive Use Area easements or to the aggregate parking requirements of each Lot if considered individually.

8.3.3 Operating Hours. Subject to the Parking Garage Rules and Regulations, all portions of the Parking Garage shall be available for operation twenty-four (24) hours per day, seven (7) days per week.

8.3.4 Parking and Vehicular Restrictions.

(a) The following vehicles are authorized within the Parking Garage: motorized land vehicles designed and used primarily for noncommercial passenger transport, such as automobiles, sport utility vehicles, passenger vans designed to accommodate ten (10) or fewer people, two-wheel motorcycles, and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less (collectively, "**Authorized Vehicles**").

(b) The following vehicles are prohibited within the Parking Garage: recreational vehicles (e.g., motorhomes, travel trailers, camper vans, boats, etc.), commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks, etc.), vehicles which exceed the posted height limitation of the Parking Garage, buses or vans designed

to accommodate more than ten (10) people, vehicles having more than two (2) axles, trailers, inoperable vehicles or parts of vehicles, aircraft, other similar vehicles or any vehicle or vehicular equipment deemed a nuisance by the Board (collectively, "**Prohibited Vehicles**"). Prohibited Vehicles shall not be parked, stored or kept in the Parking Garage unless specifically authorized by the Board; *provided, however*, the foregoing shall not apply to temporary parking of Prohibited Vehicles making deliveries to the Hotel Property or Retail Areas.

(c) As provided in Section 1.129, the Parking Spaces in the Parking Garage are characterized as either Assigned Parking Spaces or General Use Parking Spaces. Each Residential Unit shall include the right to have the number of Authorized Vehicles as identified on the grant deed to such Residential Unit valet parked in the General Use Parking Spaces. All General Use Parking Spaces are available for use only through the Project valet parking program and Residential Owners may not self-park their vehicles in the General Use Parking Spaces. Some Residential Units may include the right to have the number of Authorized Vehicles as identified on the grant deed to such Residential Unit parked within Assigned Parking Spaces (subject to availability). There are only a limited number of Assigned Parking Spaces in the Project and no Residential Owner has any right to an Assigned Parking Space(s) unless one or more such Assigned Parking Space(s) are identified on the grant deed to such Residential Owner's Residential Unit or is otherwise assigned to such Residential Owner by Declarant or the Master Association. Subject to the Parking Garage Rules and Regulations, owners of Assigned Parking Spaces in the North Tower Exclusive Parking Area and the South Tower Exclusive Parking Area may be allowed to self-park their vehicles in such Assigned Parking Spaces. Owners of Assigned Parking Spaces in the Hotel Condominium Exclusive Parking Area may not self-park their vehicles in such Assigned Parking Spaces and must use the Project valet parking program. Assigned Parking Spaces may only be used by the Owner of the Residential Unit to which such Assigned Parking Spaces have been assigned. Assigned Parking Spaces may only be transferred in accordance with this Declaration. All guests and household staff of Residential Owners must use the Project valet parking program and may not self-park their vehicles. There is absolutely no assurance that the Parking Garage will have enough capacity to accommodate all guest or household staff parking.

(d) The following general parking and vehicle restrictions shall also be observed:

(i) No repair, maintenance or restoration of any vehicle shall be conducted on the Property.

(ii) No vehicle may be parked or stored in any parking space unless it is operable and in good condition and repair.

(iii) Non-operable vehicles (including due to flat tires) may be towed at the Owner's expense (assessable as a Reimbursement Assessment) after 48-hours notice.

(iv) No Owner, nor any member of his or her Family, nor his or her tenants, guests, invitees, agents, licensees, servants or employees shall park or cause to be parked any vehicle in such a manner as to impede or prevent ready access to (a) any entrance or

exit, (b) any of the parking or storage areas for the Project, (c) any other vehicle or parking space; or (d) any Assigned Parking Space belonging to another Person.

(v) No vehicle may remain in any access driveway of the Project for more than ten (10) minutes.

(vi) Vehicles may not be washed on the Property except as provided for by the Board in the Parking Garage Rules and Regulations.

(vii) No Assigned Parking Space may be severed from any Residential Unit except in accordance with Section 8.3.5 herein.

(viii) No Assigned Parking Space may be rented to or leased to a non-Owner except in connection with the lease of the Residential Unit.

(ix) Under no circumstances may explosives, fireworks, or highly flammable material such as gasoline, kerosene, oil, oil-based paints, solvents, *etc.*, be stored in the Parking Garage or any other parking area located on the Property.

(x) Owners shall keep all Assigned Parking Spaces free of oil, brake fluid, power steering fluid or other fluid leaks, at all times. If any Owner fails to so maintain any Assigned Parking Space, the Board shall have the right, without obligation, to perform any necessary cleaning of such parking space, and/or tow the offending Owner's vehicle which is leaking such fluids, after providing sufficient notice to such Owner to repair such leak, and thereafter assess such Owner the cost of such clean up and/or towing, which Assessment shall be deemed a Reimbursement Assessment in accordance with the terms of this Declaration.

(xi) For any violation of these restrictions, or any other restrictions or regulations related to vehicles or parking as may be adopted by the Board from time to time, the offending vehicle may be towed at the direction of the Master Association at the offending Owner's expense, the cost of which shall be borne by such Owner and assessed against same as a Reimbursement Assessment.

(xii) Neither the Master Association nor any of its officers, directors, agents or employees shall be liable to any Owner, or to any member of his or her Family, his or her guests, servants, employees or invitees, for any theft of, or injury to, any vehicle on the Project. Each Owner shall Indemnify, defend, and hold harmless the Master Association and the Master Association's officers, directors, agents, employees, and representatives from any injury, damages, claims, liabilities, costs or expenses caused by, arising out of, or related to the provisions of this Section, or any offending vehicle.

8.3.5 Assignment/Transfer of Assigned Parking Spaces and Valet Parking Rights. So long as Declarant owns any Residential Unit in the Project, Declarant has, and after Declarant no longer owns any Residential Unit in the Project, the Master Association shall have (i) the sole right to assign Assigned Parking Spaces in the Project to Residential Owners and to collect additional consideration for Assigned Parking Spaces which have been deeded to Residential Owners and (ii) the sole right to grant to Residential Owners the right to have such Residential Owners' Authorized Vehicles valet parked in the Project. No parking space in the

Parking Garage may be designated as an Assigned Parking Space (or otherwise restricted for the benefit of an individual Owner), no Assigned Parking Space may be assigned to an individual Owner or Residential Unit by any person or entity other than Declarant so long as Declarant owns any Residential Unit in the Project or, after Declarant no longer owns any Residential Unit in the Project, the Master Association. After an Assigned Parking Space has been assigned to a Residential Owner, the Master Association shall not have the right to reassign such Assigned Parking Space without the consent of such Residential Owner. Notwithstanding the foregoing, after an Assigned Parking Space which is a "Deeded Parking Space" (as defined in each of the North Tower CC&Rs and the South Tower CC&Rs) has been deeded to a Residential Owner, such Deeded Parking Space may only be transferred by such Residential Owner pursuant to an "Exclusive Use Transfer Deed" (as defined in each of the North Tower CC&Rs and the South Tower CC&Rs). Under no circumstances may an Assigned Parking Space in a Residential Project's Exclusive Use Area be transferred to any Person that does not own a Residential Unit in such Residential Project.

8.4 Loading Dock/Shared Walkway.

8.4.1 *Loading Dock/Shared Walkway Restrictions.* Use of the Loading Dock and the Shared Walkway is shared with an adjacent condominium project known as "The Century." A portion of the Shared Walkway is located on property owned by The Century adjacent to the boundary of the Project. The Loading Dock and Shared Walkway are subject to certain covenants and restrictions, including (i) that certain *Easement Agreement* by and between AP Properties, Ltd. and Century Plaza Hotel Limited Partnership recorded on August 5, 1988 in the Official Records of Los Angeles County, California as Instrument No. 88-1238398, (ii) the *Amended and Restated Declaration of Easements* recorded on June 2, 2008 in the Official Records of Los Angeles County, California as Instrument No. 2008-0963819 and (iii) the *First Amendment to Amended and Restated Declaration of Easements* recorded on February 1, 2017 in the Official Records of Los Angeles County, California as Instrument No. 2017-0134764 (the "Loading Dock/Shared Walkway Restrictions").

8.4.2 *Loading Dock Committee.* The Loading Dock/Shared Walkway Restrictions require that a committee be formed following construction of the Loading Dock to provide for the ongoing and orderly management, access and use of the Loading Dock and the Shared Walkway by the Century Property Owners Association (an owners association responsible for management of The Century) (the "Century POA"), Declarant and their respective successors and assigns (including the Master Association and the Owners) (the "Loading Dock Committee"). As set forth in the Loading Dock/Shared Walkway Restrictions, the Loading Dock Committee shall have a maximum total of up to six (6) representatives. The Century POA shall be entitled to appoint one (1) representative to the Loading Dock Committee and such representative will have sole approval and/or veto authority with respect to any matter that would interfere with or adversely affect the Century POA's use of certain portions of the Loading Dock as further described in the Loading Dock/Shared Walkway Restrictions. The remaining five (5) representatives shall represent the Project and shall be appointed as follows:

(a) The Project's initial representatives on the Loading Dock Committee shall consist of the following: (i) one (1) representative of the Retail Owner who may be, but need not be, the director who represents the Retail Owner on the Board, (ii) one (1)

representative of the Hotel Owner, who may be, but need not be, the director who represents the Hotel Owner on the Board, (iii) one (1) representative of Declarant and (iv) one (1) representative of the Hotel Residential Association, who may be, but need not be, the director who represents the Hotel Residential Association on the Board.

(b) Following annexation of Phase 2, the North Tower Association shall appoint one (1) representative to the Loading Dock Committee who may be, but need not be, the director who represents the North Tower Association on the Board and who shall serve along with the representatives appointed prior to the annexation of Phase 2.

(c) Following annexation of Phase 3, the South Tower Association shall appoint one (1) representative to the Loading Dock Committee who may be, but need not be, the director who represents the South Tower Association on the Board. The South Tower Association's representative shall replace the representative previously appointed by Declarant but otherwise shall serve along with the representatives appointed prior to the annexation of Phase 3.

8.4.3 *Management and Operation of Loading Dock.* The Loading Dock Committee is responsible for preparing a management plan for the Loading Dock that provides for the appointment of a manager of the Loading Dock and sets forth the management and scheduling needs of the Loading Dock. Such management plan shall include the following limitations on use of the Loading Dock:

(a) The bay labeled "Shared Bay" on *Exhibit "A"* will be shared by the Century POA and the Project, subject to time limits which may be set and modified from time to time by the Loading Dock Committee. With respect to the Project's use of the shared bay, the manager of the Loading Dock shall give first priority to the Retail Areas, the Hotel and the Hotel Condominium Project and second priority to the North Tower Project and the South Tower Project.

(b) The two (2) bays labeled "Century POA Bays" on *Exhibit "A"* shall be reserved for use by the Century POA and its members and shall not be available to Owners in the Project.

(c) The four (4) bays labeled "Century Plaza Dock Area" on *Exhibit "A"* shall be reserved for exclusive use by the Project and the use of such bays shall be allocated as follows:

(i) One (1) bay shall be assigned for use by the Hotel and the Hotel Condominium Project at all times.

(ii) One (1) bay shall be assigned for use by the North Tower Project at all times.

(iii) One (1) bay shall be assigned for use by the South Tower Project at all times.

(iv) One (1) bay shall be assigned for use by the Retail Owner at all times.

(v) The manager of the Loading Dock shall have the right to allow temporary use of an assigned bay for deliveries to other portions of the Project (e.g., use of the bay assigned to the North Tower Project for deliveries to Retail Areas) so long as such use does not materially impact deliveries to that portion of the Project to which the bay was initially assigned.

(d) The parking spaces labeled "Van Parking" on *Exhibit "A"* shall be reserved for loading and unloading and short-term parking of delivery vans and other small vehicles.

8.4.4 *Loading Dock Manager.* In the event the Master Association is appointed manager of the Loading Dock, the Master Association shall operate (including, without limitation, scheduling all deliveries to the Loading Dock) and maintain the Loading Dock and the Shared Walkway subject to the Loading Dock/Shared Walkway Restrictions, the direction of the Loading Dock Committee and the management plan for the Loading Dock. Regardless of whether the Master Association is the manager of the Loading Dock, the Master Association shall be responsible for all costs and expenses associated with the management and maintenance of the Loading Dock (other than those portions of the Loading Dock that the Century POA is responsible to maintain at the Century POA's expense pursuant to the Loading Dock/Shared Walkway Restrictions) and the Shared Walkway (including those portions of the Shared Walkway not located on the Property).

8.5 Outdoor Event and Seating Areas.

8.5.1 *Plaza Areas.* The Hotel Owner (or the Hotel Operator on behalf of the Hotel Owner) and the Retail Owner shall have the right to reserve that portion of the plaza area located on Lot 25 and depicted on *Exhibit "I"* hereto (the "West Plaza") and that portion of the plaza area located on Lot 2 and depicted on *Exhibit "J"* hereto (the "East Plaza" and, together with the West Plaza, the "Plaza Areas") for temporary events such as, but not limited to, weddings, concerts and receptions subject to the scheduling and operational procedures set forth in Section 8.5.2.

8.5.2 *Event Scheduling and Operations.*

(a) The Operator shall maintain an event schedule for the West Plaza and the East Plaza. All events in the Plaza Areas shall be scheduled at least four (4) weeks in advance. The Operator shall notify the Hotel Owner, the Retail Owner and each Residential Association of each such event no later than one (1) week prior to the date such event is scheduled to occur.

(b) Other than the Operator's costs and expenses related to maintaining the event schedule as set forth in Section 8.5.2(a), the Master Association shall not be responsible for any costs or expenses relating to use of the Plaza Areas for events. The party hosting an event in a Plaza Area shall be responsible for coordinating such event (including obtaining all necessary permits from the City and other Governmental Authorities), all setup,

teardown and cleanup after such event and shall restore such Plaza Area to at least the condition substantially equivalent to its condition immediately prior to the event. In the event such party does not so restore such Plaza Area, the Master Association may undertake such restoration, subject to reimbursement to the Master Association by the Owner that reserved the use of such Plaza Area (i.e., the Hotel Owner or the Retail Owner) for the cost of such restoration as a Reimbursement Assessment.

8.5.3 *Retail Outdoor Seating Areas.* The Retail Owner (or its Occupant(s)) shall have the right to maintain outdoor seating and/or dining areas on those portions of the plaza areas located on Lots 2 and 25 and depicted on *Exhibit "K"* hereto (the "**Retail Outdoor Seating Areas**"). The Retail Owner (or its Occupant(s)) shall maintain the Retail Outdoor Seating Areas in accordance with all applicable Legal Requirements and in accordance with the maintenance standards of the Retail Owner; *provided*, that in no event shall such maintenance standards be less than the standards consistent with the operation of a First Class Project. Should the Retail Owner and/or its Occupant fail to maintain the Retail Outdoor Seating Areas, the Master Association shall have the right to perform such maintenance subject to reimbursement to the Master Association by the Retail Owner for the cost of such maintenance as a Reimbursement Assessment. Any outdoor seating and/or dining areas (such as, but not limited to, cafe tables and chairs, benches and other seating) maintained by the Retail Owner (or its Occupant(s)) on the Common Facilities outside the Retail Outdoor Seating Areas shall be subject to the Master Association's prior approval pursuant to Section 7.1.2.

8.5.4 *Use Restrictions.* The use restrictions set forth in this Declaration, including without limitation, Section 7.4 shall apply to all uses of the West Plaza, the East Plaza and the Retail Outdoor Seating Areas. Without limiting the foregoing:

(a) During the hours of 11 p.m. to 8 a.m. (subject to any City ordinances), no events shall be held in the West Plaza or the East Plaza and the Retail Outdoor Seating Areas shall not be available to guests of the Retail Owner (or its Occupant(s)). Unless otherwise approved by the Master Association, all post-event cleanup in the West Plaza and/or the East Plaza must be completed by 11:59 p.m. on the date of the event.

(b) Use of the Plaza Areas shall at no time interfere with pedestrian access to and from the Retail Areas or the Hotel Building.

(c) All uses of the Plaza Areas and the Retail Outdoor Seating Areas shall comply with all applicable Legal Requirements, including all laws and regulations related to the service of alcohol and all applicable noise and occupancy restrictions.

(d) The Master Association shall have the right to promulgate additional restrictions and regulations relating to events held at the Project.

This Section 8.5 may not be amended without the prior written approval of both the Hotel Owner and the Retail Owner.

8.6 **Hotel Maintenance Areas.**

8.6.1 *Hotel Ballroom Drop-off Area and Hotel Patio Area.* The Hotel Ballroom Drop-off Area and Hotel Patio Area each contain certain Improvements which benefit the Hotel. Accordingly, notwithstanding anything to the contrary herein, the Hotel Owner (and/or the Hotel Operator on behalf of the Hotel Owner) shall be responsible for (i) operating the Hotel Ballroom Drop-off Area and Hotel Patio Area (including all personnel staffing of the Hotel Ballroom Drop-off Area and the Hotel Patio Area) and (ii) all maintenance and repair of the Hotel Ballroom Drop-off Area and the Hotel Patio Area (e.g., maintenance of pavers, paneling and lighting, patio furniture, etc.), including in each case, all costs and expenses associated therewith. The Hotel Owner (and/or the Hotel Operator on behalf of the Hotel Owner) shall maintain the Hotel Ballroom Drop-off Area and the Hotel Patio Area in accordance with all applicable Legal Requirements and in accordance with the maintenance standards of the Hotel; *provided*, that in no event shall such maintenance standards be less than the standards consistent with the operation of a First Class Project. Should the Hotel Owner and/or the Hotel Operator fail to maintain the Hotel Ballroom Drop-off Area or the Hotel Patio Area, the Master Association shall have the right to perform such maintenance on the Hotel Owner's behalf, subject to reimbursement to the Master Association by the Hotel Owner for the cost of such maintenance as a Reimbursement Assessment. As the Hotel Ballroom Drop-off Area is a part of the Parking Garage, in operating and maintaining the Hotel Ballroom Drop-off Area, the Hotel Owner (and/or the Hotel Operator on behalf of the Hotel Owner) shall coordinate with the Master Association to ensure the efficient operation and maintenance of the Parking Garage.

8.6.2 *Hotel Storage Area.* Although the Hotel Storage Area is located on the North Tower Property, the Hotel Storage Area will be used by the Hotel Owner and the Hotel Operator as a storage room adjacent to the Hotel's ballroom. Accordingly, the Hotel Owner (and/or the Hotel Operator on behalf of the Hotel Owner) shall maintain the Hotel Storage Area in accordance with all applicable Legal Requirements and in accordance with the maintenance standards of the Hotel; *provided*, that in no event shall such maintenance standards be less than the standards consistent with the operation of a First Class Project. Notwithstanding the foregoing, while the Hotel Owner (and/or the Hotel Operator on behalf of the Hotel Owner) shall be responsible for routine cleaning, maintenance and repair of the Hotel Storage Area, the North Tower Association shall be responsible for structural maintenance of the Hotel Storage Area and any other maintenance of the Hotel Storage Area that would constitute "Major Construction Work" hereunder.

This Section 8.6 may not be amended without the prior written approval of the Hotel Owner.

8.7 Signs. Subject to the provisions of California Civil Code Sections 712, 713, 4705 and 4710, no sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Project (including, without limitation, within any Exclusive Use Area and any sign monument located on the Project from time to time) or on any public street abutting or visible from the Property, or shown or displayed from any Improvement, Lot or other portion of the Project, without the prior written consent of the Master Association and all required approvals from any applicable Governmental Authority.

8.8 Cell Site Leases. The Master Association shall have the right to collect all revenue generated by the Cell Site Leases and shall have the exclusive right to enter into new

leases for cellular equipment throughout the Project and receive the revenue from such leases. Payments received by the Master Association pursuant to the Cell Site Leases or any new leases for cellular equipment shall be deposited in the Operating Fund established pursuant to Section 5.4.

8.9 **Overlapping Jurisdiction.** Notwithstanding the foregoing allocation of operation, maintenance, repair and replacement functions, any maintenance, repair or replacement work required by any applicable Legal Requirement which will take place across two or more Lots, or across any Lot and adjacent Common Facilities or when responsibility is disputed between a Burdened Interest and a Benefited Interest, shall be undertaken by the Board, which shall have legal authorization for and responsibility for obtaining appropriate permits or other regulatory approvals and the commencement and completion of said work (subject, however, to the right of the Master Association to levy appropriate Assessments therefor as provided in Article V). This Section 8.9 is intended to create a lead entity for the completion of legally required repairs across lot lines and other situations as set forth above and to allow regulatory agencies to look to a single responsible entity for the completion of such work. Nonetheless, providing the Master Association with such lead entity authority and responsibility as provided in Section 8.9 shall not relieve any otherwise responsible Owner of its legal responsibilities, it being understood that concurrent responsibility may exist, or for the responsibilities to pay any Assessments levied in connection therewith. This Section 8.9 is not intended to allocate the fiscal responsibility to pay for work undertaken pursuant to its provisions.

ARTICLE IX.

DECLARANT'S RIGHTS AND RESERVATIONS

9.1 **General.** Subject to applicable laws and regulations, nothing in the Restrictions shall limit, and no Owner or the Master Association shall do anything to interfere with, the right of Declarant to subdivide or resubdivide any portion of the Property, record any tract map(s) or condominium plan(s) for all or a portion of the Property owned by Declarant or the Master Association, or to complete Improvements to and on the Common Facilities or any portion of the Property owned solely or partially by Declarant, or to alter the foregoing or its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Property so long as Declarant owns any portion of the Property. The rights of Declarant hereunder shall include, but shall not be limited to, the right to install and maintain such structures, displays, signs, billboards, flags and sales offices anywhere on the Property as may be necessary for the conduct of its business of completing the work and disposing of the Lots or Residential Units by sale, resale, lease or otherwise. Each Owner, by accepting a deed to a Lot or a Residential Unit, hereby acknowledges that the activities of Declarant may temporarily or permanently impair the view of such Owner and may constitute an inconvenience or nuisance to the Owners, and hereby consents to such impairment, inconvenience or nuisance. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title to a Lot or a Residential Unit in the Project by a purchaser from Declarant to establish on that Lot or Residential Unit additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property. Declarant may use any Lots or Residential Units owned by Declarant as model home complexes or real estate sales

or leasing offices. Declarant need not seek or obtain Board approval of any Improvement constructed or placed on any portion of the Property by Declarant. The rights of Declarant hereunder and elsewhere in the Restrictions may be assigned by Declarant to any successor in interest to any portion of Declarant's interest in any portion of the Property by a written assignment. Notwithstanding any other provision of this Declaration, the prior written approval of Declarant, as developer of the Property, will be required before any amendment to this Article shall be effective. Declarant and its prospective purchasers of Lots or Residential Units shall be entitled to the nonexclusive use of the Common Facilities and any recreational facilities thereon, without further cost for access, ingress, egress, use or enjoyment, in order to show the Property to its prospective purchasers and to dispose of the Property as provided herein. Declarant, its successors and tenants, shall also be entitled to the nonexclusive use of any portions of the Property which comprise private streets, drives and walkways for the purpose of ingress, egress and accommodating vehicular and pedestrian traffic to and from the Property. The Master Association shall provide Declarant with all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefor.

9.2 Right of Declarant to Redesign Project.

9.2.1 *General.* There is no guarantee that the Project will be developed as originally planned. Subject to the restrictions and limitations set forth in this Section, Declarant reserves the right, in its sole discretion, from time to time, within a period of ten (10) years from the date of the recording of this Declaration, or at any time or at different times within such ten (10) year period, to redesign the Property or any portion or aspect thereof, including, but not limited to, any Improvement constructed or proposed to be constructed on the Property and, in connection with such redesign, to effect the following changes in the Project:

- (a) Alter the vertical and/or horizontal boundaries, of any Improvement.
- (b) Alter the size, shape, configuration, floor plan and/or location of any Residential Units.
- (c) Create new Residential Units or eliminate or combine existing Residential Units.
- (d) Change the configuration of any Improvement.
- (e) Adjust the configuration of the Common Facilities.
- (f) Effect deviations from any condominium plan which result during the actual construction of the Improvement.
- (g) Alter the layout of any Lot, including, without limitation, the location of any doorways or any demising walls or dividers separating any portion of any Lot from any other portion of such Lot.

9.2.2 *General Restrictions on Redesign.* The rights of Declarant set forth in Section 9.2.1 above are hereby made subject to the following restrictions and limitations:

(a) In no event shall the Project, when completed, be materially inconsistent with the Project Approvals.

(b) The redesign of any portion of the Property shall in no event physically modify, affect, or change any Residential Units, which as of the date of such redesign, are the subject of an agreement of sale or are owned by an Owner other than Declarant, unless the purchaser or Owner of such a Residential Unit shall consent to such redesign in writing.

9.2.3 *Amendment to Condominium Plan.* In the event that a redesign of all or any portion of the Property in accordance with the provisions of this Article affects any Residential Units in the Project so as to necessitate the preparation of an amendment to a condominium plan, including any amendment necessary to cause such condominium plan to comply with the Improvements as actually built, Declarant shall prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval and record or cause to be recorded an amendment to such condominium plan. Any such amendment to such condominium plan which would have a material adverse effect on a Residential Unit or any Exclusive Use Common Area (as defined in the applicable Residential CC&Rs) or Exclusive Use Common Elements (as defined in the applicable Residential CC&Rs) shown on such condominium plan shall require the consent of the Owner of such Residential Unit and/or the Owner with rights to such Exclusive Use Common Area or Exclusive Use Common Elements, which consent shall not be unreasonably withheld, conditioned or delayed. Any such amendment to such condominium plan which would have a material adverse effect on the Residential Common Area shown on such condominium plan shall require the consent of the applicable Residential Association, which consent shall not be unreasonably withheld, conditioned or delayed.

9.2.4 *Power of Attorney.* Each Owner, by accepting a deed to a Lot or Residential Unit, shall be deemed to have constituted and irrevocably appointed, for himself or herself and each of his or her Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, for a period of ten (10) years from the date of the recording of this Declaration, Declarant as his or her attorney-in-fact and thereby to have conveyed a power of attorney coupled with an interest ("Power of Attorney") to Declarant as his or her attorney-in-fact to effect the redesign of all or any portion of the Property in accordance with the limitations and requirements set forth in this Article, and further:

(a) To prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval and file or record or cause to be filed or recorded any map or record of survey required or permitted by the provisions of the Subdivision Map Act of the State of California as in effect on the date of recordation of this Declaration and as thereafter amended and any ordinances, rules and regulations of any governmental entities and authorities having jurisdiction over the Project as in effect on the date of recordation of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith, to perform all conditions, undertake any obligations and execute all

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

(b) To prepare or cause to be prepared, execute, and acknowledge and file or cause to be filed for approval and record or cause to be recorded any amendment to a condominium plan, including any amendment necessary to cause such condominium plan to comply with the Project as actually built, which may be required or permitted by the laws of the City, the County of Los Angeles or the State of California as in effect on the date of recordation of this Declaration and as thereafter enacted or amended and any ordinances, rules and regulations of any governmental entities and authorities having jurisdiction over the Project as in effect on the date of recordation of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(c) To prepare or cause to be prepared, execute, acknowledge and file or cause to be filed for approval, any application for zoning or setback changes or variance or special use permits or any other permits and/or reports required or permitted by the laws of the City, the County of Los Angeles, or the State of California as in effect on the date of recordation of this Declaration and as thereafter enacted or amended and any ordinances, rules and regulations of any governmental entities and authorities having jurisdiction over the Project as in effect on the date of recordation of this Declaration and thereafter enacted or amended and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(d) To make application for any property reports or public reports or amendments thereto or exceptions from the requirements therefor required or permitted in order to comply with federal and state statutes, rules and regulations relating to the sale, lease, transfer or other disposition of subdivided lands to the public and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any agreements and bonds securing the performance of the obligations contained therein;

(e) To deliver any public reports or property reports, or amendments thereto, obtain receipts and offer and administer rescission rights required by law;

(f) To prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval, any registration or any application for any permit, approval,

exemption, ruling or entitlement required or permitted pursuant to any law or regulation in effect as of the date of the recording of this Declaration and as hereafter enacted or amended by any federal, state and local governmental entities and authorities, and in connection therewith to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by such governmental body and by any such laws and regulations; to appear before any such governmental bodies and to execute and deliver any agreement and bonds and post deposits securing the performance of any such conditions and obligations; and do all other things now or hereafter permitted or required by any such governmental body and any such laws and regulations;

(g) To prepare or cause to be prepared, execute, acknowledge and record or cause to be recorded any deeds, waivers, releases, reconveyances or other documentation which may be permitted or required to clear title to any Lots or Residential Units, whether constructed or to be constructed, in the Project; and

(h) To do any and all things necessary or desirable under the circumstances to effect and accomplish the purposes of this Article.

9.2.5 *Indemnification of Owners on Exercise of Power of Attorney.* Declarant shall Indemnify and hold each Owner harmless from all liabilities, including reasonable attorneys' fees, which are incurred as a direct result of the execution by Declarant of any improvement agreements or bonds, or both, in connection with the exercise by Declarant of the Power of Attorney set forth in Section 9.2.4 hereof.

9.2.6 *Mortgage Interests to Take Subject to Power of Attorney.* The acceptance or creation of any Mortgage whether voluntary or involuntary, and whether or not created in good faith and whether or not given for value, shall be deemed to be accepted and/or created subject to each of the terms and conditions of the Power of Attorney described in Section 9.2.4 hereof.

9.2.7 *Consent of Administrative Agent.* Nothing in this Section 9.2 shall release Declarant from its obligation under the Construction Loan Documents to obtain consent of Administrative Agent with respect to any redesign of the Project pursuant to this Section 9.2.

9.2.8 *Power of Attorney Binding on Successors in Interest.* Each and all Owners and each of their respective Mortgagees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, shall be deemed to have expressly agreed, assented and consented to each and all of the provisions of this Declaration and shall be deemed to have constituted and irrevocably appointed Declarant as his or her attorney in fact to carry out the powers described in Section 9.2.4 hereof, and such Power of Attorney shall be deemed to continue to be coupled with an interest.

9.3 **Reservation of Air, Development and Other Rights.** Subject to applicable Legal Requirements, Declarant reserves ownership rights, including the right to transfer same, to any and all excess air rights, trips or other development rights appurtenant to the Property which are not used in connection with the Project.

9.4 **Protection of Declarant.** The prior written approval of Declarant, as developer of the Property, shall be required for any amendment to this Declaration which would affect, impair or diminish the rights, duties, or obligations of Declarant hereunder, or would otherwise affect, impair, or diminish Declarant's ability to complete the Property or sell or lease Lots or Residential Units therein in accordance with this Declaration. Notwithstanding any other provisions of the Restrictions, until such time as Declarant no longer owns any Lots or Residential Units in the Property, the following actions, before being undertaken by the Master Association, shall first be approved in writing by Declarant:

9.4.1 Any amendment or action requiring the approval of First Mortgagees pursuant to this Declaration, including without limitation all amendments and actions specified in Section 14.6.1;

9.4.2 The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Facilities by Declarant; or

9.4.3 Subject to Section 5.7 regarding limitations on Regular Assessment increases, any significant reduction of Master Association maintenance or other services.

ARTICLE X. TAXES

10.1 **Separate Assessment.** To the extent permissible under applicable Legal Requirements, each Lot and the Common Facilities shall be separately assessed so that (a) all Taxes pertaining to any individual Lot which is not part of the Common Facilities shall be Owner Taxes and shall relate only to such individual Lot and not to the Project as a whole, or any portion of the Project other than such Lot, and (b) all Taxes pertaining to the Common Facilities, or any portion thereof, if any, shall be Common Facility Taxes and shall relate only to the Common Facilities and not to any Lot which is not part of the Common Facilities, or any portion thereof not owned by the Master Association. It is the intention of Declarant in establishing this Declaration that the Taxes attributable to each Lot shall take into account the benefit to each respective Lot of the easements benefiting such Lot and the burden to each respective Lot of the easements burdening such Lot, as provided in Article II. If and to the extent that any portion of Taxes are attributable to the Common Facilities, and such Taxes are taxed under a tax bill covering any Lot which is not part of the Common Facilities, then the Board shall determine in its reasonable discretion the portion of such Taxes attributable to the Common Facilities and, based upon such determination, the Master Association shall reimburse such Owner for such proportionate share of any installment of such Taxes (provided that the Owner is not in Default under this Declaration with respect to the payment of any Assessments) within ten (10) Business Days after such Owner provides evidence to the Master Association of the Owner's payment of such Taxes.

10.2 **Common Facility Taxes.** Subject to the provisions of Section 10.4 below, and subject to the right of the Master Association to levy each Owner for reimbursement of Common Facility Taxes as a part of Common Expenses, the Master Association shall pay directly to the

taxing authority before delinquency all Common Facility Taxes assessed to the Master Association or against the Common Facilities. If Common Facility Taxes, or any portion thereof, may be paid in installments, then the Master Association may pay each installment before the same becomes delinquent. If the Master Association fails to pay any Common Facility Taxes prior to the delinquency thereof, then any Owner may demand that the Master Association pay such Common Facility Taxes by sending written notice to the Master Association. If the Master Association fails to pay such Common Facility Taxes within thirty (30) days thereafter, such Owner may (but shall not be obligated to) pay such Common Facility Taxes. If an Owner pays any Common Facility Taxes as provided in this Section 10.2, then such Owner shall have a limited right to offset the amount of such Common Facility Taxes actually paid by such Owner against a corresponding amount of the next Assessments levied against such Owner.

10.3 **Owner Taxes.** Subject to the provisions of Section 10.4 below, each Owner shall pay directly to the taxing authority before delinquency all Owner Taxes assessed to such Owner or against its respective Lot. If Owner Taxes, or any portion thereof, may be paid in installments, then the Owner may pay each installment before the same becomes delinquent. If any Owner fails to pay any Owner Taxes prior to the delinquency thereof, the Master Association may demand that the Owner pay such Owner Taxes by sending written notice to such Owner. If such Owner fails to pay such Owner Taxes within thirty (30) days thereafter, the Master Association may (but shall not be obligated to) pay such Owner Taxes. If the Master Association pays any Owner Taxes, the Master Association may levy a Remedial Assessment against such Owner as provided in Section 5.10.4 above.

10.4 **Right to Contest by Owners and Association.** The Master Association, any Owner or any Residential Association acting on behalf of a Residential Owner may, at its respective sole cost and expense, contest by appropriate proceedings, prosecuted diligently and in good faith, any Common Facility Taxes or Owner Taxes, as applicable, levied upon the Master Association or the Common Facilities or upon such Owner or its Lot or Residential Unit, as applicable. Any such contested Taxes shall in any event be paid prior to the time when the affected Common Facilities, Lot or Residential Unit, as applicable, may be subjected to sale by reason of nonpayment of same. The contesting Master Association, Residential Association or Owner, as applicable, shall Indemnify the Master Association, the other Residential Association and the other Owners, as applicable, against any and all Loss arising out of or relating to such contest.

ARTICLE XI.

INSURANCE

11.1 **Master Association Insurance; Required Coverages.** The Master Association shall obtain and keep in force at all times the following policies of insurance, the cost and expense of which shall be borne by the Owners as Insurance Expenses:

11.1.1 Commercial General Liability Insurance.

(a) One (1) or more commercial general liability insurance ("CGL") policies providing coverage at least as broad as a current Insurance Services Office ("ISO")

CG 0001 commercial general liability insurance occurrence policy form or its equivalent, with such limits as may be considered acceptable to FNMA (but in no event less than Three Million Dollars (\$3,000,000) per occurrence, Three Million Dollars (\$3,000,000) annual general aggregate (with a "per project" endorsement causing the annual general aggregate limit to apply separately to the Common Facilities) and Three Million Dollars (\$3,000,000) annual products-completed operations aggregate), with a self-insured retention or deductible of not more than Two Hundred Fifty Thousand Dollars (\$250,000) per occurrence, providing coverage for bodily injury, property damage, personal and advertising injury, and fire damage legal liability. The required limits may be provided by any combination of primary and umbrella or follow form excess liability insurance policies.

(b) In addition to the foregoing CGL policies, one (1) or more umbrella or excess liability insurance policies providing coverage at least as broad as the CGL policies required herein with limits of not less than Fifty Million Dollars (\$50,000,000) per occurrence and in the annual aggregate. All such umbrella or excess liability insurance policies shall also provide excess auto liability coverage over the policy required in Section 11.1.3.

(c) In any event, and notwithstanding any other provision herein, the Master Association shall maintain, at a minimum, insurance as required by Section 5805 of the California Civil Code, as same may be amended from time to time.

(d) The foregoing liability policies, to the extent commercially reasonably available, (i) shall include full separation of insureds and shall not contain any insured versus insured limitation on exclusion; (ii) shall include as named insureds the Master Association and Declarant; and (iii) shall name the Residential Associations, the Hotel Owner and the Retail Owner as additional insureds (by endorsement(s) or policy provision(s) reasonably acceptable to such parties) on the policies with respect to liability arising out of the Common Facilities.

11.1.2 *Garage Keeper's Liability.* Garage keeper's liability insurance providing coverage at least as broad as the current ISO garage keeper's liability insurance form or its equivalent providing collision liability insurance to the Master Association and any Operator of the Parking Garage. Such policy or policies of insurance shall have limits of liability equal to or greater than the garage keeper's liability insurance customarily carried by owners of parking garages which are comparable in size, location and quality to the Parking Garage, but not less than Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) general aggregate. Garage keeper's liability coverage for the Hotel Owner, the Retail Owner or any Residential Association providing any valet or similar parking service or levying any charge or fee from any Person for parking in all or any portion of the Parking Garage may be included in the Master Association's policy.

11.1.3 *Commercial Auto Liability.* Commercial auto liability insurance with a combined single limit of One Million Dollars (\$1,000,000) per accident, and including non-owned liability coverage.

11.1.4 *Workers' Compensation and Employer's Liability Insurance.* Worker's compensation insurance having limits not less than those required by state or federal statute, if

applicable, and covering all persons employed by the Master Association in the conduct of its operations on the Project (including the "other states" and volunteers extensions, if applicable), together with employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000) bodily injury by accident (each accident), One Million Dollars (\$1,000,000) bodily injury by disease (policy limit) and One Million Dollars (\$1,000,000) bodily injury by disease (each employee). The Master Association shall require any independent contractor who performs any service for the Master Association to carry statutory worker's compensation and employer's liability insurance in the amount of at least One Million Dollars (\$1,000,000) bodily injury by accident (each accident), One Million Dollars (\$1,000,000) bodily injury by disease (policy limit) and One Million Dollars (\$1,000,000) bodily injury by disease (each employee).

11.1.5 *Property Insurance.*

(a) An "All Risk" or "Causes of Loss – Special Form" policy of insurance or equivalent covering all Improvements located on the Project, including the Common Facilities and all Improvements located on each Lot whether owned by the Master Association, any Residential Association or any Owner (except for the (i) interior of Improvements to be insured by (A) each Residential Association pursuant to Section 11.2.4, (B) each of the Hotel Owner and the Retail Owner pursuant to Section 11.3.3 and (C) each Owner of a Residential Unit pursuant to Section 11.4 and (ii) the Hotel Property and the Hotel Residential Property solely in the event the Hotel Operator obtains insurance for the Hotel Property and the Hotel Residential Property pursuant to Section 11.3.6(b)), in an amount equal to the full replacement cost thereof (including the building ordinance and increased costs of construction endorsement), without deduction for depreciation, except for peril of earthquake which may be in an amount as may be customary from time to time in other reasonably similar First-Class Projects and that is less than the full replacement cost of all Improvements located on the Project, with such reasonable deductible amounts as may be customary from time to time in other reasonably similar First-Class Projects. Such "all risk" or "special form" policy of insurance or equivalent shall insure against risks, including, but not limited to, loss or damage by earthquake, earthquake sprinkler leakage, fire, windstorm, aircraft, vehicle, smoke damage, water damage, flood, sprinkler leakage, riot, civil commotion and certified terrorist acts as covered by standard insurer "TRIA" endorsements (unless not commercially available at reasonable rates). Such "all risk" or "special form" policy of insurance or equivalent shall also include ordinance or law coverage (coverages A, B and C). Such ordinance or law coverage shall include a commercially reasonable sublimit selected by the Board in its reasonable discretion. Any coverage for business income shall be the responsibility of each Residential Association (with respect to the Lots comprising such Residential Association's Residential Project), the Hotel Owner (with respect to the Hotel Property) and/or the Retail Owner (with respect to the Retail Areas) to provide and shall not be included in such "all risk" or "special form" policy of insurance or equivalent maintained by the Master Association. Coverage for the perils of earthquake and flood can be provided by a separate policy or policies, with a commercially reasonable limit selected by the Board in its reasonable discretion. If separate insurance applies to earthquake and/or flood, then such policy(ies) shall include all features required of the "all risk" or "special form" insurance, to the extent commercially reasonably available. Promptly following any fire, earthquake, Casualty, or similar event, the Master Association shall have such portion of the Project affected by such Casualty inspected by qualified consultants and engineers, and shall take immediate steps to (i) tender any claim to any applicable insurance carrier under any applicable

policy, and (ii) subject to the requirements of any such carrier, commence repair of any damage caused by such event. The amount of the premium for such insurance shall be levied as a part of the Regular Assessments levied pursuant to Section 5.10.1. In determining the amount of deductible allocable to each Building and the Common Facilities from time to time, the Board, acting in its reasonable discretion and based upon the recommendation of an outside insurance consultant, shall establish and assign the portions of the deductible under any insurance policy to each Building and the Common Facilities. Each Member (*i.e.*, the Hotel Owner, Retail Owner and/or a Residential Association) may request that the Master Association maintain a higher level (*e.g.*, additional forms and types) and/or higher limits of property insurance with respect to the Lots and/or Residential Units owned or managed by such Member ("Additional Property Insurance"). The Master Association shall provide such Additional Property Insurance provided that (i) the Member requesting such Additional Property Insurance shall be responsible for the cost of such Additional Property Insurance in excess of the cost of the insurance maintained by the Master Association pursuant to this Section 11.1.5(a), (ii) such Additional Property Insurance is commercially reasonably available, and (iii) the Additional Property Insurance is provided by the same insurance carrier or carriers providing the property insurance maintained by the Master Association pursuant to this Section 11.1.5(a).

(b) Boiler and machinery insurance written on the broadest commercially reasonably available comprehensive form, covering all Project equipment, machinery and apparatus consisting of, but not limited to boilers, heating apparatus, fired and unfired pressure vessels, air conditioning equipment, miscellaneous electrical apparatus and their appurtenant equipment in an amount not less than the full replacement or functional cost thereof. If commercially reasonably available, such boiler and machinery insurance shall include the same business income coverage as specified above in Section 11.1.5(a).

11.1.6 Fidelity Bonds. Fidelity bond coverage, naming the Master Association as an obligee, for any person or entity handling funds of the Master Association, including, but not limited to, officers, directors, trustees, volunteers, employees and agents of the Master Association and employees of any Operator, whether or not such Persons are compensated for their services, in an amount not less than the greater of (a) the estimated maximum of funds, including reserve funds, in the custody of the Master Association or the Operator, as the case may be, at any given time during the term of each bond and (b) the sum of three (3) months' Regular Assessments plus any reserve funds. The fidelity bond shall include, at minimum, the following insuring agreements: employee dishonesty, depositor's forgery/alteration, computer fraud, messenger inside premises and messenger outside premises.

11.1.7 Directors and Officers. Directors and officers liability coverage for individual liability of officers and directors of the Master Association for negligent acts or omissions in that capacity and covering employment practices liability. The limit of such coverage shall be not less than Five Million Dollars (\$5,000,000) per claim/aggregate and shall at all times meet or exceed the minimum requirements of Section 5800 of the California Civil Code.

11.1.8 Insurance Required by Federal Agencies. Such casualty, flood and liability insurance and fidelity bond coverage for the Project (including all Common Facilities and all Improvements located thereon) meeting the insurance and fidelity bond requirements for

projects similar to the Project established by any Federal Agencies, except to the extent such coverage is not commercially reasonably available or has been waived in writing by such Federal Agencies, as applicable.

11.1.9 *Builder's Risk.* At all times during which structural construction, repairs or alterations are being made by the Master Association with respect to the Improvements located on the Common Facilities, or any portion thereof, the estimated cost of which will exceed \$200,000: (i) the insurance provided for in Section 11.1.5, written in a so-called builder's risk completed value form (A) on a non-reporting basis, (B) against all risks insured against pursuant to Section 11.1.5, (ii) including permission to occupy, and (iii) with an agreed amount endorsement or clause waiving any co-insurance requirements.

11.1.10 *Other Insurance.* Such other insurance, as necessary and/or appropriate, including, but not limited to, errors and omissions, plate glass insurance, malicious mischief, liquor liability, vandalism, and insurance against such other risks as shall customarily be covered with respect to similar First-Class Projects.

11.1.11 *Beneficiaries.* Such insurance shall be maintained for the benefit of the Master Association, the Residential Associations, the Owners, and, as their interests may appear, the Mortgagees, subject, however, to loss payment requirements as set forth herein.

11.2 **Residential Association Insurance: Required Coverages.** Each Residential Association shall obtain and keep in force at all times the following policies of insurance:

11.2.1 *Commercial General Liability Insurance.*

(a) One (1) or more CGL policies providing coverage at least as broad as a current ISO CG 0001 commercial general liability insurance occurrence policy form or its equivalent, with such limits as may be considered acceptable to FNMA (but in no event less than Three Million Dollars (\$3,000,000) per occurrence, Three Million Dollars (\$3,000,000) annual general aggregate (with a "per project" endorsement causing the annual general aggregate limit to apply separately to the applicable Residential Project) and Three Million Dollars (\$3,000,000) annual products-completed operations aggregate), with a self-insured retention or deductible of not more than Two Hundred Fifty Thousand Dollars (\$250,000) per occurrence, providing coverage for bodily injury, property damage, personal and advertising injury, and fire damage legal liability. The required limits may be provided by any combination of primary and umbrella or follow form excess liability insurance policies.

(b) In addition to the foregoing CGL policies, one (1) or more umbrella or excess liability insurance policies providing coverage at least as broad as the CGL policies required herein with limits of not less than Fifty Million Dollars (\$50,000,000) per occurrence and in the annual aggregate. All such umbrella or excess liability insurance policies shall also provide excess auto liability coverage over the policy required in Section 11.2.2.

(c) In any event, and notwithstanding any other provision herein, such Residential Association shall maintain, at a minimum, insurance as required by Section 5805 of the California Civil Code, as same may be amended from time to time.

(d) The foregoing liability policies, to the extent commercially reasonably available, (i) shall include full separation of insureds and shall not contain any insured versus insured limitation or exclusion; (ii) shall include as named insureds such Residential Association and Declarant; and (iii) shall name the Residential Owners in the applicable Residential Project as additional insureds (by endorsement(s) or policy provision(s) reasonably acceptable to such parties) on the policies with respect to liability arising out of the Residential Common Area located in the applicable Residential Project.

11.2.2 *Commercial Auto Liability.* Commercial auto liability insurance with a combined single limit of One Million Dollars (\$1,000,000) per accident, and including non-owned liability coverage.

11.2.3 *Workers' Compensation and Employer's Liability Insurance.* Worker's compensation insurance having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by such Residential Association in the conduct of its operations on the applicable Residential Project (including the "other states" and volunteers extensions, if applicable), together with employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000) bodily injury by accident (each accident), One Million Dollars (\$1,000,000) bodily injury by disease (policy limit) and One Million Dollars (\$1,000,000) bodily injury by disease (each employee). Such Residential Association shall require any independent contractor who performs any service for such Residential Association to carry statutory worker's compensation and employer's liability insurance in the amount of at least One Million Dollars (\$1,000,000) bodily injury by accident (each accident), One Million Dollars (\$1,000,000) bodily injury by disease (policy limit) and One Million Dollars (\$1,000,000) bodily injury by disease (each employee).

11.2.4 *Property Insurance.* A policy of insurance insuring against loss by fire and the risks covered by an ISO special form policy or equivalent covering any non-structural Improvements (i.e., non-structural walls, ceilings, floor coverings, fixtures and finishes) located within the Residential Common Area of the applicable Residential Project, and any personal property owned or maintained by the applicable Residential Association, in an amount equal to the full replacement cost thereof, as determined annually, without deduction for depreciation, with such reasonable deductible amounts as may be customary from time to time in other First-Class Projects. Each Residential Association shall coordinate its property insurance coverage with the Master Association to ensure that, to the extent reasonably possible, the property insurance obtained by such Residential Association does not duplicate the property insurance maintained by the Master Association. Additionally, each Residential Association may elect to procure coverage for business income as a supplement to the property insurance maintained by the Master Association pursuant to Section 11.1.5. Notwithstanding the foregoing, in the event the Master Association is unable to obtain property insurance required by Section 11.1.5 on commercially reasonable terms for the Lots comprising the applicable Residential Project, the applicable Residential Association shall obtain and keep in force such property insurance for such Lots.

11.2.5 *Fidelity Bonds.* Fidelity bond coverage, naming such Residential Association as an obligee, for any person or entity handling funds of such Residential Association, including, but not limited to, officers, directors, trustees, volunteers, employees and

agents of such Residential Association and employees of any manager of the applicable Residential Project, whether or not such Persons are compensated for their services, in an amount not less than the greater of (a) the estimated maximum of funds, including reserve funds, in the custody of the Residential Association or the manager of the applicable Residential Project, as the case may be, at any given time during the term of each bond and (b) the sum of three (3) months' regular assessments plus any reserve funds. The fidelity bond shall include, at minimum, the following insuring agreements: employee dishonesty, depositor's forgery/alteration, computer fraud, messenger inside premises and messenger outside premises.

11.2.6 Directors and Officers. Directors and officers liability coverage for individual liability of officers and directors of such Residential Association for liability arising out of acts or omissions in that capacity and covering employment practices liability. The limit of such coverage shall be not less than Five Million Dollars (\$5,000,000) each claim and annual aggregate and shall at all times meet or exceed the minimum requirements of Section 5800 of the California Civil Code.

11.2.7 Insurance Required by Federal Agencies. Such casualty, flood and liability insurance and fidelity bond coverage for the applicable Residential Project (including all Residential Common Area and all Improvements located thereon) meeting the insurance and fidelity bond requirements for projects similar to the applicable Residential Project established by any Federal Agencies, except to the extent such coverage is not commercially reasonably available or has been waived in writing by such Federal Agencies, as applicable.

11.2.8 Builder's Risk. At all times during which structural construction, repairs or alterations are being made by the applicable Residential Association with respect to the Improvements located on the Residential Common Area of the applicable Residential Project, or any portion thereof, the estimated cost of which will exceed \$200,000: (i) the insurance provided for in Section 11.1.5, written in a so-called builder's risk completed value form (A) on a non-reporting basis, (B) against all risks insured against pursuant to Section 11.1.5, (ii) including permission to occupy, and (iii) with an agreed amount endorsement or clause waiving any co-insurance requirements.

11.2.9 Other Insurance. Such other insurance, as necessary and/or appropriate, including, but not limited to, errors and omissions, plate glass insurance, malicious mischief, liquor liability, vandalism, and insurance against such other risks as shall customarily be covered with respect to condominium projects similar in construction, location and use.

11.2.10 Beneficiaries. Such insurance shall be maintained for the benefit of the applicable Residential Association, the Owners who are members of such Residential Association, and, as their interests may appear, the Mortgagees under Mortgages encumbering the applicable Residential Project, subject, however, to loss payment requirements as set forth herein.

11.3 Retail Owner and Hotel Owner Insurance; Required Coverages. The Retail Owner and the Hotel Owner shall each obtain and keep in force at all times the following insurance, the cost and expense of which shall be borne by such Owner:

11.3.1 *Commercial General Liability Insurance.* One (1) or more CGL policies providing coverage at least as broad as a current ISO CG 0001 commercial general liability insurance occurrence policy form or its equivalent having a combined single limit of not less than Ten Million Dollars (\$10,000,000) per occurrence, Ten Million Dollars (\$10,000,000) annual general aggregate (with a "per project" endorsement causing the annual general aggregate limit to apply separately to the Hotel Building (in the case of the Hotel Owner) and the Retail Areas (in the case of the Retail Owner)) and Ten Million Dollars (\$10,000,000) annual products-completed operations aggregate, providing coverage for bodily injury, property damage, personal injury, product liability and completed operations. If necessary, an umbrella or following form excess liability policy or policies can also be used to satisfy the above limit requirement. The required limits may be provided by any combination of primary and umbrella or follow form excess liability insurance policies.

11.3.2 *Workers' Compensation and Employer's Liability Insurance.* Worker's compensation insurance having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by such Owner in the conduct of its operations on the Project (including the "other states" and volunteers extensions, if applicable), together with employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000) bodily injury by accident (each accident), One Million Dollars (\$1,000,000) bodily injury by disease (policy limit) and One Million Dollars (\$1,000,000) bodily injury by disease (each employee).

11.3.3 *Property Insurance.* An "All Risk" or "Causes of Loss - Special Form" policy of insurance or equivalent (including boiler and machinery comprehensive form, if applicable) covering the non-structural interior portions of the Improvements (*i.e.*, non-structural walls, ceilings, floor coverings, fixtures and finishes) owned by such Owner, as applicable or located on such Owner's Lot(s), and any personal property owned or maintained by such Owner, in an amount equal to the full replacement cost thereof (including the building ordinance and increased costs of construction endorsement), without deduction for depreciation, with such reasonable deductible amounts as may be customary from time to time in other First-Class Projects. Such "all risk" or "special form" policy of insurance or equivalent shall insure against risks, including, but not limited to, loss or damage by earthquake (unless not available at commercially reasonable rates), earthquake sprinkler leakage, fire, windstorm, aircraft, vehicle, smoke damage, water damage, flood, sprinkler leakage, riot, civil commotion and certified terrorist acts as covered by standard "TRIA" endorsements (unless not available at commercially reasonable rates). Coverage for the perils of earthquake and flood can be provided by a separate policy or policies, with a commercially reasonable limit selected by the Board in its reasonable discretion. If separate insurance applies to earthquake and/or flood, then such policy(ies) shall include all features required of the "all risk" or "special form" insurance, to the extent commercially reasonably available. Such Owner may satisfy its obligations under this Section 11.3.3 by having such obligations fulfilled by an Occupant. Each of the Hotel Owner and the Retail Owner shall coordinate its property insurance coverage with the Master Association to ensure that, to the extent reasonably possible, the property insurance obtained by such Owner does not duplicate the property insurance maintained by the Master Association. Additionally, each of the Hotel Owner and the Retail Owner may elect to procure coverage for business income as a supplement to the property insurance maintained by the Master Association pursuant to Section 11.1.5. Notwithstanding the foregoing, in the event the Master Association is unable

to obtain property insurance required by Section 11.1.5 on commercially reasonable terms for such Owner's Lot(s), such Owner shall obtain and keep in force such property insurance for such Lots.

11.3.4 *Builder's Risk.* At all times during which structural construction, repairs or alterations are being made with respect to any Improvements owned by such Owner on any Lot, or any portion thereof, the estimated cost of which will exceed \$100,000: (i) the insurance provided for in Section 11.1.5, written in a so-called builder's risk completed value form (A) on a non-reporting basis, (B) against all risks insured against pursuant to Section 11.1.5, (ii) including permission to occupy, and (iii) with an agreed amount endorsement waiving any co-insurance requirements.

11.3.5 *Commercial Auto Liability.* Commercial auto liability insurance with a combined single limit of One Million Dollars (\$1,000,000) per accident, and including non-owned liability coverage. If necessary, an umbrella or following form excess liability policy or policies can also be used to satisfy the limit requirements.

11.3.6 *Hotel Operator's Right to Insure.*

(a) The Hotel Operator may obtain any or all of the foregoing insurance policies required to be maintained by the Hotel Owner at the Hotel Operator's sole cost and expense. The Hotel Owner and Declarant shall be included as additional insureds by endorsements on policy provisions reasonably acceptable to such parties and loss payee under all such policies except Workers' Compensation and Employer's Liability. The Hotel Owner shall not be obligated to obtain and keep in force any insurance policy and/or policies required by this Section 11.3 so long as such policy and/or policies are obtained and kept in force by the Hotel Operator.

(b) The Hotel Operator may provide property insurance for the Hotel Property and the Hotel Residential Property (*i.e.*, the entire Hotel Building) as part of the Hotel Operator's insurance program for properties managed by the Hotel Operator subject to the following conditions:

(i) the Board must approve the terms of such property insurance in writing;

(ii) the coverage provided by such property insurance must be at least as comprehensive as, and no less broad than, the coverage provided by the insurance maintained pursuant to Section 11.1.5; and

(iii) in the event of an occurrence, loss or damage affecting the Hotel Property and/or the Hotel Residential Property, such property insurance shall pay insurance proceeds in at least the same amounts and in the same manner as if the Master Association had maintained such property insurance pursuant to Section 11.1.5.

(c) In the event the Hotel Operator provides property insurance for the Hotel Property and the Hotel Residential Property pursuant to Section 11.3.6(b):

(i) the Hotel Property and the Hotel Residential Property shall not be insured under the policy or policies obtained by the Master Association pursuant to Section 11.1.5 and the Master Association shall revise the allocation of Percentage Share (Insurance Expenses) to reflect the removal of the Hotel Property and the Hotel Residential Property from the insurance coverage provided pursuant to Section 11.1.5. Following such reallocation of Percentage Share (Insurance Expenses), the Hotel Owner and each Hotel Residential Owner shall remain obligated to pay a share of the costs of property insurance for the Common Facilities; and

(ii) none of the Hotel Owner, the Hotel Residential Association or the Hotel Residential Owners shall receive any Proceeds from the Master Association under Article XII in the event of a Casualty affecting Hotel Property and/or the Hotel Residential Property. Instead, the Hotel Owner, the Hotel Residential Association and/or the Hotel Residential Owners shall be obligated to obtain recovery from the property insurance maintained by the Hotel Operator and/or any property insurance maintained by the Hotel Residential Association pursuant to Section 11.2.4 and/or the Hotel Residential Owners pursuant to Section 11.4.

11.4 Right and Duty of Owners of Residential Units to Insure. It is the responsibility of each Owner of a Residential Unit to provide insurance on his or her personal property and upon all other property and Improvements within or constituting part of his or her Residential Unit in an amount equal to the full replacement cost thereof, as determined annually, without deduction for depreciation, with such reasonable deductible amounts as may be customary from time to time in other First-Class Projects, and to obtain a waiver of subrogation as to the Master Association and such Owner's Residential Association (and to the extent commercially reasonably available, Declarant) in such insurance. Each Owner of a Residential Unit shall maintain liability insurance in such amounts as may be required by such Owner's Residential Association or such Owner's lender(s) from time to time, whichever is greater. Nothing herein shall preclude any Owner of a Residential Unit from carrying such additional liability insurance as he or she deems desirable to cover his or her individual liability for injury or damage to persons or property occurring inside his or her individual Residential Unit or elsewhere upon the Property. Duplicate copies of such policies maintained by Owners shall be deposited with the Board upon request. Each Owner must first seek and use commercially reasonable efforts to obtain recovery from his or her own property insurance prior to instituting any claim for loss of, loss of use of or damage to property or Improvements located within, or constituting part of, such Owner's Residential Unit (including loss caused by another Owner(s), the Master Association or such Owner's Residential Association) against any insurance maintained by or on behalf of the Master Association, such Owner's Residential Association or another Owner. After resolution of an Owner of a Residential Unit's claim against his or her own insurance, any subsequent claim by such Owner for such loss against insurance maintained by or on behalf of the Master Association, such Owner's Residential Association or another Owner shall be reduced by the amount of such Owner's recovery from such Owner's property insurance. In the event that such Owner has failed to maintain his or her own property insurance as required by this Section 11.4, then the amount of any claim by Owner for such loss against insurance maintained by or on behalf of the Master Association, such Owner's Residential Association or another Owner shall be reduced by the amount that such Owner would have

recovered from such Owner's property insurance if such Owner had in fact maintained such insurance.

11.5 General.

11.5.1 *Insurance Companies.* All insurance policies required to be maintained pursuant to this Article XI shall be written by insurance carriers authorized to transact that class of insurance in California and having a "General Policyholders Rating" of at least A:X (or, with respect to any insurance required to be maintained by any Owner, such higher rating as may be required by a Mortgagee) as set forth in the most current issue of "Best's Insurance Guide" or an equivalent rating from another industry-accepted rating agency.

11.5.2 *Certificates of Insurance.* Each Residential Association and each Owner shall deliver to the Master Association certificates or other reasonable evidence of insurance required to be maintained by it with original endorsements for all coverages required by Sections 11.2, 11.3 and 11.4, as applicable. The certificates and endorsements of each insurance policy shall be signed by a person authorized by the insurer to do so on its behalf. The certificates and endorsements shall be on Acord forms or such other forms acceptable to the Master Association in its sole discretion. The Master Association shall have available for inspection and copying by any Owner at its offices certificates or other reasonable evidence of insurance required to be maintained by it with original endorsements for all coverages required by Section 11.1. Each Residential Association and each Owner shall furnish the Master Association with renewal certificates or "insurance binders" thereof at least ten (10) days prior to expiration of the policy, but in all events prior to expiration. Each policy shall be endorsed to provide that such policies shall not be cancelable except after thirty (30) days' prior written notice to the Master Association (except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least ten (10) days' written notice has been given to the Master Association) and name the Master Association as an additional insured by endorsement(s) or policy provision(s) acceptable to the Master Association in its sole and absolute discretion. The Master Association shall be included as an additional insured by endorsement(s) or policy provision(s) acceptable to the Master Association in its sole and absolute discretion and loss payee under all of the policies required by Sections 11.2 and 11.3 above, except Workers' Compensation and Employer's Liability.

11.5.3 *Excess Coverage.* Any umbrella liability policy or excess liability policy shall be in "following form," shall be at least as broad as the underlying insurance and shall contain a provision to the effect that, if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance.

11.5.4 *Trustee.*

(a) The Master Association, acting through the Board, is hereby appointed and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Master Association. All insurance proceeds under any such policies as provided for in Section 11.1 of this Article shall be paid to the Board as trustees. The Board shall have full power to receive and to receipt for the proceeds and to deal therewith as provided herein. Insurance proceeds shall be used by the Master Association for the

repair or replacement of the property for which the insurance was carried or otherwise disposed of as provided in Article XII of this Declaration. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire, of First Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 12.6 of this Declaration. Any two (2) officers of the Master Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds. A representative may be chosen by the Board, including a trustee with whom the Master Association may enter into an insurance trust agreement or any successor to such trustee, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions necessary to accomplish this purpose.

(b) Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Master Association, the Residential Associations and all Owners, shall have the exclusive right to bind such parties in respect to all matters affecting insurance carried by the Master Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance, in a manner satisfactory to beneficiaries of seventy-five percent (75%) of the First Mortgages held by First Mortgagees (based on one (1) vote for each Lot or Residential Unit encumbered by a First Mortgage) who have filed requests under Section 12.6 of this Declaration. Duplicate originals or certificates of all policies of property insurance maintained by the Master Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Master Association to the Residential Associations and all Owners and Mortgagees who have requested the same in writing.

11.5.5 *Primary Coverage.* Each insurance policy required to be maintained under Sections 11.1, 11.2 or 11.3 shall expressly provide that for any claims which are the insured Person's responsibility under this Declaration, the "other insurance" condition of such Person's insurance coverage shall constitute primary insurance with respect to the Master Association and shall not share with the insurance of the Master Association, the Residential Associations and the other Owners, and their respective directors, officers and employees.

11.5.6 *Severability of Interest.* The insurance coverage required to be maintained under Sections 11.1, 11.2 and 11.3 shall apply separately to each party named as an additional insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability, and shall not contain any insured vs. insured limitation or exclusion.

11.5.7 *Constant Dollars.* The required insurance coverage limits and/or amounts for each policy set forth in Sections 11.1, 11.2 and 11.3 shall be measured in Constant Dollars and updated annually upon the renewal of such policy.

11.6 **Compliance.** The Master Association, each Residential Association and each Owner shall use commercially reasonable efforts to comply with the requirements of any insurance carrier providing insurance called for under this Declaration.

11.7 **Required Waivers.** The Master Association, each Residential Association and each other Owner shall ensure that any policy of property insurance relating to the Project, the Common Facilities, any Lot or any Improvements, shall provide, if commercially reasonably

available, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

11.7.1 any defense based upon coinsurance;

11.7.2 any right of setoff, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Master Association, any Residential Association or any other Owner;

11.7.3 any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Master Association, any Residential Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any insured or the respective agents, contractors and employees of any insured;

11.7.4 any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement cost of the Improvements insured;

11.7.5 notice of the assignment of any Owner of his or her interest in the insurance by virtue of a conveyance of a Lot or Residential Unit; and

11.7.6 any right to require any assignment of any Mortgage to the insurer.

11.8 **Annual Insurance Review.** The Board shall review the insurance carried by or on behalf of the Master Association at least annually (or as otherwise required by law), for the purpose of determining the amount of the coverages and limits of insurance maintained by the Master Association pursuant to Section 11.1 above. If economically feasible, the Board shall obtain a current appraisal of the full replacement cost of the Improvements on the Project without deduction for depreciation, from a qualified independent insurance appraiser, prior to each such annual review.

11.9 **Modification of Insurance Requirements.**

11.9.1 *Generally.* The insurance required in this Article XI reflects insurance coverage that is customarily carried and reasonably available to prudent owners and associations of similar First-Class Projects as of the date of this Declaration. The availability of insurance coverage is subject to change over time based on market conditions and insurance coverage that is customary and reasonably available as of the date of this Declaration may not be customary and/or reasonably available in the future. Accordingly, the Board shall review in good faith the requirements set forth in this Article XI at least once every two (2) years, and the Board shall have the power and right to adjust and modify the insurance requirements for the Master Association and to recommend adjustments and modifications to the insurance requirements for the Residential Associations, the Hotel Owner, the Retail Owner and Owners of Residential Units set forth in this Article XI to reflect coverage and protection that is customarily carried and reasonably available to prudent owners and associations of similar First-Class Projects and each of the Residential Associations, the Hotel Owner, the Retail Owner and Owners of Residential Units shall use reasonable good faith efforts to comply with such recommended adjustments and modifications. In the event the Board elects to materially reduce the coverage required to be

maintained by the Master Association from the coverage required in Section 11.1, the Board shall use reasonable efforts to notify the Residential Associations, the Hotel Owner, the Retail Owner and Owners of Residential Units at least thirty (30) days prior to the effective date of such reduction. No Residential Association or Owner shall be in breach of its obligations under this Declaration solely due to the failure to maintain insurance if, after a good faith effort, such Residential Association or Owner is unable to obtain one or more of the insurance coverages required hereunder to the extent the insurance is no longer available or if the insurance can be obtained only at a cost that the Board, in its sole discretion, agrees is unreasonable under the circumstances.

11.9.2 *Termination of Earthquake, Flood or Certified Terrorist Act Insurance.* Notwithstanding the foregoing, until the Final Sale Date, the Board cannot elect to terminate any required earthquake, flood and/or certified terrorist act coverage without the prior written consent of Declarant, which consent may be withheld by Declarant in its sole and absolute discretion. Thereafter, the Board may not elect to terminate any required earthquake, flood and/or certified terrorist act coverage unless (a) the Board has voted unanimously to terminate such coverage and (b) such termination will not constitute an event of default under any Mortgage. In the event such coverage is terminated as provided herein (or otherwise) the Master Association shall be deemed to have waived any and all claims against Declarant or any other parties for matters which would have otherwise been covered by earthquake, flood and/or terrorism coverage. For example, if the Project is damaged by an earthquake and such damage would have been covered by the earthquake coverage, the Master Association may not pursue any claims against Declarant (or any other party) to recover funds to cover such repairs (e.g., defect claims, etc.).

ARTICLE XII.

DESTRUCTION OF IMPROVEMENTS AND CONDEMNATION

12.1 Casualty and Restoration: Common Facilities.

12.1.1 *Duty of Master Association.* If a Casualty occurs to the Common Facilities or any portion thereof, including the Parking Garage, or any of the Improvements located thereon, then, as soon as practicable thereafter, the Master Association shall cause such damage or destruction to be repaired, rebuilt and restored to at least the condition substantially equivalent to its condition immediately prior to the Casualty, to the extent permitted by applicable Legal Requirements.

12.1.2 *Automatic Reconstruction.* If and to the extent that the Proceeds for any reason are insufficient to pay the cost of such repair, rebuilding or restoration, then, except as otherwise expressly provided in Section 12.3 below, to the extent that the available Proceeds are at least eighty-five percent (85%) of the estimated cost of such repair, rebuilding or restoration, the Master Association shall levy a Reconstruction Assessment against each Owner as provided in Section 5.10.6 above to provide the necessary funds for such repair, rebuilding or restoration over and above the Proceeds available for such purpose. The Master Association shall have the right to levy such Reconstruction Assessment in advance of the time when the Master Association expends or expects that it will expend funds to complete a restoration.

12.1.3 *Vote of Members.* If and to the extent that the Proceeds for any reason are insufficient to pay the cost of such repair, rebuilding or restoration, then, except as otherwise expressly provided in Section 12.3 below, to the extent that the available Proceeds are less than eighty-five percent (85%) of the estimated cost of such repair, the Master Association may levy a Reconstruction Assessment against each Owner as provided in Section 5.10.6 above and proceed with rebuilding or restoration, such repair, rebuilding or restoration only if the following condition (the "**Condition to Reconstruction**") has first been satisfied: the levy of a Reconstruction Assessment to pay the costs of such repair, rebuilding or restoration is approved by the affirmative vote or written consent of fifty-one percent (51%) of the voting power of the Members, and by the written consent of fifty-one percent (51%) of the Institutional Mortgagees (with such Institutional Mortgagee consent determined using the voting procedures set forth in Section 14.6.2). If the Condition to Reconstruction does not occur within six (6) months following a destruction for which Proceeds available for repair, rebuilding or restoration are less than eighty-five percent (85%) of the estimated cost of repair, rebuilding or restoration, it shall be conclusively presumed that the Members have determined not to proceed with repair, rebuilding or restoration and not to allow the Master Association to levy a Reconstruction Assessment, in which case the Owners may proceed as provided in Section 12.7.2 below. If the Condition to Reconstruction has been satisfied, the Master Association shall have the right to levy such Reconstruction Assessment in advance of the time when the Master Association expends or expects that it will expend funds to complete any repair, rebuilding or restoration.

12.2 **Casualty and Restoration: Improvements on Lots.** If a Casualty occurs to all or any portion of any Building or other Improvements on a Lot or Residential Unit owned by an Owner and not part of the Common Facilities, then, as soon as practicable thereafter, the affected Owner shall cause such damage or destruction to be repaired, rebuilt and restored to at least the condition substantially equivalent to its condition immediately prior to the Casualty, to the extent permitted by applicable Legal Requirements. Following any Casualty, the Board, acting in its reasonable discretion and based upon the recommendation of an outside insurance consultant, shall establish and assign Proceeds under any insurance policy to be available for the restoration of affected portions of each Building and the Common Facilities; *provided, however*, that in the event the Hotel Operator has elected to maintain property insurance for the Hotel Property and the Hotel Residential Property pursuant to Section 11.3.6(b), restoration of affected portions of the Hotel Property and the Hotel Residential Property shall be funded from such insurance and not from any Proceeds. If and to the extent that the Proceeds for any reason are insufficient to pay the cost of such repair, rebuilding or restoration (including, without limitation, as a result of damage, misconduct or wrongdoing by an Owner, its Occupant or Permittee that is not covered by insurance or a Default by such Owner with respect to its obligation to maintain insurance required under Article XI above), then, except as otherwise expressly provided in Section 12.3 below and except pursuant to any provisions in the Residential CC&Rs allowing Residential Owners to disapprove a reconstruction assessment or other special assessment for repair, rebuilding or restoration, the affected Owner shall nevertheless be obligated to undertake the repair, rebuilding and restoration of the Building or Improvements affected by the Casualty, and the Master Association shall not be required to make any portion of the Proceeds assigned for the restoration of such Building or Improvements available to such Owner until the Owner has provided evidence reasonably satisfactory to the Board (which may be in the form of an irrevocable letter of credit, bond or other secured funds) that the Owner has funds, when added to the assigned portion of the Proceeds for such Building, necessary to complete the repair,

rebuilding and restoration of its Building. The Owner shall commence restoration of its Building or Improvements within ninety (90) days following the occurrence of the Casualty, and the failure to do so shall be a Default (unless such ninety (90)-day period has been extended by the Board in writing) and in the event the Owner does not commence restoration of its Building or Improvements within such timeframe, the Master Association, upon written notice to such Owner, may commence such restoration subject to reimbursement by such Owner of the Master Association's costs and expenses in performing such restoration which exceed the Proceeds available for such restoration. Notwithstanding the foregoing, if a Casualty affects both the Hotel Residential Property and the Hotel Property and if the Hotel Residential Owners do not approve a reconstruction assessment or other special assessment for repair, rebuilding or restoration of the Hotel Residential Property pursuant to Section 12.1 of the Hotel Residential CC&Rs and the Hotel Residential Property is not restored, the Hotel Owner may elect to restore the Hotel Property but shall not be obligated to do so. Any restoration that an Owner may be required to make pursuant to this Section 12.2, and any changes to the design of the replacement or repaired Building or Improvements shall constitute Major Construction Work, and shall be subject to all applicable provisions of this Declaration, including, without limitation, Article VI hereof. Each Owner, shall cooperate with the Master Association and the other Owners in performing all repair, rebuilding and restoration work to ensure coordination and efficient completion of all such work throughout the Project.

12.3 No Obligation to Restore. Except to the extent required to comply with an Owner's or the Master Association's obligations under Section 2.4, above or Section 12.5, below, if (a) eighty percent (80%) or more of the aggregate square footage of all of the Buildings located in the Project has been damaged or destroyed, (b) the Project cannot be substantially restored within three (3) years after the date of such Casualty, or (c) in excess of fifty percent (50%) of the Parking Spaces in the Parking Garage are closed as a result of such Casualty either permanently or for a period in excess of three (3) years, then the Members, acting by a unanimous vote, may determine that it is not feasible or commercially practical to restore the Project, in which event the Master Association, with respect to the Common Facilities and the Owners, with respect to their Buildings, shall have no obligation to repair, rebuild or restore same.

12.4 Obsolete Improvements. Notwithstanding any other provision of this Article XII if any Improvements that are damaged or destroyed in any Casualty were functionally obsolete immediately prior to such damage or destruction, then the Owner thereof shall not be required to repair, rebuild or restore the same to their prior condition if the Board determines that such Improvements were functionally obsolete, which determination shall include an evaluation of whether and how alternative Improvements can be rebuilt in a useful and viable manner and the most appropriate and cost effective way to deal with the undamaged portion of such Improvements.

12.5 Obligation to Clear Debris. If any of the Improvements are damaged or destroyed and, pursuant to Sections 12.1.3, 12.2 or 12.3 or pursuant to any provisions in the Residential CC&Rs allowing Residential Owners to disapprove a reconstruction assessment or other special assessment for repair, rebuilding or restoration, the Master Association or the Owner thereof, as applicable, has the right pursuant to the foregoing provisions not to rebuild or repair the same, and in fact determines not to do so, then the Master Association or such Owner,

as applicable, shall be obligated to raze the Improvements, clear the Project of all construction debris or other life safety hazards and appropriately landscape the surface area of that portion of the Project and maintain same in a safe, sightly, and dust free condition in accordance with applicable Legal Requirements. The Owner performing the foregoing demolition shall comply with all provisions of this Declaration, including Article II and Article VI hereof in performing same, and shall undertake such demolition in a manner that will minimize any disruptions or inconvenience to the other Owners, their Occupants and Permittees. In no event shall any such demolition be undertaken in a way that would render unusable any structural support easements or any other easements granted in Article II, except in strict accordance therewith. If such Owner fails to commence performance of the covenants set forth in this Article XII within thirty (30) days, or to complete such restoration within one hundred twenty (120) days, in each case after the determination by the Board not to rebuild or restore the Project in accordance with Section 12.3 above, then the Master Association shall have the right to perform the same at the expense of the affected Owner.

12.6 Rights of Mortgagees. The right of any Mortgagee to receive or retain any Proceeds (including the right to control the disbursement of any Proceeds) shall be subject to the availability of such Proceeds for repair, rebuilding and restoration or distribution to the Owners, as provided in this Article XII. If any Mortgagee has and desires to exercise its right to receive or retain any Proceeds, then the Board shall make the allocable share of such Proceeds available to such Mortgagee provided that: (a) the Mortgage requires (or the Mortgagee agrees in writing to the Board) the Proceeds are to be made available for the repair, restoration and rebuilding of the Building located on the Lot secured by the Mortgage, (b) the Mortgage contains construction disbursement provisions with respect to such Proceeds reasonably satisfactory to the Board, and (c) the Mortgagee acknowledges that the obligation to repair, restore and rebuild the Building located on the Lot secured by the Mortgage shall be a continuing obligation notwithstanding any Transfer or Involuntary Transfer of the interest of the Owner in such Lot, and notwithstanding any contrary provision contained in this Declaration, including Article XIV hereof. In furtherance of the provisions of this Section 12.6, if the Proceeds allocated by the Board for the repair, rebuilding and reconstruction of the Building located on the Lot secured by the Mortgage are insufficient to pay the cost of repair, rebuilding or restoration of such Building, then Owner thereof (or any Transferee) shall nevertheless be obligated to prioritize the use of the remaining Proceeds so as to repair, rebuild and restore such Improvements in the manner set forth in Section 12.2, including the obligation to provide any additional funds required to complete such repair, rebuilding or restoration of such Building.

12.7 Distribution of Proceeds.

12.7.1 *Casualty and Condemnation Proceeds; Restoration.* Except as provided in Section 12.7.2 below, Proceeds of any insurance paid in connection with any Casualty, or paid by any condemning authority in respect of any Condemnation shall be held by the Master Association, by a third party consultant appointed by the Master Association to oversee the repair of the Project (the "**Casualty Consultant**" and all references in this Section 12.7.1 to "the Master Association or Casualty Consultant" shall mean the Master Association or the Casualty Consultant, as applicable) or, with respect to a particular Lot secured by a Mortgage, by the Mortgagee under such Mortgage, pursuant to the provisions of Section 12.6, above, for application to the rebuilding, restoration and repair of the Project as provided in Sections 12.1

and 12.2 above. The Master Association or Casualty Consultant shall make such Proceeds available to the Owners, based upon their allocated share of such Proceeds, subject to the following conditions to disbursement, with respect to each disbursement requested by an Owner:

(a) Each request for a disbursement of Proceeds shall be made in writing and shall specify the amount of Proceeds requested, the purpose for which such Proceeds are requested (including the restoration costs to be paid therefrom) and shall contain a certification by such Owner that such Owner is in compliance with all provisions of this Declaration applicable to the repair, rebuilding and restoration of such Owner's Building.

(b) If at any time the Master Association or Casualty Consultant determines that the allocable share of Proceeds for a particular Building, or the undisbursed balance thereof are not sufficient to pay in full the balance of the costs which are estimated by the Master Association or Casualty Consultant to be incurred in connection with the completion of the restoration by the Owner of such Building, then such Owner shall deposit the deficiency (the "**Proceeds Deficiency**") with the Master Association or Casualty Consultant before any further disbursement of the Proceeds shall be made. The Proceeds Deficiency deposited with the Master Association or Casualty Consultant shall be held by the Master Association or Casualty Consultant, and shall be disbursed for costs actually incurred in connection with the restoration on the same conditions applicable to the disbursement of the Proceeds in this Section 12.7.1.

(c) The Owner shall not be in Default under this Declaration and no Event of Default shall have occurred with respect to such Owner or its Lot.

(d) The Owner shall have complied, and shall at all times remain in compliance, with the provisions of this Declaration with respect to the commencement and construction of the Construction Work, which shall be Major Construction Work and be subject to all applicable provisions related thereto. The Master Association may appoint the Casualty Consultant to oversee the Owner's compliance with the provisions of this Declaration applicable to Major Construction Work with respect to such restoration.

(e) Proceeds shall be disbursed to, or as directed by, the Owner from time to time during the course of the restoration, upon receipt of evidence satisfactory to the Master Association or Casualty Consultant that: (i) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the restoration have been paid for in full, and (ii) there exist no notices of pendency, stop orders, mechanic's or materialmen's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Project arising out of the restoration by such Owner that have not been fully bonded to the satisfaction of the Master Association or Casualty Consultant and discharged of record.

(f) In no event shall the Master Association or the Casualty Consultant be obligated to make disbursements of Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the restoration, as reasonably determined by the Casualty Consultant, minus the Casualty Retainage. The term "**Casualty Retainage**" as used in this Section 12.7.1 shall mean an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the restoration, as reasonably determined

by the Master Association or Casualty Consultant, until such time as the Master Association or Casualty Consultant determines that Proceeds allocable to such Owner's Building representing seventy-five percent (75%) of the amount required for such restoration have been disbursed. There shall be no Casualty Retainage with respect to costs actually incurred by such Owner for work in place in completing the last seventy-five percent (75%) of the required restoration. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 12.7.1, be less than the amount actually held back by such Owner from contractors, subcontractors and materialmen engaged in the restoration. The Casualty Retainage shall not be released until the Master Association or Casualty Consultant reasonably determines that the restoration has been completed in accordance with the provisions of this Declaration and that all approvals necessary for the re-occupancy and use of such Owner's Building have been obtained from all appropriate Governmental Authorities, and the Master Association or Casualty Consultant receives evidence that the costs of the restoration have been paid in full or will be paid in full out of the Casualty Retainage; *provided, however*, that the Master Association or Casualty Consultant will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the restoration as of the date upon which the Master Association or Casualty Consultant reasonably determines that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, and the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by the Master Association or Casualty Consultant.

(g) The Master Association or Casualty Consultant, as applicable, shall not be obligated to make disbursements of the Proceeds to any particular Owner more frequently than once every calendar month.

(h) With respect to those portions of the Hotel Residential Property that the Hotel Owner is responsible to restore pursuant to the Hotel Building Reciprocal Easement Agreement, the Master Association or Casualty Consultant, as applicable, shall make distributions of Proceeds allocable to such restoration (as reasonably determined by the Master Association or Casualty Consultant, as applicable) directly to the Hotel Owner rather than the Hotel Residential Association, subject to all other provisions of this Section 12.7.1.

(i) The excess, if any, of the Proceeds allocable to a particular Building after the Master Association or Casualty Consultant determines in its reasonable discretion that the restoration of such Owner's Building has been completed in accordance with the provisions of this Section 12.7.1, and the receipt by the Master Association or the Casualty Consultant of evidence reasonably satisfactory to the Master Association or Casualty Consultant that all costs incurred in connection with the restoration have been paid in full, shall be remitted by the Master Association or Casualty Consultant to such Owner.

12.7.2 Casualty Proceeds; No Restoration.

(a) If the Members vote not to restore the Project following a Casualty as permitted by Section 12.3, then Proceeds received by the Master Association shall be payable as follows: (i) first to the Master Association to pay for or to reimburse the Owners for costs the

Master Association reasonably determines are necessary to comply with the obligations set forth in Section 2.4 and Section 12.5 above, and (ii) next, the Master Association shall distribute the remaining Proceeds to the Owners, in proportion to their respective Percentage Shares (Proceeds).

(b) If the Members vote not to restore the Common Facilities following a Casualty as permitted by Section 12.1.3, then Proceeds received by the Master Association shall be payable as follows: (i) first to the Master Association to pay for or to reimburse the Owners for costs the Master Association reasonably determines are necessary to comply with the obligations set forth in Section 2.4 and Section 12.5 above, and (ii) next, the Master Association shall distribute the remaining Proceeds to the Owners based on allocations among the Owners as shall be reasonably determined by the Casualty Consultant.

(c) In the event Residential Owners within a Residential Project do not approve a reconstruction assessment or other special assessment for repair, rebuilding or restoration of such Residential Project following a Casualty and such Residential Project is subsequently subject to partition pursuant to the terms of the applicable Residential CC&Rs, the Master Association shall distribute the Proceeds allocable to such Residential Project (as reasonably determined by the Casualty Consultant) to the applicable Residential Association for distribution to the Residential Owners pursuant to the terms of the applicable Residential CC&Rs.

(d) In the event that, pursuant to Section 12.2, Hotel Owner elects not to restore the Hotel Property following a Casualty that affects both the Hotel Residential Property and the Hotel Property because Hotel Residential Owners did not approve a reconstruction assessment or other special assessment for repair, rebuilding or restoration of the Hotel Residential Property, the Master Association shall distribute the Proceeds allocable to the Hotel Property (as reasonably determined by the Casualty Consultant) to the Hotel Owner; *provided, however*, that such Proceeds payable to the Hotel Owner shall first be applied to the balance due on any Mortgages encumbering the Hotel Property, in order of priority.

12.7.3 Condemnation Proceeds; No Restoration. If the entire Project is taken by Condemnation, then all Proceeds received by the Master Association shall be payable to the Owners, in proportion to their respective Percentage Shares (Proceeds); *provided, however*, all such Proceeds payable to an Owner shall first be applied to the balance then due on any Mortgages encumbering such Owner's Lot or Residential Unit, in order of priority.

12.8 Condemnation; Restoration. If, as a result of any Condemnation, any Improvements or any portion of the Common Facilities is damaged but ownership thereof is not completely taken by the condemning authority, then the Master Association, with respect to the Common Facilities, and each Owner as to the Improvements located on such Owner's Lot(s) or Residential Unit(s), shall be obligated to restore the same to the extent practicable and to the extent and in the manner provided for in Sections 12.1, 12.2 and 12.3 above, as applicable. Following any Condemnation affecting less than the entire Project, the Project shall be repaired and restored as provided in this Article XII, and the Board, acting in its reasonable discretion and by a majority vote, shall establish and assign Proceeds thereof to be available for the restoration of affected portions of each Building and the Common Facilities. If all or any portion of the

Project is taken by Condemnation, all Proceeds shall belong to the Master Association, with respect to the Common Facilities and otherwise to the Owner whose Lot or portion thereof or Residential Unit was so taken, as its interests may appear (subject to the rights of such Owner's Mortgagees); *provided, however*, that any other Owner may file a claim with the condemning authority for damages other than the fee provided under eminent domain law (including for loss of the value of any easements). Any Proceeds received by the Master Association on account of a Condemnation affecting the Common Facilities shall be applied in the following order of priority: (a) first, to the Master Association to complete the repair and restoration of the Common Facilities to the extent practicable, such repair and restoration to be completed as provided in Section 12.1 above; and (b) second, to the Master Association, to be used to offset the cost of future General Common Expenses and Garage Expenses and expenses of capital improvements to the Project. Any Proceeds following a Condemnation that are received by the Master Association or an Owner on account of a Condemnation affecting its Lot (exclusive of the Common Facilities) or Residential Unit shall be held by the Master Association pursuant to the provisions of Section 12.7.1 for application in the following order of priority: (i) first, to complete the repair and restoration of the Building located on its Lot to the extent practicable, such repair and restoration to be completed as provided in Section 12.2 above; and (ii) second, to the Owner following a determination by the Board that the Owner has completed such repair and restoration. The Proceeds paid by the condemning authority shall be held by the Master Association and made available to the Master Association and the Owners for restoration of the affected portions of the Project subject to and in accordance with the provisions of Section 12.7.1 above as if such Proceeds were Proceeds of casualty insurance, or if the Board elects not to restore the Project as provided in Section 12.3 above, then the Proceeds shall be payable to the Owners as provided Section 12.7.3 above.

ARTICLE XIII.

DEFAULTS AND REMEDIES

13.1 **No Termination.** No Default or Event of Default by any Owner or the Master Association under this Declaration shall entitle any other Owner or the Master Association to cancel, rescind or otherwise terminate this Declaration, provided that such limitation shall not affect any other rights or remedies that any Owner or the Master Association may have by reason of such Default or Event of Default.

13.2 **Interest.** Any sums payable by an Owner to any other Person under the terms and conditions of this Declaration shall bear interest at the Default Rate from and after the due date thereof until the date of payment thereof in full (together with interest thereon).

13.3 **Right to Cure on Behalf of Defaulting Owner.** If any Owner fails to perform any of its obligations under this Declaration (except for the payment of Assessments, which shall be governed by Article V above), then the Master Association shall have the right, but not the obligation, to perform such obligations on behalf of and for the account of the defaulting Owner in accordance with the procedures set forth in Section 16.1.

13.4 **Injunctive Relief and Damages.** In the event of any breach by any Owner of any provision of this Declaration, the Master Association may prosecute any proceedings at law or in equity to enjoin such breach or threatened breach and to recover damages for any such breach or

threatened breach; *provided, however*, that the dispute resolution procedures established in this Declaration must be followed, if they are applicable. Any such action or proceeding authorized pursuant to this Section 13.4 may be maintained, and a judgment thereunder obtained, without foreclosing or waiving any lien provided for in this Declaration.

13.5 **Voting Rights.** To the extent permitted by applicable law, during any period when an Event of Default has occurred with respect to any Owner under this Declaration, the Board may, by the vote of a majority of the members of the Board (disregarding the votes of the Owner who is in Default), suspend the voting privileges of such defaulting Owner until such defaulting Owner cures the Event of Default.

13.6 **Other Remedies.** The rights and remedies given to any Person hereunder shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity which any such Person might otherwise have by virtue of a Default under this Declaration, and the exercise of one such right or remedy by any such Person shall not impair such Person's standing to exercise any other right or remedy.

13.7 **No Waiver.** No waiver of any Default by the Master Association or any Owner shall be implied from any omission by the Master Association or any Owner to take any action in respect of such Default, whether or not such Default continues or is repeated. No express waiver of any Default shall affect any Default or cover any period of time other than the Default and period of time specified in such express waiver. One or more waivers of any Default in the performance of any term, provision or covenant contained in this Declaration shall not be deemed to be a waiver of any subsequent Default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Declaration. The consent or approval by the Master Association or any such Person as required hereunder to or of any act or request by any other Person requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or requests.

13.8 **Delegation of Master Association's Rights to Cure.** Subject to applicable laws and regulations, the Master Association may at any time and from time to time delegate to any Operator the non-exclusive authority to exercise any or all of the Master Association's rights hereunder, including the right to enforce the terms of the Project Rules and Regulations and the Parking Garage Rules and Regulations, as applicable, and to pursue, in the name of the Master Association, any remedy available to the Master Association arising out of a Default under such Project Rules and Regulations or Parking Garage Rules and Regulations, as applicable or other provision of this Declaration.

ARTICLE XIV. RIGHTS OF MORTGAGEES

14.1 **Filing Notice; Notices and Approvals.** A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Master Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Lot or Residential Unit within the Project. Such notice need not state which

Lot(s) or Residential Unit(s) are encumbered by such Mortgage, but shall state whether such Mortgagee is a First Mortgagee. Wherever the approval of all or a specified percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage only of those Mortgagees which have delivered such notice to the Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Master Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Master Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Assessments levied by the Master Association hereunder shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

14.2 **Priority of Mortgage Lien.** No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any First Mortgage made in good faith and for value encumbering any Lot or Residential Unit, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot or Residential Unit except as otherwise provided in this Article.

14.3 **Curing Defaults.** A Mortgagee or the immediate transferee of such 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.

14.4 **Resale.** It is intended that any loan to facilitate the resale of any Lot or Residential Unit after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

14.5 **Relationship with Assessment Liens.**

14.5.1 The lien provided for the payment of Assessments (excepting Remedial Assessments) shall be subordinate to the lien of any First Mortgage which was recorded prior to the date any such Assessment becomes due.

14.5.2 If any Lot or Residential Unit subject to a monetary lien created by any provision hereof shall be subject to the lien of a First Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such First Mortgage; and (2) the foreclosure of the lien of said First Mortgage or the acceptance of a deed in lieu thereof (such events being hereinafter referred to as "**Events of Foreclosure**") shall not operate to affect or impair the lien hereof, except that any persons who obtain an

interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.

14.5.3 Any Mortgagee who obtains title to a Lot or Residential Unit by reason of any of the Events of Foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Lot or Residential Unit free of any lien or claim for unpaid Assessments against such Lot which accrue prior to the time such Mortgagee or purchaser takes title to such Lot or Residential Unit, except for liens or claims for a share of such Assessments resulting from a pro-rata reallocation of such Assessments to all Lots and Residential Units within the Project.

14.5.4 Nothing in this Section shall be construed to release any Owner from his obligations to pay for any Assessment levied pursuant to this Declaration.

14.6 Fifty-One Percent (51%) Vote of Institutional Mortgagees.

14.6.1 Except upon the prior written approval of at least fifty-one percent (51%) of Institutional Mortgagees, as calculated pursuant to Section 14.6.2, neither the Master Association nor the Members shall be entitled to do any of the following:

(a) dissolve the Master Association or abandon or terminate the maintenance of the Common Facilities by the Master Association;

(b) amend a material provision of this Declaration or of the Bylaws, provided "material amendment" shall mean amendments governing the following subjects:

(i) the fundamental purpose for which the Project was created (such as a change from residential/hotel/retail use to a different use);

(ii) voting rights;

(iii) annual increases in Assessments that raise the previously assessed amount by more than twenty percent (20%), Assessment liens, or the priority of Assessment liens;

(iv) reductions in the reserves for repair and replacement of the Common Facilities;

(v) property maintenance obligations;

(vi) casualty, fidelity and liability insurance requirements;

(vii) reconstruction in the event of damage or destruction;

(viii) rights to use the Common Facilities;

(ix) annexation;

(x) any provision, which by its terms, is specifically for the benefit of First Mortgagees, or specifically confers rights of First Mortgagees; and

(xi) restrictions on the sale or transfer of Lots or Residential Units.

(c) effectuate any decision to terminate professional management and assume self-management of the Project; or

(d) abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate or otherwise encumber the Common Facilities; *provided, however*, the granting of easements for public utilities or other purposes which are consistent with the intended use of the Common Facilities shall not require such approval.

14.6.2 The voting rights of Institutional Mortgagees under Section 12.1.3 and Section 14.6.1 shall be allocated as follows:

(a) Institutional Mortgagees holding First Mortgages encumbering the Retail Areas or any portion thereof shall have one (1) vote. If more than one Institutional Mortgagee holds a First Mortgage encumbering the Retail Areas or any portion thereof, such vote shall be cast as decided by a majority of such Institutional Mortgagees based on one (1) vote for each First Mortgage held by such Institutional Mortgagees.

(b) Institutional Mortgagees holding First Mortgages encumbering the Hotel Property or any portion thereof shall have one (1) vote. If more than one Institutional Mortgagee holds a First Mortgage encumbering the Hotel Property or any portion thereof, such vote shall be cast as decided by a majority of such Institutional Mortgagees based on one (1) vote for each First Mortgage held by such Institutional Mortgagees.

(c) Institutional Mortgagees holding First Mortgages encumbering the Hotel Residential Property or any portion thereof shall have one (1) vote. Such vote shall be cast as decided by a majority of such Institutional Mortgagees based on one (1) vote for each Hotel Residential Unit encumbered by a First Mortgage held by such Institutional Mortgagees.

(d) Following the annexation of Phase 2, Institutional Mortgagees holding First Mortgages encumbering the North Tower Property or any portion thereof shall have one (1) vote. Such vote shall be cast as decided by a majority of such Institutional Mortgagees based on one (1) vote for each North Tower Residential Unit encumbered by a First Mortgage held by such Institutional Mortgagees.

(e) Following the annexation of Phase 3, Institutional Mortgagees holding First Mortgages encumbering the South Tower Property or any portion thereof shall have one (1) vote. Such vote shall be cast as decided by a majority of such Institutional Mortgagees based on one (1) vote for each South Tower Residential Unit encumbered by a First Mortgage held by such Institutional Mortgagees.

14.6.3 In the event an Institutional Mortgagee holds more than one First Mortgage encumbering the Property or any portion thereof, such Institutional Mortgagee shall

vote consistently with respect to each First Mortgage held by such Institutional Mortgagee (*i.e.*, vote "yes" or "no" consistently for all First Mortgages held). If an Institutional Mortgagee casts inconsistent votes with respect to its First Mortgages, it shall forfeit the vote on the matter in question.

14.7 **Other Rights of Institutional Mortgagees.** Any Institutional Mortgagee or its mortgage servicing contractor, shall, upon written request to the Master Association, be entitled to:

14.7.1 inspect the books and records of the Master Association during normal business hours;

14.7.2 receive the annual audited financial statement of the Master Association one hundred and twenty (120) days following the end of the Master Association's fiscal year;

14.7.3 receive written notice of all annual and special meetings of the Members of the Board, and Institutional Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Master Association; *provided, however*, nothing contained in this Section shall give an Institutional Mortgagee the right to call a meeting of the Board or of the Members for any purpose or to vote at any such meeting; and

14.7.4 receive written notification from the Master Association of any Default by the Owner whose Lot or Residential Unit is encumbered by such Institutional Mortgagee's Mortgage, which Default has not been cured within sixty (60) days of a request therefor by the Master Association (a "**Delinquency Notice**"); *provided, however*, the Master Association shall only be obligated to provide such notice to Institutional Mortgagees who have delivered a written request therefor to the Master Association specifying the Lot(s) or Residential Unit(s) to which such request relates. Any Institutional Mortgagee who receives a Delinquency Notice shall have the right, but not the obligation, to elect in its sole discretion to cure any such Default on behalf of such Owner within thirty (30) days thereafter, or in the case of a Default which by its nature requires an Institutional Mortgagee to take possession of Lot(s) or Residential Unit(s) to cure, such Institutional Mortgagee shall be provided additional time as may reasonably be required to take possession of the applicable Lot(s) or Residential Unit(s), and the Master Association shall accept such performance by such Institutional Mortgagee with the same force and effect as if furnished by such Owner.

14.8 **Mortgagees Furnishing Information.** Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage.

14.9 **Right of First Refusal.** In the event this Declaration is amended to provide for any right of first refusal to purchase or lease a Lot or Residential Unit in the Master Association, a Mortgagee who comes into possession of a Lot or Residential Unit pursuant to a judicial foreclosure, a deed in lieu of foreclosure or a trustee's sale shall be exempt therefrom. In addition, conveyances to and from third party foreclosure purchasers and mortgage insurers and guarantors shall also be exempt.

14.10 **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.

14.11 **Voting Rights of Institutional Mortgagees.** In the event of a default by the Hotel Owner or the Retail Owner in any payment due under the terms of any First Mortgage held by an Institutional Mortgagee or the promissory note secured thereby, the Institutional Mortgagee or its representative shall have the right, upon giving written notice to such defaulting Owner and the Master Association and placing of record a notice of default, to exercise the voting rights of such defaulting Owner attributable to the Hotel Property or Retail Areas, as applicable, at any regular or special meeting of the Members held during such time as such default may continue. Any such Owner's voting rights shall be restored to him at such time as such default is cured.

14.12 **Notice of Destruction or Taking.** In the event that the Project, or any portion thereof, is substantially damaged or is made the subject of any Condemnation proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any Institutional Mortgagee affected by such destruction, taking or threatened taking. As used herein, "substantially damaged" or "taking" shall mean damage or taking exceeding One Hundred Thousand Dollars (\$100,000). If requested in writing by an Institutional Mortgagee, the Master Association shall evidence its obligations under this Section in a written agreement in favor of such Institutional Mortgagee.

14.13 **Payment of Taxes or Premiums by Institutional Mortgagees.** Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Facilities, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Institutional Mortgagees shall be governed by the provisions of their Mortgages. Institutional Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Facilities and Institutional Mortgagees making such payments shall be owed immediate reimbursement therefor from the Master Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Institutional Mortgagee which requests the same to be executed by the Master Association.

ARTICLE XV. PROJECT DISCLOSURES

15.1 **Mixed-Use Project.** The Project is a "mixed-use" project, including residential elements, a hotel and retail elements. Commercial activities are permitted in the Hotel Property, the Retail Areas and elsewhere in the Project, including the operation of bars and restaurants. Each Owner recognizes and accepts that combining a hotel, retail and residential uses may present a number of issues and concerns which may not otherwise be present in a strictly residential project, including, without limitation, additional noise, odors, fumes, smoke (including, without limitation, exhaust from bars and restaurants operated from the Hotel Property and elsewhere in the Project), vehicular traffic, pedestrian traffic, diminished security, and other similar issues and/or disturbances associated with any area where hotel and retail activity is present or prevalent. In addition, the mixed-use nature of the Project may result in

higher insurance premiums and other costs due to the commercial activities being conducted in the Project. Neither Declarant nor the Master Association shall be responsible for any such additional costs which shall be allocated strictly in accordance with the provisions of this Declaration. Each Owner agrees to abide by any provisions herein which delegate to the Master Association certain rights to regulate and/or operate components of the Project without interference by Owners and/or the Residential Associations. The intent of this Declaration is to insure that the Hotel, the Retail Areas and each Residential Project are able to operate without interference at standards that are consistent with a First-Class Project. Accordingly, notwithstanding any other provision in this Declaration, under no circumstances shall (i) the Master Association, the Retail Owner, any Residential Association or any Residential Owner have any right to object to, nor in any way to interfere with, any use, operation, further subdivision, demising, leasing, subleasing, or any other matter concerning or related to the Hotel Property provided that the Hotel Owner and the Hotel Operator are in compliance with the applicable provisions of this Declaration and the Hotel Building Reciprocal Easement Agreement, (ii) the Master Association, the Hotel Owner, any Residential Association or any Residential Owner have any right to object to, nor in any way to interfere with, any use, operation, further subdivision, demising, leasing, subleasing, or any other matter concerning or related to the Retail Areas provided that the Retail Owner is in compliance with the applicable provisions of this Declaration and the West Pavilion Reciprocal Easement Agreement or (iii) the Master Association, the Hotel Owner or the Retail Owner have any right to object to, nor in any way to interfere with, any use, operation, further subdivision, demising, leasing, subleasing, or any other matter concerning or related to any Residential Project provided that the applicable Residential Association and Residential Owners are in compliance with the applicable provisions of this Declaration and, to the extent applicable to such Residential Association and Residential Owners, the Hotel Building Reciprocal Easement Agreement and/or the West Pavilion Reciprocal Easement Agreement. Without limiting the foregoing, no Owner shall seek to modify any map conditions or any zoning, land use or other laws and regulations applicable to the Project if such modification would adversely impact or affect another Owner without such impacted or affected Owner's prior written consent.

15.2 **View Impairment.** Neither Declarant, nor any of its authorized agents, representatives or employees have made any representations, warranties or promises concerning any view, present or future, that may be enjoyed from all or any portion of the Project. The view from any portion of the Project may change, be affected or obstructed by (i) construction or installation of improvements, structures, fences, walls and/or landscaping by Declarant or other owners of property within or outside the Project and/or (ii) the growth of trees, landscaping and/or vegetation within or outside the Project. Therefore each Owner acknowledges that, under California law, views are not subject to legal protection. Furthermore, this Declaration does not contain any other provisions intended to protect the view from any portion of the Project.

15.3 **Building Code.** The Project was constructed by Declarant in accordance with the standards and requirements set forth in the applicable building code at the time the plans for the construction were submitted to the City for approval. Under no circumstances shall Declarant be responsible to install, modify, or replace any Improvements to bring same into compliance with any later version of or other standards set forth in the applicable building code, nor shall Declarant be liable to any party as a result of the Improvements not complying in any respect with any updates or changes to the applicable building code.

15.4 **Noise.** Acoustical privacy is in the mutual interest and benefit of all Owners, lessees and other occupants of the Project. It is recognized, however, that total isolation from an adjacent Lot or Residential Unit is difficult if not impossible to attain. Sound, both laterally and vertically, from adjoining Lots, Residential Units, Exclusive Use Areas and Common Facilities is inevitable, including, without limitation, the sound of mechanical equipment, plumbing, television and/or stereo, *etc.* The Project is located in an area that is surrounded by commercial uses with numerous and continuous sources of noise (*e.g.*, truck traffic, street traffic, helicopters, emergency vehicles, equipment, machinery, filming traffic, *etc.*). In addition, the Project itself will generate numerous sources of noise (*e.g.*, trash removal, commercial activities, operation of building equipment, *etc.*). Each Owner recognizes that noise attenuation between Lots and/or Residential Units (side to side and top to bottom) and noise from the surrounding streets and community will have an impact on Owners and each Owner accepts his or her Lot or Residential Unit with the full understanding of the level and potential impact of such noise on the habitability of the Lot or Residential Unit.

15.5 **Neighborhood Conditions.** The Project is located in a commercial, urban area which generates numerous unique conditions and impacts. Such impacts and conditions include, without limitation, traffic, filming activity, crime and business activity. Many of the foregoing impacts occur at all times of the day and night. Each Owner recognizes that the foregoing “urban” impacts are a major element of the unique characteristics and mixture of uses that attracted such Owner to the Project and recognizes that Declarant has no obligation to take any action to reduce or eliminate the foregoing impacts.

15.6 **Excess Trips.** The Century City North Specific Plan, City of Los Angeles Ordinance Number 156,122, effective November 24, 1981 (the “**Specific Plan**”), controls development within an area that includes the Project by allocating units of real property development rights more specifically defined as “Trips” among parcels subject to the Specific Plan and prohibiting development that would cause Trips to exceed total allocations. Pursuant to **Section 9.3**, Declarant has retained ownership of the development rights appurtenant to the Property which are not used in connection with the Project, including any Trips appurtenant to the Property in excess of the number of Trips required to accommodate the Project. In the event an Owner desires to redevelop such Owner’s Lot(s) in a manner that would require a higher allocation of Trips than the current allocation for such Lot(s), such Owner may be required to purchase such Trips from Declarant to accommodate such redevelopment. Such Trips may be subject to existing or future agreements between Declarant and other parties and there is no guarantee that such Trips will be available for purchase by any Owner. Furthermore, pursuant to a Right of First Refusal Agreement described in that certain Memorandum of Right of First Refusal Agreement recorded on August 27, 2015 in the Official Records of Los Angeles County as Instrument No. 20151057667, Declarant has granted CC Site One, LLC, a Delaware limited liability company, a right of first refusal to purchase certain excess Trips that are allocated to the Property.

15.7 **Additional Development.** There are a number of properties located in the vicinity of the Project which may be developed or readapted in the future. Additionally, the Project itself will be developed in Phases, which development will include the construction of two condominium towers. Each Owner recognizes the potential impacts of such development on the community and the Project (*e.g.*, additional traffic, parking impacts, noise impacts, market

impacts, *etc.*) and acknowledges that he or she is purchasing a Lot or Residential Unit with the full understanding of such potential impacts.

15.8 **Methane**. The Project is located in a methane zone as designated by the City. As such, there exists a risk of the presence of methane within the soil located in the Project. Methane is a naturally occurring gas resulting from decomposition of biological organisms in the earth. Methane, if present, is highly combustible, and, as such, must be appropriately mitigated. The Master Association shall be responsible for certain systems which have been installed in the Project to address the methane concerns (*e.g.*, methane barriers, monitoring and exhaust systems). Declarant is not responsible for any ongoing mitigation of methane associated with the Project and makes no representations or warranties with respect thereto.

15.9 **Oil Wells**. The Project is located in a region of past oil and gas development and there are two capped oil wells located at the Project (the "**Capped Oil Wells**").

15.10 **Asbestos**. The Hotel Building consists of a pre-existing structure which is being renovated by Declarant during the course of Declarant's development and construction of the Project. Due to their age, certain of these pre-existing structures may contain asbestos-containing materials ("**ACMs**") and presumed asbestos-containing materials ("**PACMs**") even after completion of Declarant's renovations. Each Owner, by acceptance of a grant deed to such Owner's Lot(s) or Residential Unit, acknowledges receipt of the notification in this **Section 15.10** and understands that the purpose of such notification is to make such Owner, and any agents, employees, and contractors of such Owner, aware of the presence of ACMs and/or PACMs within or about the Project order to avoid or minimize any damage to or disturbance of such ACMs and/or PACMs.

15.11 **Underground Storage Tanks**. A 2,000-gallon diesel underground storage tank was located on the Property and has been removed by Declarant. Three new 1,500-gallon above ground fuel storage tanks have been installed by Declarant, which will serve the emergency generators for the entire Project.

15.12 **Cellular Antennas**. Pursuant to the Cell Site Leases, cellular antennas, transmission lines and related equipment are maintained on a portion of the Property.

15.13 **Business Improvement District**. The Project is located in, and is a part of, the Century City Business Improvement District (the "**BID**"). The BID is a benefit assessment district designed to improve and convey special benefits to properties located in Century City. Each Owner will be required to pay additional tax assessments to the BID for a number of purposes including, but not limited to, capital improvements such as maintenance along Avenue of the Stars, enhanced maintenance of landscaped corridors and pedestrian security and safety.

15.14 **Neighborhood Covenants and Restrictions**. The Project is subject to certain covenants and restrictions to benefit neighboring businesses and residents including, without limitation, (i) limitations in the Century Woods Agreement on the height of buildings near the neighboring Century Woods residential property (the "**Century Woods Property**"), (ii) limitations in the Century Woods Agreement on restaurants, bars and nightclubs operating in the South Tower, (iii) a requirement that a barrier be continuously maintained at the Project to

ensure that headlights do not shine into the residences in the Century Woods Property, (iv) the Loading Dock/Shared Walkway Restrictions, (v) the Vehicular/Pedestrian Bridge Access Agreement, (vi) limitations on the types of retail uses at the Project and the square footage allowed for certain retail uses, (vii) restrictions on office uses at the Project, (viii) requirements that the Project use low reflectivity/glare glass or non-reflective materials and (ix) restrictions and requirements set forth in the Project Approvals.

15.15 **Landmark Status of Hotel Building.** The Hotel Building has been designated as a Historic-Cultural Monument by the City. This designation may impact the ability of the Master Association, the Hotel Owner, the Hotel Residential Association and/or Hotel Residential Owners to alter the Hotel Building or portions of the Project adjacent to the Hotel Building. In particular, future alterations to the Hotel Building may be subject to approval by the City's Office of Historic Resources.

15.16 **Hotel Building Renovation.** The Hotel Building was originally constructed in 1966. The Hotel Building was originally designed, built and operated as a hotel. Despite compliance with building codes applicable to the renovation work, the Hotel Building does not meet all current building code requirements applicable to new construction. The renovation of an existing hotel structure, such as the Hotel Building, presents unique issues that may or may not be present in a newly constructed residential building. Such issues may include noise attenuation, ventilation, and/or other issues that are unique to such structures.

15.17 **Subway Station.** The Los Angeles County Metropolitan Transportation Authority will be constructing an extension of the subway system and station adjacent to the Project as part of the Metro Purple Line. Each Owner recognizes the potential impacts of construction of the Metro Purple Line and the subway station (*e.g.*, impacts of noise, dust and odors, impacts on traffic patterns, impacts and encroachments on the Project, *etc.*) and acknowledges that he or she is purchasing the Property with the full understanding of such potential impacts.

15.18 **Tax Status of Master Association.** The Master Association is not a tax exempt entity.

ARTICLE XVI. MISCELLANEOUS

16.1 Enforcement of Restrictions.

16.1.1 *Violations Identified by the Master Association.*

(a) If the Board determines that there is a violation of any provision of the Restrictions, or that an Improvement which is the maintenance responsibility of an Owner is in need of installation, maintenance, repair, restoration or painting, then the Board shall give written notice to the responsible Owner identifying (i) the condition or violation complained of, and (ii) the length of time the Owner has to remedy the violation including, if applicable, the length of time the Owner has to submit plans to the Board and the length of time the Owner has to complete the work proposed in the plans submitted to the Board.

(b) If an Owner does not perform such corrective action as is required by the Board within the allotted time, the Board, after Notice and Hearing, may undertake to remedy such condition or violation complained of and the cost thereof shall be charged to the Owner as a Reimbursement Assessment. Such Reimbursement Assessment shall be subject to enforcement and collection by the Board in accordance with the procedures provided for in this Declaration.

(c) If the violation involves nonpayment of any type of Assessment, then the Board shall be entitled to collect such delinquent Assessment pursuant to the procedures set forth in Article V.

16.1.2 *Violations Identified by an Owner.* In the event that an Owner alleges that another Owner, such Owner's Family, guests or tenants, is violating the Restrictions (other than nonpayment of any type of Assessment), the Owner must first submit the matter to the Board pursuant to the Notice and Hearing procedure established in the Bylaws before the complaining Owner may resort to legal action for relief with respect to the alleged violation.

16.1.3 *Legal Proceedings.* Failure to comply with any of the terms of the Restrictions by an Owner, such Owner's Family, guests, employees, invitees or tenants, shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of any lien, or any combination thereof; *provided, however,* the dispute resolution procedures established herein must first be followed, if they are applicable.

16.1.4 *Limitation on Expenditures.* The Master Association shall not incur litigation expenses, including, without limitation, attorneys' fees, where the Master Association initiates legal proceedings or is joined as a plaintiff in legal proceedings without the approval of a majority of the voting power of the Master Association, excluding the voting power of any Owner who would be a defendant in such proceedings. Such approval shall not be necessary if the legal proceedings are initiated to (i) enforce the use restrictions contained in Article VII hereof, (ii) enforce the architectural control provisions contained in Article VI hereof, or (iii) collect any unpaid Assessments levied pursuant to this Declaration.

16.1.5 *Schedule of Fines.* The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an Owner for the failure of such Owner, or of a resident of or visitor to such Owner's Lot(s) or Residential Unit, to comply with any provisions of the Restrictions. Such fines or penalties may only be assessed by the Board after Notice and Hearing.

16.1.6 *No Waiver.* Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision, or any other provision hereof.

16.1.7 *Right to Enforce.* The Board, any Owner (not at the time in default hereunder), or Declarant (so long as Declarant is an Owner) shall be entitled to enforce the Restrictions as described in this Article. Each Owner shall have a right of action against the Master Association for the Master Association's failure to comply with the Restrictions. Each remedy provided for in this Declaration shall be cumulative and not exclusive or exhaustive.

16.2 Termination of Declaration. This Declaration shall be effective upon the Effective Date and shall continue for an initial period which shall expire on the date that is ninety-nine (99) years after the Effective Date, after which the term shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by the Hotel Owner, the Retail Owner, at least sixty-seven percent (67%) of the Residential Owners and their First Mortgagees has been recorded in the Official Records of Los Angeles County, California, at least one (1) year prior to the end of any such period. Notwithstanding anything to the contrary contained in this Declaration, any termination of this Declaration shall not affect the survivability of those easements which are perpetual by the express terms of Article II or the accrued obligations of any Owner under an Indemnity. Upon termination of this Declaration, all rights, privileges, duties and obligations created and imposed by this Declaration, except as expressly provided in Article II shall terminate and be of no further force or effect; *provided, however*, that the termination of this Declaration shall not limit or affect any remedy at law or in equity of any Owner against any other Owner with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such termination. The termination of this Declaration shall not terminate or limit any other agreement pertaining to the Project.

16.3 Amendments. This Declaration may be modified or amended in whole or in part only by recording an amendment or a memorandum thereof in the Official Records of Los Angeles County, California, duly executed and acknowledged by the vote of the Members comprising a majority of the Board and, if and to the extent expressly required hereunder, the written consent of the City. Additional easement areas, or changes in existing easement areas, shall be reflected in recorded instruments. Notwithstanding anything contained in this Declaration to the contrary, but subject to Section 16.3.4 below:

16.3.1 At any time prior to the first anniversary of the first Close of Escrow of a Residential Unit in the Project, Declarant may unilaterally amend this Declaration in its sole and absolute discretion by recording a written instrument which effects the amendment and is signed and acknowledged by Declarant. Notwithstanding the foregoing, no such amendment made after the first Close of Escrow of a Residential Unit in the Project shall materially change the rights of any Owner under this Declaration.

16.3.2 For so long as Declarant owns any portion of the Project, Declarant may unilaterally amend this Declaration by recording a written instrument signed by Declarant required to conform this Declaration to the requirements of the City, any Governmental Authority or to comply with any Legal Requirement.

16.3.3 Declarant reserves the right at any time unilaterally to make certain amendments to this Declaration to add any necessary easements or use rights consistent with the overall development of the Project and to make technical corrections, correct errors or omissions, or describe more precisely the actual sizes and locations of the areas or Improvements described herein, including, without limitation, such adjustments to the Common Facilities, Exclusive Use Areas, the Parking Garage or any other matters as necessary to accommodate minor encroachments of Improvements in, to, over or across any portion of the Project. Each Owner, by acceptance of a deed to its Lot or Residential Unit acknowledges, accepts and takes such Lot or Residential Unit subject to the possibility of such adjustments. Declarant shall effect any such

changes by preparing, or causing to be prepared, and recording, or causing to be recorded, an amendment to this Declaration in form and substance determined by Declarant.

16.3.4 Notwithstanding any other provision herein, no amendment of this Declaration which affects, amends, modifies or terminates (i) any rights of the City, (ii) any rights to the public under any easements established hereunder, or (iii) any provision hereof which is required to be included herein by the City (including pursuant to any condition of approval of any entitlement for the Project), shall be effective without the City's prior written consent.

16.3.5 Notwithstanding any other provision herein, (i) no amendment of this Declaration which materially and adversely affects, impairs or terminates any rights specifically granted to one or more Residential Lots and the Owners of Residential Units on such Residential Lots (including, without limitation, the rights to any Exclusive Use Areas) shall be effective without the prior written consent of the applicable Residential Association, (ii) no amendment of this Declaration which materially and adversely affects, impairs or terminates any rights granted to the Hotel Property or which would otherwise affect, impair or diminish the ability of the Hotel Owner to sell, lease or operate the Hotel Property at a standard consistent with other luxury hotels in the Los Angeles area (e.g., the Beverly Wilshire, the Peninsula Beverly Hills, the Waldorf Astoria Beverly Hills, etc.) shall be effective without the prior written consent of the Hotel Owner and (iii) no amendment of this Declaration which materially and adversely affects, impairs or terminates any rights granted to the Retail Areas or which would otherwise affect, impair or diminish the ability of the Retail Owner to sell, lease or operate the Retail Areas at a standard consistent with other high-end retail destinations in Los Angeles (e.g., Westfield Century City) shall be effective without the prior written consent of the Retail Owner.

16.3.6 Each First Mortgagee which receives proper written notice of a proposed amendment or termination of this Declaration by certified or registered mail with a return receipt requested shall be deemed to have approved the amendment or termination if the First Mortgagee fails to submit a response to the notice within sixty (60) days after the First Mortgagee receives the notice.

16.4 **Enforcement of Bonded Obligations.**

16.4.1 *Consideration by Board.* If (1) the Improvements to be installed by Declarant on the Common Facilities are not completed prior to the issuance of a Public Report by the DRE for the sale of Residential Units in the Hotel Condominium Project, and (2) the Master Association is obligee under a bond or other arrangement ("**Bond**") required by the DRE to secure performance of the commitment of Declarant to complete such Improvements, the Board shall consider and vote on the question of action by the Master Association to enforce the obligations under the Bond, with respect to any such Improvement for which a notice of completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the "Planned Construction Statement" appended to the Bond. If the Master Association has given an extension in writing for the completion of any such Improvements, the Board shall be directed to consider and vote on the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of the extension period.

16.4.2 **Consideration by Members.** A special meeting of Members, for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the failure of the Board to consider and vote on the question, shall be held no fewer than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) of the total voting power of the Master Association. A vote of a majority of the voting power of the Master Association residing in Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Master Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Master Association.

16.5 **Severability.** If any term, provision or condition contained in this Declaration shall, to any extent, be invalid or unenforceable, then the remainder of this Declaration (or the application of such term, provision or condition to Persons or circumstances other than those in respect to which it is invalid or unenforceable) shall not be affected thereby, and each term, provision and condition of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

16.6 **Change of Circumstances.** Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

16.7 **Unavoidable Delays.** The Master Association and each other Owner shall be excused from performing any of its obligations or undertakings provided for in this Declaration, except any of their respective obligations to pay any sums of money under applicable provisions hereof, in the event and for so long as the performance of such obligation or undertaking is prevented, delayed, retarded or hindered by Unavoidable Delays; *provided, however*, that any such excused Person shall use reasonable efforts to mitigate the damages of such excused performance. Nothing contained in this Section 16.7 shall defeat or limit any duty of each Person having an obligation under this Declaration from taking all reasonable actions to mitigate the effects of any such cause, by substitute performance or otherwise.

16.8 **References to the Covenants in Deeds.** Deeds to and instruments affecting any Lot or any part of the Project may contain the easements, covenants, obligations and restrictions contained in this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the easements, covenants, obligations and restrictions contained in this Declaration shall be binding upon the Person claiming through any such deed or instrument and such Person's heirs, executors, administrators, successors and assigns.

16.9 **Notices.** Any notice, demand, consent, approval or other communication required or permitted to be given hereunder shall be effective only if given in writing, sent by first-class certified mail, return receipt requested, or sent by Federal Express or similar generally recognized overnight carrier or delivery service regularly providing proof of delivery, or delivered personally, and addressed as follows:

If to Declarant:

NEXT CENTURY PARTNERS, LLC
1999 Avenue of the Stars, Suite 2850
Los Angeles, CA 90067
Attention: Chief Executive Officer

The foregoing addresses may be changed or new addressees may be added by written notice given as herein provided. Notwithstanding the foregoing, if an Owner has elected pursuant to the Bylaws to receive notices from the Master Association by electronic transmission, then such notice may be delivered by the Master Association to such Owner by electronic transmission. After formation of the Master Association, the Master Association shall send each Owner a notice specifying its address for notice and each Owner shall send written notice to the Master Association setting forth its address for notice. If an Owner does not send the Master Association a notice specifying its address for notice, then the Master Association may send any notice required or permitted to be given hereunder to such Owner's address for property tax bills as listed in the records of the Los Angeles County tax assessor. Notice shall be deemed to have been given as of the date of delivery (whether accepted or refused) established by return receipt or proof of delivery, or upon the date personal delivery is made, except that notice of a change of address shall be effective upon receipt.

16.10 Annexation Property. Additional real property may be annexed to and become subject to this Declaration by any of the following methods set forth in this Section 16.10. Upon annexation, and after the first Close of Escrow of the sale of a Residential Unit in the Annexation Property under a Public Report, or after the lease of a Residential Unit in the Annexation Property as described in Section 16.10.3, the additional property shall be subject to this Declaration without the necessity of amending any of its individual Sections.

16.10.1 *Annexation Pursuant to Plan.* The Annexation Property may be annexed to and become a part of the Project in Phases, subject to this Declaration, and subject to the jurisdiction of the Master Association, without the assent of the Master Association or any Owner, on condition that a Declaration of Annexation shall be recorded covering the applicable portion of the Annexation Property to be annexed. The Declaration of Annexation may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexation Property, and as are not inconsistent with the scheme of this Declaration, including without limitation, provisions for the addition or expansion of a Cost Center. The Declaration of Annexation shall contain at least the following:

- (a) A legal description of the portion of the Annexation Property to be annexed;
- (b) The names of the record owner or owners of such property as of the date such Declaration of Annexation is recorded;
- (c) A statement submitting that portion of the Annexation Property to be annexed to this Declaration, which shall be referred to by title and date and instrument number of recording;

(d) A statement of the use restrictions imposed upon that portion of the Annexation Property to be annexed as part of the general plan for the Project, which restrictions may be the same as or different from those set forth in this Declaration;

(e) A legal description of the Common Facilities, if any, within the portion of the Annexation Property to be annexed; and

(f) With respect to a Declaration of Annexation annexing property to be subject to a Cost Center, a statement (i) identifying the Lots and/or Residential Units comprising the Cost Center (or to be added to an existing Cost Center, as the case may be), (ii) identifying the applicable Cost Center Common Facilities, and (iii) providing for the allocation of Cost Center Expenses attributable to that Cost Center to the Owners of the Lots and/or Residential Units included within that Cost Center.

16.10.2 Annexation Pursuant to Approval. Additional real property may be annexed to and become a part of the Project subject to this Declaration, and subject to the jurisdiction of the Master Association, upon approval in writing of the Master Association, pursuant to vote or written consent of a two-thirds (2/3rds) majority of the voting power of the Board residing in non-Declarant Members. Upon such approval, the owner of such property may file of record a Declaration of Annexation.

16.10.3 Leased Annexation Property.

(a) In the event any of the North Tower Residential Units are leased by the Owner of the North Tower Property prior to the first Close of Escrow of the sale of a North Tower Residential Unit under a Public Report, and a Declaration of Annexation has been recorded covering the North Tower Property, (i) the North Tower Property shall be subject to this Declaration, (ii) the Owner of the North Tower Property shall have the Member voting rights applicable to the North Tower Association, (iii) the Assessments which otherwise would be payable by the North Tower Residential Owners shall be payable by the Owner of the North Tower Property, (iv) each tenant of a North Tower Residential Unit shall have the easement rights granted to a North Tower Residential Owner hereunder and (v) each tenant of a North Tower Residential Unit shall be obligated to comply with all provisions of this Declaration. Upon the formation of the North Tower Association and the first Close of Escrow of the sale of a North Tower Residential Unit under a Public Report, the obligation to pay Assessments shall be vested in each North Tower Residential Owner and the Member voting rights attributable to the North Tower Property shall be vested in the North Tower Association.

(b) In the event any of the South Tower Residential Units are leased by the Owner of the South Tower Property prior to the first Close of Escrow of the sale of a South Tower Residential Unit under a Public Report, and a Declaration of Annexation has been recorded covering the South Tower Property, (i) the South Tower Property shall be subject to this Declaration, (ii) the Owner of the South Tower Property shall have the Member voting rights applicable to the South Tower Association, (iii) the Assessments which otherwise would be payable by the South Tower Residential Owners shall be payable by the Owner of the South Tower Property, (iv) each tenant of a South Tower Residential Unit shall have the easement rights granted to a South Tower Residential Owner hereunder and (v) each tenant of a South

Tower Residential Unit shall be obligated to comply with all provisions of this Declaration. Upon the formation of the South Tower Association and the first Close of Escrow of the sale of a South Tower Residential Unit under a Public Report, the obligation to pay Assessments shall be vested in each South Tower Residential Owner and the Member voting rights attributable to the South Tower Property shall be vested in the South Tower Association.

16.10.4 *Deannexation.* Notwithstanding any other provisions of this Declaration or any Declaration of Annexation, notice of addition of property or amendments or supplements to this Declaration as may be hereinafter filed of record to effect an annexation of property under this Section 16.10, Declarant shall have the right at any time after such annexation but before the Close of Escrow on the sale under the authority of a Public Report to an Owner other than Declarant of the first Residential Unit within the property so annexed to deannex such property or any portion thereof by filing of record a notice of deannexation (or such other instrument as may be acceptable for recordation) describing the property to be so deannexed and stating that such deannexation is undertaken in accordance with the terms and conditions of this Section 16.10. Any such deannexation shall be effective upon the recordation of such notice or other instrument and such notice or other instrument need only be executed by Declarant. In any case where Declarant has sold and closed escrow on the sale of a Residential Unit in the Phase under authority of a Public Report, or Declarant has exercised any Master Association vote with respect to the Phase, or Assessments have commenced on any portion of the Phase, or the Master Association has made any expenditures or incurred any obligations with respect to any portion of the Phase, Declarant's right to deannex a portion of the Project shall be valid only with the approval, by vote or written consent, of a majority of the Board other than Declarant, and the prior written consent of the Real Estate Commissioner if and as required under California Business and Professions Code Section 11018.7.

16.11 **Estoppel Certificates.** Each Owner, any Major Tenant and the Master Association, at any time and from time to time upon not less than ten (10) Business Days' prior written notice from Declarant, the Master Association or any other Owner, shall execute, acknowledge and deliver to the Master Association or any such requesting Owner or, at the Master Association or any such Owner's request, to any other Person reasonably requested by the Master Association or any such Owner, a certificate legally sufficient to establish the following: (a) if true, that this Declaration is unmodified and in full force and effect (or, if there have been modifications, that this Declaration is in full force and effect as modified and stating the modifications); (b) whether, to such Person's actual knowledge, there are then existing any defenses against the enforcement of any of the obligations of the requesting Person under this Declaration (and, if so, specifying same); (c) whether, to such Person's actual knowledge, there are then existing any defaults by the Master Association, any Major Tenant or any Owner in the performance of their respective obligations under this Declaration (and, if so, specifying same); and (d) such other matters as may reasonably be requested by the requesting Person. It is intended that any such certificate delivered pursuant to this Section 16.11 may be relied upon by the Master Association or any requesting Owner and any such other Person. The Master Association, any Major Tenant or the Owners will execute an alternative form of estoppel certificate if reasonably requested by the Master Association or any Owner. Each Owner shall include a reference in any lease with a Major Tenant to the obligation of such Major Tenant to deliver estoppel certificates pursuant to this Section 16.11.

16.12 **No Partnership.** Neither anything contained in this Declaration, nor any acts of the Master Association or any of the Owners, shall be deemed or construed by any Person to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between or among the Master Association or any of the Owners,

16.13 **No Third Party Benefited.** This Declaration is not intended nor shall it be construed to create any third party beneficiary rights in any Person, other than a Mortgagee, unless expressly provided herein. No modification of this Declaration shall require any consent or approval of any Owner's Permittees or any Occupant or its Permittees.

16.14 **Consent.** In any instance in which the Master Association, the Board or an Owner shall be requested to consent to or approve of any matter with respect to which such Association's, Board's or Owner's consent or approval is required by any of the provisions of this Declaration, such consent or approval shall not be effective unless given in writing, and shall not be unreasonably withheld or delayed, unless the provisions of this Declaration with respect to a particular consent or approval shall expressly provide that the same shall be given or refused in the sole judgment of the Master Association, Board or such Owner, as applicable.

16.15 **Governing Law.** This Declaration shall be construed in accordance with the laws of the State of California.

16.16 **No Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of the Project or any portion thereof to the general public or for the general public or for any public purpose whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed

16.17 **No Merger.** Neither this Declaration nor and portion hereof shall be extinguished by merger through the operation of law alone, but only by a recorded instrument specifically so providing.

16.18 **Successors and Assigns.** This Declaration shall, except as otherwise provided herein, be binding upon and inure to the benefit of the successors and assigns of the Owners hereto. The terms, covenants and conditions set forth in this Declaration with respect to an Owner shall be binding upon and enforceable by a Person only with respect to the time period during which such Person is an Owner. Any and all obligations of an Owner which had accrued and were undischarged or otherwise unsatisfied at the time when such Owner Transferred its interest in the Project shall remain personal obligations of that Owner and in addition shall be binding upon its successors.

16.19 **Time of Essence.** Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Declaration.

16.20 **Interpretation.** This Declaration shall be construed in accordance with its fair meaning and not strictly for or against the Master Association or any Owner.

16.21 **RESOLUTION OF DISPUTES.** DECLARANT AND, BY ITS ACCEPTANCE OF A DEED TO ANY LOT OR RESIDENTIAL UNIT, EACH OWNER ACKNOWLEDGE THAT THE PROJECT IS A COMPLEX MIXED-USE PROJECT AND

CLAIMS, CONTROVERSIES BREACHES OR DISPUTES ("**DISPUTES**") WILL INEVITABLY ARISE. IN ORDER TO MAINTAIN THE INTEGRITY OF THE USE AND OPERATION OF THE PROJECT AND INSURE EACH OWNER'S INTENDED BENEFIT THEREOF, ANY DISPUTES BY, BETWEEN OR AMONG THE MASTER ASSOCIATION, ANY RESIDENTIAL ASSOCIATION, ANY OWNER (INCLUDING ANY RESIDENTIAL OWNER) OR DECLARANT ARISING OUT OF OR RELATED TO THE PROJECT OR ANY PORTION THEREOF, THIS DECLARATION, ANY RESIDENTIAL CC&Rs, THE HOTEL BUILDING RECIPROCAL EASEMENT AGREEMENT, THE WEST PAVILION RECIPROCAL EASEMENT AGREEMENT, THE PROJECT RULES AND REGULATIONS AND/OR THE PARKING GARAGE RULES AND REGULATIONS SHALL FIRST BE PROMPTLY SUBMITTED TO MEDIATION CONDUCTED IN LOS ANGELES COUNTY, CALIFORNIA AS SET FORTH IN SECTION 16.21.1 AND THEREAFTER, PROCEED TO ARBITRATION ACCORDING TO THE PROCEDURES SET FORTH IN SECTION 16.21.2, IF NECESSARY; *PROVIDED, HOWEVER*, THAT IN THE EVENT OF A DISPUTE BETWEEN (I) THE MASTER ASSOCIATION AND AN OWNER OR (II) A RESIDENTIAL ASSOCIATION AND A RESIDENTIAL OWNER WHO IS A MEMBER OF SUCH RESIDENTIAL ASSOCIATION, IN EITHER CASE, THE PARTIES TO SUCH DISPUTE SHALL FIRST ENDEAVOR TO RESOLVE SUCH DISPUTE PURSUANT TO THE INTERNAL DISPUTE RESOLUTION PROCEDURES ESTABLISHED BY THE MASTER ASSOCIATION OR BY THE APPLICABLE RESIDENTIAL ASSOCIATION, AS THE CASE MAY BE, PURSUANT TO CALIFORNIA CIVIL CODE SECTION 5900, *ET SEQ.*

16.21.1 **MEDIATION OF DISPUTES.**

(a) THE PARTIES SHALL SELECT ONE (1) MEDIATOR. IF THE PARTIES CANNOT AGREE UPON A MEDIATOR, ANY PARTY MAY PETITION THE SUPERIOR COURT OF LOS ANGELES COUNTY FOR APPOINTMENT OF THE MEDIATOR BY THE PRESIDING JUDGE. THE MEDIATOR SHALL BE FAMILIAR WITH THE OPERATION OF MIXED-USE DEVELOPMENTS SUCH AS THE PROJECT. NO PERSON SHALL SERVE AS A MEDIATOR IN ANY 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 OR BIAS OR PREVENT A PROMPT COMMENCEMENT OF THE MEDIATION PROCESS.

(b) 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 MEMORANDUM AND SHALL BE CONCLUDED WITHIN FIFTEEN (15) DAYS FROM THE COMMENCEMENT OF THE MEDIATION UNLESS THE PARTIES MUTUALLY AGREE TO EXTEND THE MEDIATION PERIOD.

(c) THE MEDIATOR HAS DISCRETION TO CONDUCT THE MEDIATION IN THE MANNER IN WHICH THE MEDIATOR BELIEVES IS MOST APPROPRIATE FOR REACHING A SETTLEMENT OF ANY OR ALL DISPUTES. THE MEDIATOR IS AUTHORIZED TO CONDUCT JOINT AND SEPARATE MEETINGS WITH THE PARTIES AND TO MAKE ORAL AND WRITTEN RECOMMENDATIONS FOR SETTLEMENT OF ANY OR ALL DISPUTES. WHENEVER NECESSARY, THE MEDIATOR MAY ALSO OBTAIN EXPERT ADVICE CONCERNING TECHNICAL ASPECTS OF ANY OR ALL DISPUTES, PROVIDED THAT THE PARTIES AGREE AND ASSUME THE EXPENSES OF OBTAINING SUCH ADVICE. THE MEDIATOR MAY ALSO SOLICIT DECLARANT'S INPUT REGARDING THE INTENDED USE AND OPERATION OF THE VARIOUS COMPONENTS OF THE PROJECT. THE MEDIATOR SHALL STRIVE TO CONDUCT THE MEDIATION IN SUCH A MANNER AS TO ENSURE AN OUTCOME THAT PRESERVES THE OVERALL INTEGRITY OF THE PROJECT AND DETERS ANY ONE OWNER FROM MATERIALLY IMPACTING ANOTHER OWNER'S USE AND ENJOYMENT OF THE PROJECT. FOR EXAMPLE, IF AN OWNER (THE "**IMPACTING OWNER**") HOLDS FEE TITLE TO A DRIVEWAY USED BY ANOTHER OWNER (THE "**IMPACTED OWNER**") FOR INGRESS AND EGRESS TO A PORTION OF THE PROJECT AND SUCH IMPACTING OWNER PREVENTS THE IMPACTED OWNER'S USE OF THE THAT DRIVEWAY, THE MEDIATOR SHALL STRIVE TO RESTORE THE IMPACTED OWNER'S USE OF THE DRIVEWAY. THE FOREGOING DIRECTIONS SHALL IN NO WAY AUTHORIZE THE MEDIATOR TO DISREGARD THE PROVISIONS OF THIS DECLARATION OR ANY OTHER APPLICABLE DOCUMENTATION RELATED TO THE PROJECT BUT INSTEAD IS INTENDED AS A DIRECTION TO THE MEDIATOR TO INTERPRET THIS DECLARATION AND SUCH OTHER APPLICABLE DOCUMENTATION IN A MANNER MOST FAVORABLE TO THE OVERALL INTEGRITY OF THE PROJECT AND EACH OWNER'S INTENDED USE AND ENJOYMENT THEREOF.

(d) THE EXPENSES OF WITNESSES AND CONSULTANTS FOR EITHER SIDE SHALL BE PAID BY THE PARTY PRODUCING SUCH WITNESSES AND/OR ENGAGING SUCH CONSULTANTS. EACH PARTY SHALL BEAR ITS OWN ATTORNEYS' FEES AT ITS SOLE COST AND EXPENSE. ALL OTHER EXPENSES OF THE MEDIATION, INCLUDING REQUIRED TRAVEL AND OTHER EXPENSES OF THE MEDIATOR 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.

16.21.2 **ARBITRATION OF DISPUTES.** ANY DISPUTE NOT RESOLVED AS PROVIDED IN SECTION 16.21.1 SHALL BE RESOLVED BY BINDING ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT AND SUBJECT TO THE PROCEDURES IN THE ARBITRATION AGREEMENT SET FORTH IN THIS SECTION 16.21.2 (THIS "**ARBITRATION AGREEMENT**"). THIS ARBITRATION AGREEMENT SHALL BE DEEMED TO BE A SELF-EXECUTING ARBITRATION AGREEMENT. ANY DISPUTE CONCERNING THE INTERPRETATION OR THE ENFORCEABILITY OF THIS ARBITRATION AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS REVOCABILITY OR VOIDABILITY FOR ANY CAUSE, ANY CHALLENGES TO THE ENFORCEMENT OR THE VALIDITY OF THIS DECLARATION

OR THIS ARBITRATION AGREEMENT, OR THE SCOPE OF ARBITRAL ISSUES UNDER THIS DECLARATION OR THIS ARBITRATION AGREEMENT, AND ANY DEFENSE RELATING TO THE ENFORCEMENT OF THIS ARBITRATION AGREEMENT, INCLUDING, WITHOUT LIMITATION, WAIVER, ESTOPPEL, OR LACHES, SHALL BE DECIDED BY AN ARBITRATOR IN ACCORDANCE WITH THIS ARBITRATION AGREEMENT AND NOT BY A COURT OF LAW. NOTWITHSTANDING THE FOREGOING, IN THE EVENT THAT THE PARTIES TO A DISPUTE ARE SUBJECT TO A WARRANTY OR OTHER AGREEMENT WHICH APPLIES TO SUCH DISPUTE AND SUCH WARRANTY OR OTHER AGREEMENT CONTAINS A DISPUTE RESOLUTION PROVISION WHICH IS INCONSISTENT WITH THIS SECTION, THE DISPUTE RESOLUTION PROVISION IN THE WARRANTY OR OTHER APPLICABLE AGREEMENT SHALL CONTROL.

(a) **SELECTION OF THE ARBITRATOR.** WITHIN TEN (10) DAYS OF RECEIPT BY ANY PARTY OF A WRITTEN REQUEST TO RESOLVE A DISPUTE BY ARBITRATION, THE PARTIES TO SUCH DISPUTE SHALL SUBMIT SUCH DISPUTE TO BINDING ARBITRATION BEFORE A SINGLE ARBITRATOR BY AND PURSUANT TO JAMS' COMPREHENSIVE ARBITRATION RULES AND PROCEDURES OR JAMS' STREAMLINED ARBITRATION RULES AND PROCEDURES (AS APPLICABLE BASED UPON THE AMOUNT OF THE CLAIMS AND COUNTERCLAIMS) IN EFFECT AT THE TIME THE REQUEST FOR ARBITRATION IS SUBMITTED AND IN ACCORDANCE WITH THIS SECTION 16.21.2 SO LONG AS THOSE RULES ARE FAIR AND REASONABLE TO THE PARTIES. IN THE EVENT JAMS IS FOR ANY REASON UNWILLING OR UNABLE TO SERVE AS THE ARBITRATION SERVICE OR IF A PARTY OBJECTS TO JAMS, THE PARTIES SHALL SELECT ANOTHER REPUTABLE ARBITRATION SERVICE (E.G., AMERICAN ARBITRATION ASSOCIATION OR SIMILAR ENTITY PROVIDING ARBITRATION SERVICES) (THE "**ARBITRATION PROVIDER**"). IF THE PARTIES ARE UNABLE TO AGREE UPON AN ARBITRATION PROVIDER, THEN EITHER PARTY MAY PETITION ANY COURT OF COMPETENT JURISDICTION IN LOS ANGELES COUNTY TO APPOINT AN ARBITRATION PROVIDER, WHICH SHALL BE BINDING ON THE PARTIES. EXCEPT AS SET FORTH HEREIN, THE RULES AND PROCEDURES OF SUCH ARBITRATION PROVIDER IN EFFECT AT THE TIME THE REQUEST FOR ARBITRATION IS SUBMITTED SHALL BE FOLLOWED.

(b) **NEUTRAL AND IMPARTIAL ARBITRATOR.** THE ARBITRATOR SHALL BE A RETIRED JUDGE OR AN ATTORNEY OR OTHER PERSON WITH SUBSTANTIAL EXPERIENCE IN RELEVANT MATTERS AND FAMILIAR WITH THE OPERATION OF MIXED-USE DEVELOPMENTS SUCH AS THE PROJECT. THE ARBITRATOR SHALL BE INDEPENDENT, NEUTRAL AND IMPARTIAL AND SHALL NOT HAVE ANY RELATIONSHIP TO ANY OF THE PARTIES OR ANY INTEREST IN THE PROJECT. ANY PERSON BEING CONSIDERED TO SERVE AS THE ARBITRATOR SHALL WITHIN FIFTEEN (15) DAYS OF BEING DESIGNATED AS A POTENTIAL ARBITRATOR DISCLOSE IN WRITING TO THE PARTIES ANY INFORMATION WHICH MIGHT CAUSE HIS OR HER IMPARTIALITY TO BE QUESTIONED. THE ARBITRATOR SHALL BE APPOINTED WITHIN SIXTY (60) DAYS FROM THE RECEIPT BY ANY PARTY OF A WRITTEN REQUEST TO RESOLVE THE DISPUTE, UNLESS THE PARTIES

AGREE OTHERWISE. ANY DISPUTE REGARDING THE SELECTION OF ARBITRATOR SHALL BE RESOLVED BY THE ARBITRATION PROVIDER, OR IF NO ARBITRATION PROVIDER IS INVOLVED, BY ANY COURT OF COMPETENT JURISDICTION IN LOS ANGELES COUNTY.

(c) **LOCATION OF PROCEEDINGS.** THE VENUE OF THE PROCEEDINGS SHALL BE IN LOS ANGELES COUNTY, CALIFORNIA, UNLESS THE PARTIES AGREE TO A DIFFERENT LOCATION.

(d) **COMMENCEMENT OF ARBITRATION.** THE ARBITRATION SHALL BE PROMPTLY AND TIMELY COMMENCED AND COMPLETED IN ACCORDANCE WITH THE RULES OF THE ARBITRATION PROVIDER, OR, IF THE RULES DO NOT SPECIFY A DATE BY WHICH THE ARBITRATION MUST COMMENCE, THEN A DATE AS AGREED TO BY THE PARTIES, AND IF THEY CANNOT AGREE, A DATE DETERMINED BY THE ARBITRATOR. IN ANY EVENT, WITHIN THIRTY (30) DAYS AFTER THE HEARING IS CLOSED, THE ARBITRATOR MUST ISSUE A WRITTEN DECISION.

(e) **CONDUCT OF PROCEEDINGS.** THE ARBITRATOR SHALL BE AUTHORIZED TO PROVIDE ALL RECOGNIZED REMEDIES AVAILABLE IN LAW OR IN EQUITY FOR ANY CAUSE OF ACTION THAT IS THE BASIS OF THE ARBITRATION. THE ARBITRATOR MUST FOLLOW CALIFORNIA SUBSTANTIVE LAW (INCLUDING STATUTES OF LIMITATIONS) BUT STRICT CONFORMITY WITH THE RULES OF EVIDENCE IS NOT REQUIRED, EXCEPT THAT THE ARBITRATOR SHALL APPLY APPLICABLE LAW RELATING TO PRIVILEGE AND WORK PRODUCT.

(f) **AUTHORITY OF ARBITRATOR.**

(i) THE DECISION OF THE ARBITRATOR SHALL BE FINAL AND BINDING. ANY APPLICATION TO CONFIRM, VACATE, MODIFY OR CORRECT AN AWARD RENDERED BY THE ARBITRATOR SHALL BE FILED IN ANY COURT OF COMPETENT JURISDICTION IN LOS ANGELES COUNTY.

(ii) TO THE EXTENT THAT ANY STATE OR LOCAL LAW, ORDINANCE, REGULATION, OR JUDICIAL RULE IS INCONSISTENT WITH ANY PROVISION OF THE RULES OF THE ARBITRATION PROVIDER UNDER WHICH THE ARBITRATION PROCEEDING SHALL BE CONDUCTED, THE LATTER RULES SHALL GOVERN THE CONDUCT OF THE PROCEEDING.

(iii) THE PARTICIPATION BY ANY PARTY IN ANY JUDICIAL PROCEEDING CONCERNING THIS ARBITRATION AGREEMENT OR ANY MATTER ARBITRATED HEREUNDER SHALL NOT BE ASSERTED OR ACCEPTED AS A REASON TO DELAY, TO REFUSE TO PARTICIPATE IN, OR TO REFUSE TO ENFORCE THIS ARBITRATION AGREEMENT.

(g) **FEDERAL ARBITRATION ACT.** THE MASTER ASSOCIATION, DECLARANT AND EACH OWNER, BY ACCEPTANCE OF THE DEED TO SUCH OWNER'S LOT(S) OR RESIDENTIAL UNIT, EXPRESSLY ACKNOWLEDGE

AND AGREE THAT THIS DECLARATION AND THIS ARBITRATION AGREEMENT INVOLVE AND CONCERN INTERSTATE COMMERCE AND ARE 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, TO THE EXCLUSION OF ANY DIFFERENT OR INCONSISTENT STATE OR LOCAL LAW, ORDINANCE, REGULATION, OR JUDICIAL RULE. ACCORDINGLY, ANY AND ALL DISPUTES SHALL BE ARBITRATED WHICH ARBITRATION SHALL BE MANDATORY AND BINDING PURSUANT TO THE FEDERAL ARBITRATION ACT.

(h) **DISCOVERY.** ALL PARTIES SHALL BE ENTITLED TO CONDUCT ANY DISCOVERY AS PROVIDED IN THE CALIFORNIA CODE OF CIVIL PROCEDURE AND THE ARBITRATOR SHALL OVERSEE DISCOVERY AND MAY ENFORCE ANY DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE, WITH RIGHTS TO REGULATE DISCOVERY AND TO ISSUE AND ENFORCE SUBPOENAS, PROTECTIVE ORDERS OR OTHER LIMITATIONS ON DISCOVERY AVAILABLE UNDER CALIFORNIA LAW. IF RELEVANT TO THE DISPUTE, ALL PARTIES ARE ENTITLED TO REASONABLE SITE INSPECTIONS, VISUAL INSPECTIONS, DESTRUCTIVE TESTING AND OTHER DISCOVERY MECHANISMS COMMONLY EMPLOYED IN SUCH DISPUTES.

(i) **JOINDER OF ADDITIONAL PARTIES.** ANY PARTY MAY JOIN AS A PARTY TO THE ARBITRATION PROCEEDINGS ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO, A CONTRACTOR, SUPPLIER, SUBCONTRACTOR, VENDOR, ENGINEER, ARCHITECT OR DESIGN PROFESSIONAL) INVOLVED IN A COMMON QUESTION OF FACT OR LAW. ALL PARTIES SHALL COOPERATE IN GOOD FAITH TO ENSURE THAT NECESSARY AND APPROPRIATE THIRD PARTIES ARE INCLUDED IN THE ARBITRATION PROCEEDINGS.

(j) **RECORD.** A STENOGRAPHIC RECORD OF THE ARBITRATION PROCEEDINGS MAY BE MADE, PROVIDED THAT THE RECORD SHALL REMAIN CONFIDENTIAL EXCEPT AS NECESSARY FOR POST-HEARING MOTIONS AND APPEALS.

(k) **COOPERATION.** THE PARTIES SHALL DILIGENTLY COOPERATE WITH ONE ANOTHER AND THE ARBITRATOR TO RESOLVE THE DISPUTE AND SHALL PERFORM SUCH ACTS AS MAY BE NECESSARY TO OBTAIN A PROMPT AND EXPEDITIOUS RESOLUTION OF THE DISPUTE, INCLUDING WITHOUT LIMITATION, SOLICITING DECLARANT'S INPUT REGARDING THE INTENDED USE AND OPERATION OF THE VARIOUS COMPONENTS OF THE PROJECT.

(l) **ALLOCATION OF COSTS.** THE COSTS OF THE ARBITRATION SHALL INITIALLY BE BORNE EQUALLY BY THE PARTIES TO THE DISPUTE, BUT THE PREVAILING PARTY IN THE ARBITRATION SHALL BE ENTITLED TO RECOVER, IN ADDITION TO ANY OTHER FEES OR COSTS ALLOWED BY THIS ARBITRATION AGREEMENT, ITS CONTRIBUTION FOR THE REASONABLE COSTS OF THE ARBITRATOR AS AN ITEM OF RECOVERABLE COSTS. IF EITHER PARTY REFUSES TO PAY SUCH PARTY'S SHARE OF THE COSTS OF THE

ARBITRATION AT THE TIME REQUIRED, THE OTHER PARTY MAY DO SO IN WHICH EVENT THAT PARTY WILL BE ENTITLED TO RECOVER (OR OFFSET) THE AMOUNT ADVANCED. NOTWITHSTANDING THE FOREGOING, IF DECLARANT IS A PARTY TO THE ARBITRATION, THE FEES TO INITIATE THE ARBITRATION SHALL BE ADVANCED BY DECLARANT, AND SUBSEQUENT FEES AND COSTS OF THE ARBITRATION AND/OR THE ARBITRATOR SHALL BE BORNE EQUALLY BY THE PARTIES TO THE ARBITRATION; *PROVIDED, HOWEVER*, THE FEES AND ANY OTHER FEES AND COSTS OF THE ARBITRATION AND/OR THE ARBITRATOR SHALL ULTIMATELY BE BORNE AS DETERMINED BY THE ARBITRATOR. EACH PARTY SHALL BEAR ITS OWN ATTORNEYS' FEES AT ITS SOLE COST AND EXPENSE.

(m) **AMENDMENT.** NOTWITHSTANDING ANYTHING IN THIS DECLARATION TO THE CONTRARY, WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF DECLARANT, THIS **SECTION 16.21** MAY NOT BE AMENDED FOR A PERIOD OF FIFTEEN (15) YEARS AFTER THE DATE OF RECORDATION OF THIS DECLARATION.

NOTICE: THE MASTER ASSOCIATION, EACH RESIDENTIAL ASSOCIATION, DECLARANT AND EACH OWNER, BY ACCEPTANCE OF THE DEED TO SUCH OWNER'S LOT(S) OR RESIDENTIAL UNIT, AGREE TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS ARBITRATION AGREEMENT ENTITLED "ARBITRATION OF DISPUTES" DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND THE PARTIES ACKNOWLEDGE THAT THEY ARE GIVING UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR BY A JURY TRIAL. THE MASTER ASSOCIATION, EACH RESIDENTIAL ASSOCIATION, DECLARANT AND EACH OWNER, BY ACCEPTANCE OF THE DEED TO SUCH OWNER'S UNIT, ACKNOWLEDGES THAT IT IS GIVING UP ITS JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION ENTITLED "ARBITRATION OF DISPUTES." IF ANY SUCH 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 NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT.

16.22 **Integration.** This Declaration, and the exhibits, schedules and addendums, attached hereto, constitutes the entire agreement concerning the matters set forth in this Declaration, and there are no agreements or representations between or among the Master Association or the Owners except as expressed herein.

16.23 **Conflicts.** In the event of any conflict between the terms of this Declaration and the terms of the Project Approvals, the terms of the Project Approvals shall control.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

NEXT CENTURY PARTNERS, LLC,
a Delaware limited liability company

By: _____

Name: Rick Arambulo

Title: Vice President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF Los Angeles)

ss:

On November 29, 2018 before me, Nicole Stein, Notary Public,
Notary Public (insert name and title of the officer),

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

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

WITNESS my hand and official seal.

Signature: N Stein

[Seal]

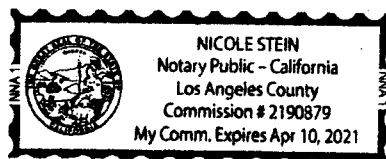


Exhibit "A"

Loading Dock

[See Attached]

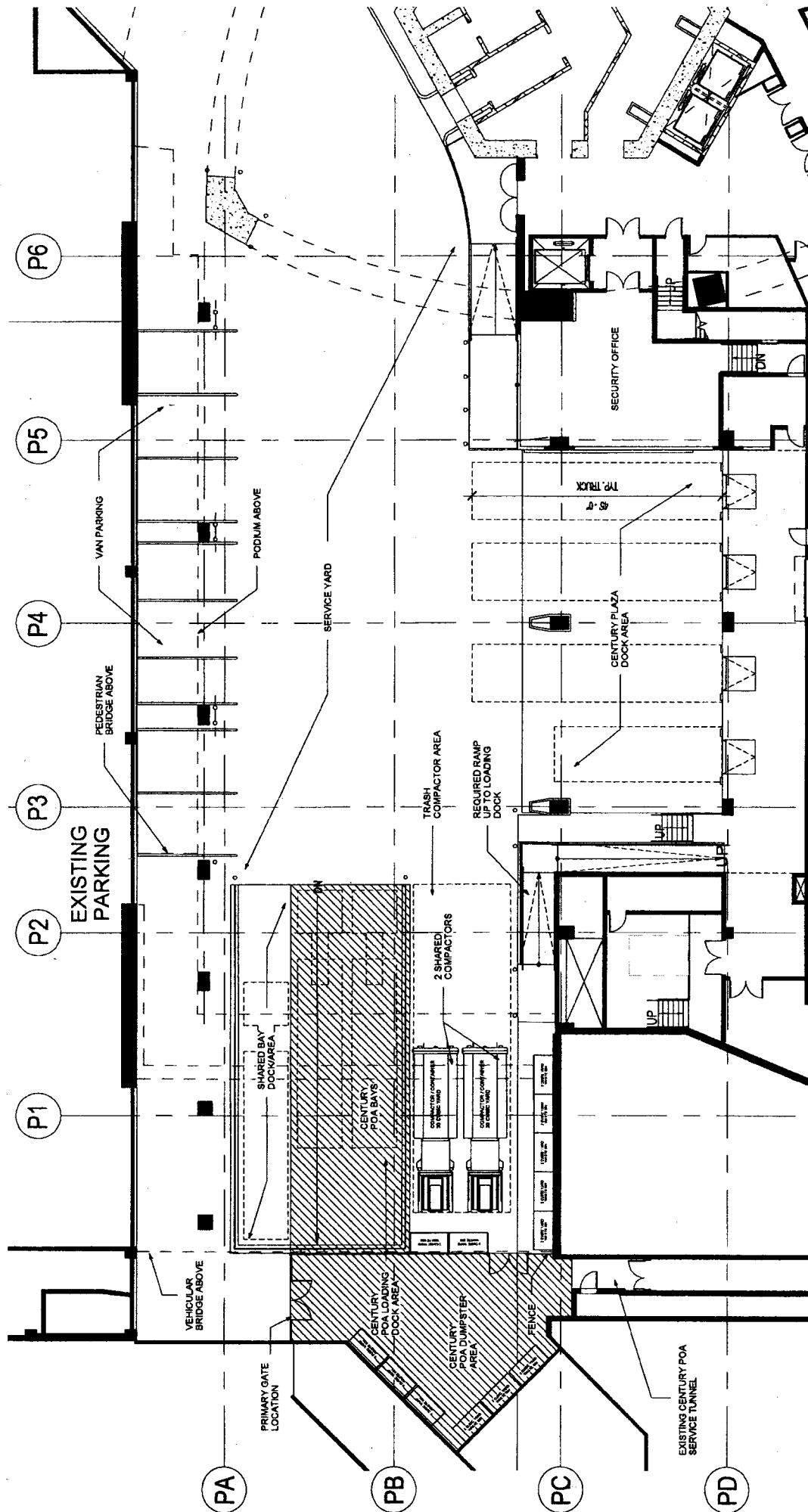


EXHIBIT "A" - LOADING DOCK

Exhibit "B"

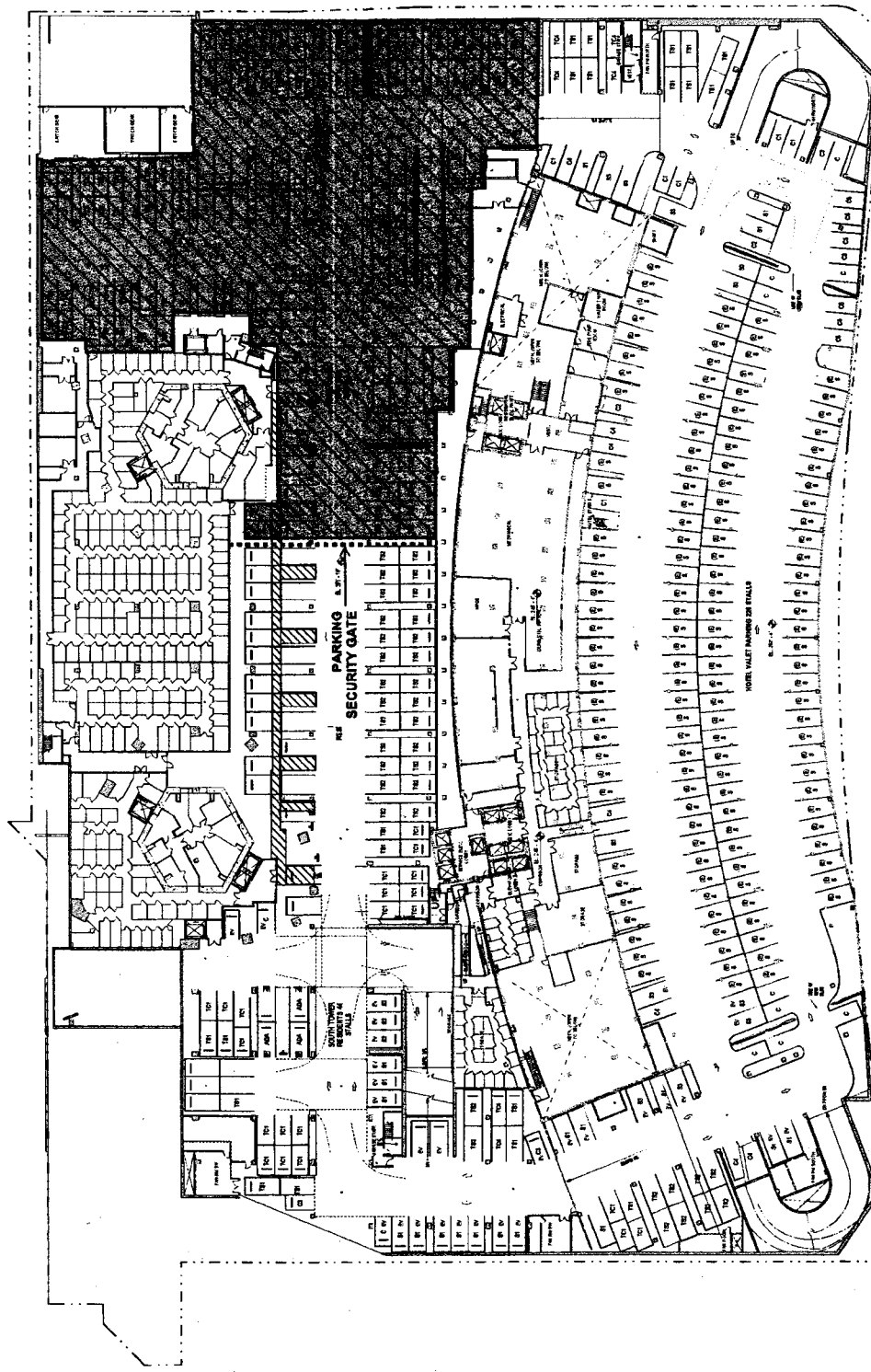
Hotel Condominium Exclusive Parking Area

[See Attached]

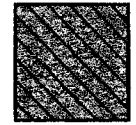
Exhibit "C"

North Tower Exclusive Parking Area

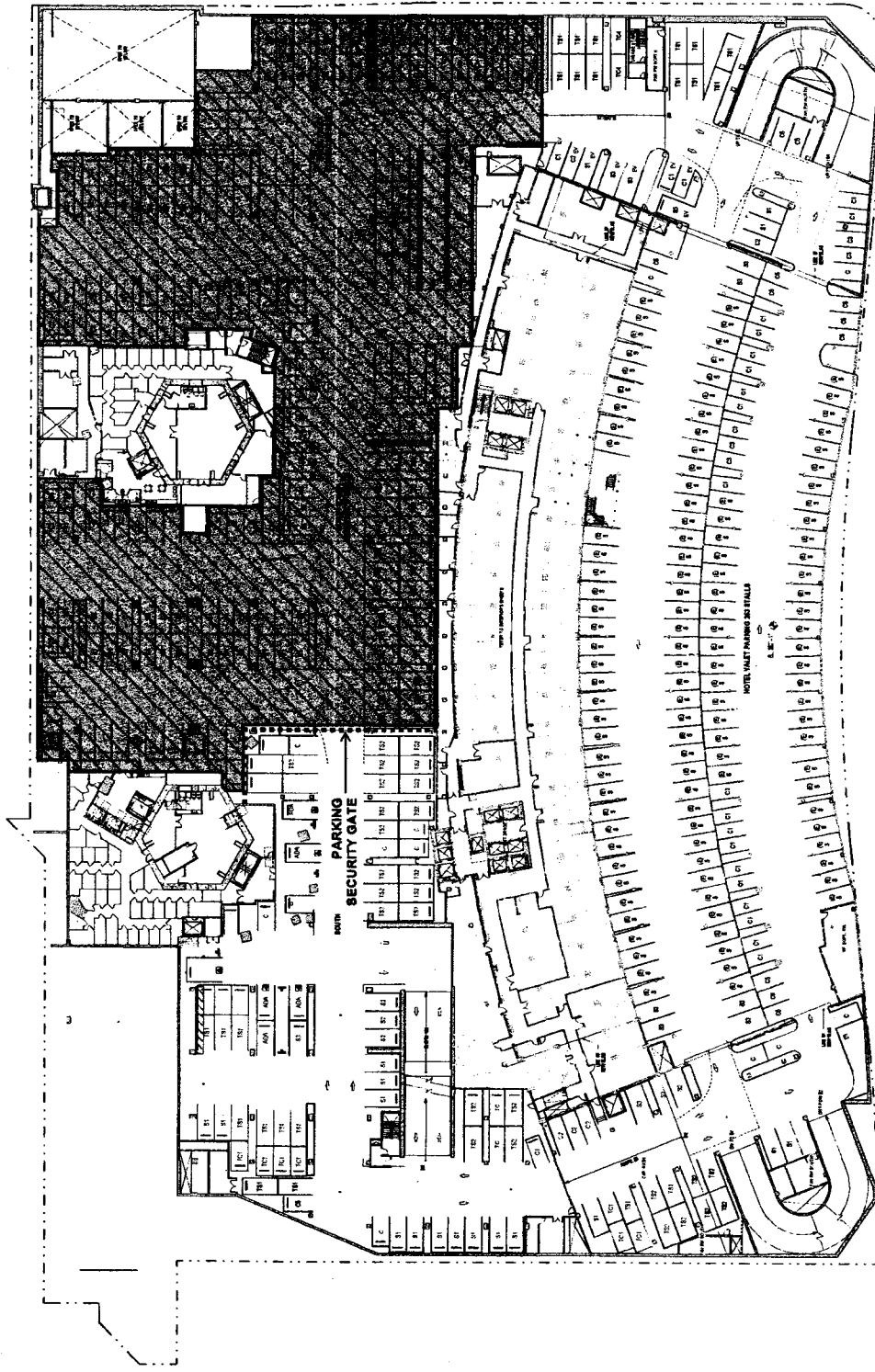
[See Attached]



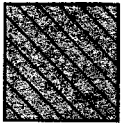
0 40'

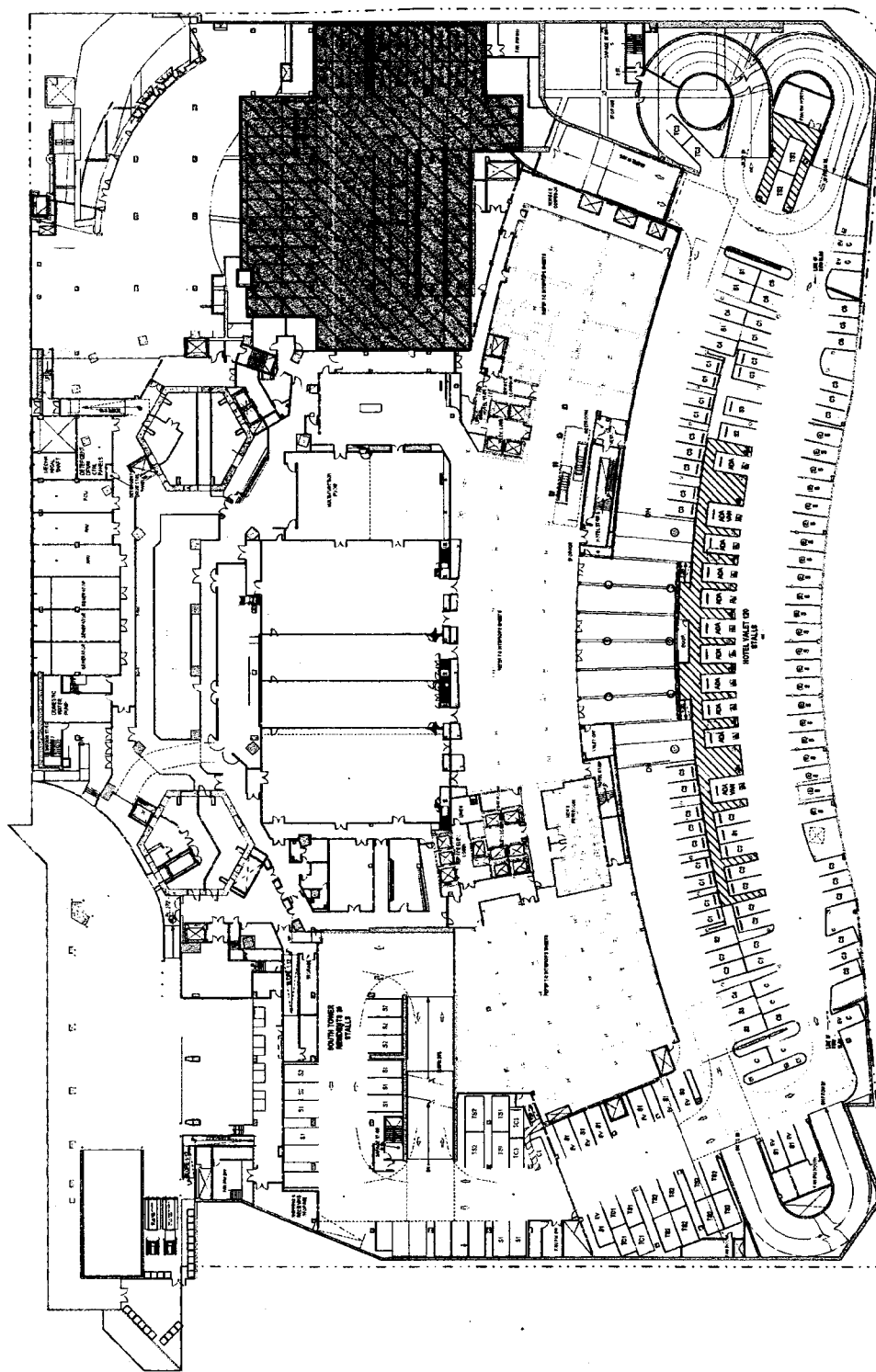


NORTH TOWER EXCLUSIVE PARKING AREA LEVEL B4



NORTH TOWER EXCLUSIVE PARKING AREA LEVEL B3





0' 40'

**NORTH TOWER EXCLUSIVE
PARKING AREA
LEVEL B2**

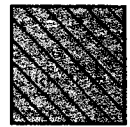
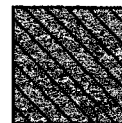
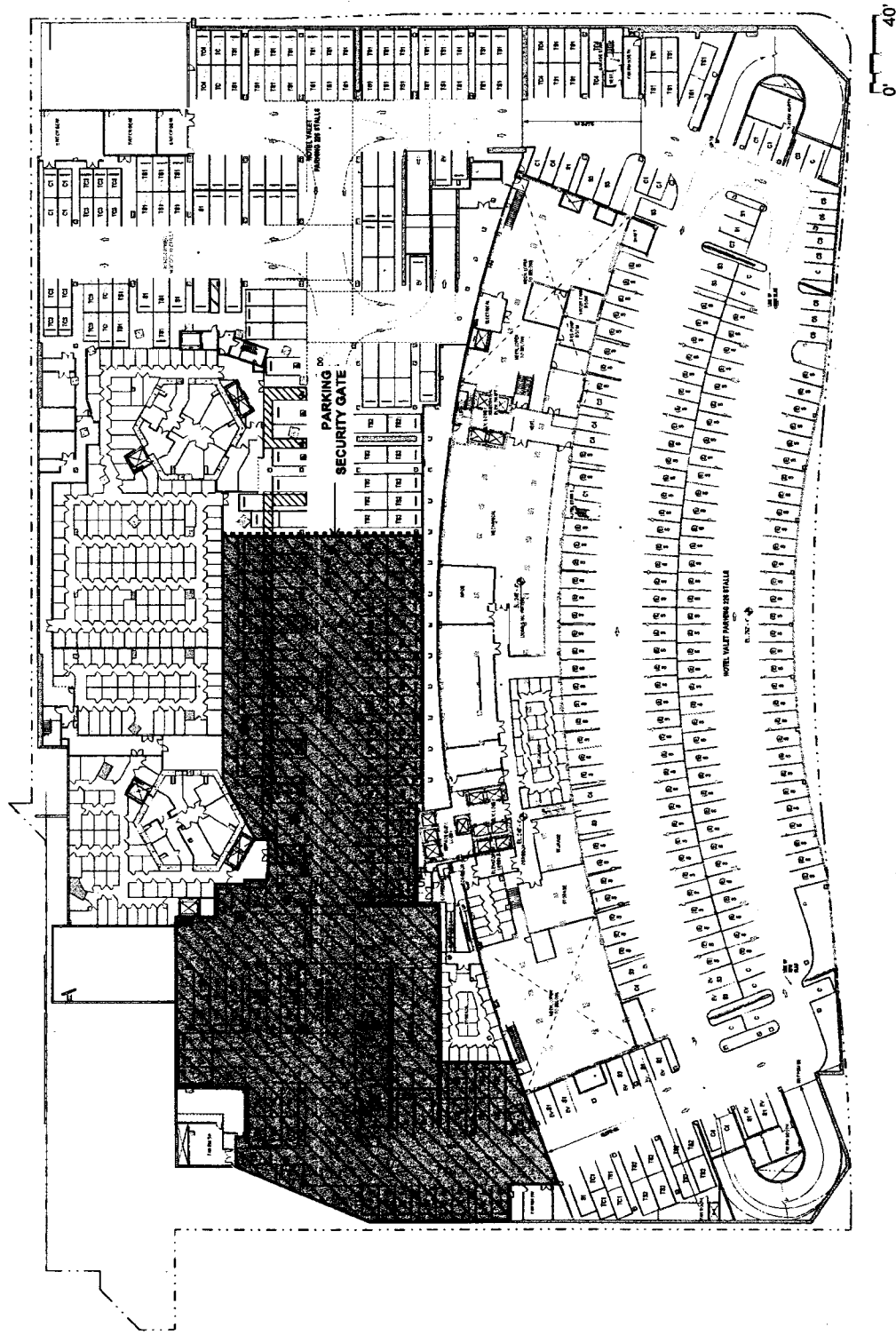


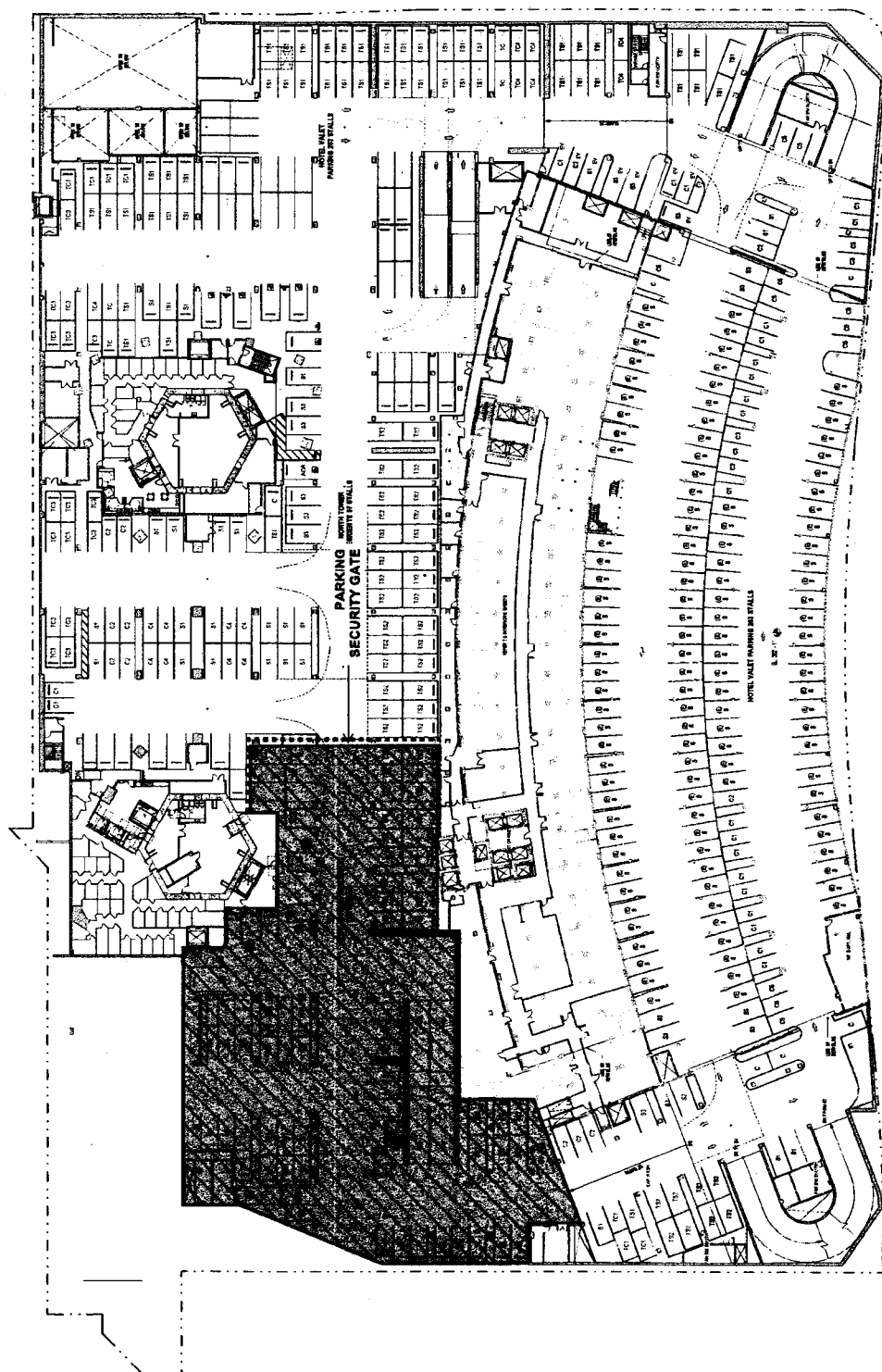
Exhibit "D"

South Tower Exclusive Parking Area

[See Attached]

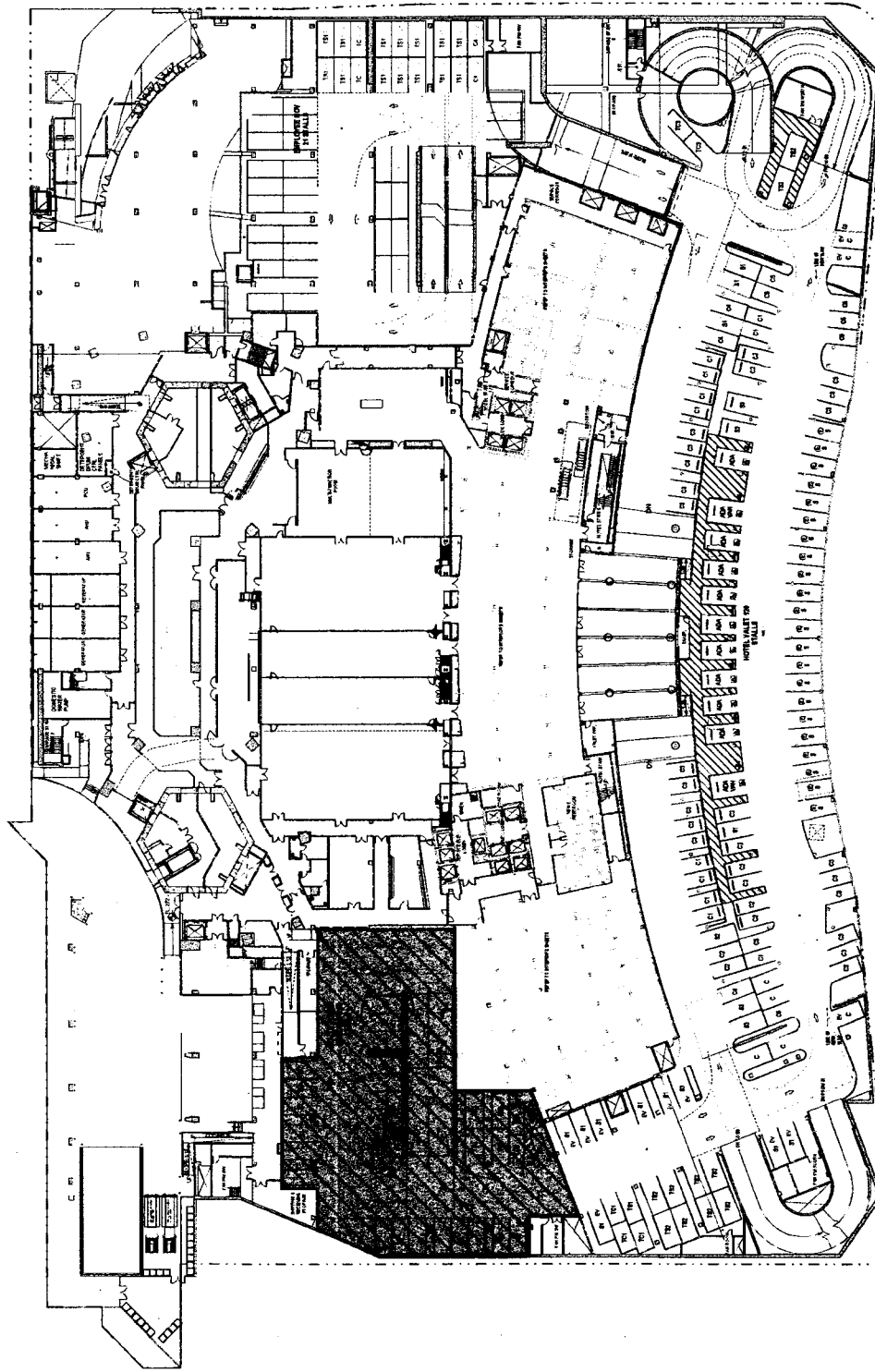


**SOUTH TOWER EXCLUSIVE
PARKING AREA
LEVEL B4**

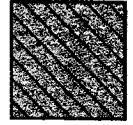


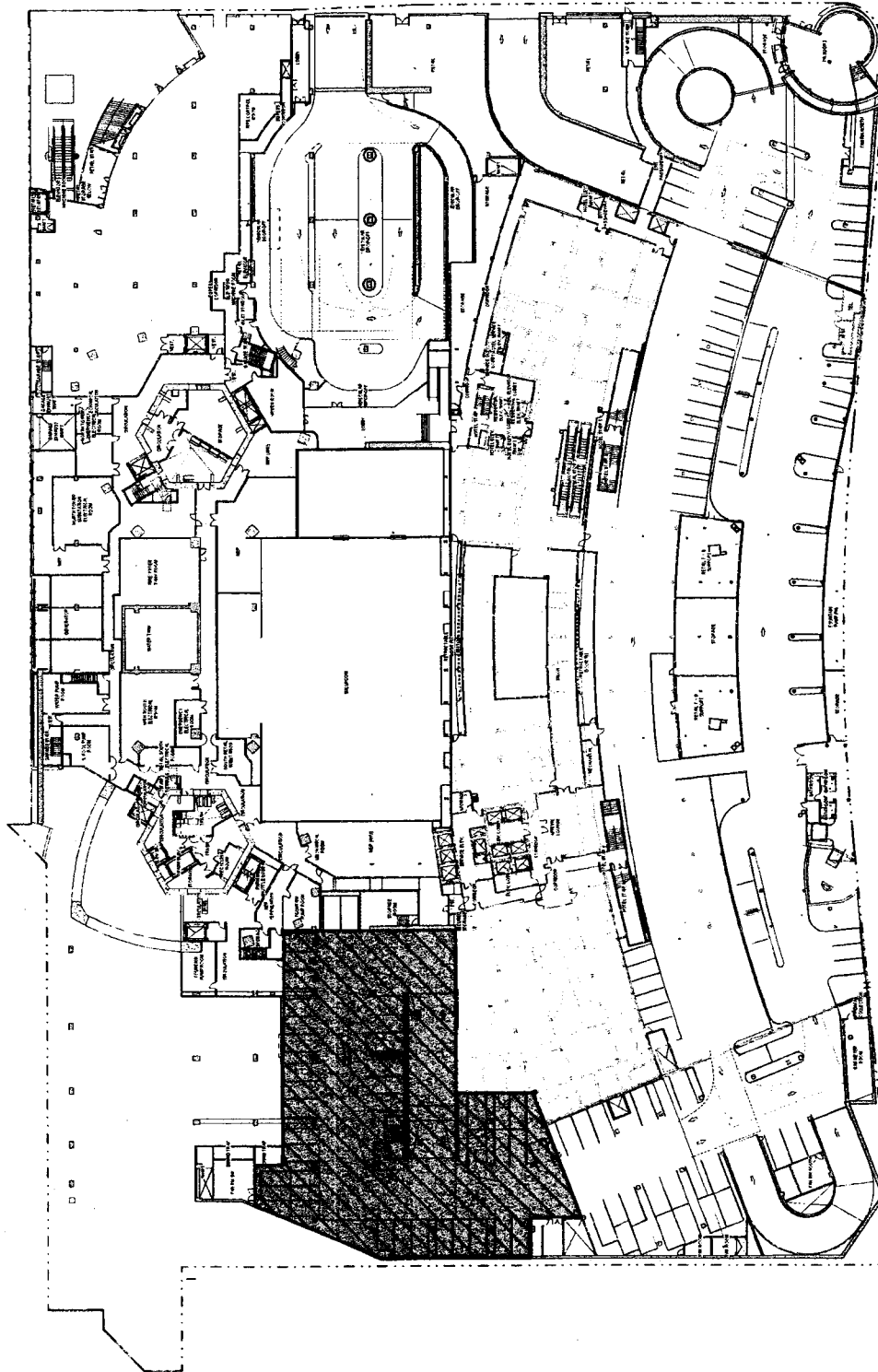
SOUTH TOWER EXCLUSIVE PARKING AREA LEVEL B3



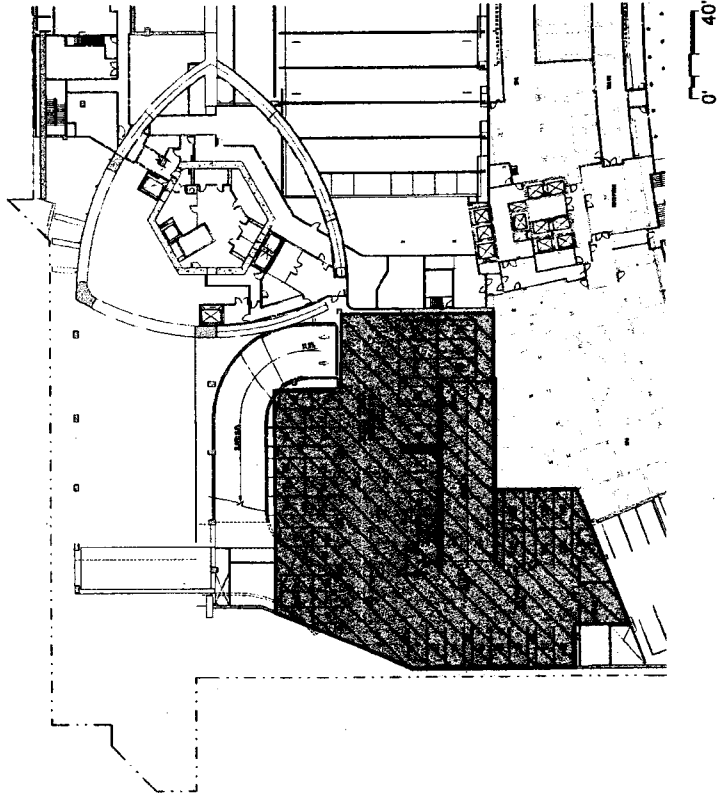


**SOUTH TOWER EXCLUSIVE
PARKING AREA
LEVEL B2**





**SOUTH TOWER EXCLUSIVE
PARKING AREA
LEVEL B1**



**SOUTH TOWER EXCLUSIVE
PARKING AREA
LEVEL B1M**

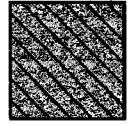
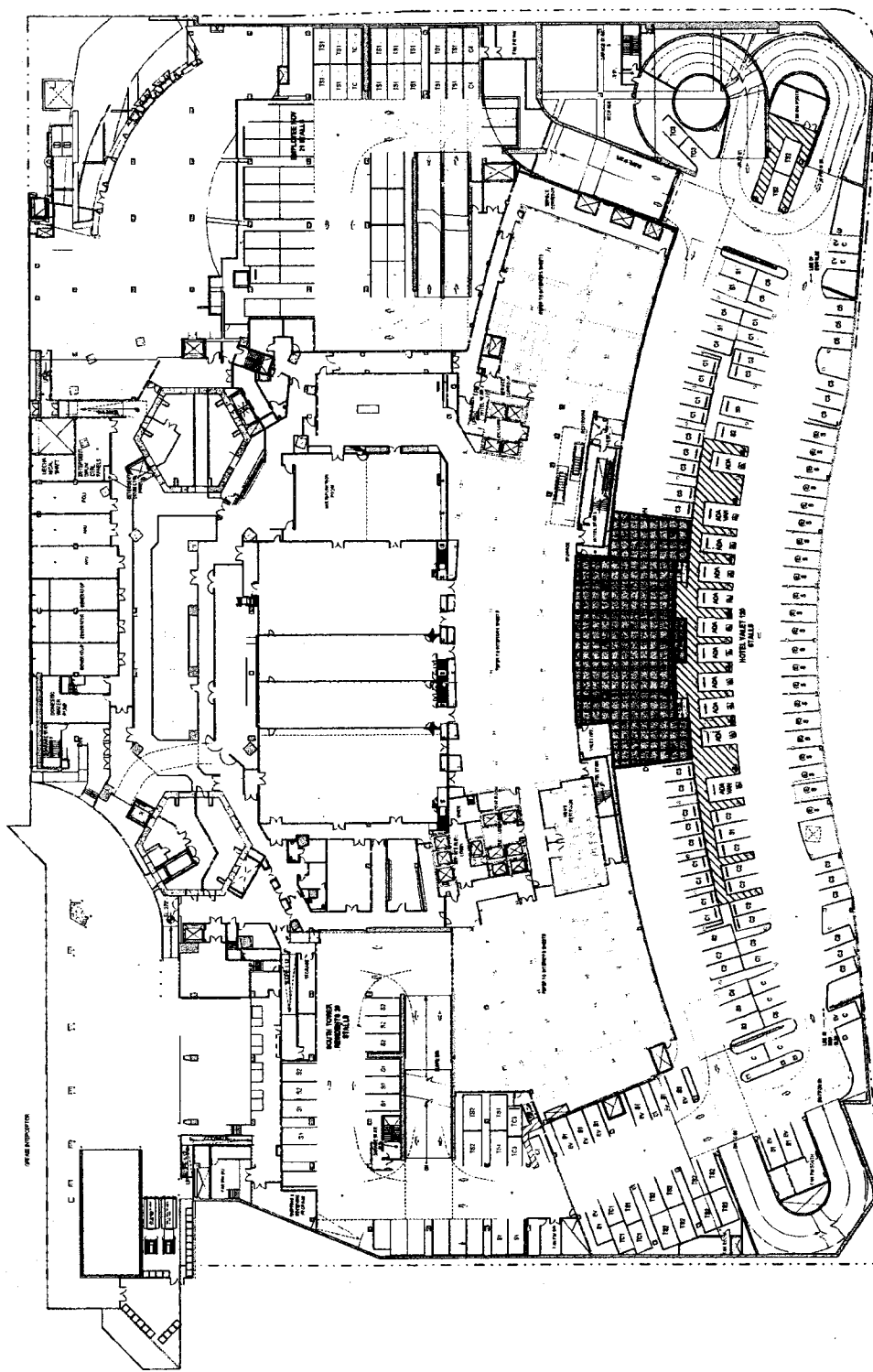


Exhibit "E"

Hotel Ballroom Drop-off Area

[See Attached]



HOTEL BALLROOM DROP-OFF AREA LEVEL B2

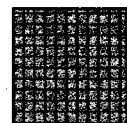
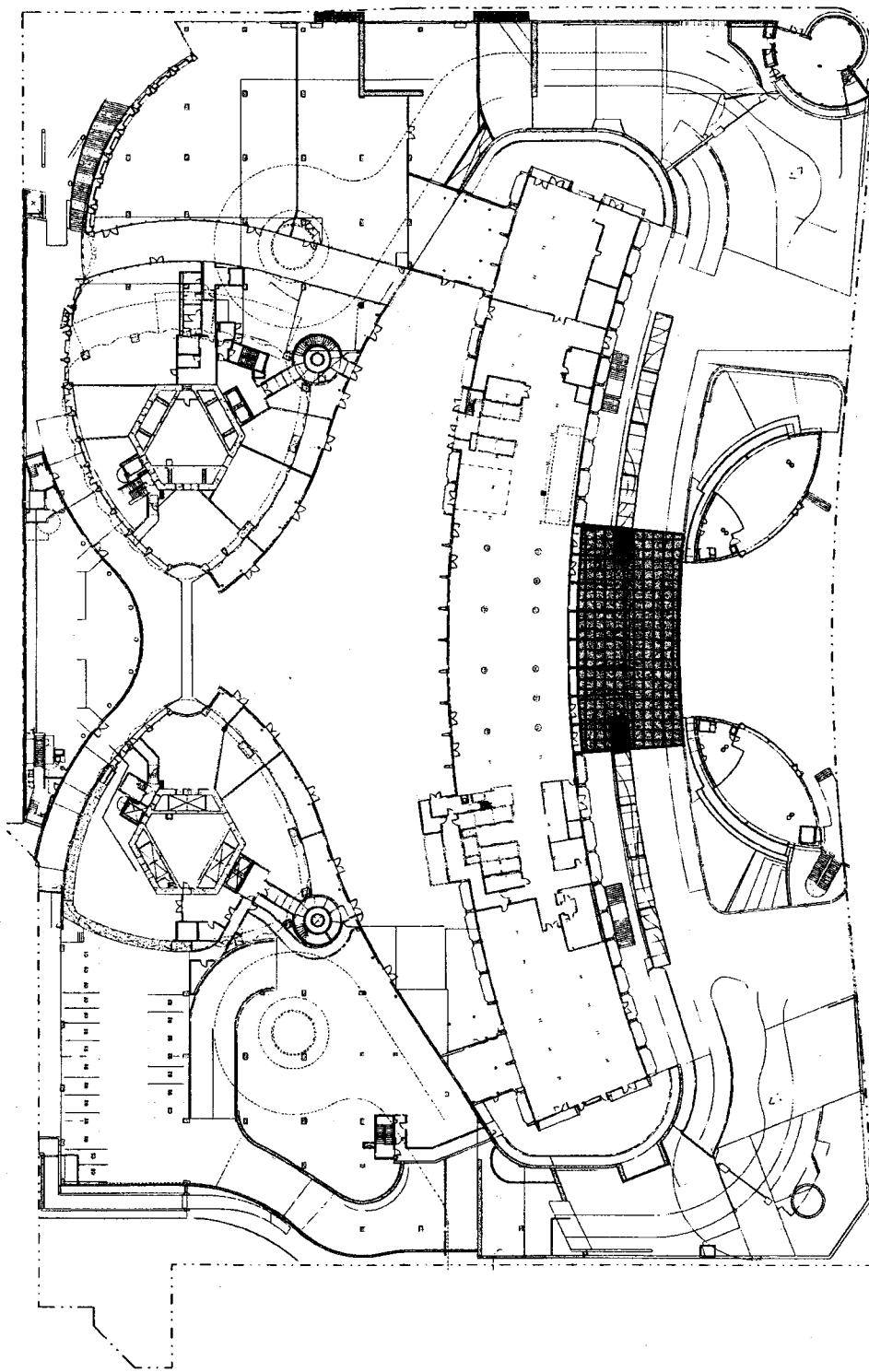


Exhibit "F"

Hotel Entrance Area

[See Attached]



0' 40'

HOTEL DROP-OFF LEVEL 1

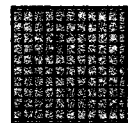
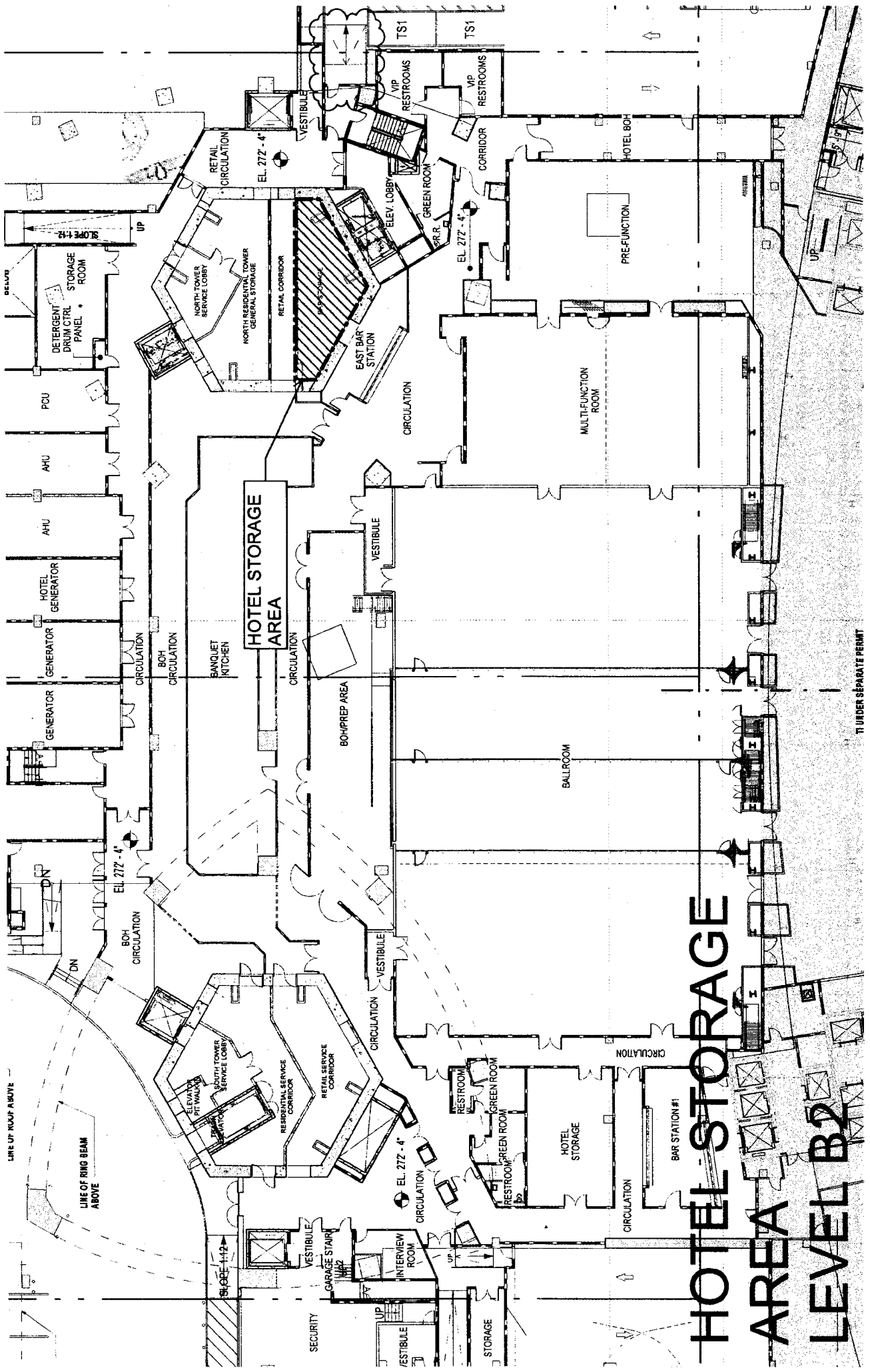


Exhibit "G"

Hotel Storage Area

[See Attached]



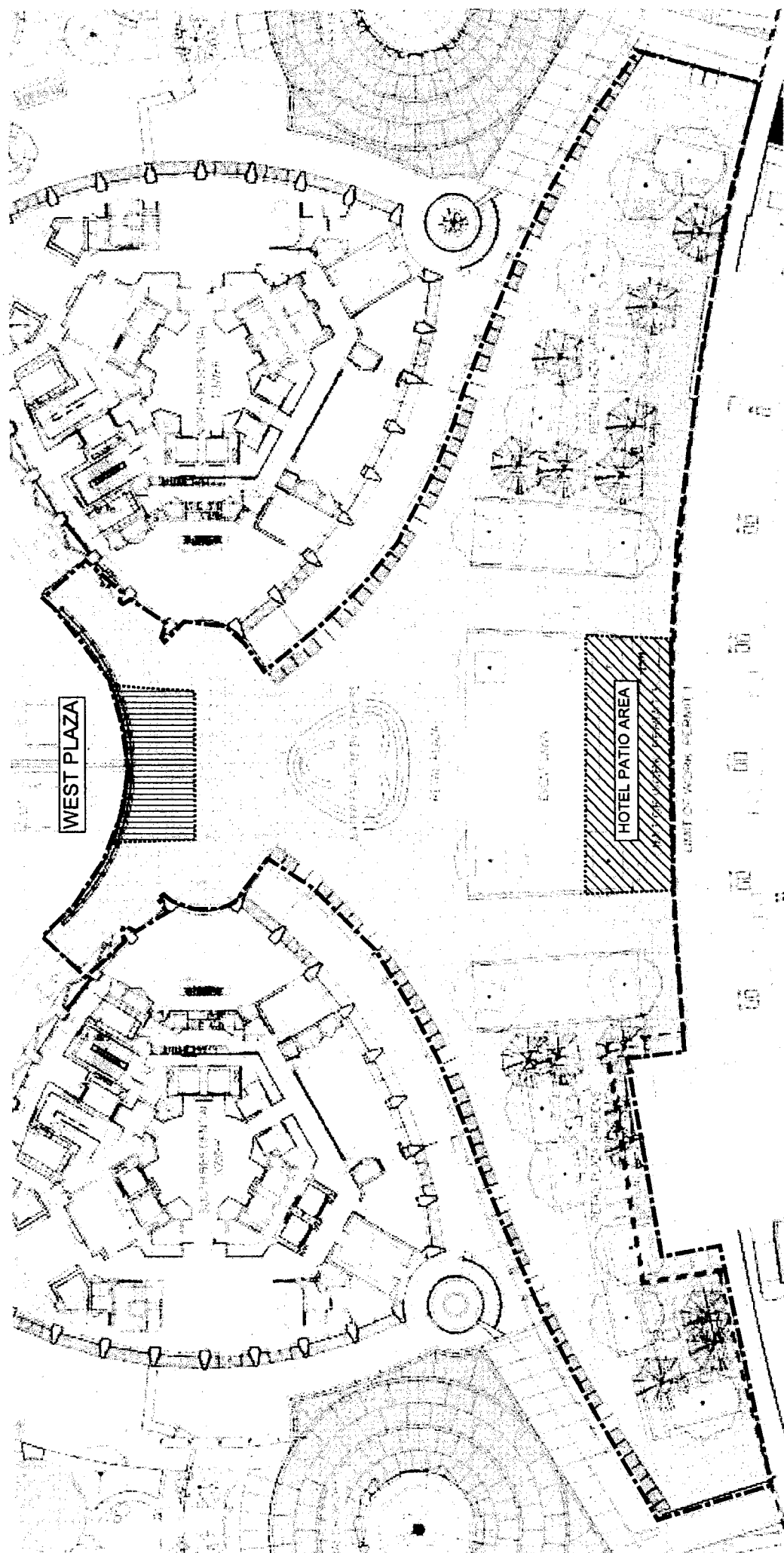
HOTEL STORAGE AREA LEVEL B2

TI UNDER SEPARATE PERMIT

Exhibit "H"

Hotel Patio Area

[See Attached]



WEST PLAZA

HOTEL PATIO AREA

UNIT OF WORKS SHEET 1

Exhibit "I"

West Plaza

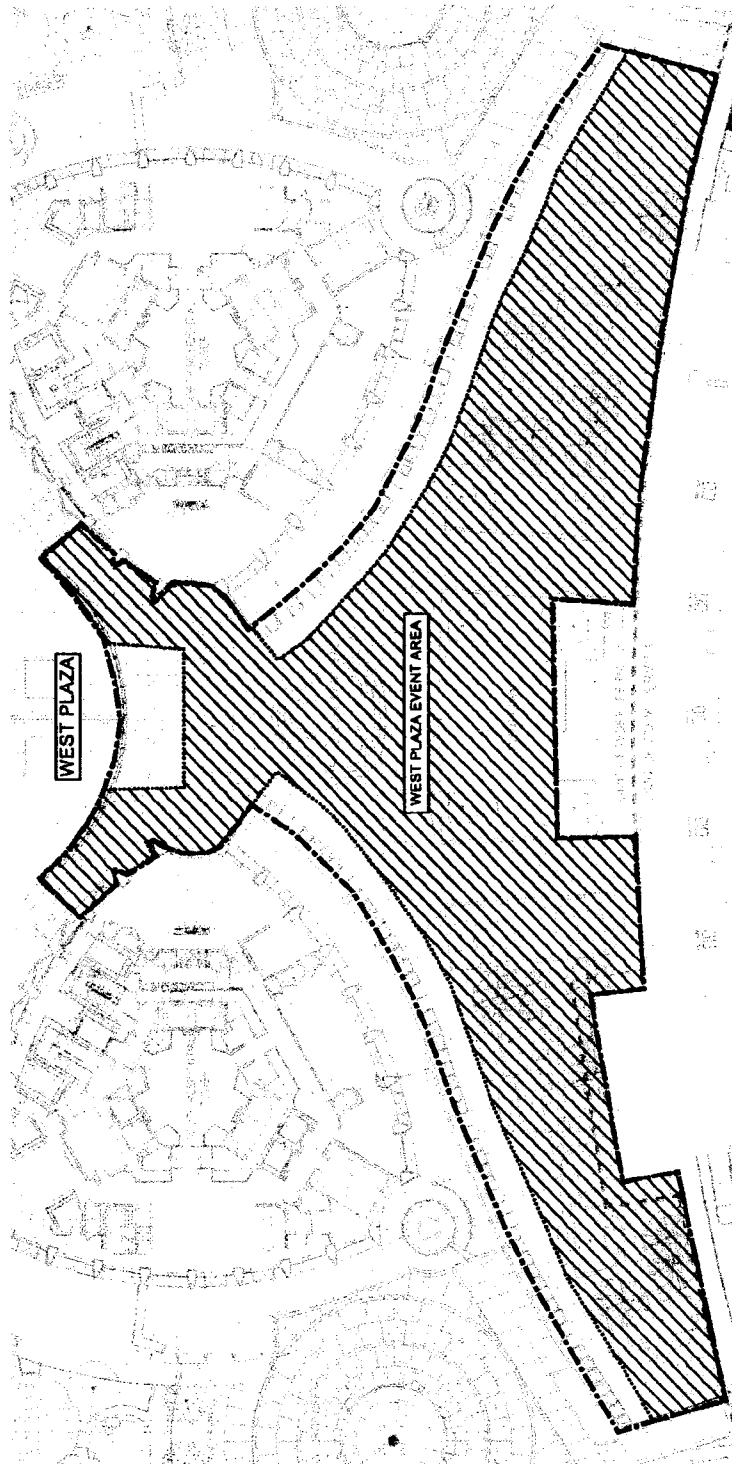


Exhibit "J"

East Plaza

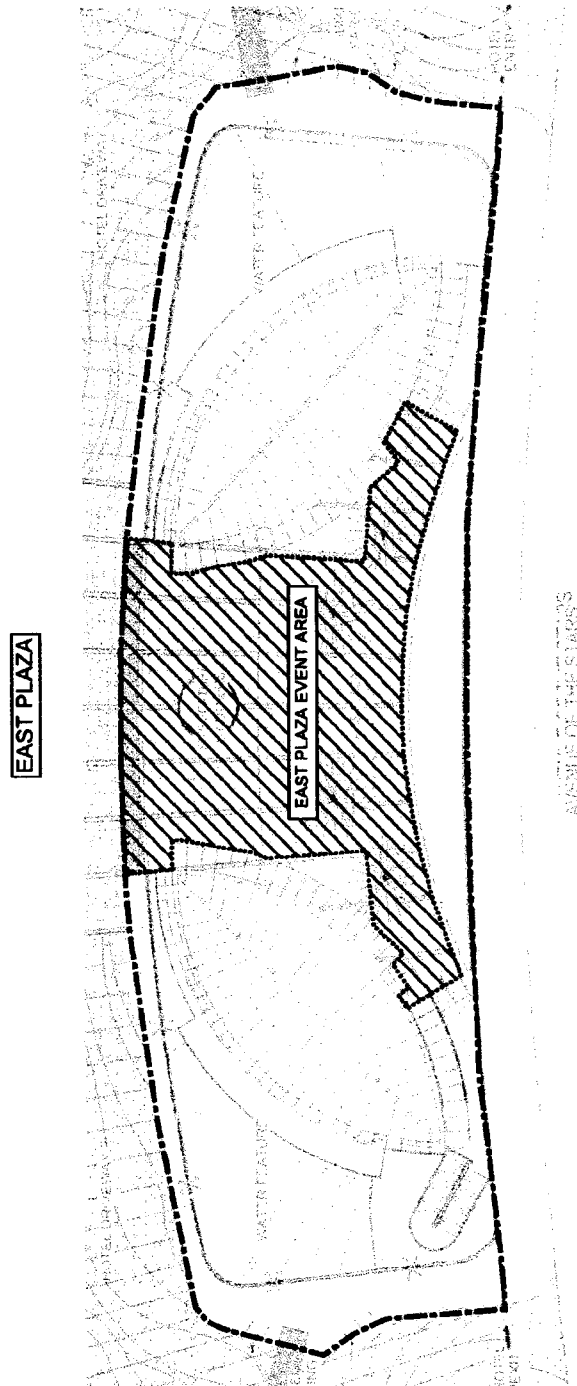


Exhibit "K"

Retail Outdoor Seating Areas

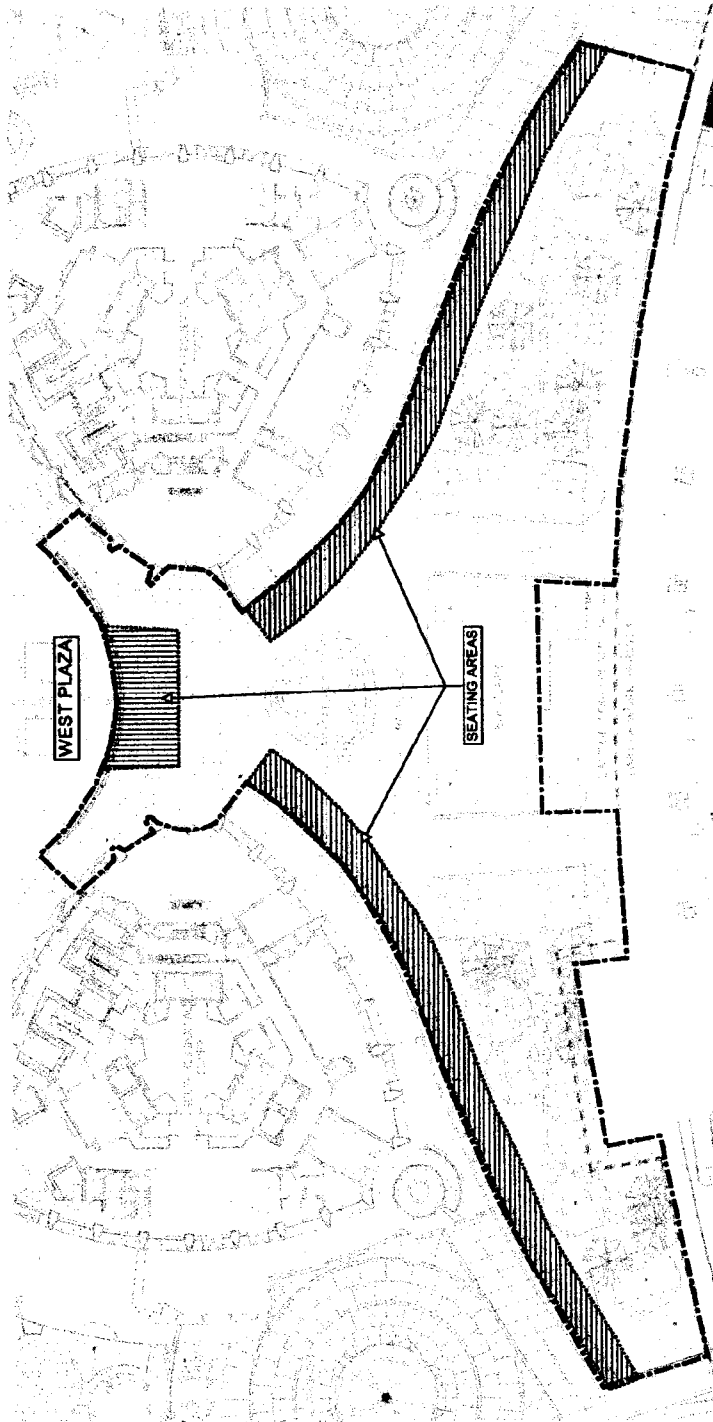


Exhibit "L"

Unit Percentage Shares of Hotel Residential Units

Residential Unit Number	Unit Percentage Share Per Residential Unit
201	1.053%
202	0.759%
203	1.164%
204	1.054%
205	0.793%
206	1.218%
207	1.232%
208	0.615%
209	1.074%
210	0.938%
1201	2.029%
1202	1.222%
1203	1.539%
1204	1.839%
1205	1.223%
1206	1.225%
1207	1.223%
1208	1.224%
1209	1.220%
1210	1.221%
1211	2.021%

Residential Unit Number	Unit Percentage Share Per Residential Unit
1212	1.908%
1213	1.942%
1214	1.946%
1215	1.943%
1216	1.942%
1217	1.942%
1218	2.151%
1219	2.149%
1220	1.943%
1221	1.900%
1401	2.029%
1402	1.222%
1403	1.539%
1404	1.839%
1405	1.223%
1406	1.225%
1407	1.223%
1408	1.224%
1409	1.220%
1410	1.221%
1411	2.021%
1412	1.908%
1413	1.942%

Residential Unit Number	Unit Percentage Share Per Residential Unit
1414	1.946%
1415	1.943%
1416	1.942%
1417	1.942%
1418	2.151%
1419	2.149%
1420	1.943%
1421	1.900%
1601	3.005%
1602	1.361%
1603	2.373%
1604	1.392%
1605	1.381%
1606	2.496%
1607	1.223%
1608	1.228%
1609	1.516%
1610	1.312%
1611	1.309%

Exhibit "M"

Unit Percentage Shares of North Tower Residential Units

Group	Residential Units in Group (by Residential Unit Number)	Unit Percentage Share Per Residential Unit
A	3C 4C 5C 6C 7C 8C 9C	0.266%
B	10C 11C 12C 13C 14C 15C 16C	0.269%
C	3E 4E 5E 6E 7E 8E 9E	0.471%
D	10E 11E 12E 13E 14E 15E 16E	0.476%

Group	Residential Units in Group (by Residential Unit Number)	Unit Percentage Share Per Residential Unit
E	3B 4B 5B 6B 7B 8B 9B	0.499%
F	10B 11B 12B 13B 14B 15B 16B	0.501%
G	3D 4D 5D 6D 7D 8D 9D	0.506%
H	10D 11D 12D 13D 14D 15D 16D	0.509%
I	3A 4A 5A 6A 7A 8A 9A	0.589%

Group	Residential Units in Group (by Residential Unit Number)	Unit Percentage Share Per Residential Unit
J	10A 11A 12A 13A 14A 15A 16A	0.592%
K	26B 27B 28B 29B 30B 31B 32B 33B 34B 35B	0.631%
L	36B 37B 38B	0.635%
M	17B 18B 19B 20B 21B 22B 23B 24B 25B	0.690%

Group	Residential Units in Group (by Residential Unit Number)	Unit Percentage Share Per Residential Unit
N	26C 27C 28C 29C 30C 31C 32C 33C 34C 35C	0.697%
O	36C 37C 38C	0.702%
P	17C 18C 19C 20C 21C 22C 23C 24C 25C	0.813%
Q	17A 18A 19A 20A 21A 22A 23A 24A 25A	0.918%

Group	Residential Units in Group (by Residential Unit Number)	Unit Percentage Share Per Residential Unit
R	26A 27A 28A 29A 30A 31A 32A 33A 34A 35A	1.093%
S	36A 37A 38A	1.098%
T	39A 40A	1.083%
U	39B 40B	1.341%
V	41A	2.931%
W	41B	3.192%
X	43A	2.979%

Exhibit "N"

Unit Percentage Shares of South Tower Residential Units

Group	Residential Units in Group (by Residential Unit Number)	Unit Percentage Share Per Residential Unit
A	3D 4D 5D 6D 7D 8D 9D	0.380%
B	10D 11D 12D 13D 14D 15D 16D	0.383%
C	3C 4C 5C 6C 7C 8C 9C	0.505%
D	10C 11C 12C 13C 14C 15C 16C	0.506%

Group	Residential Units in Group (by Residential Unit Number)	Unit Percentage Share Per Residential Unit
E	17B 18B 19B 20B 21B 22B 23B 24B 25B	0.631%
F	26B 27B 28B 29B 30B 31B 32B 33B 34B	0.629%
G	3A 4A 5A 6A 7A 8A 9A	0.676%
H	10A 11A 12A 13A 14A 15A 16A	0.681%

Group	Residential Units in Group (by Residential Unit Number)	Unit Percentage Share Per Residential Unit
I	26C 27C 28C 29C 30C 31C 32C 33C 34C	0.695%
J	3B 4B 5B 6B 7B 8B 9B	0.792%
K	10B 11B 12B 13B 14B 15B 16B	0.794%
L	17C 18C 19C 20C 21C 22C 23C 24C 25C	0.810%

Group	Residential Units in Group (by Residential Unit Number)	Unit Percentage Share Per Residential Unit
M	17A 18A 19A 20A 21A 22A 23A 24A 25A	0.972%
N	26A 27A 28A 29A 30A 31A 32A 33A 34A	1.087%
O	35A	1.072%
P	36A 37A 38A 39A 40A	1.080%
Q	35B	1.328%
R	36B 37B 38B 39B 40B	1.338%
S	41A	2.922%
T	41B	3.183%
U	43A	2.970%