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**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS AND AMENDMENT OF
DECLARATION OF RECIPROCAL EASEMENTS**

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THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS AND AMENDMENT OF DECLARATION OF RECIPROCAL EASEMENTS (this "**Declaration**") is made as of October 27, 2004 ("**Effective Date**"), by and between Madison Bay Street LLC, a Delaware limited liability company, formerly known as Madison Manhattan Village, LLC ("**Project Developer**"), Bay Street Housing Partners, L.P., a Delaware limited partnership ("**Housing Partners**") and Bay Street Condominiums, LLC (the "**Condo LLC**"), with reference to the following facts:

A. Project Developer is the fee owner of certain land (the "**Project Site**"), and Housing Partners and the Condo LLC are the fee owner of certain airspace related thereto, located in Emeryville, California. Project Developer has been and is continuing to develop the Project Site and air space related thereto into a mixed use, retail/residential complex (the "**Project**"), which along with other property not subject to this Declaration is to be known as "**Bay Street Emeryville.**" The Project Site is depicted on Exhibit "A-1" ("**Site Plan**") attached hereto and is legally described on Exhibit "A-2" attached hereto. Project Developer has constructed a two-level structure (the "**East Retail Structure**") on the east side of Bay Street within the Project Site containing certain retail stores (the "**East Retail Stores**") on the first floor and parking for the retail stores (the "**Retail Parking Facility**") on the second floor and two one level-structures (collectively, the "**West Retail Structure**") on the west side of Bay Street within the Project Site containing certain additional retail stores (the "**West Retail Stores**"). The East Retail Structure and the West Retail Structure are collectively referred to as the "**Retail Structure**".

B. In furtherance of the Project, Project Developer sold (i) to Housing Partners one (1) airspace parcel located above the East Retail Structure (the "**East Residential Parcel**") and (ii) to the Condo LLC two (2) airspace parcels located above the West Retail Structure ("**West Residential Parcel #1**" and "**West Residential Parcel #2**", respectively). West Residential Parcel #1, West Residential Parcel #2 and the East Residential Parcel are legally described on Exhibit "B-1", Exhibit "B-2" and Exhibit "B-3", respectively, which Exhibits are attached hereto.

C. Project Developer, Housing Partners and the Condo LLC intend that three (3) separate multi-story buildings, one of which is to be constructed on West Residential Parcel #1, one of which is to be constructed on West Residential Parcel #2 and one of which is to be constructed on the East Residential Parcel, comprised of certain multi-family residential units (collectively, the "**Residential Units**"), will be constructed and operated as part of the Project. The buildings referred to in the preceding sentence are individually referred to herein as a "**Residential Tower**".

D. Project Developer, Housing Partners and the Condo LLC desire to subject the Property (as hereinafter defined) to the terms of this Declaration to provide for: (i) the grant

and reservation of certain rights and easements; (ii) the integrated development and improvement of the Project; (iii) mutual covenants regarding the operation of the Improvements (as hereinafter defined) on the Property; and (iv) certain other covenants and agreements, all as more particularly set forth herein.

NOW, THEREFORE, with reference to the foregoing recitals, in consideration of the premises, covenants and agreements set forth in this Declaration, Project Developer, Housing Partners and the Condo LLC hereby declare that 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 (collectively, the "**Restrictions**"), 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, including the Restrictions, shall be enforceable equitable servitudes upon the Property. The Restrictions shall run with and burden the Property, and shall be binding upon and, as applicable, inure to the benefit of the Property and each Person having or acquiring any right, title or interest in the Property or any part thereof, or any Improvements thereon, and upon and to the benefit of their respective successors and assigns.

Project Developer, Housing Partners and the Condo LLC hereby declare as follows:

ARTICLE I

CERTAIN DEFINITIONS

The following terms, when used in this Declaration, shall have the following meanings:

"**Agency**" means the Emeryville Redevelopment Agency.

"**Amended REA**" shall have the meaning set forth in Section 2.16.

"**Applicable Damage Threshold**" shall have the meaning set forth in Section 9.02(b).

"**Declaration**" shall have the meaning set forth in the Preamble.

"**Approved Plans**" shall mean the plans for the Improvements as identified on the Schedule of Approved Plans attached hereto as Exhibit "N" as such may be modified from time to time as permitted by the City and this Declaration.

"**Association**" shall have the meaning set forth in Section 12.04.

"**Benefited Interest**" shall mean the dominant Parcel for whose benefit and appurtenant to which a particular easement, license or similar right in, on, over, upon or through

another Parcel is granted or exists. Where only a portion of the dominant Parcel is benefited by the easement, license or similar right, only that portion so benefited shall be the Benefited Interest.

“Benefited Party” shall mean any Party having title to a Benefited Interest.

“Breaching Party” shall have the meaning set forth in Section 16.24(b).

“Burdened Interest” shall mean the servient Parcel in, on, over, upon or through which an easement, license or similar right in favor of a Benefited Interest is granted or exists. Where only a portion of a servient Parcel is burdened by the easement, license or similar right, only that portion so burdened shall be the Burdened Parcel.

“Burdened Party” shall mean any Party having title to a Burdened Interest.

“CEQA” shall mean 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.

“City” shall mean the City of Emeryville and any departments or agencies of the City of Emeryville 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.

“Casualty Assessment Notice” shall have the meaning set forth in Section 9.02(d).

“CMU” shall have the meaning set forth in Section 2.02(d).

“Condemnation” shall mean any taking of the Property 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.

“Condo LLC” shall have the meaning set forth in the Preamble, as qualified in the definition of “Parties”.

“Constructing Party” shall have the meaning set forth in Section 4.02.

“Construction Work” shall mean any construction, reconstruction, demolition, replacement, alteration, erection, installation, remodeling, rebuilding repair, razing, or restoration of any Improvement, excluding tenant improvements to interior portions of buildings.

“Curing Party” shall have the meaning set forth in Section 11.03.

“CRUP” shall have the meaning set forth in Section 5.12(b)(1).

“DDA” shall mean that certain Development and Disposition Agreement by and between the City and Project Developer dated as of September 23, 1999, as amended from time to time, providing for, among other things, Project Developer’s acquisition of the Project Site from the Emeryville Redevelopment Agency.

“Default Rate” shall mean the lesser of (a) four (4) percentage points in excess of the “Prime Rate”, or (b) the highest rate permitted by law. The interest rate ascertained as the Default Rate under this Declaration shall change as often as, and when, the Prime Rate changes or changes in the law occur, as the case may be.

“Development Agreement” shall mean that certain Development Agreement dated as of October 22, 1999, between the City of Emeryville and Emeryville South Bayfront Redevelopment Partnership, as amended.

“Dispute” shall have the meaning set forth in Section 15.01

“DTSC” shall have the meaning set forth in Section 5.12(a)(1).

“East Loading Zone” shall mean the area depicted on Exhibit “C” attached hereto and identified as the Loading and Unloading Area and Pedestrian Access to Residential Freight Elevators.

“East Residential Developer” shall mean the Owner of the East Residential Parcel.

“East Residential Parcel” shall have the meaning set forth in Recital B.

“East Retail Stores” shall have the meaning set forth in Recital A.

“East Retail Structure” shall have the meaning set forth in Recital A.

“Effective Date” shall have the meaning set forth in the Preamble.

“Emergency” shall mean a condition requiring immediate repair, replacement or other action: (a) to prevent material damage to any portion of the Property; (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.

“Environmental Disclosures” shall have the meaning set forth in Section 5.03(b).

“Environmental Laws” shall mean any federal, state, and local laws, ordinances, rules, regulations, requirements, orders, directives, guidelines, 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 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.

"Escape Lane" shall have the meaning set forth in Section 2.01(b).

"First-Class Project" shall mean a mixed-use, retail/residential project constructed, operated, maintained, restored and replaced substantially in accordance with quality standards comparable to other institutionally owned first-class residential and retail projects in the San Francisco Bay Area; provided that, Project Developer shall have the right to lease space in the Retail Parcel to such retail and entertainment tenants as it deems appropriate, subject to the restrictions set forth in Section 5.01(a).

"Governmental Authorities" shall mean all federal, state, county, municipal and local governmental and quasi-governmental bodies and authorities, including the United States of America, the State of California, the City, the Agency, the County of Alameda and any political subdivision, public corporation, district or other political or public entity or departments thereof having or exercising jurisdiction over the Parties, the Property, or such portions thereof as the context indicates.

"Hazardous Substances" means any chemical, substance, material, object, condition, waste or combination thereof (i) the presence of which requires investigation or remediation under any applicable statute, regulation, ordinance, order, action, policy or common law; (ii) which 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; (iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is regulated by any Governmental Authority; or (iv) the presence of which on the Property causes or threatens to cause a nuisance or injury upon the Property, 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 Property.

"Improvements" shall mean all buildings, outbuildings, parking or loading areas, driveways, roadways or walkways, display or storage areas, arcades, stairs, decks, Utility Facilities (as defined below), 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 exterior boundaries of the Property, including the buildings and any replacements, additions, repairs or alterations thereto of any kind whatsoever.

"Indemnify" in any provision of this Declaration which requires one Person to Indemnify any other Person, shall mean 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, agents and representatives (collectively, the **"Indemnified Persons"**) harmless from and against any and all Loss arising directly or indirectly 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; provided 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 reasonable attorneys' fees and court costs. If the Indemnified Person elects to conduct its own defense, then the Indemnified Person shall report the status of the defense on a regular basis to the Indemnifying Person, and the terms of any settlement or other voluntary resolution of the claim, lawsuit or other proceeding shall require the prior written approval of the Indemnifying Person, which approval shall not be unreasonably withheld, delayed or conditioned.

"Initial Reconstruction Period" shall have the meaning set forth in Section 9.02(a)

"Initial Reconstruction Period Damage Threshold" shall have the meaning set forth in Section 9.02(a)

"Initial Residential Sales Phase" shall have the meaning set forth in Section 14.03.

"Insurance Notice" shall have the meaning set forth in Section 8.01(c).

"Interested Party" shall mean any Party who reasonably can demonstrate that the Improvements to be constructed as a proposed Major Construction Work would have a material adverse impact on the cost of insurance for or the value, profitability, safety, integrity or utility of (i) such Party's Parcel, (ii) any easement running in such Party's favor or (iii) the Improvements located on such Party's Parcel.

"Involuntary Transfer" shall mean the conveyance or foreclosure of fee or leasehold title to a Parcel (or portion thereof) from an Owner ("**Involuntary Transferor**") to a Mortgagee or ground lessor, as the case may be ("**Involuntary Transferee**"), resulting from any of the following: the judicial or nonjudicial foreclosure of the Mortgage; the grant of a deed in lieu of such foreclosure or the expiration; or the termination or surrender of a ground lease with respect to a Parcel or portion thereof; provided, however, 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 Parcel 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 such Involuntary Transfer. The foregoing shall in no event be construed to limit or forfeit a Party's rights which it might otherwise have against such Involuntary Transferor pursuant to or arising under this Declaration.

“ISO” shall have the meaning set forth in Section 8.01(a)(1).

“Housing Partners” shall have the meaning set forth in the Preamble, as qualified in the definition of **“Parties”**.

“Later Period Damage Threshold” shall have the meaning set forth in Section 9.02(b).

“Legal Requirements” shall mean all applicable (a) laws, ordinances, orders, judgments, rules, regulations, mandatory guidelines and other requirements of Governmental Authorities, and (b) requirements of public and private utilities providing service to the Property, 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 Parcel 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 Parcel, whether foreseen or unforeseen, ordinary or extraordinary.

“Loss” shall mean all costs and expenses arising out of all claims, demands, losses, damages, liens, liabilities, injuries, deaths, penalties, relocation or disruption of use, fines, lawsuits and other proceedings, judgments and awards rendered therein, including reasonable attorneys’ fees and court costs, and all other costs and expenses.

“Major Construction Work” for the Residential Parcels shall mean any Construction Work which would (a) materially affect any building on the Property; (b) increase the loads imposed on the Retail Parking Facility or the Retail Structure in excess of the loads that are permitted for construction in accordance with the Approved Plans; (c) create new or additional Improvements on any Residential Parcel that would cost in excess of \$1,000,000; or (d) alter or demolish in any material way the building shell (including foundation, floor, roof and other structural elements) of any Improvements on the Residential Parcels. **“Major Construction Work”** for the Retail Parcel shall mean any Construction Work which would materially alter or demolish the building shell (including foundation, floor, roof and other structural elements) of any Improvements on the Retail Parcel in such manner as to have a material effect on any Residential Parcel.

“Master Plan” shall mean the Final Development Plan in effect as of the Effective Date pursuant to the Development Agreement.

“Mortgagee” shall mean any mortgagee, beneficiary under any deed of trust, trustee of any bonds, governmental agency which is a grantor of funds, and, with respect to any Parcel which is the subject of a sale-leaseback transaction, the Person acquiring fee title. The term **“Mortgagor”** shall mean the mortgagor or trustor under a **“Mortgage”** (or lessee, in the case of a sale-leaseback transaction). The term **“Mortgage”** shall mean any indenture of mortgage or deed of trust, bonds, grant of taxable or tax exempt funds from a governmental agency and, to the extent applicable, the documents governing a sale-leaseback transaction.

“Non-Restoring Owner” shall have the meaning set forth in Section 9.02(e).

“Non-Restoring Owner’s Parcel” shall have the meaning set forth in Section 9.02(e).

“Occupant” shall mean any Person from time to time entitled to use and occupy a building or any portion of a building on the Property or Parcel pursuant to a lease or any Parcel pursuant to a ground lease.

“Owner” shall mean, subject to the qualifications set forth in Section 12.04, each Person who (a) owns fee simple title to any Parcel or any fractional interest therein which is not ground leased to another Owner hereunder, (b) owns a groundleasehold interest in any Parcel which is not further ground leased, or (c) the vendor or vendors under an executory contract for sale of a Parcel, but shall not include any Person having an interest in a Parcel, the Improvements thereon or any portion thereof merely as security for the performance of an obligation (including a Mortgagee). The fee owner of any Parcel of the Property which 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 Parcel during the term of such ground lease but the ground lessee under such ground lease shall be considered the Owner of such Parcel and shall be responsible for all of the obligations of the Owner of such Parcel hereunder; provided, however, that in the event of the expiration of such ground lease or earlier termination pursuant thereto, such fee owner shall become an Owner hereunder with respect to such Parcel and shall be responsible for and perform the obligations of an Owner pursuant to this Declaration with respect thereto. The term “ground lease” shall include sub-groundleases, sub-subgroundleases and other agreements by which a party obtains a leasehold interest in possession of a Parcel and assumes responsibility for performance of all of its lessor's obligations under this Declaration with respect to such Parcel.

“Owner Taxes” shall mean all Taxes that are imposed, levied or assessed upon or with respect to (i) any individual Owner or its Occupants, or (ii) all or a portion of any individual Parcel or Improvements, to the extent such Taxes are apportioned to the land or to the Improvements located in, on or under such Parcel.

“Parcel” shall mean any of (a) the Retail Parcel or (b) the Residential Parcels. The term “Parcel” shall also include any property which, after the Effective Date, shall become part of or form a legal lot or parcels in connection with an addition of property or a further subdivision, reconfiguration or split of any existing Parcel or Parcels pursuant to Sections 5.08 and 16.11. As the term Parcels is used in this Declaration, there are four (4) Parcels: the Retail Parcel, West Residential Parcel #1, West Residential Parcel #2 and the East Residential Parcel.

“Parcel E PSA” shall have the meaning set forth in Section 16.25.

“Parcel 8&10 PSA” shall have the meaning set forth in Section 16.25.

“Parking Facilities Rules and Regulations” shall mean the rules and regulations regarding the Parking Facilities set forth in the Project Rules and Regulations and such additional rules and regulations as may be adopted by Project Developer from time to time with respect to the Retail Parking Facility and such additional rules and regulations as may be adopted by each Residential Developer from time to time with respect to its respective Residential Parking Facility.

“Parking Facilities” shall mean the Retail Parking Facility and the Residential Parking Facilities, collectively.

"Parties" shall mean the Owners, collectively, and the term **"Party"** shall mean any Owner, individually, subject to Section 12.04 (under which Owners and Occupants of individual Residential Units are not Parties). Upon a Transfer or Involuntary Transfer, any of their respective Transferees or Involuntary Transferees (as the case may be) shall be a Party. Without limiting the generality of the foregoing, upon a Transfer by a Residential Developer of any part of its interest in this Declaration to an Association (defined in Section 12.04), the Association shall be a Party as to the applicable Residential Parcel. Following a Transfer or Involuntary Transfer, the Transferor or Involuntary Transferor shall no longer be a Party as to the Residential Parcel so Transferred. A Mortgagee or ground lessor shall not be deemed to be the Party with respect to a Parcel so long as the Mortgagor or ground lessee, as the applicable Party, retains the entire possessory interest in such Parcel. Subject to the provisions of Article XIII, the Mortgagee or ground lessor shall become the Party following an Involuntary Transfer. Any reference herein to Residential Developer shall be deemed a reference to the Party (or Parties, as the case may be) as to any of the Residential Parcels, including without limitation Housing Partners as to the East Residential Parcel and the Condo LLC as to the West Residential Parcels during the period of its respective ownership. Any reference herein to Project Developer shall be deemed a reference to the Party (or Parties, as the case may be) as to the Retail Parcel.

"Permittees" shall mean, as to each Party, its respective Occupants, officers, directors, employees, agents, patrons, guests, customers, invitees, contractors, visitors, licensees, vendors, suppliers, tenants and concessionaires.

"Person" shall mean individuals, partnerships, firms, associations, corporations, limited liability companies, trusts and any other form of governmental or business entity, and the singular shall include the plural.

"Preliminary Notice" has the meaning set forth in Section 9.02(e)(1).

"Prime Rate" shall mean the Bank of America Reference rate as announced from time to time, or, if the Bank of America Reference Rate ceases to exist, the Prime Rate shall be the prime rate, reference rate or equivalent rate announced from time to time by the lending institution in the State of California having the largest dollar volume of deposits.

"Proceeds" shall mean the net amount of insurance proceeds received by any Person on account of damage to or destruction of the Project or any portion thereof, or 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 such Person in collecting said amounts (including reasonable attorneys' fees).

"Project" shall have the meaning set forth in Recital A.

"Project Developer" shall have the meaning set forth in the Preamble, as qualified in the definition of "Parties".

"Project Rules and Regulations" shall mean the rules and regulations attached hereto as Exhibit "D" governing the use and enjoyment by the Parties and their respective Permittees of the Project, as the same may be amended or supplemented from time to time by the unanimous written agreement of the Parties (but expressly excluding any individual residential

Owner or Occupant), such agreement not to be unreasonably withheld. The Project Rules and Regulations are intended to be administrative in nature, and any amendments thereto shall not materially modify the Parties' respective rights and obligations under this Declaration.

"Project Site" shall have the meaning set forth in Recital A.

"Property" shall mean the Project Site and airspace related thereto together with all Improvements thereon or therein, as applicable.

"Purchase Price" shall have the meaning set forth in Section 9.02(e)(1).

"REA" shall have the meaning set forth in Section 2.16.

"Ramps" shall have the meaning set forth in Section 2.01(b).

"Reconstruction Appraiser" shall have the meaning set forth in Section 9.02(d).

"Reference Parties" shall have the meaning set forth in Section 15.02.

"Remaining Owner" shall have the meaning set forth in Section 9.02(e).

"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, and/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 and related entities including the applicable Regional Water Quality Control Board, the State Water Resources Control Board and the Department of Toxic Substances Control; the City, the County of Alameda; the United States Environmental Protection Agency; and/or any other federal, state or local governmental agency or Governmental Authorities 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 Property. However, Remediation shall not mean dewatering activities on or under the Property including any removal, treatment and disposal of contaminants from groundwater required due to excavation, construction or development activities. All references to a Governmental Authority, agency or agencies shall mean and include any successor agency.

"Residential Developer" shall mean either the Owner of West Residential Parcels #1 and #2 or the Owner of the East Residential Parcel, as qualified in the definition of "Parties".

"Residential Easement Common Areas" means the areas with respect to which easements are granted pursuant to Sections 2.01(a), (b), (d) and (e) below, except for the Ramps.

“Residential Easement Area” shall mean each of the areas depicted on Exhibit “E” attached hereto, including, without limitation, elevator shafts, utility and equipment rooms, trash chutes and areas in which trash containers are located.

“Residential Parcels” means West Residential Parcel #1, West Residential Parcel #2, and the East Residential Parcel.

“Residential Parcels Cam Cost” shall have the meaning set forth in Section 6.05.

“Residential Parcel Exclusive Facilities” shall mean the Improvements located on the Retail Project but intended for the exclusive use of a Residential Parcel, including but not limited to trash areas dedicated for the use of a Residential Parcel, elevators and elevator shafts, fire exit stairs designated for the use of a Residential Parcel, Ramps, exclusive Utility Facilities, and Residential Tower Entrance Areas.

“Residential Parcels Exclusive Use Cost” shall have the meaning set forth in Section 6.05.

“Residential Parcels Shared Costs” shall have the meaning set forth in Section 6.05.

“Residential Parking Facility” shall mean the parking area for each Residential Parcel, each of which is located approximately as set forth on the Site Plan.

“Residential Stairways” shall mean those fire exit stairways from the Residential Parcels shown on Exhibit “E” and those stairways designed for access to the Residential Parking Facilities shown on Exhibit “E”.

“Residential Tower” shall have the meaning set forth in Recital C.

“Residential Tower Entrance Areas” shall have the meaning set forth in Section 2.01(c).

“Residential Units” shall have the meaning set forth in Recital C.

“Retail Equipment Area” shall mean the areas depicted on Exhibit “G” attached hereto.

“Retail Parcel” shall mean the land described on Exhibit “A-2” attached hereto.

“Retail Parking Facility” shall have the meaning set forth in Recital A.

“Retail Project” shall mean the Retail Structure and all Improvements constructed in connection therewith.

"Retail Shafts" shall mean the interior area of the shafts and ducts (whether intended for ventilation, exhaust, utility lines or other purposes) located in the Residential Parcels which serve the Retail Parcel as depicted on Exhibit "F" attached hereto.

"Retail Storefront Easement Areas" shall have the meaning set forth in Section 2.02(d) for the installation and maintenance of retail storefronts.

"Retail Signage Easement Areas" shall have the meaning set forth in Section 2.02(d) for the installation and maintenance of retail signage.

"Retail Structure" shall have the meaning set forth in Recital A.

"Risk Management Plan" shall have the meaning set forth in Section 5.12(a)(1).

"Signage Criteria" shall have the meaning set forth in Section 14.01.

"Site Plan" shall have the meaning set forth in Recital A.

"Taxes" shall mean, except as expressly limited below, all taxes, assessments, fees, impositions and charges imposed, levied or assessed upon or with respect to: (a) all 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 Parcel or Improvement or any personal property located thereon or therein; or (c) any Parcel or portion thereof or any Improvements or personal property located on or within any Parcel. 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 Property or any 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 Property or any Parcel 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 Property, 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 Property that are now or hereafter levied or assessed against the Property, 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 Parties as of the date of this Declaration, whether ordinary or extraordinary, foreseen or unforeseen. 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.

"Transfer" shall mean any voluntary transaction in which a Person (**"Transferor"**) shall sell, ground lease, transfer or assign, other than for security purposes, all or

substantially all of its interest in its Parcel together with all of its rights under this Declaration to a Person or Persons (“**Transferee**”). The transfer of any interest in any Party shall not constitute a Transfer. The execution and delivery of any space lease within the Retail Project shall not be deemed a Transfer by Project Developer. The execution and delivery of any apartment lease within the Residential Parcels shall not be deemed a Transfer by a Residential Developer. The sale of any Residential Unit shall not be deemed a Transfer by a Residential Developer. Any Involuntary Transfer shall not be deemed a Transfer. The execution and delivery of any management or operating agreement or lease with an operator of all or any portion of the Parking Facilities shall not be deemed a Transfer by the Owner of the Retail Parcel or the Owners of the Residential Parcels.

“**Unavoidable Delays**” shall mean delays due to acts of war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restriction; unusually severe weather; hidden conditions on the Property that are unknown to a Party as of the date hereof; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, supplier or lender; acts or the failure to act of any public or governmental agency or entity or any other causes (excluding financial difficulties) beyond the reasonable control and without the fault of a Party.

“**Unified Policy**” shall have the meaning set forth in Section 8.01(c).

“**Utility Facilities**” shall mean all utility and service lines and systems serving the Project or portions thereof, including sewers; ejector pumps; water pipes and systems; intake and exhaust vents; gas pipes and systems; sprinkler pipes and systems; drainage lines and systems; electrical power conduits, lines and wires; cable television lines; microwave communication systems; telephone conduits, lines and wires; security lines and systems; any utilities required for teleconferencing facilities; utility rooms; and other service or utility lines necessary or convenient to operate the Project as a First-Class Project; provided, however, that the meaning of such term shall not include (i) equipment or other facilities served by such utility and service lines and systems, and (ii) the Retail Shafts and the Retail Equipment Areas and any other shafts or areas serving functions for the benefit of the Retail Parcel similar to the functions served by the Retail Shafts and the Retail Equipment Area.

“**West Loading Zone**” shall mean the area depicted on Exhibit “H” as the Loading and Unloading Area, which comprises all of Brunswig Lane and the immediately adjacent sidewalk areas.

“**West Residential Developer**” shall mean the Owner of West Residential Parcels #1 and #2.

“**West Residential Parcel #1**” shall have the meaning set forth in Recital B.

“**West Residential Parcel #2**” shall have the meaning set forth in Recital B.

“**West Residential Parcels**” shall mean West Residential Parcel #1 and West Residential Parcel #2, collectively.

“West Residential Parcels Trash Area” is the area depicted on Exhibit “E” and is included in the term Residential Easement Areas.

“West Retail Structure” shall have the meaning set forth in Recital A.

ARTICLE II

EASEMENTS AND LICENSES

2.01 Residential Parcels Access Easements.

The easements described in subparagraphs (a), (b), (c), (d), (e) and (f) below are designated by use. Accordingly the easement areas depicted on related Exhibits identified in such subparagraphs may contain information that overlaps with easements granted in other subparagraphs.

(a) Pedestrian. Project Developer hereby grants to the Owner of the applicable dominant Residential Parcel a non-exclusive easement across, in, over and under any then-existing common areas of the Retail Parcel for pedestrian access (including handicap), ingress, egress, passage and accommodation. Project Developer may modify the common areas of the Retail Parcel, provided that any modification must provide commercially reasonable and adequate access to the Residential Parcels, Residential Easement Areas, Residential Parcel Exclusive Facilities and Ramps and comply with Legal Requirements, including without limitation applicable fire and life safety ordinances.

(b) Vehicular and Incidental Uses. Project Developer hereby grants to the Owner of the applicable dominant Residential Parcel a non-exclusive easement across, in, over and under any then-existing common areas of the Retail Parcel for vehicular access, ingress, egress, passage and accommodation. Subject to Article IV, Project Developer may modify the common areas of the Retail Parcel, provided that any modification must provide commercially reasonable and adequate access to the Residential Parcels, Residential Easement Areas, Residential Parcel Exclusive Facilities and Ramps and comply with Legal Requirements, including without limitation applicable fire and life safety ordinances.. Project Developer hereby also grants to the Owner of the applicable dominant Residential Parcel an exclusive easement across, in and over those certain ramps (“**Ramps**”) which exclusively service the Residential Parking Facilities as shown on Exhibit “I”. Project Developer grants to West Residential Developer the right to construct a deceleration and escape lane (“**Escape Lane**”) for the connection of the “Residential Parking Access Ramp” depicted on Exhibit I (page 1 of 4) for Building C to Shellmound Street; provided that West Residential Developer obtains all necessary approvals from the City to construct such Escape Lane, including any and all adjustments necessary to Shellmound Street and right of way and the adjacent landscaping improvements. Exact location of the Escape Lane is subject to Project Developer’s prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned. If the Escape Lane is approved and installed pursuant to this Section, the Escape Lane shall be deemed part of the exclusive Residential Parking Access Ramp.

(c) Residential Tower Entrance Areas. Project Developer hereby grants to the Owner of the applicable dominant Residential Parcel an exclusive easement as to the West Residential Parcels and exclusive and non-exclusive easements as to the East Residential Parcel within that portion of the Retail Parcel constituting the Residential Tower Entrance Areas (the "**Residential Tower Entrance Areas**") as depicted on Exhibit "J" attached hereto. The exclusive easements described in this subparagraph 2.01(c) are indicated in the shaded areas of Exhibit "J".

(d) Loading Zones. Project Developer hereby grants to the Owner of the applicable dominant Residential Parcel a non-exclusive easement across, in and over that portion of the Retail Parcel constituting the West Loading Zone and the East Loading Zone for the loading and unloading of vehicles, and, incidental thereto, pedestrian and light equipment (e.g., carts, lifts and dollies) use, subject to Project Developer's reasonable rules and regulations to ensure reasonable passage through Brunswig Lane.

(e) Residential Easement Areas. Project Developer hereby grants to the Owner of the applicable dominant Residential Parcel exclusive easements across, in, under and over that portion of the Retail Parcel constituting the Residential Easement Areas for the purpose of installing and operating those facilities depicted on Exhibit "E", including trash containers and chutes, utility and equipment rooms, and elevator shafts. Project Developer hereby also grants to the Owner of the applicable dominant Residential Parcel non-exclusive easements across, in, under and over the Retail Parcel as indicated on Exhibit "E" for ingress, egress, loading and unloading of trash disposal vehicles to and from the Residential Easement Areas.

(f) Permittees. Each Party may allow its respective Permittees to use the foregoing easements for the purposes and subject to the limitations set forth in this Declaration; provided, however, that the Retail Developer and its Permittees shall have no right to use any of the foregoing exclusive easements.

2.02 Utility, Equipment and Related Easements.

(a) Utility Easements. The Owner of each Parcel grants to the Owner of each other Parcel a non-exclusive easement upon, across, in, over and under such Burdened Parcel for ingress to, egress from, and the construction, installation, operation, inspection, maintenance, repair, removal, and replacement of, the Utility Facilities. The location of the Utility Facilities shall be as set forth on the Approved Plans. Each Party may allow its respective 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 Party may, subject to the provisions of Section 2.08, 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 Interest as provided for in the Approved Plans. Such Utility Facilities shall in all events be subject to the terms and conditions of Section 5.09. Following the initial construction of the applicable Residential Tower any construction of additional Utility Facilities or relocation of existing Utility Facilities on the Retail Parcel shall be subject to the provisions of Section 2.08 and shall require the prior written approval of Project Developer, which approval shall not be unreasonably withheld, delayed or conditioned. It shall be reasonable for Project Developer to withhold consent to any requested additional Utility

Facilities or relocation of existing Utility Facilities on the Retail Parcel which would (i) be a breach of or otherwise not be permitted under any lease in the Retail Structure, (ii) cause Project Developer to incur additional operating or maintenance costs or (iii) materially adversely affect the Retail Structure. Residential Developer shall be solely responsible for, and shall Indemnify Project Developer against, any Loss related to any permitted additional Utility Facilities or relocation of existing Utility Facilities on the Retail Parcel, including without limitation claims by retail tenants for reduction in rent or other damages. Project Developer shall have the right to construct additional Utility Facilities or relocate existing Utility Facilities on the Residential Parcels, subject to the provisions of Section 2.08 provided that (x) Project Developer is solely responsible for all costs related to the same, (y) there is no material adverse affect on the use of the existing Utility Facilities and (z) there is no suspension of utility service to any Owner or Occupant of the Residential Parcels; provided that, such Utility Facilities and any construction and maintenance work performed in connection with the Utility Facilities shall not be located or performed from within any Residential Unit, unless the Owner or Occupant of the affected Residential Unit agrees otherwise, in its sole discretion.

(b) Retail Shaft Easements. West Residential Developer hereby grant to the Owner of the Retail Parcel an exclusive easement within that portion of each Residential Parcel constituting the Retail Shafts for the purpose of ventilation, and a non-exclusive easement for the incidental purposes of installation, inspection, maintenance, repair, removal and replacement of any ventilation facilities located in the Retail Shafts; provided, however, that, after any part of a Residential Tower is initially occupied by Occupants, any such installation, maintenance, repair, removal or replacement shall be conducted from the Retail Parcel, from the roof of the Residential Tower or from within the Retail Shafts and shall not be conducted from within the Residential Tower, unless it is not commercially practicable to do so. If it is not commercially practicable to do so, then such work may be conducted from the common areas adjacent to the applicable Retail Shaft (and not from within any individual Residential Unit), so long as there is no material adverse effect to the structural integrity of the Residential Tower. Project Developer shall conduct such work in a commercially reasonable manner so as to minimize any disturbance to any Occupants of the Residential Towers. Residential Developer shall construct Retail Shaft boxes as part of the contemplated residential development in the approximate size and location shown on the Approved Plans. The Retail Shaft boxes shall have at least two (2) hour fire rated walls; provided that Project Developer may provide other reasonable specifications for such Retail Shaft boxes so long as (a) the specifications comply with Legal Requirements and (b) adequate lead time is provided so that the critical path of Residential Developer's construction schedule can be maintained.

(c) Retail Equipment Easements. Residential Developers hereby grant to the Owner of the Retail Parcel a non-exclusive easement upon, across, in and over the applicable Residential Parcel for ingress to and egress from the Retail Equipment Areas and in, on, over and across that portion of each Residential Parcel constituting the Retail Equipment Areas as depicted on Exhibit "G" for purposes of installation, operation, inspection, maintenance, repair, removal and replacement of heating, ventilation and air conditioning equipment.

(d) Retail Storefront Easement Areas and Retail Signage Easement Areas. In addition to the "Blade Signs" allowed under Section 14.01, Project Developer, Housing Partners and the Condo LLC hereby grant to the Owner of the Retail Parcel (i) non-exclusive easements

within the West Residential Parcels from the lowest boundary of the West Residential Parcels to the top of the Concrete Masonry Unit ("CMU") wall (approximately 42 inches from the top of the Retail Parcel) as shown on the Approved Plans and for any storefronts in existence as of the Effective Date (even if above the CMU wall) for the installation, operation, inspection, maintenance, repair, removal and replacement of storefronts (the "Retail Storefront Easement Areas") and (ii) exclusive easements over the exterior surfaces of all four sides of the Residential Parking Facility for the West Residential Parcels up to the top of the CMU wall for installing and maintaining signage in accordance with the Signage Criteria (the "Retail Signage Easement Areas"). Project Developer may also install signage in accordance with the Signage Criteria from the top of the CMU wall to the ceiling of the Residential Parking Facility for the West Residential Parcels; provided that, no such signage may cause or result in violation of any applicable health and safety ventilation requirements for the Residential Parking Facility, which is a naturally ventilated garage (including without limitation building codes in effect at the time such sign is installed). If any storefront is lower in height than the CMU wall, then Project Developer shall repair and restore the exterior of the affected Residential Parcels. All access to the Retail Storefront Easement Areas and the Retail Signage Easement Areas shall be from the exterior of the West Residential Parcels and from the West Residential Parking Facility. The Owner of the Retail Parcel shall be responsible for all maintenance and repair of the Retail Storefront Easement Areas and Retail Signage Easement Areas pursuant to the standards of Section 2.08, including but not limited to any necessary repairs to the exterior finish (including waterproofing) to return the area to the condition prior to initiating any work in the Retail Storefront Easement Areas or Retail Signage Easement Areas. For the purposes of installation, maintenance, repair and replacement of the storefronts and signage, the Owner of the Retail Parcel is also granted a non-exclusive right of access within a reasonable area around the Retail Storefront Easement Areas and Retail Signage Easement Areas for the purposes of effective construction, subject to the standards of Section 2.08.

2.03 Residential Developer Construction Easements.

Project Developer hereby grants to the Owner of the applicable dominant Residential Parcel a non-exclusive easement upon, across, in, over and under the Retail Parcel for the following purposes: (i) installation and construction of the Residential Towers performed pursuant to this Declaration, (ii) ingress, egress and access to perform such work, and (iii) without limitation of parts (i) and (ii) of this sentence, for the purposes set forth in clauses (a) through (d) below.

(a) the installation and construction of separate or common footings, girders, columns, braces, and other standard support elements for the purpose of supporting the Residential Towers as may be necessary for the structural integrity and enclosure of the Residential Towers and any replacement, substitution or modification thereof as permitted by this Declaration; provided that the manner of attachment and construction shall be designed in accordance with good construction practice in the manner customary for such improvements and so as not to impose any load on Project Developer's buildings in excess of the loads that are permitted for construction in accordance with the Approved Plans;

(b) subject to the limitations in this Declaration with respect to signage, the installation and construction of canopies, roof and building overhangs, roof flashings, wing

walls, awnings, alarm bells, signs, lights and lighting devices and other similar appurtenances on the Residential Parcel, subject to Project Developer's prior written approval of any canopies, overhangs or other improvements which protrude from the exterior of the Improvements on the Residential Parcels, which approval shall not be unreasonably withheld, delayed or conditioned;

(c) the construction of the Residential Tower Entrance Areas, provided, that Project Developer shall have the exclusive right to use each Residential Tower Entrance Area prior to the commencement of construction thereon by a Residential Developer; and

(d) the construction of tunnels, bridges or skywalks in connection with the easements granted pursuant to Sections 2.01(a) above.

The precise locations (and any other detail relating to such items which is reasonably required by a Residential Developer) of the items described in subparagraphs (a), (b), (c) and (d) above shall be approved by Project Developer and be consistent with the Master Plan; provided that Project Developer shall not unreasonably withhold, condition or delay such approval. Notwithstanding the foregoing, any location of the items described in subparagraphs (a), (b), (c) and (d) which are shown on the Approved Plans are hereby approved by Project Developer.

Use by a Residential Developer of the easements granted under this Section 2.03 shall be subject to the provisions of Article IV below.

2.04 Construction License.

The Owner of each Parcel hereby grants to the Owner of each other Parcel a temporary license to enter onto portions of such other Parcels, except Residential Units, in order to construct, alter, add to, remodel, demolish, expand, repair, restore and reconstruct or maintain Improvements on the Benefited Interest. Each Benefited Party may allow its respective Permittees to use the foregoing license for the purposes and subject to the limitations contained in this Declaration. Such license shall permit such activities as are reasonably necessary to achieve the purposes for which such license is granted, including the location of construction equipment and materials, erection of protective barricades, scaffolding and fencing, and access for construction vehicles and trailers and personnel in parking areas as may be required from time to time. The Party who is exercising the license granted under this Section 2.04 shall do all things reasonably necessary and proper 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 license in a safe and clean condition and shall also comply with all Legal Requirements in exercising such license.

2.05 Support Easement.

(a) Project Developer hereby grants to the Owner of the applicable dominant Residential Parcel a non-exclusive easement in all structural support elements located on the Retail Parcel necessary for adjacent, lateral, subjacent and general support of the Residential Towers and related Improvements wherever located on the Property.

(b) Project Developer hereby grants to the Owner of the applicable dominant Residential Parcel a non-exclusive easement to reconstruct or restore such supports. Such

easement shall be used only in the event Project Developer is obligated to reconstruct or restore any such supports, but fails to do so within the notice and cure periods set forth in Section 11.03.

2.06 General Integration, Maintenance and Development Easements.

The Owner of each Parcel hereby grants to the Owner of each other Parcel non-exclusive easements over the Burdened Parcels at any level above or below the ground to the extent to which such easements may be required to comply with any applicable Legal Requirement with respect to ingress or egress or with respect to separation walls in the event of fire or other emergency; provided, however, that the location of any such additional easements shall be as set forth on the Approved Plans; and provided, further, that with respect to any such additional easements, this Section 2.06 is not intended to relieve any Benefited Party of the obligation to comply with the specific requirements of and specific protections provided for in the other Sections of this Article II applicable to similar easements. The Benefited Party shall pay all costs relating to the Improvements installed pursuant to such easements.

2.07 Antenna and Telecommunication Equipment Easements.

Subject to the limitations stated in Section 5.06, the Owner of each Parcel hereby grants to the Owner of each other Parcel easements over the Burdened Parcel for the construction, maintenance, repair, replacement and/or removal, at the Benefited Party's sole cost and expense, of such antennas, satellite dishes and other telecommunication equipment as may be reasonably necessary or required for the benefit of the Benefited Party's Parcel (but excluding antennas and telecommunication equipment installed by third parties pursuant to a lease or license executed by the Benefited Party). The locations of said easements shall be as reasonably agreed to by the Parties.

2.08 Performance of Work.

In addition to the Construction Work obligations set forth in Section 4.01, a Party or its Permittees 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 Party and its 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); (d) do all things reasonably necessary and proper 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; (e) upon completion of such work, replace and restore the Burdened Interest and all Improvements thereon (and any other portion of the Property which may have been damaged by or in conjunction with such work) to their condition prior to the performance of such work; and (f) comply with the Work Rules set forth in Exhibit "K", attached hereto. The Benefited Party of any easement and/or license herein shall Indemnify the

Burdened Party under such easement or license with respect to any matters arising from, relating to or as a result of the exercise of such easement or license by such Benefited Party. Notwithstanding anything to the contrary contained in this Declaration, the easements and licenses described in Sections 2.02, 2.03, 2.04, and 2.07 may be used only if the Burdened Party is given at least ten (10) days' prior written notice as to the nature and location of any work to be performed pursuant to such easements and licenses; provided that in the case of Emergency, 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. The Benefited Party 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 Parties will cooperate in good faith in exercising and consenting to the use of easements and licenses under this Declaration.

2.09 Intentionally omitted.

2.10 Parties Not Liable.

Nothing contained in this Article II shall obligate a Party hereto to cause any Party (other than itself) to honor or respect any easement or right provided for in this Article, or to enforce, by legal action or otherwise, the provisions of this Article II as against any Party, and none of the Parties shall incur any liability whatsoever for its failure to do so.

2.11 No Public Dedications.

Nothing contained in this Declaration shall be deemed a dedication of any portion of the Property to the general public or for any public use or purpose.

2.12 Nature of Easements.

All easements created by or pursuant to this Declaration shall be appurtenant easements and not easements in gross.

2.13 No Waste.

Each Party covenants to the other that it shall not commit any waste or damage to, or impairment of the value of any other Party's Parcel in the exercise and use of the easements created in this Article II or otherwise. Use of the easements created in this Article II for the purpose for which such easements are intended, in itself, shall not constitute waste, damage or an impairment of value.

2.14 Relocation of Easements.

To the extent not expressly specified elsewhere in this Declaration (as, for instance, with Utility Easements in Section 2.02(a), the Burdened Party shall have the right to relocate any or all of the easements granted pursuant to this Article II upon at least thirty (30) days' prior notice to the Benefited Party. Approval of the Benefited Party shall not be required so long as the Burdened Party bears all costs and expenses related to the relocation and there is

no suspension of utility services or other material adverse effect to the Benefited Party. Where approval of the Benefited Party is required, the Benefited Party shall not unreasonably withhold, delay or condition such approval. Any disapproval shall contain corrective alternatives acceptable to the Benefited Party describing the nature of the objection and a reasonably explicit narrative or illustrative suggestion of what would be acceptable. Without limitation, it shall be reasonable for the Benefited Party to withhold approval if such relocation of an easement is likely to materially and adversely affect the use of such easement by the Benefited Party or its Permittees. Without limitation, it shall be reasonable for the Benefited Party to condition such approval upon the agreement by the Burdened Party to pay to the Benefited Party, or its Permittees as the case may be, any material cost increase incurred by the Benefited Party or its Permittees as a result of such relocation of an easement.

2.15 No Parking Easements.

In no way limiting any other provision of this Declaration, for purposes of clarity only, there shall be no easement for the benefit of the Retail Parcel for the purpose of parking in any of the Residential Parking Facilities and no easement for the benefit of the Residential Parcels for the purpose of parking in the Retail Parking Facility. Notwithstanding the preceding sentence, all Permittees of a Residential Developer shall have the same right as members of the public to use the Retail Parking Facility on a transient basis, subject to the Parking Facilities Rules and Regulations. The Permittees of the Residential Developers shall also be entitled to use any portion of the Retail Parking Facility that is made available by Project Developer for overnight parking at the same rate charged by Project Developer to other, non-validated parkers. In the event Project Developer does not otherwise provide overnight parking, Project Developer shall permit overnight parking in at least two hundred (200) stalls in the Building E portion of the Retail Parking Facility at the request of either Residential Developer, provided that Project Developer shall be allowed to charge the Permittees of the Residential Developers a reasonable rate for such overnight parking.

2.16 Amendment and Restatement of Existing REA.

Notwithstanding any term or provision contained in either that certain Declaration of Reciprocal Easements recorded on September 25, 2002 in Series 2002-429895, Official Records of Alameda County (the "REA") or the Bay Street Emeryville Declaration of Covenants, Conditions, Restrictions and Easements and Amendment of Reciprocal Easements recorded on October 15, 2002, Official Records of Alameda County in Series 2002-4655643 (the "Amended REA"), which superceded and terminated the REA in its entirety, to the contrary, this Declaration supercedes the Amended REA by terminating it in its entirety as to the Parcels constituting the Project Site and, as of the Effective Date, the Amended REA shall be of no further force or effect with respect thereto. From and after the Effective Date, this Declaration shall govern the rights of the Residential Developers, if any, in those certain private easements identified on Parcel Map No. 7661, recorded in Book 267, Pages 1 through 20 in the Official Records of Alameda County (and amended by the Certificate of Correction recorded on July 8 2004 as Series No. 2004-236575), as the "Private Ingress-Egress Easement", "Private Storm Drain Easement", "Private Sanitary Sewer Easement", "A Private Street", "Christie Avenue", "Bay Street", and "Entry Street To Be Named Subject To Memorialization Process." Any approvals or consents granted, or agreements or other understandings reached, pursuant to or in

connection with the Amended REA shall continue in full force and effect and, except in the case of a direct conflict with this Declaration, shall be deemed to apply to this Declaration as if they had been granted or reached pursuant to or in connection with this Declaration. Any rights, claims or causes of action arising under or in connection with the Amended REA shall survive the termination of the Amended REA.

2.17 Existing Retail Leases.

Notwithstanding anything contained elsewhere in this Declaration to the contrary, the Residential Developers shall not use the easements granted pursuant to this Article II in a manner prohibited under any retail lease for any of the West Retail Stores or East Retail Stores in effect as of the Effective Date.

2.18 No Light, Air or View Easement.

There shall be no light, air or view easement granted in favor of any Owner or Occupant of the Project. It is expressly acknowledged and agreed that Project Developer anticipates constructing a major multi-use project, which may include high-rise buildings, on the tract immediately to the north of the Property.

ARTICLE III

PROJECT CONSTRUCTION

3.01 Residential Developer Construction.

Each Residential Developer shall have the right, but not the obligation, to construct the Residential Tower located on its Parcel(s). The Condo LLC shall construct the Residential Parking Facilities to be located above the West Retail Structure. Housing Partners shall construct the Residential Parking Facility to be located above the East Retail Structure. Any such construction shall comply with the provisions of this Agreement.

ARTICLE IV

CONSTRUCTION WORK AT THE PROJECT

4.01 Construction Work Generally.

Notwithstanding any other provision of this Declaration to the contrary, all Construction Work undertaken by any Person upon any part of the Property shall be performed pursuant to this Article IV (and any construction license pursuant to Section 2.04 shall be exercised): (a) except as otherwise provided by this Declaration, at the sole expense of the Party 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 Parcel or any Improvements located thereon by any Party or its Permittees (without incurring premium or overtime rates for work); (c) in a good and workmanlike manner using new materials; (d) in conformity with the DDA, the

Master Plan, the Approved Plans, this Declaration and all Legal Requirements; (e) in a manner so that all safety measures reasonably required to protect the Parties and their respective 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 Party, impose any material additional obligations upon any Party or unreasonably interfere with any construction performed by any Party or its Permittees, (g) as to Persons who are agents, consultants or contractors of a Party, only with the agreement by that Party 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 each Parcel and so as not to cause any unreasonable obstruction on any Parcel through the placement or operation of any equipment, construction materials, debris or loose dirt related to such work. The Person performing any Construction Work must obtain approval of any material modifications to the Approved Plans, and the approving Person must respond to requests for modification in a commercially reasonable and timely manner. The Person performing any Construction Work shall provide and keep in force comprehensive general liability insurance with respect to such work as provided for in Article VIII, naming each Party and the Parties as additional insureds, 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 Party causing such Construction Work shall Indemnify the other Parties with respect to such work or any entry related thereto. No Party shall permit any mechanics' liens or materialmen's liens, stop notices or other liens to stand against any other Party's Parcel for labor, material or services furnished to or on behalf of such Party; provided, however, that each Party 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 Party either furnishes security reasonably acceptable to the other Parties 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. Any work on the Residential Parcels shall be performed in accordance with the Work Rules (including the limitation of staging areas). Notwithstanding anything to the contrary set forth in this Declaration (including but not limited to the aforesaid provisions of this Section 4.01), Construction Work on the Retail Parcel conducted prior to October 10, 2002 shall not be subject to the terms and conditions of this Declaration.

4.02 Major Construction Work.

Prior to undertaking any Major Construction Work other than the initial construction of Improvements pursuant to the Approved Plans, the Party desiring to undertake such work (the "**Constructing Party**") shall obtain the consent of all Interested Parties to such Party's plans and specifications for such Major Construction Work. The Interested Parties shall have ninety (90) days after receipt of such plans and specifications to deliver their written disapproval or approval to the Constructing Party. Failure to respond within such ninety (90) day period shall be deemed approval. Any written disapproval shall contain corrective alternatives acceptable to such Interested Party describing the nature of the objection and a reasonably explicit narrative or illustrative suggestion of what would be acceptable. Constructing Party shall make such changes or additions as are reasonably required to satisfy the objections raised by the Interested Parties and shall resubmit the affected plans and specifications

to such Interested Parties. Any disputes with respect to this Section 4.02 shall be submitted to arbitration in accordance with Article XV. Any Major Construction Work shall be constructed in accordance with the plans and specifications approved by all Interested Parties. A Party's disapproval of any Major Construction work that has a material, adverse impact on such Party's Parcel shall be deemed reasonable.

4.03 Permits.

The Person undertaking any Construction Work shall secure and keep in force, at its expense, all licenses and permits necessary for such work and shall complete all Construction Work in accordance with all requirements of any necessary permits, including requisite construction permits, temporary and permanent certificates of occupancy, board of fire underwriter certificates and certificates of plumbing and electrical inspections. Without limitation on the foregoing, each Residential Developer shall be responsible for obtaining at its sole cost and expense all Department of Real Estate of the State of California approvals, condominium map processing and building permits necessary for the construction of the Residential Units, as applicable.

4.04 Fencing Off Construction.

Unless otherwise agreed in writing by the Parties, the Person undertaking any Construction Work shall, at its sole cost and expense, fence off or cause to be fenced off any Construction Work performed by such Person on any Parcel. Fencing shall be of such a material and of such a height reasonably necessary to protect existing Improvements in the Property from debris and other inconveniences occasioned by such Construction Work and to protect the Parties and their respective Permittees from safety hazards resulting from such Construction Work. Except as permitted by this Declaration, no signs or advertising materials shall be placed upon any fence without the prior written approval of the other Parties, except for warning and safety signs and advertising for any tenants of the Retail Parcels and sales and leasing of Residential Units located on the Residential Parcels.

4.05 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, dust-minimizing method permitted under Legal Requirements. The Party on whose behalf such Construction Work is being performed shall be responsible at its sole cost and expense for keeping the other Party's Improvements and the streets and sidewalks in and around the Project (or causing the same to be kept) clean and free of dust and mud caused by such Construction Work on a daily basis.

4.06 Orderly Site.

The Parcels shall be kept in a neat and orderly condition during construction periods; however, normal construction activities and parking in connection with Construction Work on a Parcel shall not be considered a nuisance or otherwise prohibited by this Declaration.

Trash and debris shall not be permitted to accumulate on any Parcel. The Parties may store construction equipment and building materials only in areas established by this Declaration or otherwise approved by the Parties, who may require screening of the construction areas.

4.07 No Walls, Fences or Barriers.

Except as permitted by this Declaration, no permanent walls, fences or other barriers which materially and adversely interfere with the easements granted pursuant to this Declaration shall be constructed or erected in the Property .

4.08 Utility Connections.

All Utility Facilities erected, placed or maintained anywhere in or upon the Property shall be contained in conduits or cables installed and maintained underground or concealed in, under or on the Property unless an alternative location for such Utility Facilities, wires or devices shall have been approved pursuant to the provisions of Article II. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to Construction Work with respect to which plans shall have been approved pursuant to this Article. No Person shall interrupt any utilities if such interruption would interfere with the orderly development and operation of the business conducted by any Party or Permittee on the Property. If utility interruption is necessary as part of the Construction Work or for required repairs and maintenance, then the Person causing the interruption must give the affected Parties and Permittees not less than fifteen (15) business days' prior written notice of the work to be undertaken (except in the event of Emergency, in which event Section 4.09 shall apply), the scope, nature and extent of the work, the duration of the work, and the area in which the work is to be performed. All such work shall be carried on at such times and in such a manner as would minimize or prevent the disruption of the orderly development and operation of any business conducted on such affected Party's Parcel and the Person performing such work shall bear the cost of any overtime or other additional expense incurred.

4.09 Emergency Work.

Notwithstanding any other requirement for notice contained in Article II or this Article IV, in the event of an Emergency, a Party or Permittee may undertake any Construction Work reasonably necessary to remedy such Emergency, provided that such Party or Permittee acts in good faith, gives notice thereof to any affected Parties upon the occurrence of the Emergency or as soon thereafter as reasonably practicable, and otherwise conforms, to the extent practicable, to the applicable provisions of this Article.

4.10 Indemnity.

As to Construction Work or materials ordered or contracted for by or on behalf of each Party or its agents, such Party covenants to Indemnify the other Parties and the Parcels of the other Parties from (i) claims of lien of laborers, materialmen and others arising from such Construction Work performed or supplies furnished pursuant to such order or contract and (ii) 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 Party.

ARTICLE V

USES AND OPERATION OF THE PROJECT

5.01 Permitted Uses of Retail Project.

(a) Retail Project. The Retail Project shall be occupied, used and/or leased for retail merchandising, restaurant use and/or office use and all uses incidental (including parking) to the foregoing or any other lawful use, other than any of the following uses:

List of Prohibited Uses:

1. Any unusual fire, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks).
2. Any warehouse operation (except that storage which is merely incidental to a retail operation, and an operation engaged in the retail sale of merchandise to the general public or to its members, but utilizing a "rack style" or "wholesale" concept of merchandising, shall not constitute a warehouse for this purpose).
3. Any distilling, refining, smelting, industrial, agricultural, drilling or mining operation, or assembling or manufacturing operation, except to the extent that such assembling or manufacturing is merely incidental to a retail operation (*e.g.*, for jewelry, so-called "high-tech" products and similar-type items).
4. Any mobile home park or trailer court (except that this provision shall not prohibit the temporary use of construction trailers during the initial construction of the Improvements).
5. Any lot for the sale of new or used motor vehicles, or any automobile, truck, trailer or R.V. sales, leasing, display or repair, provided that this restriction shall not be deemed to preclude the display for promotional purposes (*e.g.*, as part of a raffle) and/or sale of new automobiles as customarily found in retail projects similar in size, function and character to the Project, provided that any such display is conducted within the interior of a particular tenant's/Occupant's space or in the Common Areas (other than public roadways and parking areas) and involves the display of no more than five (5) vehicles in the aggregate.
6. Any junk yard, stockyard or animal raising operation (other than pet shops).
7. Any dumping, disposal, incineration or reduction of garbage or refuse (exclusive of appropriately screened dumpsters), other than handling or reducing such waste if produced on the premises from authorized uses and if handled in a reasonably clean and sanitary manner.

8. Any commercial laundry or central laundry or dry cleaning plant (but this shall not be deemed to prohibit nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer), laundromat, veterinary hospital, animal raising facilities, car washing establishment, mortuary or funeral home

9. Any medical or dental clinics in excess of 1,000 square feet of floor area in the aggregate.

10. Any bar, tavern, lounge, nightclub, discotheque, or similar business, unless operated as an incidental part of a restaurant operated primarily for on-premises consumption, or as an incidental part of a retail use. This restriction shall not be deemed to preclude the operation within the Project of a so-called "brewpub" so long as any operation also sells food for on-premises consumption, nor to preclude live music and other forms of entertainment commonly associated with the operation of a so-called "night club" or "discotheque" as an entertainment operation incidental to an otherwise permitted restaurant.

11. Any massage parlor, topless club, "strip joint," "adult" bookstore or adult video store or other business primarily catering to pornographic interests, or selling or exhibiting drug-related paraphernalia. The sale or rental of so-called "adult" materials shall not violate this restriction as long as the same is conducted in compliance with all applicable laws and is only an incidental use with no sign, advertisement or display in any storefront window or otherwise in locations visible from the outside, and provided, further, that this restriction shall not preclude a bookstore from offering so-called "adult-reading" materials as an incidental part of its general bookstore operation.

12. Any bowling alley or permanent roller skating rink.

13. Any living quarters, sleeping apartments or lodging rooms.

14. Any training or educational facility, including, but not limited to, beauty schools, barber colleges, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to (a) on-site employee training by an Occupant incidental to the conduct of its business at the Project, nor to the incidental use of a building for such purposes; (b) a tenant or other operator offering to the general public, as an incidental part of its primary retail use, activities such as book readings, computer-training sessions and other similar educational-type activities, (c) specialized educational classes conducted in a first-class manner, so long as any such operator offering specialized classes does not occupy more than 10,000 square feet of floor area and, in any event, it can be demonstrated that such operation will not impose an undue burden on parking within the Project, and (d) health clubs (health clubs are subject to the provisions of clause 18 below, however).

15. Any flea market, shooting gallery, swap shop, liquidation outlet, consignment store, "second hand" store, "surplus" store, or store that primarily sells used or damaged merchandise, but antique stores shall be permitted.

16. Any fire, auction or bankruptcy sales (unless pursuant to a court order).

17. Any arcade or pin-ball machine business, provided that it is permissible for an otherwise permitted restaurant, theater or retail operator to have a reasonable number of video games for the use of its patrons, but only as an incidental part of its overall business operation.

18. Any health club, spa or gymnasium, provided that this restriction shall not be deemed to preclude (a) the type of business that has come to be known as a "day spa" (e.g., Ulta 3 and substantially similar operators offering manicures, facials and other similar body treatments) or (b) an executive health club, provided that no such executive health club shall be in excess of 10,000 square feet of floor area.

19. Any auto parts store or gas or service station (provided that this restriction shall not preclude the sale of auto parts as an incidental part of the overall operations of another permitted retail operator).

20. Any church, temple, synagogue or other place of worship.

21. Any auditorium, meeting hall or other place of public assembly.

22. Any gambling facility or operation, including, but not limited to, off-track or sports betting parlor, table games such as black-jack or poker, slot machines, video poker/black-jack/keno machines or similar devices, or bingo parlor.

23. Any use which is a public or private nuisance.

24. Any signage in violation of the Signage Criteria attached as Exhibit "M".

(b) Retail Parking Facility. The Retail Parking Facility shall be used solely for the operation and maintenance of a public parking facility with spaces for not less than the number of automobiles required by applicable Legal Requirements and uses incidental thereto, including (i) management and rental office; (ii) storage of maintenance supplies and equipment, (iii) car washing, (iv) valet parking service; and (v) leasing of advertising signage. Project Developer shall have the right to change the use and/or configuration of the Retail Parking Structure, provided that the Retail Parcel will thereafter continue to comply with all Legal Requirements in connection with the number and type of parking stalls. Except as otherwise provided for herein, Occupants of the Residential Parcels shall have no right to use the Retail Parking Facility greater than that of the general public.

5.02 Permitted Uses of Residential Parcels.

(a) Residential Parcels. The Residential Parcels shall be used only for Residential Units, related parking and uses incidental thereto, including, without limitation, meeting and private entertainment facilities, private recreation facilities, property management offices and maintenance facilities, and shall in no event be used for any commercial, retail or hotel purpose (except for home business use to the extent permitted by Legal Requirements), including without limitation any commercial signage. There shall be no obligation whatsoever to

lease (or sell) any Residential Units, or operate or cause Occupants to occupy all or any portion of the Improvements on the Residential Parcels.

(b) Residential Parking Facilities. The Residential Parking Facilities shall be used solely for the operation and maintenance of private parking facilities for the exclusive use and benefit of the Residential Parcels (and any Persons designated by each Residential Developer) and shall contain spaces for not less than the number of automobiles required by applicable Legal Requirements and uses incidental thereto, including, without limitation, (i) management and rental office; (ii) storage of maintenance supplies and equipment; and (iii) valet parking service.

5.03 Compliance With Legal and Insurance Requirements; Right to Contest.

(a) Compliance With Laws and Insurance Requirements. Each Party shall cause all Improvements on its Parcel (other than those parts of such Improvements which are the subject of an exclusive easement appurtenant to another Parcel) and all activities thereon (other than the activities of another Party or the Permittees of another Party) to comply with all Legal Requirements. Nothing shall be done or permitted in or about the Project, nor anything brought or kept therein, 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. In the event that it is conclusively established that a change in any use or activity by any Party shall have led to an increase in premiums for any insurance policy maintained by any other Party pursuant to Article VIII, then the Party causing or permitting such change in use or activity shall reimburse the Party affected by such increase in premiums in the amount of such increase as such premiums become payable.

(b) Proposition 65 Notices. Without limiting the generality of the requirements in Section 5.03(a) above or Section 5.13 below, each Party hereby agrees that it shall post (or shall cause the Owner of the Parcel in which it has an interest to post) on its Parcel all notices required to be posted by the State of California Proposition 65, passed in November, 1987, and all laws, statutes, rules, regulations promulgated thereunder (collectively, the "**Environmental Disclosure Laws**") with respect to the presence or use of Hazardous Substances within its Parcel, notwithstanding that any such Party may, in its capacity as a Governmental Authority, be exempt from Environmental Disclosure Laws. The Parties acknowledge that the foregoing agreement to post such notices is solely for the benefit of the Parties hereto and shall not be deemed an assumption by any such Party of responsibility, obligation or liability of any kind, to the other Parties or to any third parties, under such Environmental Disclosure Laws.

(c) Right to Contest. Notwithstanding the foregoing, any Party 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 non-contesting Parties and each Permittee shall cooperate and participate, at the sole cost and expense of the contesting Party, in such proceedings, provided that:

(1) such deferral of compliance shall not create a dangerous condition, or constitute a crime or an offense punishable by fine or imprisonment, or subject any Party or Occupant to any civil or criminal penalty or liability, or risk of divestiture of title, or any hindrance or interruption of the conduct of business by any Party or Permittee in any portion of the Property other than the contesting Party's business, or subject any other Parcel or the Improvements thereon to being condemned, vacated or damaged by reason of such contest or deferral of compliance, or create a lien on any portion of any other Parcel or the Improvements thereon unless adequate security reasonably acceptable to all non-contesting Parties shall have been provided by the contesting Party to secure removal of such lien;

(2) the contesting Party shall Indemnify the other Parties and their respective Permittees with respect to such contest and any noncompliance with such Legal Requirement; and

(3) the contesting Party shall keep the other Parties regularly advised in writing of the status of such proceedings.

5.04 Diseases and Insects.

No Party shall permit upon its Parcel or Improvements owned by 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 Improvements and landscaping on its Parcel as may be occasioned by the presence of wood-destroying pests or organisms, infectious plant diseases or noxious insects. The Benefited Party of an exclusive easement shall be considered the "Owner" of such exclusive easement area for purposes of this Section 5.04.

5.05 Repair of Improvements.

No Party shall permit any Improvement owned by it to fall into disrepair, including deterioration in exterior appearance. Subject to casualty and condemnation (which are dealt with in Articles IX and X) and subject to the other terms and conditions of this Declaration (including but not limited to Sections 5.01, 5.02 and 6.01), each Party shall maintain all Improvements owned by it in good condition and repair at all times in a manner consistent with maintaining the Project as a First-Class Project. Notwithstanding the foregoing, each Party shall have the right to demolish all or any portion of its Improvements, provided that the ingress and egress easements granted pursuant to Section 2.01 and the support easement granted pursuant to Section 2.05 are not materially and adversely affected thereby (subject to the relocation rights set forth in Section 2.16). The Benefited Party of an exclusive easement shall be considered the "Owner" of such exclusive easement area for purposes of this Section 5.05.

5.06 Antennas.

All antennas and other devices for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, satellite dishes and other telecommunication equipment erected, used or maintained outdoors on any Parcel, shall comply in all respects with Legal Requirements, as the same may be amended from time to time. Except for antennas intended solely to serve their Residential Parcels, the Residential Developers shall

have no right to place antennas on the Residential Parcels. The Residential Developers shall have no right to place antennas on the Retail Project. Project Developer shall use reasonable efforts to locate on the Retail Project any antennas and other transmission or reception devices so as to minimize material adverse effects on views by Occupants of the Residential Parcels. Project Developer shall not install antennas or other transmission or reception devices intended to serve the Occupants of the Residential Parcels.

5.07 Trash Containers and Collection.

All rubbish, trash, or garbage shall be removed by each Party from all Improvements owned by such Party and shall not be allowed to accumulate on any Parcel. All trash areas, rooms, bins and receptacles shall be maintained by the Party using such trash areas, rooms, bins and receptacles in a clean and sanitary manner. No outdoor incinerators shall be kept or maintained on any Parcel.

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

(a) The Property is comprised of seven (7) legally subdivided parcels. All further subdivisions, reconfigurations and lot line adjustments affecting any portion of the Property shall be accomplished in accordance with Legal Requirements. Without limiting the generality of the foregoing, Project Developer acknowledges that the Residential Developers may sell some or all of the Residential Units as condominiums, and hereby consents to the subdivision or mapping of the Residential Parcels to accommodate such condominiums. Nothing in this Section shall release any Party of its obligation arising under any other agreement to obtain the consent of such Party's Mortgagee having a lien on its property affected by any subdivision, reconfiguration, or lot line adjustments.

(b) No rezoning of any Parcel, and no variances or use permits, shall be obtained from any Governmental Authority unless the proposed use of the Parcel complies with this Declaration. Notwithstanding the foregoing, Project Developer shall be permitted to rezone or obtain conditional use permits and variances for portions of the Property owned by it in order to increase (subject to Section 5.01) permitted uses and densities, to permit construction of Improvements across Parcel lines or boundaries, or to decrease or eliminate any such uses and densities. Nothing in this Section 5.08(b) shall diminish or negate any requirement of Project Developer to obtain approval or consent of the City under the DDA, if applicable.

5.09 Utility Facilities.

All Utility Facilities shall comply with Section 4.08. All utilities serving a single Parcel shall be separately metered to the Owner of such Parcel. In the event any utilities serving any Residential Parcel are jointly metered with other utilities serving the Retail Parcel (including the Retail Parking Facility), the applicable utility costs shall be allocated among the respective Owners by the Owner of the applicable Retail Parcel, with such allocation based on submetering or other reasonable method of determination (and with any disputes regarding such allocation or methodology being resolved pursuant to Article XV).

5.10 No Interference.

Subject to the other provisions of this Declaration, no Person shall keep or maintain anything or shall permit any condition to exist upon the Property or cause any other condition on the Property that materially impairs or materially interferes with any easement or right of any Party or Permittee or that otherwise materially impairs or materially interferes with the use and enjoyment by any Party or its Permittees of its Improvements. Nothing in this Section 5.10 shall be construed to prohibit or restrict the operation of a First-Class Project on the Property. The materially standard as used in this Section 5.10 shall be consistent with the express acknowledgement and agreement that (a) the Project is currently under construction with future construction planned, (b) the Project is and will be located in an urban, vibrant area with higher density and noise levels than suburban housing projects and (c) Project Developer anticipates constructing a major multi-use project, which may include high-rise buildings, on the tract immediately to the north of the Property.

5.11 Storage and Loading Areas.

(a) Storage. No materials, supplies or equipment shall be stored in any area on any Parcel except inside a closed building or behind a visual barrier screening such areas from the view of adjoining portions of the Property and adjoining public streets.

(b) Residential Deliveries. Each Residential Developer shall cause its Permittees to make all deliveries (i) through its Residential Parking Facility, or (ii) to or from (x) the West Residential Parcels through the West Loading Zone or (y) the East Residential Parcel through the East Loading Zone. Use of all loading bays shall be scheduled by Project Developer. Any residential deliveries shall comply with Legal Requirements, including without limitation applicable ordinances controlling noise.

(c) Retail Deliveries. Project Developer shall cause its Permittees to make all deliveries to or from the East Retail Structure through the East Loading Zone and to or from the West Retail Structure from the West Loading Zone, as well as on Bay Street, subject to Project Developer's reasonable rules and regulations to protect against material adverse effects on the Residential Parcels arising from extended parking to effect deliveries. Any retail deliveries shall comply with Legal Requirements, including without limitation applicable ordinances controlling noise.

5.12 Environmental Hazards.

(a) Past Environmental Hazards

(1) Site Remediation. The Parties acknowledge that the Property was subject to an environmental remediation program which was certified as complete by the Department of Toxic Substances Control ("DTSC") on June 8, 2001 ("Completed Remediation") and on-going monitoring responsibilities as described in the Risk Management Plan, South Bayfront Project Area, Emeryville, California, prepared by Erler & Kalinowski, Inc. dated July 12, 2000 ("**Risk Management Plan**"). Except for compliance with the CRUP and Risk Management Plan relating to future uses of the Property by the Residential Developers and their respective Permittees, the Parties acknowledge that the Residential Developers and their

respective Permittees shall not be responsible for any of the liabilities, duties, obligations or costs associated with the Completed Remediation or the Risk Management Plan and that Project Developer shall be responsible for and shall perform the obligations associated with the Completed Remediation and the Risk Management Plan .

(2) Indemnification. The Project Developer shall Indemnify the Owners of the Residential Parcels against third party claims arising out of or relating to, and whether arising prior to or after the Effective Date, (i) any breach of Section 5.12(b), (ii) any alleged act or omission by the Project Developer in performing the Completed Remediation or (iii) any failure by Project Developer and its Permittees to comply with the Risk Management Plan. Third party claims, as such term is used in this Section 5.12(a)(2), shall exclude any claims by Owners of the Residential Parcels or by Owners and/or Occupants of individual Residential Units.

(3) Project Developer Release. Except for Project Developer's obligations to comply with the Amended REA (with respect to periods during which the Amended REA was in effect), the Risk Management Plan and this Declaration, and to the extent permitted by Legal Requirements, (i) each Owner and/or Occupant of a Residential Unit and (ii) employees, agents, contractors and others claiming through a Residential Developer, hereby release Project Developer from any Losses related to the existence of Hazardous Substances on, in under or about the Property prior to the Effective Date to the extent such Hazardous Substances are permitted to be on the Property in accordance with the Risk Management Plan and the Amended REA. The Residential Developers shall provide a copy of this Section 5.12 to each potential Owner of and/or Occupant holding a leasehold interest in an individual Residential Unit. Under no circumstances shall the Residential Developers be liable for any breach of this Section 5.12(a)(3) by any Owner and/or Occupant of a Residential Unit.

(b) Future Use of the Property

(1) Prohibition. No Party shall use, or permit any Permittee or other Person to use, any portion of the Property or the Project (whether in the use of its own Parcel or in the exercise of any of the easement granted under Article II on any other Party's Parcel) in violation of the Covenant to Restrict Use of Property/Environmental Restriction (Alameda County Recorder Series No. 2000220929) ("CRUP") or 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 5.01, 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 Party shall cause or permit the releasing, spilling, leaking, pumping, pouring, emitting, discharging, leaching, disposing or dumping of any Hazardous Substances on, in, or from its Parcel in violation of any Legal Requirement. Nothing in this Section 5.12(a) shall be intended to prohibit the incidental release of automobile exhaust fumes or the leakage of Hazardous Substances from automobile engines in a manner and quantity commensurate with the operation of other similarly sized public parking facilities located in First-Class Projects and in compliance with all applicable Legal Requirements.

(2) Indemnification. Each Party shall Indemnify each other Party and the other Owners against and in respect of any breach of Section 5.12(b) attributable to the Indemnifying Person or any Remediation required in connection with such breach attributable to the Indemnifying Person.

(3) Notice. Each Party shall promptly advise each other Party of (i) such Party's discovery of the presence or release of any Hazardous Substances on, in, or from its Parcel (except for such Hazardous Substances permitted by Section 5.12(b)(1) or that are described in the Risk Management Plan as having existed on the Property as of the date of the Risk Management Plan), (ii) any "Remediation" required to be performed by such Party pursuant to Section 5.12(d) below, and (iii) such Party's discovery of any occurrence or condition on, in, or from its Parcel 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 to be otherwise subject to any regulation of or restrictions on the ownership, occupancy, transferability or use of the Property or any portion thereof under any Legal Requirements. Each Party shall provide to each other Party copies of any notice received by such Party from any Governmental Authority relating to the environmental condition of, or activity on or about, any portion of the Property or the Project within ten business days after such Party's receipt of same. In the case of written communication, each Party shall provide the other with copies within ten (10) business days of such written communication or earlier if required by law.

(4) Remediation. Each Party 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 activities which would amount to a breach of this Section 5.12(b). In the event any Remediation is required by reason of a breach of Section 5.12(b), the Owner of the affected Parcel shall promptly perform or cause to be performed such Remediation and provide any bonds or financial assurances required in connection therewith; provided that such Party may withhold commencement of such Remediation pending resolution of any contest maintained in accordance with Section 5.03 regarding the application, interpretation or validity of any Legal Requirement respecting such Remediation, provided that such Party shall take immediate action to remediate any Emergency relating to Hazardous Substances. All Remediation shall be conducted in accordance with all Legal Requirements. All costs and expenses of the Remediation (including any reasonable 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 5.12(b), be paid by the Owner of the affected Parcel.

5.13 Rules and Regulations.

Each Party agrees to observe and comply with, and shall use reasonable efforts to cause its respective Permittees to observe and comply with, the Project Rules and Regulations.

5.14 No Obligation to Operate or Occupy.

Subject to the specific provisions of this Declaration to the contrary Project Developer shall have no obligation to operate, lease or cause all or any part of the Retail Project to be occupied. The Residential Developers shall have no obligation whatsoever to lease (or sell)

any Residential Units, or operate or cause Occupants to occupy all or any portion of the Improvements on the Residential Parcels.

5.15 Street Closures.

Subject to the prior approval of both Residential Developers and reasonable conditions to such approval Project Developer may close Bay Street (between Ohlone Way and Christie Avenue) to vehicular access on a temporary basis. Project Developer shall conduct any such street closure so that there shall be no material impediment to pedestrian and vehicular ingress and egress of Permittees of the Residential Developers to the Residential Parcels or the Residential Parking Facilities. Except in connection with repairs and maintenance, emergencies or special events at the Retail Project, Developer shall not close Bay Street to pedestrian access to Permittees of the Residential Developers or close the access roads to the north and south of the Project to pedestrian or vehicular access to Permittees of the Residential Developers. Any street closure must comply with Legal Requirements, including without limitation applicable fire and life safety ordinances, and must allow for reasonable ingress and egress to and from the Residential Parcels.

5.16 Certain Matters Related to Development Agreement.

Project Developer shall Indemnify the Residential Developers from and against any obligations of the Developer (as such term defined in the Development Agreement) under the Development Agreement arising under or relating to any part of the Mitigation Monitoring and Reporting Program (as such term defined in the Development Agreement), notwithstanding any assignment to and assumption by the Residential Developers of such obligations in connection with the Parcel E PSA or the Parcels 8&10 PSA.

ARTICLE VI

MAINTENANCE

6.01 Authority and Responsibility.

(a) Property Management. Each Party shall be responsible for the operation and management of its respective Parcel and the repair and maintenance of the Improvements on its respective Parcel, provided, however, each Residential Developer shall be responsible for the maintenance, operation, management and repair of its respective Residential Parcel Exclusive Facilities, and Project Developer shall be responsible for the maintenance, operation, management and repair of any equipment, Utility Facilities or other improvement located on the Residential Parcels which serve the Retail Project. Each Party shall use a standard of care in providing for the maintenance, operation, management and repair described above so that the Project will reflect a high pride of ownership and will be maintained in a condition and state of repair commensurate with a First-Class Project and in compliance with Legal Requirements, the DDA and the Development Agreement. In no way limiting this paragraph, certain aspects of the obligations imposed by this paragraph are more specifically set forth in this Article VI, below.

1. Improvements. Each Party shall repair any Improvements on its Parcel consistent with the applicable foregoing standard, subject to any limitations set forth in Article IX (Casualty and Restoration) and Article X (Condemnation). Notwithstanding anything to the contrary contained in this Article VI, but subject to any limitations set forth in Article IX and Article X, Project Developer at its cost (except as provided below) shall be responsible for all monitoring and maintenance, and structural and other repairs, required to maintain the waterproofing qualities of the flooring surface on the Residential Parking Facilities, including without limitation repairing any membrane or other surface topping. This obligation to pay for repairs shall not extend to (a) repairs required by any surface penetrations caused by Residential Developers, or by any Owner or Occupant of all or any portion of the Residential Parcels, after the Effective Date, (b) repairs required by the negligence or willful misconduct of a Residential Developer or any Owner or Occupant of all or any portion of the Residential Parcels or (c) any ordinary maintenance or cleaning obligations in connection with the flooring surface, including without limitation any striping or re-striping. To the extent any repair results from the items set forth in clauses (a) and (b) above, the responsible Residential Developer, Owner or Occupant shall reimburse Project Developer for the costs of repair within ten (10) days after receipt of an invoice therefor. Project Developer shall be given full access to the Residential Parcels in order to perform its obligations under this Section 6.01(a)(1), and may temporarily close areas in order to perform repairs. Project Developer shall reasonably cooperate with any Residential Developer with respect to claims against the general contractor in the construction of the podiums providing vertical support to the Improvements on the Residential Parcels, including assigning to the Residential Developer any transferable warranties or guarantees under construction contract with contractors retained by Project Developer.

2. Signage. Subject to the other provisions of this Declaration, each Party shall place and maintain upon its Parcel such signs as the Party may deem appropriate for the proper identification, use and regulation thereof, in accordance with applicable Legal Requirements and Article XIV hereof.

3. Lighting. Each Party shall install, maintain and clean lighting fixtures and relamp and reballast them as needed in a timely fashion.

4. Other Maintenance. Each Party shall perform such other acts in a timely fashion that are reasonably necessary to preserve and protect its Parcel and the beauty thereof in accordance with this Declaration and the applicable foregoing standards.

5. Landscaping. Each Party shall maintain landscaping on or in its Parcel consistent with the applicable foregoing standard.

(b) Security. Project Developer shall provide and maintain a security force, security equipment and other security measures for the Retail Project in compliance with Legal Requirements, the DDA and the Development Agreement. Project Developer shall have no responsibility for providing security to any portion of the Residential Parcels, and Project Developer's security force shall not be given, nor provide to others, access to the Residential Parcels. However, Project Developer's security force is not a guarantee against unauthorized entry to the Residential Parcels, or to the Project, and Project Developer shall not be liable for breaches of the security system.

6.02 Buildings.

Each Owner shall be responsible for maintaining the exterior of all buildings and other Improvements within its Parcel. Each Owner shall cause the exterior surfaces of the buildings within its Parcel to be periodically repainted, cleaned, reconditioned or resurfaced, as frequently as is consistent with the maintenance of a First-Class Project.

6.03 Parking Operation.

Project Developer and the Residential Developers shall reasonably cooperate in good faith to operate or cause to be operated the Parking Facilities, in good order, condition and repair, consistent with a First-Class Project. Without limiting the generality of the foregoing, in their operation of the Retail Parking Facility and the Residential Parking Facilities, respectively, Project Developer and the Residential Developers shall cause the following to be performed, all consistent with operation of a First-Class Project:

(a) Surfaces. 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) Cleaning. Remove all papers, debris, filth, refuse and surface waters and wash or thoroughly sweep paved areas as required.

(c) Entrances. Maintain, repair, and replace such appropriate parking area entrance, exit and directional signs, markers and lights as shall be reasonably required.

(d) Lighting. Install and maintain lighting as deemed appropriate by the Party on whose Parcel the lighting is installed.

(e) Striping. Maintain, repair, replace and repaint striping, markers and directional and similar signs as necessary to maintain the same in a condition commensurate with a First-Class Project.

(f) Landscaping. Maintain, repair and replace landscaping as necessary to keep the same in a thriving condition commensurate with a First-Class Project.

(g) Signage. Install, clean, maintain, relamp and repair all signs in the Parking Facility on a timely basis.

6.04 Parking Charges.

Project Developer shall have the right to charge members of the public, including Permittees, for parking or the right to park vehicles in the Retail Parking Facility, including additional charges associated with any valet parking operated or other services provided by the parking operator therein.

6.05 Certain Costs of Common Area.

As used herein, “Residential Parcels Cam Costs” means \$100,000.00, per calendar year (prorated for partial years), increased by three percent (3%) annually on a compounded basis. Such amount is Project Developer’s good faith estimate of the appropriate share to be borne by the Residential Parcels of all costs of Project Developer with respect to the operation and maintenance of the Common Areas, including, but not limited to, costs of property insurance, Taxes, maintenance and repair. Project Developer shall have the right to propose a different amount of Residential Parcels Cam Costs to the other Parties from time to time, but not prior to October 10, 2032 and not more frequently than every ten years thereafter. If the other Parties object to such different amount, the dispute shall be resolved by arbitration pursuant to Article XV. To the extent that the efforts described in Section 7.1(a) are not successful, Project Developer shall have the right to reasonably allocate to the Residential Parcels, in addition to and not in lieu of the Residential Parcels Cam Costs, those costs (the “Residential Parcels Exclusive Use Costs”) relating to property insurance and Taxes incurred by Project Developer with respect to the Residential Parcels Exclusive Facilities. (Nothing set forth in this Section 6.05 shall be construed to affect the obligation of Residential Developer to maintain in good repair and to and maintain liability insurance with respect to the Residential Parcels Exclusive Facilities, and nothing set forth in this Section 6.05 shall be construed to affect the obligations of Project Developer contained in the other portions of this Article VI.) The Residential Parcels Cam Costs and the Residential Parcels Exclusive Use Costs are collectively called the “Residential Parcels Shared Costs”. The Residential Parcels Shared Costs shall be payable quarterly (in arrears at the end of each calendar quarter) within twenty (20) days after receipt of a bill therefor. The Residential Parcels Shared Costs are allocated 27% to the West Residential Parcels and 73% to the East Residential Parcel. The obligation of the Housing LP to pay Residential Parcels Shared Costs commenced as of the date on which the Housing LP acquired the East Residential Parcel, as to the portion thereof allocable to the East Residential Parcel (73%). As of the date the Condo LLC acquired the West Residential Parcels, the Residential Parcels Shared Costs became payable in full, and each of the three (3) Residential Parcels shall be responsible for its allocable share thereof (calculated as set forth above), unless and until Residential Developer and Project Developer agree upon a different allocation of Residential Parcels Shared Costs.

ARTICLE VII

TAXES

7.01 Owner Taxes.

(a) To the extent permissible under applicable Legal Requirements, the Parcels shall be separately assessed so that all Taxes shall be Owner Taxes and shall relate only to the individual Parcels and not to the Property as a whole. Subject to the provisions of Sections 7.02 and 7.03, each Owner shall pay directly to the taxing authority before delinquency all Owner Taxes assessed to such Owner or against its respective Parcel. If Owner Taxes, or any portion thereof, may be paid in installments, then the Owner shall pay each installment before the same becomes delinquent.

(b) To the extent the Parcels are not separately assessed so that all Taxes are Owner Taxes, the Parties shall allocate, in good faith, among the Owners the responsibility for payment of any Taxes that are not Owner Taxes. Taxes so allocated shall become Owner Taxes.

(c) Project Developer and the Residential Developers shall use reasonable efforts to cause the taxing authorities to allocate to each Residential Parcel all Taxes reasonably attributable to the Residential Parcel Exclusive Facilities. To the extent that the taxing authorities so allocates such Taxes, such Taxes shall be included in the Owner Taxes attributable to such Residential Developer. To the extent that the taxing authorities does not so allocate such Taxes, such Taxes shall be allocated as provided for in subparagraph (b) above, and borne by each Residential Developer as part of its Owner Taxes.

7.02 Contest by Parties.

Any Party may, at its expense, contest by appropriate proceedings, prosecuted diligently and in good faith, any Owner Taxes levied upon such Party or its Parcel. Any such contested Taxes shall in any event be paid prior to the time when the affected Parcel may be subjected to sale by reason of nonpayment of same. The contesting Party shall Indemnify the other Parties against any matter arising out of or relating to such contest.

7.03 Non-Payment of Taxes.

In the event any Party shall fail to comply with its obligations under this Article VII, then following the notice and cure periods set forth in Section 11.03, any other Party may pay the Taxes in question and penalties and interest thereon, and shall be entitled to prompt reimbursement from the defaulting Party for the sums so expended, with interest thereon at the Default Rate, as provided in Section 11.02.

ARTICLE VIII

INSURANCE

8.01 Owner Insurance.

(a) Required Coverages: Project Developer. Except as provided in Section 8.01(c), Project Developer shall obtain and keep in force at all times the following insurance, the cost and expense of which shall be borne by Project Developer:

1. Commercial General Liability Insurance. A policy of Insurance Services Office ("ISO") commercial general liability insurance (occurrence form CG000001 or equivalent) having a combined single limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence, with a deductible of not more than \$250,000, providing coverage for bodily injury, property damage, personal injury, product liability, liquor liability, completed operations and fire legal liability. Such liability policy shall not include (a) any exclusion for operations within fifty (50) feet of a railroad track (railroad protective liability) to the extent commercially feasible, or (b) any exclusion for explosion, collapse or underground hazard.

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 Project Developer in the conduct of its operations in and around the Project (including the "all states" and volunteers endorsements, or comparable coverage), together with employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease.

3. Property Insurance.

A standard "all risk" policy of insurance or equivalent (including boiler and machinery comprehensive form) covering the Improvements owned by Project Developer, in an amount equal to the full replacement cost thereof (including costs attributable to a change in laws), 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" policy of insurance or equivalent shall insure against all risks (unless not available at commercially reasonable rates), including loss or damage by earthquake, fire, windstorm, aircraft, vehicle, smoke damage, water damage, flood, sprinkler leakage, riot, civil commotion and terrorist acts. Project Developer may satisfy its obligations under this Section by having such obligations fulfilled by a tenant, subtenant or operating agent.

4. Automobile Insurance.

Automobile insurance for owned, hired and non-owned vehicles, including the loading or unloading thereof, with liability limits of not less than One Million Dollars (\$1,000,000.00) per person per accident or occurrence for bodily injury (including but not limited to wrongful death) and liability limits of not less than One Million Dollars (\$1,000,000.00) per accident or occurrence for property damage.

5. Excess Coverage.

Excess primary, automobile and employer's liability insurance with liability limits of not less than Fifteen Million Dollars (\$15,000,000.00) per occurrence. Such insurance shall be made on a following form basis excess of primary liability insurance policies.

(b) Required Coverages:

Except as provided in Section 8.01(c), each Residential Developer shall obtain and keep in force at all times the following insurance, the cost and expense of which shall be borne by such Residential Developer:

1. Commercial General Liability Insurance.

A policy of ISO commercial general liability insurance (occurrence form CG000001 or equivalent) having a combined single limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence, providing coverage for bodily injury, property damage, personal injury, product liability, fire legal liability and completed operations (including but not limited to all of the foregoing with respect to each Residential Developer's Residential Parcel Exclusive Facilities), without (a) any exclusion for operations within fifty (50) feet of a railroad track (railroad protective liability) to the extent commercially feasible, or (b) any exclusion for explosion, collapse or underground hazard.

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 each Residential Developer in

the conduct of its operations on the Property (including the "all states" and volunteers endorsements, or comparable coverage), together with employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease.

3. Property Insurance. A standard "all risk" policy of insurance or equivalent (including boiler and machinery comprehensive form, if applicable) covering the Improvements owned by each Residential Developer, in an amount equal to the full replacement cost thereof (including costs attributable to a change in laws), 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" policy of insurance or equivalent shall insure against all risks (unless not available at commercially reasonable rates), including loss or damage by earthquake, fire, windstorm, aircraft, vehicle, smoke damage, water damage, flood, sprinkler leakage, riot, civil commotion and terrorist acts. Each Residential Developer may satisfy its obligations under this Section by having such obligations fulfilled by a tenant under a master lease for one or more of the Residential Towers or by an operating agent.

4. Residential Parcels Exclusive Use Facilities. Each Residential Developer shall use reasonable efforts to cause its insurance company providing the property insurance described in Section 8.01(b)(3) to include in such Residential Developer's property insurance policy coverage for its respective Residential Parcel Exclusive Facilities. To the extent such insurance company does so, each Residential Developer shall maintain such insurance and those parts of the Residential Parcel Exclusive Facilities so insured shall be deemed Improvements on the applicable Residential Parcel for purposes of the restoration obligations of the Parties set forth in Article IX.

5. Automobile Insurance. Automobile insurance for owned, hired and non-owned vehicles, including the loading or unloading thereof, with liability limits of not less than One Million Dollars (\$1,000,000.00) per person per accident or occurrence for bodily injury (including but not limited to wrongful death) and liability limits of not less than One Million Dollars (\$1,000,000.00) per accident or occurrence for property damage.

6. Excess Coverage. Excess primary, automobile and employer's liability insurance with liability limits of not less than Fifteen Million Dollars (\$15,000,000.00) per occurrence. Such insurance shall be made on a following form basis excess of primary liability insurance policies.

(c) Unified Policy. Notwithstanding Sections 8.01(a) and 8.01(b), Project Developer shall obtain a unified policy covering both the Retail and Residential Parcels that is substantially equivalent in coverage to the insurance required under Sections 8.01(a) and 8.01(b) (except that the amount of excess coverage shall be Thirty Million Dollars (\$30,000,000.00)), to the extent the same is available on commercially reasonable terms ("**Unified Policy**"). The Parties expressly acknowledge that the Unified Policy obtained by Project Developer under this Section 8.01(c) will not cover design or construction defects in the Improvements constructed on the Residential Parcels (as to which the Residential Developers will obtain such separate insurance as it may elect), nor will it apply to a particular Residential Parcel until the Improvements on that Residential Parcel are completed, as evidenced by a Notice of Completion

recorded in the Official Records of Alameda County, California. The cost and expense of the Unified Policy obtained by Project Developer shall be shared pro rata by Project Developer and the Residential Developers in an amount to be determined by Project Developer using any of the following methods: (i) according to the underwriter's rating and assigned by the underwriter, (ii) based upon the insured value and loss history of the Property as reasonably determined by an underwriter or (iii) based upon an insurance quote from an underwriter as to the Retail Project alone, with any excess then deemed attributable to each Residential Parcel as determined by the underwriter. Project Developer shall deliver to the Residential Developers an insurance certificate setting forth the terms of the Unified Policy and an invoice showing each Party's share of the cost and expense of the Unified Policy, including the cost and timing of removing a Residential Developer as an additional insured, as determined under this Section 8.01(c) ("**Insurance Notice**"). The Insurance Notice will include supporting documentation showing how the amount due was calculated. The costs and expenses will include not only the premium cost, but the reasonable cost of risk management advisors. Each Residential Developer will pay its share of the cost and expense of the Unified Policy as shown in the Insurance Notice within ten (10) days after receipt of the Insurance Notice. However, at any time, either Residential Developer may elect to obtain a stand-alone policy that meets the requirements of Section 8.01(b) by providing to Project Developer an insurance certificate demonstrating that it has obtained a stand-alone policy meeting the requirements of Section 8.01(b). In such event, the Party obtaining a stand-alone policy will be removed as an insured on the Unified Policy, and will be entitled to receive from the insurer issuing the Unified Policy any unearned premiums, less any short rate or penalty arising from being removed as an insured. Project Developer will use commercially reasonable efforts to assist such Party in securing any unearned premiums. If Project Developer believes the insurance market has changed such that it is commercially reasonable and economically feasible for the Residential Developers to obtain stand-alone policies meeting the requirements of Section 8.01(b), then Project Developer shall have the right to require performance under Section 8.01(b) and to terminate the Unified Policy; provided, however, that Project Developer shall not terminate the Unified Policy until such time as each Residential Developer has obtained insurance as required under Section 8.01(b), which each Residential Developer shall use commercially reasonable efforts to obtain; further, provided that, in the event a Residential Developer provides notice to Project Developer of its objection to Project Developer's determination that it is commercially reasonable and economically feasible for the Residential Developers to obtain stand-alone policies, Project Developer shall not terminate the Unified Policy unless and until such dispute is resolved pursuant to arbitration as provided in this Section 8.01(c). If at any time a Residential Developer who is not insured through a Unified Policy believes the insurance market has changed such that it is not commercially reasonable and economically feasible for the Residential Developers to obtain stand-alone policies meeting the requirements of Section 8.01(b), upon notice from such Residential Developer, the Project Developer shall again obtain a Unified Parcel in accordance with this Section 8.01(c) to the extent the same is available on commercially reasonable terms. Notwithstanding any other provisions of this Declaration any dispute as to whether it is commercially reasonable and economically feasible to obtain a stand-alone policy meeting the requirements of Section 8.01(b), or a Unified Policy meeting the requirements of this Section 8.01(c), shall be subject to resolution using the most expedited procedure available under the commercial arbitration rules of the American Arbitration Association. The dispute will be

arbitrated before a panel of insurance experts, each of whom shall have at least ten (10) years of experience with insurance policies covering mixed-use, retail/residential projects.

(d) General.

1. Insurance Companies. Insurance required to be maintained pursuant to this Section 8.01 shall be written by companies admitted as carriers in California and having a current rating by A.M. Best Company of at least A-VII (or an equivalent rating from another industry-accepted rating agency) or such lower rating as may be commercially reasonable in accordance with prudent risk-management practices.
2. Certificates of Insurance. Each Owner shall deliver to each other Party certificates or other reasonable evidence of insurance with original copies of insurance policies and endorsements for all insurance coverage required to be maintained by each Owner pursuant to this Section 8.01. The certificates, insurance policies and endorsements of each insurance policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements shall be on forms reasonably acceptable to the Parties. Each Owner shall furnish each other Party with certificates of renewal or binders thereof at least ten (10) days prior to expiration of any such insurance policy, but in all events prior to expiration. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after thirty (30) days' prior written notice to each Party named as an additional insured (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 each additional insured).
3. Additional Insureds and Loss Payees. Each Party, its respective directors, officers and employees, and its constituent members or partners, if any, and their constituent members or partners, if any, shall be included as an additional insured under all of the policies of insurance required with respect to Commercial General Liability Insurance.
4. Umbrella Coverage. Any umbrella liability policy shall be in "following form" and shall contain a provision to the effect that, if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance.
5. Notification of Incidents. Each Owner required to maintain insurance under this Section 8.01 will notify each potentially affected Party of the occurrence of any accidents or incidents in connection with any Parcel owned by such Owner which could give rise to a claim in excess of \$100,000 under any of the insurance policies required under this Section 8.01 within three (3) business days after such Owner obtains knowledge of the same. Each Owner shall notify its insurer of the occurrence of any accidents or incidents in connection with its Parcel within five (5) business days after such Owner obtains knowledge of the same.
6. Primary Coverage. Each insurance policy shall expressly provide that for any claims which are the insured Party's responsibility under this Declaration, such Party's insurance coverage shall constitute primary insurance with respect to the other Parties and their respective directors, officers and employees.

7. Failure to Maintain. If an Owner fails to obtain, maintain, or cause to be maintained any insurance policy required to be obtained or maintained by such Owner as provided for in this Article VIII, then such Owner shall be in default under this Declaration and any other Owner may, at its election, after giving the defaulting Owner written notice and ten (10) days to obtain such insurance, procure such insurance for the same and the defaulting Owner shall, upon demand, reimburse the Owner acquiring such insurance for all costs in connection therewith, together with interest thereon at the Default Rate from the date of payment, and the Owner acquiring such insurance shall have all other rights and remedies provided for in this Declaration.

8.02 Blanket Policies; Compliance.

The insurance described in Section 8.01 may be carried under a policy or policies covering other liabilities and locations of an Owner; provided, however, that such blanket insurance shall provide that the insurance required hereunder will be available notwithstanding losses suffered at other locations insured under such blanket insurance. Each Party shall use commercially reasonable efforts to comply with the requirements of any insurance carrier providing insurance called for under this Declaration.

8.03 Waiver of Subrogation.

Each Party releases each of the other Parties as to risks covered by the property insurance and commercial general liability insurance maintained under this Article VIII. Each Party shall use reasonable efforts to ensure that any policy of insurance relating to the Property, any Parcel or any Improvements, shall permit a waiver of subrogation for the benefit of all other Parties hereunder. If any Party is unable to obtain such a waiver as to any policy, then all other Parties shall be relieved of their respective obligations to obtain such a waiver for the same type of policy with respect to the non-obtaining Party.

8.04 Modification of Insurance Requirements.

The Parties shall review in good faith and modify as they deem reasonable the requirements set forth in this Article VIII, but not more frequently than once every five (5) years unless Project Developer reasonably determines the insurance market has changed in such a significant manner as to require an earlier review. The standard of reasonableness shall be the insurance maintained by prudent owners of First Class Projects.

8.05 Indemnity.

Each Party covenants to Indemnify each of the other Parties in connection with (i) the death of, or accident, personal injury, loss or damage whatsoever caused to any Person, as shall occur within the Indemnifying Person's Parcel, or (ii) the negligent maintenance, construction or design of the Improvements which are a part of the Parcel owned by the Indemnifying Person, whether designed or constructed before or after the Effective Date. For the purposes of this Section 8.05, without limiting the meaning of negligence, any failure to build an Improvement materially in accordance with the Approved Plans and free of material latent or patent defects shall constitute negligence.

8.06 Survival.

Each Party's indemnity obligations under this Declaration arising prior to the expiration, termination or assignment of this Declaration shall survive such expiration, termination or assignment.

ARTICLE IX

CASUALTY AND RESTORATION

9.01 Restoration.

Subject to Section 9.02 below, if the Improvements within the Retail Project or located anywhere on the Retail Parcel are damaged or destroyed, then, as soon as practicable thereafter, such Improvements shall be repaired or restored by Project Developer. In any event, and subject to the provisions of Section 16.06, the podiums and other structural support elements shall be repaired or restored no later than three hundred sixty (360) days following the damage or destruction of such Improvements. If the Improvements located on a Residential Parcel are damaged or destroyed, the Owner of such Residential Parcel may, but shall have no obligation to, repair or restore such Improvements. Upon request, Project Developer shall provide any insurance proceeds received which are attributable to the Residential Parcels to the Owner(s) of such Residential Parcels, if a unified policy of insurance was obtained pursuant to Section 8.01(c).

9.02 No Obligation to Restore.

Notwithstanding anything to the contrary in Section 9.01:

(a) If during the period ending on October 10, 2032 (the "**Initial Reconstruction Period**"), the Improvements on the Retail Parcel, collectively in the aggregate, shall have been damaged or destroyed to an extent such that the cost to rebuild or restore the same equals or exceeds eighty percent (80%) of the aggregate replacement cost thereof (the "**Initial Reconstruction Period Damage Threshold**"), then Project Developer shall not be obligated to repair, rebuild or restore any of the Improvements.

(b) If after the Initial Reconstruction Period the Improvements on the Retail Parcel, collectively in the aggregate, shall have been damaged or destroyed and the cost to rebuild or restore such Improvements equals or exceeds sixty percent (60%) of the replacement cost thereof (the "**Later Period Damage Threshold**"), then Project Developer shall not be obligated to repair, rebuild or restore such Improvements. The Initial Reconstruction Period Damage Threshold or the Later Period Damage Threshold, as applicable, is hereinafter referred to as the "**Applicable Damage Threshold**"

(c) To the extent that (i) the restoration of the Improvements on a Residential Parcel is dependent on the reconstruction of the Improvements on the Retail Parcel, and (ii) Project Developer is not obligated to restore the Improvements on the Retail Parcel, then the Residential Developer owning such Residential Parcel shall have the right, at its sole cost and expense, to restore the Improvements on the Retail Parcel (or construct reasonable substitutes

therefor) necessary for the repair, reconstruction and use of the Improvements on the Residential Parcel.

(d) Determination of Restoration Obligations. In the event of any damage to or destruction of the Improvements which the Owner of the damaged Improvements believes in good faith may exceed the Applicable Damage Threshold, such Owner shall give notice (the "Casualty Assessment Notice") to the other Owners to such effect within thirty (30) days of the occurrence of such casualty. The determination of whether the Applicable Damage Threshold has been exceeded shall be made by a general contractor or other construction consultant (the "Reconstruction Appraiser") selected by the Mortgagee of the Retail Parcel (or if there is no Mortgage on the Retail Parcel, by Project Developer) within thirty (30) days after the date of the Casualty Assessment Notice and approved by the Residential Developers, which approval shall not be unreasonably withheld, delayed or conditioned. The Reconstruction Appraiser shall provide its written determination within forty-five (45) days after the selection thereof and its acceptance of such appointment. Pending resolution of whether the damage or destruction exceeds the Applicable Damage Threshold, all Property Insurance and Builder's Risk Insurance proceeds payable as a result of such casualty by the insurer(s) of the Improvements on the Retail Parcel (including earthquake insurance but excluding the proceeds of any rental value or use and occupancy insurance) shall be paid to and held by a bank or trust company qualified under the laws of the State of California and reasonably approved by the Mortgagee of the Retail Parcel to take custody and handle disposition of the insurance proceeds, in trust, for application to rebuilding, repair and restoration, or, if not required to be applied to such rebuilding, repair and restoration, to the Persons entitled thereto, unless such proceeds are required by the terms of a Mortgage on the Retail Parcel to be administered by the Mortgagee holding such Mortgage, in which case the Mortgagee shall administer such funds. Nothing in this Section 9.02 shall preclude the Owners (subject to the approval, if required, of any Mortgagee holding a Mortgage on their respective Parcels) from agreeing, as provided in Section 9.04, to repair, rebuild and restore even if the Applicable Damage Threshold is exceeded.

(e) Purchase Option. If for any reason Project Developer (the "Non-Restoring Owner") does not commence to restore, repair or rebuild its Improvements, when it is required to do so under this Section 9.02, within one hundred eighty (180) days after a casualty that results in material damage thereto or the destruction thereof, then, subject to the terms of Section 16.06, the owner (the "Remaining Owner") of the Residential Parcel located above the portion of the Retail Parcel(s) upon which the casualty occurred (the "Non-Restoring Owner's Parcel"), in no way limiting any other rights or remedies available to the Remaining Owner, shall have the right, and the Non-Restoring Owner hereby grants to the Remaining Owner an option, to purchase the Non-Restoring Owner's Parcel upon the following terms and conditions:

(1) the Remaining Owner must give the Non-Restoring Owner written notice (a "Preliminary Notice") of its intent to determine the purchase price for the Non-Restoring Owner's Parcel (the "Purchase Price") not later than (i) forty-five (45) days after the Non-Restoring Owner has failed to commence to restore, repair or rebuild its Improvements as provided for in subparagraph (e) above, or (ii) the date upon which the Remaining Owner notifies the Non-Restoring Owner that it has breached its obligations under this Article IX to, restore, repair or rebuild its Improvements within the applicable notice and cure periods set forth in Section 11.03;

(2) if the Remaining Owner timely delivers a Preliminary Notice to the Non-Restoring Owner, the Owners shall proceed to determine the Purchase Price as provided in Exhibit "L" attached hereto;

(3) the Remaining Owner shall have until the date that is thirty (30) days after the Purchase Price Determination Date (as defined in Exhibit "L") to exercise its option to purchase the Non-Restoring Owner's Parcel by delivering written notice thereof (an "Exercise Notice") to the Non-Restoring Owner;

(4) if the Remaining Owner timely delivers an Exercise Notice, then the closing of the purchase and sale of the Non-Restoring Owner's Parcel shall occur on the date specified by the Remaining Owner in the Exercise Notice, which date may not be later than the date that is thirty (30) days after the delivery of the Exercise Notice unless otherwise agreed to by the Non-Restoring Owner in its sole and absolute discretion;

(5) the closing shall be consummated through an escrow with Chicago Title Company or another nationally recognized title insurance company reasonably satisfactory to both Owners and, at the closing the Non-Restoring Owner's Parcel shall be transferred free and clear of any and all mortgages, liens (other than a lien for taxes not yet due and payable), deeds of trusts and other monetary encumbrances in its "as-is" condition (subject to Section 9.03);

(6) the closing costs shall be allocated as follows: (i) the Non-Restoring Owner shall be responsible for any documentary transfer tax, the title premium for a CLTA standard coverage title policy (or, if the Remaining Owner elects to obtain an ALTA extended coverage title policy, the "standard coverage" portion of the premium) and one-half of the escrow fee; and (ii) the Remaining Owner shall be responsible for the recording fees for the grant deed described below, one-half of the escrow fee, the cost of any survey obtained by the Remaining Owner and the portion of the title premium in excess of the amount to be paid by the Non-Restoring Owner (i.e., the Remaining Owner shall be responsible for the cost of any endorsements to its title insurance policy and, if it desires an ALTA extended coverage title policy, the "extended coverage" portion of the premium);

(7) real property taxes (including general real property taxes, supplemental taxes and special assessments), any improvement or other bonds and any other expenses that are customarily prorated in commercial real estate transactions shall be prorated as of the closing on the basis of the actual number of days of the month that have elapsed as of the closing and based upon the actual number of days in the applicable month and a 365-day year;

(8) not later than one (1) business day prior to the closing date: (i) the Remaining Owner shall deliver to the escrow company immediately available funds in an amount equal to the sum of the purchase price and any other amounts to be paid by the Remaining Owner pursuant to paragraphs (6) and (7) above; (ii) the Non-Restoring Owner shall deliver to the escrow company a grant deed covering the Non-Restoring Owner's Parcel and such withholding exemption certificates or affidavits as are then required under applicable federal and state laws; and (iii) each Owner shall deliver to the escrow company such other instruments as may be reasonably requested by the other Owner, the escrow company or the title

company issuing a title policy to the Remaining Owner with respect to the Non-Restoring Owner's Parcel;

(9) on the closing date, the escrow company shall: (i) cause the grant deed to be recorded in the Official Records; (ii) disburse to the Non-Restoring Owner funds in an amount equal to the purchase price less any amounts to be paid by the Non-Restoring Owner pursuant to paragraphs (6) and (7) above; (iii) disburse any funds remaining in the escrow to the Remaining Owner; and (iv) instruct the title insurance company to issue the title policy to the Remaining Owner;

(10) time is of the essence with respect to this Section 9.02(e) and, without limiting the generality of such statement, the purchase option and other rights of the Remaining Owner under this Section 9.02(e) shall expire and be of no further force or effect with respect to a particular casualty if the Remaining Owner fails to deliver a Preliminary Notice or an Exercise Notice in the time required under this Section 9.02(e). The Remaining Owner shall have the right to injunctive relief and specific performance to enforce the provisions of this Section 9.02(e); and

(11) notwithstanding anything to the contrary contained herein, in order to exercise the purchase option described herein, all sums owing to any Mortgagee of the Non-Restoring Owner's Parcel (or if the such Mortgagee has acquired the Non-Restoring Owner's Parcel, all sums which would have been owing to such Mortgagee if the Mortgagee had not acquired the Non-Restoring Owner's Parcel) must be paid in full.

9.03 Obligation to Clear Debris.

If any of the Improvements are damaged or destroyed and, pursuant to Section 9.01 the Owner thereof has the right pursuant to the foregoing provisions not to rebuild or repair the same, and in fact determines not to do so, then, regardless of whether another Owner is exercising its purchase option granted in Section 9.02(e), such Owner shall be obligated to raze the Improvements on its Parcel, clear the Parcel of all construction debris and appropriately maintain its Parcel in a safe, sightly, and dust-free condition. The Party performing the foregoing demolition shall comply with all provisions of Article IV in performing same, and shall undertake such demolition in a manner that will minimize any disruptions or inconvenience to the other Parties, their Occupants and Permittees. If such Owner fails to perform the covenants set forth in this Section 9.03 within 360 days after occurrence of the damage or destruction, then the other Owners shall have the right to perform the same at the expense of the non-performing Owner.

ARTICLE X

CONDEMNATION

10.01 Distribution of Proceeds.

In the event any portion of the Property shall be taken by Condemnation, all Proceeds shall belong to the Party whose Parcel or portion thereof was so taken, as its interests

may appear, provided, however, that any other Party 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).

10.02 Restoration.

If, as a result of any Condemnation, any of the Improvements are damaged but ownership thereof is not completely taken by the condemning authority, the Owner as to such Improvements, unless expressly prohibited by Legal Requirements, shall be obligated to restore the same to the extent practicable and only to the extent and in the manner provided for in Article IX as if the Proceeds paid by the Condemning authority were Proceeds of casualty insurance.

ARTICLE XI

DEFAULTS AND REMEDIES

11.01 No Termination.

No breach or default by any Party under this Declaration or the DDA shall entitle any other Party to cancel, rescind or otherwise terminate this Declaration, provided that such limitation shall not affect any other rights or remedies that any Party may have by reason of such default.

11.02 Interest.

Any sums payable by a Party to any other Person under the terms and conditions of this Declaration shall bear interest at the Default Rate from the due date to the date of payment thereof.

11.03 Self-Help.

If any Party shall fail to perform its maintenance obligations under this Declaration to a reasonable standard of performance and appearance as determined in the commercially reasonable discretion of the performing Party, any other Party (the "Curing Party") shall have the right, but not the obligation, upon giving the defaulting Party at least sixty (60) days' prior written notice of its election to do so (but in the event of Emergency, only such notice as is reasonable under the circumstances shall be required), unless prohibited by Legal Requirements, to perform such obligations on behalf of and for the account of the defaulting Party, unless the defaulting Party within said period either cures the default in question to a reasonable standard of performance and appearance in the commercially reasonable discretion of the curing Party, or, if the nature of the default is such that more than sixty (60) days is required to cure same, commences curative measures within said period and diligently prosecutes the same to completion. In such event, the reasonable costs and expenses of the Curing Party, plus interest thereon at the Default Rate from the date of performance until the date of payment, shall be paid to such Party by the defaulting Party forthwith upon demand. If repayment shall not be made within ten (10) days after such demand is made (or is not made on behalf of such

defaulting Party by its Mortgagee), then such Party shall have the right to deduct the aforesaid amount, without liability or forfeiture, from any sums then due or thereafter becoming due from it to the defaulting Party under this Declaration. Nothing in this Section 11.03 shall permit any Person to cause a lien to attach or be enforced against the Property.

11.04 Monetary Default.

If any Party fails to make any payment when required to do so by the terms of this Declaration, then the provisions of Section 11.03 shall fully apply thereto *mutatis mutandis* except that instead of a thirty (30) day cure right the defaulting Party shall have a non-extendable ten (10) day period, after receipt of notice, to pay the amount due, and shall have the right to submit any issue to arbitration only if it shall first make such payment (which it may do "under protest").

11.05 Other Remedies.

Subject to Article XIII, the rights and remedies given to any Party 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 Party might otherwise have by virtue of a default under this Declaration, and the exercise of one such right or remedy by any such Party shall not impair such Party's standing to exercise any other right or remedy.

ARTICLE XII

TRANSFER OF INTEREST, RIGHTS, POWERS AND OBLIGATIONS

12.01 Limitations on Transfer or Assignment.

In no event shall the rights, powers and obligations conferred upon a Party pursuant to this Declaration, with respect to a Parcel owned by such Party, be at any time transferred or assigned by any such Party separate and apart from a Transfer of its interest in all or substantially all of such Parcel, and then only to the extent and in the manner hereinafter provided. This is not intended to restrict a Party from a Transfer of all or any of its interest in a Parcel.

12.02 Transfer of Entire Interest.

Subject to Section 12.03, in the event of the transfer or conveyance of the whole of the interest of an Owner in its Parcel to an acquiring Person, then the transferring Owner shall obtain, for the benefit of all Parties, the written agreement of the successor Owner respectively to assume all obligations of the transferring Owner under this Declaration with respect to such Parcel accruing and to be performed thereafter, and, thereupon, such successor shall respectively become the Owner of such Parcel for purposes of this Declaration and the transferring Owner shall be relieved of all obligations thereafter occurring under this Declaration with respect to such Parcel. However, no such transfer or conveyance shall release a Party of its accrued obligations. Any such agreement shall be in writing, duly executed, verified and acknowledged by such successor, shall be delivered to all the Owners, shall contain a certificate that a copy

thereof has been so delivered, and shall be recorded in the Official Records of Alameda County, California. The provisions of this Section 12.02 shall also apply in the event of an assignment by a Residential Developer of its entire interest in this Declaration to an Association (as provided for in Section 12.04).

12.03 Mortgagees.

In the event that a transferring Owner shall enter into a Mortgage, then none of the rights and powers conferred upon, or obligations under this Declaration of, the transferring Owner, as the case may be, shall be transferred or assigned with the transfer or conveyance of such interest to the Mortgagee, and all of the rights and powers conferred upon and obligations under this Declaration of the transferring Owner, as the case may be, shall remain in such Owner unless and until the consummation of a foreclosure, deed in lieu transaction or trustee's sale pertaining to the Mortgage in question.

12.04 Multiple Ownership.

In the event that only a portion of a Parcel is transferred or the ownership of a Parcel or interest therein is otherwise vested in more than one Person, then all such Persons shall be jointly considered a single Owner of such Parcel and such Persons shall designate one of their number (by a written agreement in the form specified in Section 12.05) to act on behalf of all such Persons in the performance of the provisions of this Declaration. In the event a Residential Parcel (or any portion thereof) is converted or sold as condominiums or other similar form of ownership, all Persons owning condominium units (or other similar form of ownership) shall be jointly considered a single Owner and such persons shall form a property owners association ("Association") pursuant to applicable law and shall designate (by written agreement in the form specified in Section 12.05) the Association to act on behalf of all such Persons in the performance of the provisions of this Declaration, in which event the Association shall be the designated Person pursuant to the terms and conditions of Section 12.05 below, and no Person or group of Persons owning one or more condominium units (or other similar form of ownership) shall have any rights of an Owner or a Party under this Declaration (all such rights being vested in the Association). There may be a separate Association for the East Residential Parcel, but only one Association for both of West Residential Parcel #1 and West Residential Parcel #2, in which event each such Association will be a separate Owner.

12.05 Designation.

(a) Effect. In the absence of the written designation referred to in Section 12.04, the acts of the transferring Party whose interest is sold or divided with respect to the rights and obligations under this Declaration shall be binding upon all of the Persons owning any interest in such Parcel, until such time as the written designation is properly served and recorded as provided by Section 12.02, and whether or not such Party retains any interest in the Parcel in question. The exercise or performance of any rights, powers or obligations of a Party under this Declaration by the Person designated in accordance with Section 12.04, to represent such Party shall be binding upon all Persons having an interest or right in such Parcel. So long as such designation remains in effect, all Persons having an interest or right in the Parcel shall act only through such Person designated hereunder and the other Parties shall have the right to deal

exclusively with and rely solely upon the acts or omissions of such Person in the performance of this Declaration and shall not be required to inquire as to whether the acts or omissions of such Person were duly authorized by the Persons having an interest or right in the Parcel.

(b) De-designation. Any Person designated under this Article XII may be removed by the Persons so designating, provided that written notice of such removal and designation of a new Person (or Association, as the case may be) to act on behalf of all such Persons under this Declaration is given and made in the manner specified in Section 12.04.

(c) Status of Designated Person. Any Person designated pursuant to the provisions of this Article XII shall be the agent of each Person having an interest as Party in the subject Parcel, as the case may be, and is hereby irrevocably appointed for such purpose, and upon whom service of any process, writ, summons, order or other mandate of any nature of any court in any action, suit or proceeding arising out of this Declaration may be made, and service upon such designated Person shall constitute due and proper service of any such matter upon each such interest holder, provided a copy of such matter is also mailed to such interest holder at their last addresses known to the sender.

(d) Obligation of Other Persons. Notwithstanding anything to the contrary herein contained, the designation of a Person to act on behalf of other Persons under this Article XII shall not for any purpose relieve any such other Persons from the obligations or liabilities created by or arising from this Declaration.

12.06 Interpretation of Developers, Parties and Owners.

As the context allows, any reference in this Declaration to the Parties or a Party shall be interpreted to be synonymous with a reference to the Owners or an Owner. As the context allows, any reference in this Declaration to Project Developer shall be interpreted to be synonymous with a reference to the Owner of the Retail Parcel. As the context allows, any reference in this Declaration to a Residential Developer shall be interpreted to be synonymous with a reference to the Owner of a Residential Parcel. As the context allows, any rights, powers or interests conferred upon a Residential Developer by this Declaration, to the extent such rights, powers or interests do not relate to a given Residential Parcel, shall not be exercised or enjoyed by the Owner of such Residential Parcel and shall not benefit such Residential Parcel. As the context allows, any obligations conferred upon the Residential Developer by this Declaration, to the extent such obligations do not relate to a given Residential Parcel, shall not obligate the Owner of such Residential Parcel and shall not burden such Residential Parcel.

ARTICLE XIII

MORTGAGEE PROTECTION

13.01 Right to Encumber.

Any Party shall have the right to encumber its interest in its respective Parcel by any Mortgage, provided such Mortgage is subject to and subordinate to this Declaration, unless the parties thereto otherwise agree in writing.

13.02 Default; Prior Claims and Obligations.

No breach or default under this Declaration, nor any entry upon a Parcel by reason of such breach or default, shall defeat or render invalid the lien of any Mortgage made in good faith and for value on any Parcel. The provisions, easements, conditions, restrictions and covenants hereof shall be binding and effective against any Person whose title is acquired by foreclosure, deed in lieu of foreclosure, trustee's sale, or otherwise; provided, however, that a Mortgagee that takes title to a Parcel pursuant to foreclosure of its Mortgage or by deed in lieu of foreclosure, or any purchaser at a foreclosure or trustee's sale under a Mortgage, shall take such Parcel free of any prior claims, obligations or charges under this Declaration, including any obligation to repair or restore (or to contribute to the repair or restoration of) any damage or destruction to or Condemnation of the Project or any portion thereof occurring prior to the taking of title to such Parcel by such Mortgagee or purchaser; provided, however, that if Mortgagee or purchaser has received the insurance proceeds or award attributable to such damage or destruction, or Condemnation, after taking title to a Parcel, then such repair and restoration obligations shall be assumed by Mortgagee or purchaser.

13.03 Notice to Mortgagees.

The Mortgagee under any Mortgage affecting a Parcel shall be entitled to receive notice of any default by any Party hereunder, provided that such Mortgagee shall have delivered a copy of a notice to each Party specifying the Mortgagee's name and address and requesting such notices. Each Mortgagee's notice shall be in substantially the following form:

The undersigned, whose address is _____, does hereby certify that it is the Mortgagee (as such term is defined in that certain Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements and Amendment of Declaration of Reciprocal Easements dated as of October __, 2004 by Bay Street Partners, LLC, Bay Street Housing Partners, L.P. and Bay Street Condominiums, LLC [the "**Declaration**"]), of the parcel of land described on Exhibit "A" attached hereto, which parcel is owned by _____, a party to the Declaration (the "**Party**"). In the event that any notice shall be given of a Default of the Party under the Declaration, a copy thereof shall be delivered to the undersigned who shall have the rights of a Mortgagee to cure such Default, as specified in the Declaration. Failure to deliver a copy of such notice shall in no way affect the validity of the notice to the Party, but shall make the same invalid as it respects the mortgage of the undersigned.

Failure of a Party to deliver a copy of such notice of default to the Mortgagee shall affect in no way the validity of the notice of default as it respects the defaulting Party, but shall make the notice invalid as it respects the interest of the Mortgagee and its lien upon the affected Parcel. Any such notice to a Mortgagee shall be given in the same manner as provided in Section 16.10. The giving of any notice of default or the failure to deliver a copy to any Mortgagee shall in no event create any liability on the part of the Person so declaring a default.

13.04 Right to Cure.

In the event that any notice shall be given of the default of a Party and of such defaulting Party's failure to cure or to commence to cure such default as provided in this Declaration, then and in that event any Mortgagee under any Mortgage affecting the Parcel of the defaulting Party shall be entitled to receive an additional notice given in the manner provided in Section 13.03, that the defaulting Party has failed to cure such default, and such Mortgagee shall have thirty (30) days after the receipt of said additional notice to cure any such default, or, if such default cannot be cured within thirty (30) days, to diligently commence curing within such time and diligently cure within a reasonable time thereafter. Mortgagees may jointly or singly pay any sum or take any other action reasonably necessary to cure any default of their Mortgagors hereunder with the same effect as cure by the Mortgagor itself.

13.05 Amendment.

This Declaration shall not, without the prior written consent of all Mortgagees holding Mortgages on any of the Parcels, be amended. No amendment to this Declaration made without the consent of any Mortgagee shall be binding upon it or its successors in interest should it become a Party.

13.06 Condemnation or Insurance Proceeds.

Nothing in this Declaration shall impair the rights of any Mortgagee, pursuant to its Mortgage, to receive Proceeds which are otherwise payable to the Party granting such Mortgage.

13.07 Title by Foreclosure.

Except as otherwise set forth herein, all of the provisions contained in this Declaration shall be binding on and for the benefit of any Person who acquires title to a Parcel by foreclosure, trustee's sale, deed in lieu of foreclosure or other Involuntary Transfer under a Mortgage.

13.08 Modification of Article; Conflicts.

No Party shall unreasonably withhold its consent to such modifications of this Article XIII as are reasonably requested by a Mortgagee, provided that the rights of any such Party will not be materially impaired, diminished, limited or delayed, nor the obligations of any such Party increased in any material respect as a result of such modifications. If there is any conflict between this Article XIII and any other provision contained in this Declaration, this Article XIII shall control.

ARTICLE XIV

SIGNAGE AND MARKETING

14.01 Criteria.

Attached hereto as Exhibit "M" are criteria or examples (the "Signage Criteria") for all signage to be erected by the Parties within the Property, including temporary signs (e.g. for sale signs, directional signs and flags) and permanent signs. No signs shall be erected by the Parties within the Property which do not conform in all respects to the Signage Criteria, or which are inconsistent with signage of a First-Class Project. Prior to the erection of any signage, the Residential Developers shall submit sign plans to Project Developer showing, among other things, the location design and scope of the signs for each Residential Developer, which sign plans shall reflect signage which is no larger than that set forth on the Signage Criteria. The signage shall not be erected unless and until approved in writing by Project Developer, whose review shall be based upon the Signage Criteria. Project Developer shall have the right to install blade signs, the upper portions of which shall not extend more than eight (8) feet into a Residential Parcel; provided that, (a) installation of any blade signs shall not materially adversely affect access to the Residential Units and (b) the top of the blade sign shall be below the horizontal plane extending from the lowest Residential Unit of the Residential Parcel on which the blade sign is installed. In addition, Project Developer shall have the right to install other storefront signs within the Residential Storefront Sign Easement Areas as described in Section 2.02(d).

14.02 Approval of Special Signs and Use of Logo.

Any change made to any initially completed sign which causes the same to not fall within the scope of the Signage Criteria or the approved sign plan is hereby prohibited, and any such changed sign shall be considered as a new installation and any deviation from the Signage Criteria or sign plan shall similarly require the approval of Project Developer. Any use by a Residential Developer of any logo developed by Project Developer for the Project shall be in accordance with standards which may be promulgated from time to time by Project Developer in its reasonable discretion. Without limiting the generality of the foregoing, any variation or change of such Project logo, including but not limited to the graphics of such logo, for use by the Residential Developers for the Residential Parcels shall be subject to the prior written consent of Project Developer.

14.03 Approval of Temporary Trailers and Sales Phase Parking.

If a Residential Developer wishes to locate temporary trailers on the Retail Project during the period in which it is selling any Residential Units, it shall submit to Project Developer a plan setting forth the location and size of the trailers and a proposed program setting forth the proposed manner of operation of such trailers. No trailers shall be located on the Retail Project unless and until such plan and program have been approved by Project Developer. The Parties agree to cooperate in an effort to permit such trailers so long as unreasonable interference with the operation of the Retail Project can be avoided. Project Developer shall grant to West Residential Developer the exclusive right to twenty (20) contiguous parking spaces within the Retail Parking Facility from 10:00 a.m. to 5:00 p.m. Monday through Friday, excluding nationally recognized holidays, during the period extending until ninety percent (90%) of the Residential Units within the West Residential Parcels are sold or leased for the first time (the "Initial Residential Sales Phase").

ARTICLE XV

RESOLUTION OF DISPUTES

15.01 Judicial Reference.

Any dispute, claim, controversy or action (collectively "**Dispute**") arising directly or indirectly out of or in any way relating to this Declaration shall be resolved by a general judicial reference pursuant to California Code of Civil Procedure Section 638, and/or other successor or applicable statute, court rule or provision of law, in accordance with the provisions set forth in this Article XV.

15.02 Parties.

For purposes of this Article XV, the term "**Reference Parties**" shall include any Party to the extent such Party is involved in a particular Dispute.

15.03 Jury Waiver.

The Parties unconditionally and irrevocably waive any right to a trial by jury.

15.04 Reference.

Such Dispute shall be tried by a judicial referee as judge pro tem under an order of general judicial reference to try and determine all issues of fact and law, whether legal or equitable, to be chosen by the Reference Parties from a list of retired California Superior, Appellate and Supreme Court judges and justices. If the Reference Parties are unable to agree on the selection of the referee, then the retired judge or justice who shall act as the referee shall be appointed by the Alameda County Superior Court in accordance with California Code of Civil Procedure Section 640, and/or other successor or applicable statute, court rule, or provision of law, with each of the Reference Parties entitled to only one disqualification pursuant to California Code of Civil Procedure Section 170.6, which right to disqualification must be exercised, if at all, at the hearing on the petition to obtain the judicial reference order and/or to have the referee appointed. The reference shall be conducted and the issues determined in compliance with all judicial rules and all statutory and decisional law of the State of California as if the matter were formally litigated in Superior Court and not by way of judicial reference.

15.05 Costs and Attorneys' Fees.

The cost of the reference shall initially be borne pro rata by the Reference Parties, but the prevailing party shall be entitled to obtain reimbursement for its pro rata share of the reference cost and shall be awarded its actual attorney's and expert's fees and all other costs and expenses relating to resolution of the Dispute.

15.06 Procedure.

The referee shall conduct and decide all pre-trial, trial and post-trial procedures which may arise as if the matter were formally litigated in the Superior Court. The judgment entered upon the decision of the referee shall be subject to all post-trial procedures and to appeal in the same manner as an appeal from any order or judgment in a civil action. All rules of evidence as set forth in the California Evidence Code, all rules of discovery as set forth in the California Code of Civil Procedure, other applicable California and federal statutory and decisional law, and all rules of court shall be applicable to any proceeding before the referee.

15.07 Enforcement.

This reference agreement may be specifically enforced by the filing of a complaint or petition or motion seeking specific enforcement as may be directed by applicable statute and/or rule of court.

15.08 Jurisdiction and Venue.

The Reference Parties agree and consent to the exclusive jurisdiction and venue of the Alameda County Superior Court, and specifically recognize and acknowledge the waiver of any right to remove any action to federal court on the basis of diversity jurisdiction or on any other basis.

15.09 Preliminary Relief.

The Reference Parties may apply to the Alameda County Superior Court for injunctive or other pre-judgment relief prior to the appointment of the referee, and such application and related proceedings prior to the appointment of the referee shall not be a waiver of the enforceability and application of this judicial reference agreement to such Dispute or any other Dispute.

ARTICLE XVI

MISCELLANEOUS

16.01 Termination of Declaration.

This Declaration and the easements created hereby shall be effective upon the Effective Date and shall continue in full force for a term of seventy-five years from the Effective Date at which time the same shall be automatically extended for successive periods of ten (10) years unless an instrument executed by all of the Owners terminating this Declaration and the easements created hereby is recorded in the Official Records of Alameda County.

16.02 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 Alameda County, California, duly executed and acknowledged by all Parties. Additional easement areas, or changes in existing easement areas, shall be reflected in recorded instruments. The Parties agree

to make such amendments to this Declaration as may be requested by the California Department of Real Estate in connection with the sale of condominiums, provided such amendments do not have a material adverse impact on the Retail Parcel.

16.03 Severability.

If any term, provision or condition contained in this Declaration shall, to any extent, be invalid or unenforceable, 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; provided that, if a material provision (other than Section 5.12(a)(3)) is adjudged void or unenforceable, the Parties shall negotiate an equitable adjustment to such other provisions of this Declaration as may be necessary or appropriate to effectuate as closely as possible the Parties' intent as evidenced by this Declaration.

16.04 Severance.

To the extent that any provision of this Declaration would otherwise be invalid or unenforceable due to a violation of the rule against perpetuities, the same shall be construed and interpreted so that it shall have effect, as though it were expressly stated that the happening of any contingency or event must take place, if at all, within the maximum period permitted therefor in order not to violate said rule; provided that if a material provision is adjudged void or unenforceable, the Parties shall negotiate an equitable adjustment to such other provisions of this Declaration as may be necessary or appropriate to effectuate as closely as possible the Parties' intent as evidenced by this Declaration.

16.05 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.

16.06 Unavoidable Delays.

Each Party 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 that any such excused Party shall use reasonable efforts to mitigate the damages of such excused performance. Nothing contained in this Section 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.

16.07 References to the Covenants in Deeds.

Deeds to and instruments affecting any Parcel or any part of the Property may contain the Restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the Restrictions shall be binding upon the Person claiming through any such deed or instrument and such Person's heirs, executors, administrators, successors and assigns.

16.08 Gender and Number.

Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

16.09 Captions and Titles.

All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

16.10 Notices.

All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this Declaration shall be in writing and shall be deemed to have been properly given if sent by registered or certified mail with a return receipt requested, postage prepaid, or sent by facsimile transmission with verification of receipt, nationally recognized overnight express carrier or delivered by hand. A Party shall have the right from time to time to specify as its address for purposes of this Declaration any other address in the United States of America upon giving fifteen (15) days written notice thereof, similarly given, to the other Parties. Notices so sent shall be effective seventy-two (72) hours from the time of mailing if mailed as provided in this Section 16.10, and otherwise upon receipt; provided, however, that non-receipt of any communication as the result of any change of address of which the sending Party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

All notices to Project Developer shall be addressed to:

Madison Bay Street LLC
c/o Madison Marquette Realty Services
1850 M Street, NW
12th Floor
Washington, D.C. 20006
Attention: Gary Mottola, CEO

And to:

Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, CA 94111
Attention: James C. Fowler

All notices intended for Housing Partners shall be addressed to:

c/o California Urban Investment Partners, LLC
MacFarlane Urban Realty Company
201 Spear Street, 14th Floor
San Francisco, California 94105
Attention: Victor MacFarlane

And to:

Russ, August & Kabat
12424 Wilshire Boulevard, Suite 1200
Los Angeles, California 90025
Attention: Richard L. August

All notices intended for the Condo LLC shall be addressed to:

c/o California Urban Investment Partners, LLC
MacFarlane Urban Realty Company
201 Spear Street, 14th Floor
San Francisco, California 94105
Attention: Victor MacFarlane

And to:

Russ, August & Kabat
12424 Wilshire Boulevard, Suite 1200
Los Angeles, California 90025
Attention: Richard L. August

16.11 Additional Property.

Additional property may be annexed from time to time to the Property by an amendment to this Declaration executed and recorded in the manner set forth in Section 16.02. Such amendment may contain supplementary provisions dealing solely with the annexed property so long as such provisions are not inconsistent with the provisions of this Declaration.

Upon the recordation of such amendment, the additional property so annexed shall in all respects be subject to this Declaration as a portion of the Property.

16.12 Incorporation of Exhibits.

Those exhibits attached to this Declaration are by this reference incorporated herein.

16.13 Estoppel Certificates.

Each Party, at any time and from time to time upon not less than thirty (30) days' prior written notice from any other Party, shall execute, acknowledge and deliver to such Party, or, at such Party's request, to any other Person reasonably requested by such Party, 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 Party under this Declaration (and, if so, specifying same); and (c) whether, to such Person's actual knowledge, there are then existing any defaults by any Party in the performance of their respective obligations under this Declaration (and, if so, specifying same). It is intended that any such certificate delivered pursuant to this Section 16.13 may be relied upon by the requesting Party and any such other Person. The Parties will execute an alternative form of estoppel certificate if reasonably requested by a Party. The Party providing any such certificate shall be entitled to receive the reasonable cost of its preparation, not to exceed \$1,000.

16.14 No Partnership.

Neither anything contained in this Declaration, nor any acts of the Parties, 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 any of the Parties or between any of the Parties.

16.15 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 Mortgagees, unless expressly provided herein. No modification of this Declaration shall require any consent or approval of any Party's Permittees or any Occupant or its Permittees.

16.16 Consent.

In any instance in which a Party shall be requested to consent to or approve of any matter with respect to which such Party'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, conditioned 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 any Party.

16.17 Governing Law.

This Declaration shall be construed in accordance with the laws of the State of California.

16.18 No Public Dedication.

Nothing herein contained shall be deemed to be a gift or dedication of a portion of the Project to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Parties that this Declaration shall be strictly limited to and for the purposes herein expressed

16.19 No Merger.

Neither this Declaration nor any portion hereof shall be extinguished by merger through the operation of law alone, but only by a recorded instrument specifically so providing.

16.20 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 Parties hereto.

16.21 Time of Essence.

Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Declaration.

16.22 No Waiver.

No waiver of any default by any Party shall be implied from any omission by any other Party 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 any such Party to or of any act or request by any other Party 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.

16.23 Interpretation.

This Declaration shall be construed in accordance with its fair meaning and not strictly for or against any Party.

16.24 Limitation of Liability.

(a) This Declaration is executed by the authorized representatives of Project Developer and the Residential Developers solely as representatives of the same and not in their

own individual capacities, and their advisors, trustees, directors, officers, employees, beneficiaries, shareholders, participants or agents shall not be personally liable in any manner or to any extent under or in connection with this Declaration except for willful misconduct or fraud.

(b) Notwithstanding anything contained in this Declaration, if at any time a Party (such Party being referred to in this Section 16.24(b) as the "**Breaching Party**") shall fail to perform or pay any covenant or obligation on its part to be performed or paid hereunder, and as a consequence thereof the other Parties shall recover a money judgment against the Breaching Party, such judgment shall (subject to the rights of any Mortgagee whose lien predates the filing of the complaint which results in such judgment) be enforced against and satisfied out of only (i) the proceeds of sale produced upon execution of such judgment and levy thereon against the Breaching Party's interest in its Parcel and improvements thereon, (ii) the rents, issues, profits or other income receivable from the such Parcel and improvements thereon, (iii) the consideration received by the Breaching Party from the sale of all or any part of its interest in its Parcel and improvements thereon made after such failure of performance or breach of warranty (which consideration shall be deemed to include any assets at any time held by the Breaching Party to the extent that the value of the same does not exceed the proceeds of such sale), (iv) any insurance proceeds or Condemnation award payable as the result of any casualty to or Condemnation of the Breaching Party's Parcel and/or Improvements thereon, and (v) any sums due or to become due from the other Party to the Breaching Party regardless of when the obligation arises, by way of set-off, and the other Parties and any other owner or holder of any claim or action against the Breaching Party shall look solely to the Breaching Party's Parcel and improvements thereon and to the property specified in clauses (i), (ii), (iii), (iv) and (v) above for the payment and satisfaction of any such claim or action and any judgment thereon. The Breaching Party shall not have any personal liability for the performance or payment of any such covenant, warranty or obligation hereunder or under any such other agreement or upon any judgment thereon. No Party shall seek specific performance of any affirmative covenant or affirmative obligation by or against the Breaching Party or any partner or member in the Breaching Party, except to the extent that the same can be achieved with the property and proceeds specified in clauses (i), (ii), (iii), (iv) and (v) above. The provisions of this Section 16.24(b) are not intended to relieve the Breaching Party from the performance of any of its obligations hereunder, but rather to limit the Breaching Party's liability as aforesaid, nor shall any of the provisions of this Section 16.24(b) be deemed to limit or otherwise affect any other Party's right to obtain injunctive relief necessary to enforce other rights specifically granted to such Party in this Declaration. To the extent that (with or without recourse to the limited remedies provided in this Section 16.24(b)) a Party is, by virtue of the foregoing limitations, unable to recover the full amount of any money judgment against the Breaching Party, the Breaching Party shall, for so long as such amount (and interest thereon in accordance with Section 16.24(b)) shall remain unpaid, be precluded and estopped from enforcing and collecting any and all of such other Party's monetary obligations to the Breaching Party under (or by reason of a breach of) this Declaration. The foregoing shall not be deemed to limit the obligations of the Parties under any other agreement between or amongst such Parties.

(c) The limitation of liability provided in this Section 16.24 above is in addition to, and not in limitation of, any limitation on liability applicable to any Party or such advisors, trustees, directors, officers, partners, members employees, beneficiaries, shareholders,

participants or agents of any Party provided by law or by any other contract or agreement or instrument.

(d) Notwithstanding the use in this Declaration of the term Residential Developer to assign rights, duties and obligations to both the West Residential Developer and the East Residential Developer, the rights, duties and obligations of the West Residential Developer under this Declaration are independent of the rights, duties and obligations of the East Residential Developer under this Declaration, and vice versa; the West Residential Developer shall have no liability for any breach of this Declaration by the East Residential Developer, and vice versa; and the rights of the West Residential Developer in connection with this Declaration shall not be conditioned upon the performance of the obligations of the East Residential Developer, and vice versa.

16.25 Integration.

Except for that certain Purchase and Sale Agreement (Parcel E) between Project Developer's predecessor-in-interest and Housing Partners dated October 10, 2002, and the agreements and instruments entered into pursuant thereto (the "Parcel E PSA"), and that certain Purchase and Sale Agreement (Parcels 8&10) between Project Developer's predecessor-in-interest and Condo LLC of even date with this Declaration, and the agreements and instruments entered into pursuant thereto (the "Parcels 8&10 PSA"), and except as provided in Section 2.16 of this Declaration, this Declaration, and the Exhibits and addenda, if any, attached hereto, constitute the entire agreement between the Parties, and there are no agreements or representations between the Parties except as expressed herein. Except as otherwise provided herein, no subsequent change or addition to this Declaration shall be binding unless in writing and signed by the Parties hereto. In the event of any direct conflict between this Declaration and the provisions of the Parcel E PSA or of the Parcels 8&10 PSA, this Declaration shall control.

16.26 Further Assurances.

Each Party agrees that it will, at any time and from time to time, upon the written request of the other Party, execute and delivery such further documents (in recordable form, if appropriate under the circumstances) and do such further acts and things, as the requesting Party may reasonably request in order to effect the purposes of this Declaration.

16.27 Authority.

Except to the extent that approval of the Mortgagees of the East Residential Parcel and the Retail Parcels and approval of the City and the Agency are required, each Party hereby represents to each other Party that: (a) it has the requisite power and authority to execute, deliver and perform this Declaration; (b) this Declaration and the other documents executed by it in accordance with this Declaration constitute legal, valid and binding obligations of it, enforceable against it in accordance with their respective terms; (c) neither the execution and delivery of this Declaration by it, nor performance of any of its obligations under this Declaration, nor consummation of the transactions contemplated by this Declaration, shall conflict with, result in a breach of, or constitute a default under, the terms and conditions of the organizational documents pursuant to which it was organized, or any indenture, mortgage, deed

of trust, agreement, undertaking, instrument or document to which it or any affiliate of it is a party or is bound, or any order or regulation of any court, regulatory body, administrative agency or governmental body having jurisdiction over it.

16.28 Mutual Cooperation.

Project Developer, Housing Partners and the Condo LLC acknowledge that the Project is a unified development with both retail and residential components, and that issues are likely to arise which are not specifically addressed in this Declaration. Therefore any Owner of the Retail Parcel and any Owner of a Residential Parcel will cooperate with each other in a commercially reasonable manner to enable each Owner to operate its Parcel so that it is competitive with other comparable residential or retail projects, without thereby impairing the operation of its own Parcel. However, any requested cooperation must be consistent with the express provisions of this Declaration.

16.29 Approvals.

(a) Project Developer, Housing Partners and the Condo LLC have executed this Declaration as of the Effective Date. However, this Declaration shall not become effective unless and until written consent and subordination is granted by Wells Fargo Bank, N.A., the Mortgagee with respect to the Retail Parcel and Key Bank National Association, the Mortgagee with respect to the East Residential Parcel, and by the City and the Agency, to the extent their approval is required. The Parties shall use commercially reasonable efforts to obtain the required consents.

(b) Upon the written consent of all required Persons pursuant to Section 16.29, this Declaration shall be duly recorded in the Official Records of Alameda County and shall become effective retroactively as of the Effective Date. Upon recordation, this Section 16.29 shall be of no further force or effect.

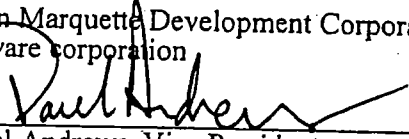
This Declaration has been executed by Project Developer, Housing Partners and the Condo LLC as of the day and year first above written.

PROJECT DEVELOPER:

MADISON BAY STREET LLC,
a Delaware limited liability company

By: Madison Manhattan Village, L.P.,
a Delaware limited partnership

By: Madison Marquette Development Corporation,
a Delaware corporation

By: 
Paul Andrews, Vice President

HOUSING PARTNERS:

BAY STREET HOUSING PARTNERS, L.P.,
a Delaware limited partnership

By: Bay Street Apartments, LLC
a Delaware limited liability company
Its: Co-Manager

By: MacFarlane Urban Realty Company, LLC,
a California limited liability company
Its: Member

By: _____
Jon Knorpp
Its: Principal

This Declaration has been executed by Project Developer, Housing Partners and the Condo LLC as of the day and year first above written.

PROJECT DEVELOPER:

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Its: Co-Manager

By: MacFarlane Urban Realty Company, LLC,
a California limited liability company
Its: Member

By: _____
Jon Knopp
Its: Principal

CONDO LLC:

BAY STREET CONDOMINIUMS, LLC,
a Delaware limited liability company

By: Bay Street Residential Partners, LLC
a Delaware limited liability company
Its: Manager

By: California Urban Investment Partners, LLC,
a Delaware limited liability company
Its: Manager

By: MacFarlane Urban Realty Company, LLC,
a California limited liability company
Its: Manager

By:


Jon Knorpp

Its:

Principal

~~STATE OF~~ _____)

DISTRICT OF COLUMBIA, ss.

COUNTY OF _____)

On January 13, 2006, before me, Laurie F. Malasky, a Notary Public in and for said state, personally appeared Paul Andrews, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Laurie F. Malasky
Notary Public in and for said State

Laurie F. Malasky
Notary Public, District of Columbia
My Commission Expires 06-14-2007

STATE OF _____)

) ss.

COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for said state, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said State

STATE OF _____)

) ss.

COUNTY OF _____)

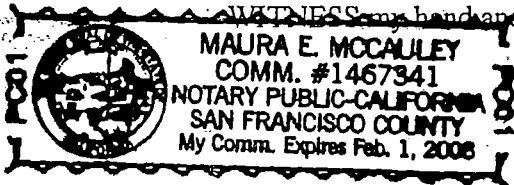
STATE OF California)

) ss.

COUNTY OF San Francisco

On January 4, 2006, before me, Maura E. McCawley, a Notary Public in and for said state, personally appeared Jon Knorpp, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Maura E. McCawley
Notary Public in and for said State

STATE OF California)

) ss.

COUNTY OF San Francisco

On January 4, 2006, before me, Maura E. McCawley, a Notary Public in and for said state, personally appeared Jon Knorpp, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Maura E. McCawley
Notary Public in and for said State

STATE OF _____)

) ss.

COUNTY OF _____)

