

**24113565**

**Regina Alcomendras**

Santa Clara County - Clerk-Recorder  
02/08/2019 11:44 AM

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## **Accommodation**

**Recording Requested By:**  
First American Title Company

**After Recordation, Return To:**  
Hanna & Van Atta  
525 University Avenue, Suite 600  
Palo Alto, CA 94301  
Attn: David Van Atta

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### **FIRST AMENDMENT TO DECLARATION OF RESTRICTIONS AND COMMON EASEMENTS FOR THE PRUNEYARD**

**THIS FIRST AMENDMENT TO DECLARATION OF RESTRICTIONS AND COMMON EASEMENTS FOR THE PRUNEYARD** ("Amendment to Declaration") is made effective as of FEBRUARY 6, 2019, by CFEP PruneYard LLC, a Delaware limited liability company (the "Declarant"), with reference to the following facts:

#### **INTRODUCTION**

This Amendment to Declaration is made with reference to the following facts:

**A.** Declarant is the owner of the real property (the "Property") located in the City of Campbell, County of Santa Clara, State of California described as follows:

Parcels 1, 2, and 3 as shown on the Parcel Map entitled "Parcel Map for The PruneYard" (the "Map"), recorded in the Official Records of Office of the Recorder Santa Clara County, California on May 18, 2017 in Book 904 of Maps, pages 9 to 12 as Document No. 23653539.

**B.** The Property was made subject to the Declaration of Restrictions and Common Easements for the PruneYard, recorded in the Official Records of Santa Clara County, California on May 18, 2017 as Document No. 23653540 (the "Declaration") for mixed-use retail, office and hotel center known as the PruneYard (the "Project Site"). Declarant has subdivided the Project Site into three (3) Building Parcels to redevelop and augment the mixed-use retail, office and hotel center on the Project Site.

**C.** The Declaration provides for the use and maintenance of the Common Utility Facilities located in Common Easement Areas for operating, maintaining, repairing and replacing the Common Utility Facilities by the Center Association to the extent such Common Utility Facilities are located within the Common Easement Areas. Notwithstanding the foregoing, there are certain other utility lines and utility easements within the Project Site that are and shall be private utility facilities that are utility lines or other utility facilities that serve only one Building Parcel (the "Private Utility Facilities") a portion of which Private Utility Facilities run over and across or under a different Building Parcel (the "Burdened Parcel") that is adjacent to the Building Parcel served by such Private Utility Facilities. Declarant desires to state and clarify the rights and obligations of the Owner of the Parcel that is served by such Private Utility Facilities (the "Utility Easement Holder") as provided in Section 3 of this Amendment to Declaration.

**D.** Declarant as the owner of all of the Property desires to modify the Declaration for the following purposes:

(1) Add and provide more particular definition and description of the Common Easement Areas of the Project Site.

(2) Add and provide more particular definition to those areas of the Common Easement Areas that are Exclusive Use Areas for the use of a particular Owner of a Building Parcel and/or the Occupants of a portion of a Building Parcel.

(3) Clarify the use and location of utility easement areas within the Common Easement Areas and Private Utility Facilities, as hereinafter defined, that are located within one Building Parcel for the benefit of another Building Parcel as Private Utility Facilities.

(4) Add a provision for allocation of property taxes assessed to the Office Parcel for the Center Parking Garage to the other Building Parcels.

(5) Add a provision pertaining to exterior furniture and fixtures in the Center.

(6) Add a provision pertaining to Center Association management standards.

(7) Add a provision pertaining to a website for the Center.

(8) Add a provision revising Section 10.10 regarding Signs and Advertising.

(9) Add provisions regarding corrections or interpretations of provisions of the Declaration.

(10) Add a provision modifying Exhibit B of the Declaration by the provisions of Exhibit "C" attached to this Amendment to Declaration ("Cost Pool B Modification").

**E.** Capitalized terms used in this Amendment to Declaration and not defined herein have the meanings therefor provided in the Declaration.

**NOW, THEREFORE**, Declarant hereby declares that all and every portion of the Project Site and all interests therein, shall be held, sold, leased, mortgaged, encumbered, rented, used, occupied, improved and conveyed subject to the declarations, limitations, easements, restrictions, covenants, and conditions stated in this Amendment to Declaration, which are imposed as covenants running with the land and equitable servitudes pursuant to a general plan for the development of the Project Site, and which shall run with the Project Site and all interests in the Project Site and be binding on Declarant and its successors and assigns, and on all parties thereof or acquiring any right, title or interest in or to the described Project Site or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**1. Common Easement Areas of the Project Site:**

The Declaration provides for the use and maintenance of Common Easement Areas within the Project Site. Exhibit "A" attached to this Amendment to Declaration shows and depicts the location of such Common Easement Areas in more detail.

**2. Exclusive Use Areas:**

Exclusive Use Areas are provided for as established and designated as Exclusive Use Areas as described in Section 2.5 of the Declaration. Exhibit "A" attached to this Amendment to Declaration also shows and depicts the location of such Exclusive Use Areas in more detail. Section 5.1.A(2) of the Declaration provides that the Center Association may delegate the responsibility of and costs for cleaning, maintaining or repairing a portion of the Common Easement Areas to an Owner who has been granted or assigned exclusive use of a portion of the Common Easement Area as an Exclusive Use Area. Unless the Center Association determines and provides otherwise in a written notice to an Owner, the Owner who has been granted or assigned the use of such an Exclusive Use Area shall have and shall undertake the responsibility and obligations for cleaning, maintaining or repairing of the Exclusive Use Area that has been granted or assigned to that Owner.

**3. Use and Location of Utility Easement Areas/Private Utility Easement Areas:**

The Utility Easement Holder shall have a non-exclusive easement and reasonable rights of access over and across the Burdened Parcel over which such Private Utility Facilities are located subject to:

**A.** The Utility Easement Holder and its contractors shall be fully and appropriately insured in accordance with Section 8.3 of the Declaration and shall name as additionally insured the Owner of the Burdened Parcel, its Mortgagees, and their respective successors and assigns, during any period of construction or installation or modification of any such Private Utility Facilities and during of use of Private Utility Facilities by the Utility Easement Holder.

**B.** Installation, maintenance and use of any Private Utility Facilities improvements shall not inhibit or impair other than in a de minimis respect the normal business activities of the Owner and/or Occupants of the Burdened Parcel, and shall not interfere with or impair other than in a de minimis respect the integrity or use of the Burdened Parcel or the Improvements located on the Burdened Parcel.

**C.** Prior to the Utility Easement Holder undertaking any installation, maintenance, or modification of Private Utility Facilities on a Burdened Parcel, the Utility Easement Holder shall notify the Owner of the Burdened Parcel in writing as to its planned installation, maintenance, or modification of such Private Utility Facilities on the Burdened Parcel, including a description of such planned installation, maintenance, or modification of such Private Utility Facilities, at least ten (10) days prior to undertaking such planned installation, maintenance, or modification of such Private Utility Facilities.

**D.** Any modifications of the Private Utility Facilities or the location thereof shall require the prior written approval of the Owner of the Burdened Parcel, not to be unreasonably withheld or delayed. The Utility Easement Holder shall within a reasonable time restore any damage made to the improvements within the Burdened Parcel that was caused by the installation, maintenance, or modification of such Private Utility Facilities by the Utility Easement Holder in a first class and workmanlike manner to a condition that conforms to the condition of improvements on the Burdened Parcel prior to the installation or modification of such Private Utility Facilities.

**E.** All construction, maintenance and installation of Private Utility Facilities within the Burdened Parcel by the Utility Easement Holder and its contractors hereunder shall be at no cost or expense to the Owner of the Burdened Parcel, and shall not result in the creation or imposition of any liens on the Burdened Parcel, and shall be undertaken in a first class manner that does not materially interfere with the use of the Burdened Parcel or the Improvements located on the Burdened Parcel.

**F.** Certain of the Private Utility Facilities may also run underneath structures on a Burdened Parcel. Each such Utility Easement Holder benefited by such Private Utility Facilities that run underneath structures on a Burdened Parcel shall have a non-exclusive easement and is hereby granted a non-exclusive easement for such Private Utility Facilities that run underneath structures on a Burdened Parcel in the current location of such Private Utility Facilities as shown and described on Exhibit "B", with the express requirements and understanding that the Utility Easement Holder shall maintain and repair such Private Utility Facilities in a first class and workmanlike manner and shall be responsible to the Owner of the Burdened Parcel for any harm or damage to the Burdened Parcel if the Utility Easement Holder should fail to appropriately maintain and repair such Private Utility Facilities or in operating, maintaining or undertaking its obligations or rights hereunder should harm or damage the Burdened Parcel or the Improvements on such Burdened Parcel.

**G.** The Utility Easement Holder shall indemnify, defend (with counsel reasonably acceptable to the indemnified party) and hold the Owner of the Burdened Parcel and its Mortgagee(s) harmless from any and all claims, demands, damages, losses, expenses, costs, judgments and liabilities, including but not limited to attorney's fees, that arise from the use of the Private Utility Facilities easement area by the Utility Easement Holder and/or its Occupants.

#### **4. Property Tax on Garage.**

The use of the Center Parking Garage situated within the Office Parcel will be shared by and among the Owners. The amount of the property taxes that are assessed to the Office Parcel that pertain to the Center Parking Garage improvements ("Garage Improvements") shall be determined and allocated to the Building Parcels and the Owners as provided in this Section. The Office Owner shall cause a determination and allocation of a reasonable and appropriate portion of the property taxes to be assessed to the Office Parcel to the Garage Improvements ("Garage Tax Allocation"). Such determination of property taxes that pertain to the Garage Improvements as the "Garage Tax Allocation" shall be made by cost segmentation methodology undertaken by a qualified third party that is mutually agreed to by the Office Owner and the Center Association. The Garage Tax Allocation as so determined shall then be allocated to each Parcel in the percentages set forth as **Cost Pool B** described in Exhibit B to the Declaration. The Office Owner shall deliver a written notice of such allocations to the Retail Owner and the Hotel Owner ("Notice of Allocation of Garage Tax Allocation").

The Garage Tax Allocation shall be recomputed using the process and methodology provided in this Section 4 upon reassessment of the Office Parcel resulting from a sale or other reassessment due to the transfer of ownership interest in the Office Parcel or subsequent improvements being made to Garage Improvements or other Improvement within the Office Parcel. Such recalculated Garage Tax Allocation shall then be allocated to each Building Parcel in the percentages set forth as **Cost Pool B** described in Exhibit B to the Declaration.

Upon the delivery of such Notice of Allocation of Garage Tax Allocation to the Retail Owner and the Hotel Owner, the Retail Owner and the Hotel Owner shall reimburse the Office Owner for their respective shares of the Garage Tax Allocation within thirty (30) days after delivery of the Notice of Allocation of Garage Tax Allocation.

If and to the extent that the provisions of this Section 4 are different from and/or inconsistent with the provisions of Section 4.3(E) or Section 6.2(E) of the Declaration, or any other provisions thereof, the provisions of this Section 4 shall apply and prevail.

If there is any disagreement between or among the Hotel Owner, the Retail Owner and the Office Owner regarding any Garage Tax Allocation as made under this Section, such dispute shall be submitted to arbitration pursuant to Section 13.25 of the Declaration and the time stated for reimbursement of such Garage Tax Allocation shall be postponed until the disagreement is resolved.

#### **5. Exterior Furniture and Fixtures.**

Each Owner shall be responsible for maintenance and repair of any exterior furniture and fixtures within its Building Parcel (even if located within the Common Easement Areas of such Building Parcel) and shall keep, maintain and repair such furniture and fixtures in a manner consistent with the operation of a First-Class Project. The Center Association shall have the right to intercede and undertake such maintenance and repair of such furniture and fixtures, and charge the applicable Owner for the out-of-pocket costs and expenses incurred by the Center Association for such maintenance and repair as a Reimbursement Assessment, if the Center Association determines, after written notice and a hearing before the Board, that an Owner is not complying with this provision.

#### **6. Association Management Standards.**

Staffing and operations of the Association shall conform to the standards of the operation of owners' associations for First-Class Projects.

**7. Office Parcel Restaurant and Food Service, Liquor Licenses and Holiday Signage and Lighting.**

The Office Parcel shall be subject to the following provisions:

(1) The aggregate amount of restaurant and/ or food service use permitted on the ground floor[s] of the Office Building[s] within the Office Parcel shall be limited to a maximum of six thousand (6,000) square feet; (2) No restaurant uses shall be permitted on the Office Parcel prior to the completion of the expansion of the Center Parking Garage as provided in Section 6.5(A) of the Declaration; (3) Two (2) of total of the "On-Sale" (Consumption on-site) alcohol licenses that are allowed for the Project under the Master Use Permit (Table IV-3 - page 13) are and shall be available to use for premises within the Office Parcel for the Office Owner or its tenants and (4) the Office Owner shall allow the Association or Retail Owner, for no charge, costs or expense, to install holiday signage and lighting on the roof of one of the Office Buildings (to be mutually agreed upon) at the Association's or Retail Owner's cost and expense.

**8. Revisions to Section 13.26.**

Section 13.26 of the Declaration is revised to read as follows:

13.26 Name. The names "Pruneyard", "The Pruneyard" and "Pruneyard Center" are registered trademarks of the Declarant. Except as provided herein, such names and the logo ("Pruneyard Logo") used by Declarant for "Pruneyard" and "Pruneyard Center" may not be used by any Person without the prior written consent of the Declarant. The name of the Center as "Pruneyard", "The Pruneyard" and "Pruneyard Center", and the Pruneyard Logo, may not be changed without the prior written consent of the Declarant, as long as the Declarant holds Declarant's Reserved Rights under this Declaration. Any Owner may use the name of the Center and the Pruneyard Logo only in connection with the marketing and use of its Building Parcel in the Center or the uses within its Building Parcel by itself or its tenants; provided, however, no party or Owner other than Declarant shall use the name of the Center or the Pruneyard Logo as part of its business name or operation for any other use or for any other development or project.

**9. Website for Project.**

The Retail Owner shall have the right to create and manage a website for the Center ("Center Website"), at its cost and expense, provided however that the Office Owner and the Hotel Owner shall have the right to add appropriate links to the Center Website for their respective marketing purposes which shall conform to such information and content that is compatible with the marketing for similar commercial properties in the San Francisco Bay Area.

**10. Signs and Advertising:** Section 10.10 of the Declaration is amended and restated to read as follows:

10.10. Signs and Advertising. All project signage, monument signage and building signage, ("signage") shall conform to the Center Signage Program.

(A) Center Signage Program. Signage within the Center shall comply with the Master Sign Plan that is attached as Appendix B to the Master Use Permit, as such Master Sign Plan may be revised from time to time, which shall be the Center Signage Program under this Declaration and comply with the provisions of Paragraph G of Article V of the Master Use Permit. All signage in the Center shall conform to the Center Signage Program, and shall be reviewed and approved as provided in Section 10.10(B) and by the City. Any changes or modifications to the Center Signage Program shall be reviewed and approved by the City after prior review as required in Section 10.10.(B). The Center Association shall take responsibility for compliance with the signage requirements under the Master Sign Plan as stated in Paragraph G, Article V, of the Master Use Permit.

(B) Approval of Center Signage. Prior to submittal of any proposed signage for review by the City, all signage displayed to the public view from any Building or any portion of the Center must be reviewed and approved by the Declarant, as long as Declarant holds Declarant's Reserved Rights, or until Declarant assigns such review to the Construction Work Review Body, solely for conformance to the Center Signage Program criteria. After such time as Declarant no longer holds Declarant's Reserved Rights any such proposed signage shall be reviewed and approved by the Construction Work Review Body, pursuant to the provisions of Article 9, solely for conformance to the Center Signage Program criteria.

(C) Signs in General. Subject to Civil Code §§ 712 and 713, and this Section 10.10, no signs shall be displayed to the public view on any Building Parcel or on any other portion of the Center except signs that comply with the Center Signage Program which are part of the Center Design Guidelines and the Rules.

(D) All other signs, billboards, posters, or advertising materials within the Center not covered by the Center Signage program shall conform to standards established by Declarant and the applicable laws and regulations of the City, including those located within the storefront windows of commercial spaces.

(E) For Sale or For Rent or For Exchange Signage. "For Sale" or "For Rent" or "For Exchange" signs shall be allowed to be displayed within areas of the Center that are designated in the Center Signage Program regarding such signs, and that conform to the requirements of State law, and applicable local ordinances, provided the design, dimensions and locations are reasonable.

(F) The Center Association shall maintain, repair and replace the Center's signage other than those signs expressly listed in subsection (G), below.

(G) (1) Hotel Freeway Identification Sign on Office Parcel: There is currently located on the Office Parcel a freeway identification sign that identifies the hotel situated on the Hotel Parcel (the "Hotel Sign"). The Owner of the Hotel Parcel [Hotel Parcel Owner] shall have a continuing right and license to locate such Hotel Sign on the Office Parcel in its current location as long as a hotel operation exists on the Hotel Parcel. The Hotel Owner shall have the obligation to maintain such Hotel Sign, at its sole costs and expense, and the Hotel Owner and its agents shall have a license to enter the Office Parcel to maintain such Hotel Sign, provided that any such entry shall be made with 24 hours advanced written notice to the Office Parcel Owner, with evidence of liability insurance reasonably satisfactory to the Office Parcel Owner being provided to the Office Parcel Owner, and shall not materially interfere with the operations of the Office Parcel or the parking located within the Office Parcel. The Hotel Owner shall be deemed to have agreed to indemnify and hold harmless the Office Parcel Owner from any claims of injury, death or damage that result from the Hotel Parcel Owner's use or maintenance or repair activities regarding such Hotel Sign. If the Hotel Owner fails to maintain the Hotel Sign in a commercially reasonable manner, the Office Parcel Owner may terminate the Hotel Owner's rights of use of such Hotel Sign after no less than 30 days prior written notice if Hotel Owner should fail to cure such failure to maintain during such 30 day period of time. If the Hotel Owner discontinues use of the Hotel Sign or the Hotel Parcel is not being used for hotel purposes for a period of more than 180 days, the Office Parcel Owner may terminate the Hotel Owner's rights of use of such Hotel Sign after no less than 60 days prior written notice. If Hotel Owner desires to change the Hotel Sign, the Hotel Owner shall present the proposed change to the signage to the Office Parcel Owner, who shall be entitled to object the proposed

change if such proposed change to the Hotel Sign is not compliant with Center Sign Program.

(2) The Office Parcel Owner shall maintain the freeway identification sign reading "The Pruneyard, City of Campbell", the address signage and tenant identification signage situated within the Office Parcel.

(3) Retail Parcel Owner shall maintain the address signage and tenant identification signage situated within the Retail Parcel.

#### **11. Corrections and Interpretation of Declaration.**

A. Clarification of use of Terms and Definitions. [1] The term "Owner" as used in the Declaration and in this Amendment shall include the terms used in the Declaration as "Building Parcel Owner" and/or "Parcel Owner"; [2] The term "Hotel Owner" as used in the Declaration and in this Amendment shall include the term used in the Declaration as "Hotel Parcel Owner"; [3] The term "Office Owner" as used in the Declaration and in this Amendment shall include the term used in the Declaration as "Office Parcel Owner"; [4] The term "Retail Owner" as used in the Declaration and in this Amendment shall include the term used in the Declaration as "Retail Parcel Owner" and the term Master Use Permit shall include the designation "MUP" as stated in the Declaration.

B. Section 1.24 is revised and corrected to read as follows:  
"Center Signage Program" shall mean any Center Signage Program defined and established pursuant to Section 10.10 of this Declaration.

C. The words "Owner's Unit" are deleted from the ninth (9<sup>th</sup>) line of Section 2.6 of the Declaration.

D. Section 2.21 is revised and corrected to read as follows:  
"2.21. Modifications of the Common Easement Areas. The Common Easement Areas, including the Center Roadways, the Private Vehicular Access Areas, the Private Pedestrian Access Areas, the Center Parking Garage and the Utility Facility Easement Areas may be altered, modified, and/or relocated pursuant to review and approval by the Construction Work Review Body as provided in Article 9 (Sections 9.2 and 9.4) of this Declaration or as provided in the provisions of Section 2.22."

E. The brackets in Section 2.22(A) around the words "owned by Declarant" (but not the words themselves) are deleted from the third (3<sup>rd</sup>) line of Section 2.22(A) of the Declaration and the bracket in the third (3<sup>rd</sup>) line of Section 2.22 (B) is removed.

F. The second sentence of Section 4.5 of the Declaration is amended to read: "Any Special Assessment that exceeds Ten Thousand Dollars (\$10,000) as assessed to any one Parcel shall be presented to the Members for approval."

G. Special Approval Rights. Notwithstanding anything to the contrary set forth in the Declaration, neither the Center Association nor the Declarant shall take any of the following actions [in subsections G (i) through (vii) below] (including taking such actions through an amendment of the Declaration, Rules, Center Design Guidelines, Center Operational Standards, Center Signage Program, Parking Management Plan, Trash Management Plan or any other Center Governance Document) (collectively, "Fundamental Issues") without the prior written approval of the Owners affected thereby, which approval shall not be unreasonably withheld, delayed or conditioned. Such approval right shall apply to Declarant actions, Member votes and to Center Association Board votes.

(i) any action that would have a material and adverse impact on the permitted uses or operations of the Parcel and/or the Owner of a Parcel;

(ii) any change to the Owner's allocable share of any Assessment Pool (and the adoption of an allocable share for a future Cost Center of which the Owner is a participant) except as is consistent with the methodology and procedures regarding Cost Pool B that was initially described in Exhibit B to the Declaration and further delineated in Exhibit "C" attached to this Declaration (the "Cost Pool B Modification").

(iii) changes to ingress, egress, or access to the Parcel having a material adverse effect on the Parcel;

(iv) As to the Office Parcel, any modification to the allocation of parking spaces in the Center (including those within the Parking Garage), and/or amendment of the Parking Management Plan, that materially and adversely affects the rights or obligations of the Office Owner or Office Parcel disproportionately to any other Owners or Parcels;

(v) any modification or addition to the categories of Base Budget Common Operational Costs or Common Operational Costs specified in the initial Base Budget that materially and adversely affects the rights of an Owner in a discriminatory manner relative to the other Owners;

(v) any Special Assessment that exceeds \$10,000;

(vi) as to the Office Parcel, the performance of any Construction Work on the Office Parcel, including the Parking Garage, without approval of the Office Owner; and

(vii) any modification to this Section F.

H. Amendments. The following is hereby added to Section 13.5 of the Declaration: "Notwithstanding anything to the contrary set forth in the Declaration, any amendment that concerns any of the Fundamental Issues or the provisions of Section G, above, must be approved by all of the Owners (in which case, the proposed amendment must be delivered to the Owners not less than 15 days and not more than 60 days prior to any approval being solicited)."

I. Affiliate. Notwithstanding anything to the contrary set forth in the Declaration, the transfer of the Office Parcel to Pruneyard Office Investors LLC shall not be considered a transfer to an Affiliate of the Declarant. Upon such transfer, the Center Association's duties and powers shall commence, as set forth in Section 5.3 of the Declaration.

J. Improvements. The second sentence of Section 9.5 of the Declaration shall be revised to read: "Notwithstanding anything to the contrary set forth in the Declaration, in no event shall Declarant, the Center Association or any Construction Work Review Body have the right to review or approve any improvements, additions or modification made or to be made solely within the interior of a Building that comply with the Master Use Permit."

K. Modification to Exhibit B. Exhibit B of the Declaration is modified regarding "Cost Pool B" as stated on the attached Exhibit "C" as the "Cost Pool B Modification".

L. Reconciliation. Section 4.6(E) of the Declaration is hereby amended such that the procedures for the end of the year reconciliation will also apply to the Base Budget and all Base Assessments.

M. Declarant's Reserved Rights. Notwithstanding anything to the contrary set forth in the Declaration, upon the transfer of the Retail Parcel by Declarant, all of Declarant's rights set forth in the Declaration, including all of Declarant's Reserved Rights, shall automatically be assigned and transferred to Ellis Partners LLC without the need for any further recorded document, as long as Ellis Partners LLC has an ownership interest in the entity that owns the Retail Parcel. After such time as Ellis Partners LLC no longer holds an ownership interest in the Retail Parcel, all of the Declarant's rights set forth in the Declaration, including all of Declarant's Reserved Rights, shall terminate.

**SIGNATURES ARE CONTAINED ON FOLLOWING PAGE**

**IN WITNESS WHEREOF**, the undersigned, being the Declarant herein, has executed this Amendment to Declaration effective as of FEBRUARY 6, 2019.

**CFEP Pruneyard LLC,**  
a Delaware limited liability company

By: CFEP Regular Holdings LLC,  
a Delaware limited liability company  
Its Sole Member

By: EPL Pruneyard LLC,  
a California limited liability company  
Its Administrative Manager

By: Ellis Partners LLC,  
a California limited liability company  
Its Managing Member

By:   
Name: **MELINDA ELLIS EVERS**  
Its: **Managing Member**

A notary public or other officer completing the certificate verifies only the identity of the individual who signed the document to which the certificate is attached and not the truthfulness, accuracy, or validity of that document.

**STATE OF CALIFORNIA**

**COUNTY OF** SAN FRANCISCO

On FEBRUARY 6, 2019 before me, SHAWN A. CHRISTMAN a Notary Public, personally appeared MELINDA ELIS EVERS who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

(SEAL)

WITNESS my hand and official seal

Shawn A. Christman



Exhibit "A"

Common Easement Areas  
Exclusive Use Areas

# Exhibit "A"

## Common Easement Areas Exclusive Use Areas



Common Easement Areas  
(Includes all spaces outside of the  
building envelope including but not  
limited to arcades, breezeways  
and exterior corridors on first floor)

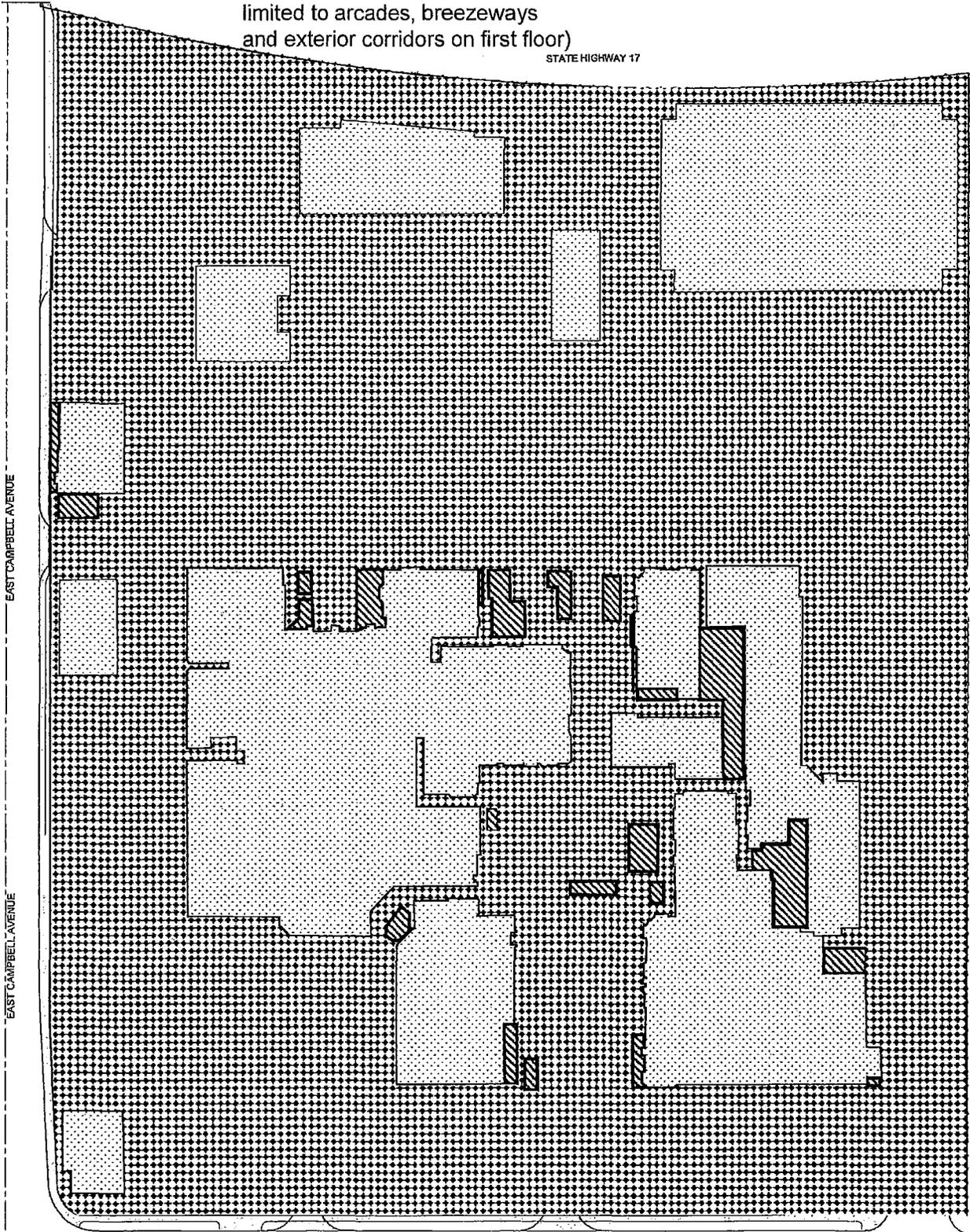


Exclusive Use Areas



Building

STATE HIGHWAY 17



EAST CAMPBELL AVENUE

EAST CAMPBELL AVENUE

SOUTH BASCOM AVENUE

Exhibit "B"  
Utility Easement Areas

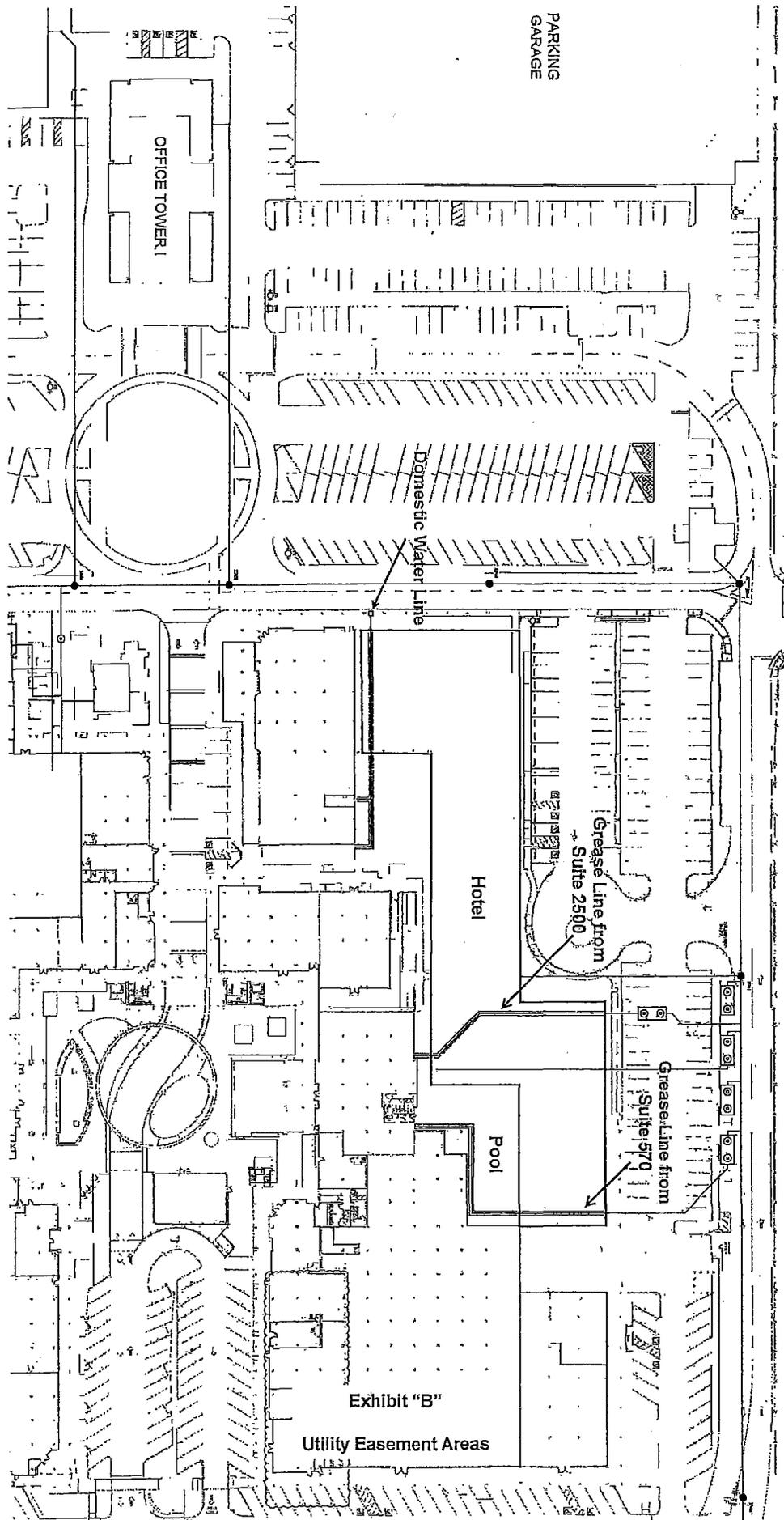


Exhibit "C"  
"Cost Pool B Modification"



23653540

Regina Alcomendras  
Santa Clara County - Clerk-Recorder  
05/18/2017 01:39 PM

Recording Requested By:  
First American Title Company

After Recordation, Return To:  
Hanna & Van Atta  
525 University Avenue, Suite 600  
Palo Alto, CA 94301  
Attn: David Van Atta

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Has not been compared with original.

RECEIVED

MAY 23 2017

Public Works Administration

CONFORMED COPY

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**DECLARATION OF RESTRICTIONS AND COMMON EASEMENTS FOR THE PRUNEYARD**

**IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, GENDER, GENDER IDENTITY, GENDER EXPRESSION, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, GENETIC INFORMATION, NATIONAL ORIGIN, SOURCE OF INCOME AS DEFINED IN SUBDIVISION (P) OF SECTION 12955 OF THE GOVERNMENT CODE, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.2 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.**

5/17/2017 4:54 PM

*Law Offices of*  
**Hanna & Van Atta**  
525 UNIVERSITY AVENUE, SUITE 600  
PALO ALTO, CA 94301  
(650) 321-5700

-i-

04.06.17

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**DECLARATION OF RESTRICTIONS AND COMMON EASEMENTS FOR THE PRUNEYARD**

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## **DECLARATION OF RESTRICTIONS AND COMMON EASEMENT FOR THE PRUNEYARD**

**THIS DECLARATION OF RESTRICTIONS AND COMMON EASEMENTS FOR THE PRUNEYARD** ("Declaration") is made effective as of MAY 8, 2017, by CFEP Pruneyard LLC, a Delaware limited liability company, (the "Declarant"), with reference to the following facts:

### **INTRODUCTION**

This Declaration is made with reference to the following facts:

**A.** Declarant is the owner of the real property located in the City of Campbell, County of Santa Clara, State of California described as follows:

Parcels 1, 2, and 3 as shown on the Parcel Map entitled "Parcel Map for The Pruneyard" (the "Map"), recorded in the Official Records of Office of the Recorder Santa Clara County, California on MAY 18, 2017 in Book 914 of Maps at Pages 9 to 10, as Instrument No. 23853539

**B.** The Project Site contains a mixed-use retail, office and hotel center known as the Pruneyard. Declarant intends subdivide the Project Site into three (3) Building Parcels and over time to redevelop and augment the mixed-use retail, office and hotel center on the Project Site.

**C.** Center Land Use Approvals. The Project Site is subject to the approvals and land use regulations from the City of Campbell - including those listed on **Exhibit "C"** - incorporated by this reference (the "Land Use Approvals").

**D.** The Project Site is comprised of (i) Parcel 1 - as the "Office Parcel", (ii) Parcel 2 - as the "Retail Parcel", and (iii) Parcel 3 - as the "Hotel Parcel".

**E.** Situated within Parcel 1, the Office Parcel, is the "Center Parking Garage".

**F.** The Parcels are subject to (i) the Emergency Vehicle Access Ways; (ii) the Private Vehicular Access Easement; and (iii) the Private Pedestrian Access Easements.

**G.** Declarant desires to establish a system for the governance and operation of the Pruneyard Center, including the formation of the Pruneyard Center Association as set forth in this Declaration.

**H.** This Declaration for the Pruneyard that provides for a Center Association is made pursuant to the requirements of the Master Use Permit for the Pruneyard (PLN2015-358) adopted by the City Council of the City on October 18, 2016 by City Council Resolution No. 12067. The Center and each Parcel in the Center is subject to and shall comply with the requirements of the Master Use Permit. Where necessary or useful in the administration of this Declaration, the definitions set forth in Article VII of the Master Use Permit are adopted and incorporated by reference into this Declaration.

**I.** The Declarant desired and intends for itself and for its successors and assigns, to establish and impose certain easements, covenants, rights, duties, obligations and responsibilities upon each Owner and Occupant of the Project Site under a general plan of development and operation, with respect to the development, conduct, operation and maintenance of an integrated development that will be binding upon each Owner and Occupant, will run with title to all of the Project Site and every portion thereof, and provide for the operation of the Center as an integrated mixed use development consisting of retail, hotel, and office uses.

**NOW, THEREFORE**, the Declarant hereby declares that all and every portion of the Project Site and all interests therein, shall be held, sold, leased, mortgaged, encumbered, rented, used, occupied, improved and conveyed subject to the following declarations, limitations, easements, restrictions, covenants, and conditions, which are imposed as covenants running with the land and equitable servitudes pursuant to a general plan for the development of the Project Site, and which shall run with the Project Site and all interests in the Project Site and be binding on the Declarant and its successors and assigns, and on all parties having or acquiring any right, title or interest in or to the described Project Site or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE 1.**  
**DEFINITIONS**

**1.1.** "Affiliate of the Declarant" shall mean a Person which is owned or controlled by or under common control with Declarant.

**1.2.** "Alterations" shall mean "Alterations" as defined in Section **9.2.(B)**.

**1.3.** "Articles" shall mean the Articles of Incorporation of the Center Association, as amended from time to time.

**1.4.** "Assessments" shall mean the assessments to be determined and levied by the Center Association and paid by the Owners in accordance with this Declaration and shall include without limitation: (a) Base Assessments, (b) Special Assessments, (c) Cost Center Assessments and (d) Reimbursement Assessments.

**1.5.** "Assessment Lien" shall mean the lien in favor of the Center Association for collection of delinquent Assessments as set forth in Section **4.13** of this Declaration.

**1.6.** "Assessment Pool" shall mean the Assessment Pools established by and pursuant to Section 4.3(E) of this Declaration.

**1.7.** "Base Assessments" shall mean the portion of the Assessments levied by the Center Association in accordance with Section **4.3** for the Base Budget Common Operational Costs included in the Base Budget.

**1.8.** "Base Budget" shall mean the budget to be prepared annually by the Board under Section **4.3.(A)**.

**1.9.** "Base Budget Common Operational Costs" are defined in Section **4.3.(B)**.

**1.10.** "Board" shall mean the Center Association Board.

**1.11.** "Building" shall mean the building or buildings located on or within a Building Parcel.

**1.12.** "Building Improvement" shall mean the Improvements for a Building located on a Building Parcel.

**1.13.** "Building Parcel" shall mean each of the separate parcels shown and described on the Map as Parcels 1, 2, and 3.

**1.14.** "Bylaws" shall mean the Bylaws of the Center Association, as amended from time to time.

**1.15.** "Center" shall mean the Pruneyard Center, the mixed use project developed or to be developed on the Project Site.

**1.16.** "Center Association" shall mean the Pruneyard Center Association, a California nonprofit mutual benefit corporation.

**1.17.** "Center Association Board" shall mean the board of directors of the Center Association.

**1.18.** "Center Association Manager" shall mean the professional manager or management company hired by the Board to manage and operate the Center Association and the Center's Common Easement Areas and the Center Parking Facilities.

**1.19.** "Center Design Guidelines" shall mean any guidelines, rules and procedures adopted by the Construction Work Review Body.

**1.20.** "Center Governance Documents" shall mean this Declaration, as amended from time to time, the exhibits, if any, attached thereto, together with the other basic documents used to create and govern the Center, including the Map, the Articles, the Bylaws, and the Rules.

**1.21.** "Center Operational Standards" shall mean the standards established by the Declarant, during such time as Declarant holds Declarant's Reserved Rights, and thereafter, by the Center Association, for the operation and maintenance of the improvements and facilities within the Center, including but not limited to the Common Easement Areas and the Buildings.

**1.22.** "Center Parking Facilities" shall mean collectively the Center Parking Garage and the exterior surface parking areas located within the Common Easement Areas as such Center Parking Facilities may be modified or expanded from time to time.

**1.23.** "Center Parking Garage" shall mean and refer to the parking garage situated within Parcel 1, including, without limitation, all garages, ramps, drive aisles and entranceways as such Center Parking Garage may be modified or expanded from time to time.

**1.24.** "Center Signage Program" shall mean any Center Signage Program defined and established pursuant to Section 10.9 of this Declaration.

**1.25.** "Change in Use" shall mean an application or other action requesting that the City approve a revision, modification, alteration or other change to the use or uses permitted by the City pursuant to the Land Use Approvals.

**1.26.** "City" shall mean the City of Campbell, California, a municipal corporation.

**1.27.** "Class C Member" is defined in Section 3.5.

**1.28.** "Common Easement Areas" shall mean:

**(A)** Those portions of the Project Site described and defined in this Declaration as Common Easement Areas, including (i) the Emergency Vehicle Access Ways ("EVAW"); (ii) the Private Vehicular Access Easement and (iii) the Private Pedestrian Access Easements.

**(B)** Common Easement Areas shall include the Center Parking Garage.

**(C)** Common Easement Areas shall include the private roadways and driveways within the Private Vehicular Access Easements of the Project Site, except for those that are established solely for the use of a specific Building Parcel or the Occupants thereof.

**(D)** Common Easement Areas shall include the Common Utility Facilities.

**1.29.** "Common Operational Costs" shall mean the costs and expenses incurred by the Center Association in connection with the operation, maintenance, equipping and repair of the Common Easement Areas, the fulfillment by the Center Association of its duties, obligations and powers set forth in this Declaration, including, but not limited to the following costs and expenses: (a) operating, equipping, maintaining, repairing, replacing, lighting, cleaning, striping, and removing garbage, trash and debris from all Common Easement Areas; (b) all premiums, fees and other charges for insurance required to be maintained by the Center Association pursuant to this Declaration; (c) maintenance, repair and replacement of landscaping of Common Easement Areas; (d) all replacement and improvements of or to the Common Easement Areas, including, without limitation, the Center Parking Facilities; (e) reasonable amounts for capital replacements and reserves for the Common Easement Areas; (f) costs of maintenance, repair and replacement of Center Parking Facilities and for the operations and management of the Center Parking Facilities pursuant to **Article 6**; (g) machinery and equipment; (h) all license and permit fees and any and all parking surcharges; (i) employing the Center Association Manager and other personnel, including the salaries, benefits and insurance costs of the Center Association Manager and other personnel; (j) all costs of utility services including sanitary sewers provided to the Common Easement Areas; (k) operating, maintaining, repairing and replacing the Common Utility Facilities to the

extent such Common Utility Facilities are located within the Common Easement Areas or are located in Utility Facility Easements; (l) costs of traffic regulation and control signs and devices within the Common Easement Areas; (m) all legal, accounting and other fees and expenses incurred by the Center Association in maintaining its status and qualification as an entity in good standing and entitled to do business under the laws of the State of California and preparing any financial statements, tax returns, audits and other financial statements and documentation required to be prepared by the Center Association pursuant to this Declaration or otherwise; (n) the costs and expenses incurred by the Center Association for the administration, management and operation of the Center Association including, but not limited to, compensation for the Center Association Manager, accountants, attorneys, and employees, and allocation of rent for Center Association office in the Center, based upon reasonable attribution of fair market rent for the space used by the Center Association in the Center; and (o) all costs and expenses paid to third parties (including the Declarant) by the Center Association for providing any of the foregoing services. Common Operational Costs" shall include costs incurred by the Center Association for undertaking upkeep, maintenance and repair of "off-site" landscaping and facilities as required or may be required under the "Conditions of Approval". The "Common Operational Costs" shall be allocated and assessed to each Parcel as provided in Section 4.3(E) in two separate Assessment Pools as (i) Cost Pool A: General Common Area Maintenance Expense Assessment Pool and (ii) Cost Pool B: Specialty/Traffic Impact Expense Assessment Pool as set forth on Exhibit "B" attached to this Declaration. Insurance, Property taxes and assessments related to the Center Parking Garage shall be allocated among the Parcel Owners based upon determination of the relative use of the Center Parking Garage by those Parcels and reimbursed by the Center Association to the Owner of Parcel 1 for the relative shares of the Retail Parcel and the Hotel Parcel as set forth on Exhibit "B" as Cost Pool B - Specialty/Traffic Impact Expense Assessment Pool.

**1.30.** "Common Utility Facilities" shall mean any utility lines and other Utility Facilities that serve more than one Building Parcel located within the Project Site.

**1.31.** "Conditions of Approval" shall mean the "Conditions of Approval" imposed by the City as part of the Land Use Approvals for the Center.

**1.32.** "Construction Work" shall mean any construction, installation, alteration, modification or reconstruction of any Common Easement Area, Building, structure, fence, wall, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover or other Improvement of any kind, excluding installation of storefronts of Retail Spaces, provided that such installations conform to the Center Design Guidelines, or improvements to the interior of a Building.

**1.33.** "Construction Work Review" shall mean the review by the Construction Work Review Body described in Section 9.2 of this Declaration.

**1.34.** "Construction Work Review Body" shall mean the Construction Work Review Body described in Section 9.2.(A) of this Declaration.

**1.35.** "Cost Center" shall mean a designation of Building Parcels as to which Cost Center Assessments are to be levied for Cost Center Services provided by the Center Association to those Building Parcels as described in this Declaration. "Cost Center" shall mean the separate designation of any type or types of costs that specifically relate to a Building Parcel, user, or type of user in order to more specifically and directly allocate those costs to that Building Parcel, user or groups thereof who are the particular beneficiary of the Cost Center Services for which the costs are incurred. Additional separate Cost Centers may be created on as needed basis with the goal of isolating those costs more directly to the beneficiaries of same upon the approval of the Board and the approval by the Declarant as long as Declarant holds Declarant's Reserved Rights.

**1.36.** "Cost Center Assessments" shall mean the assessments levied and assessed by the Center Association in accordance with Section 4.6 for Cost Center Services, including any such costs and expenses under a third party operating agreement made by the Center Association for such Cost Center Services.

**1.37.** "Cost Center Budget" shall mean the budgets for Cost Center Services to be prepared annually by the Board under Section **4.6.(A)**.

**1.38.** "Cost Center Services" shall mean those services and activities of the Center Association, including services provided by the Center Association from Utility Facilities that are specified herein as Cost Center Services or are determined by the Center Association to provide benefits disproportionately to one or more Building Parcels, or portions thereof, including those Cost Center Services stated in Section **4.6**.

**1.39.** "County" shall mean the County of Santa Clara, California, a municipal corporation.

**1.40.** "Declarant" shall mean and refer to CFEP Pruneyard LLC, a Delaware limited liability company, and any successors or assigns thereof that expressly assume all of the rights and duties of the Declarant under this Declaration in a recorded written document executed by the Declarant and such successor or assign.

**1.41.** "Declarant's Reserved Rights" shall mean and refer to the rights reserved to the Declarant under this Declaration pursuant to Section **13.24**.

**1.42.** "Declaration" shall mean this Declaration as the same may be further amended or supplemented from time to time.

**1.43.** "Emergency Vehicle Access Way" shall mean the emergency vehicle access ways located within the Center's private roadways, driveways and parking spaces situated within the Common Easement Areas as described in Section **2.16**.

**1.44.** "Exclusive Use Area" shall a portion of the Common Easement Area that has been established and designated as an Exclusive Use Area as described in Section **2.5**.

**1.45.** "First-Class Project" shall mean a mixed-use commercial/retail/office project constructed, operated, maintained, restored and replaced substantially in accordance with quality standards of other mixed use projects in the San Francisco/San Jose Bay Area constituting or belonging to the first, highest, or best in the group of such projects, with the foremost excellence or highest quality.

**1.46.** "Holiday" shall mean New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day or when applicable those dates as designated in the City Municipal Code.

**1.47.** "Hotel Owner" shall mean the Owner from time to time of the Hotel Parcel.

**1.48.** "Hotel Facilities" shall mean the Hotel Parcel and all Improvements thereon.

**1.49.** "Hotel Parcel" shall mean and refer to Parcel 3 on the Map, including the Hotel Facilities and the Improvements built or to be built thereon that is established and operated for hotel and or other uses under the Land Use Approvals and this Declaration.

**1.50.** "Improvements" means all Buildings, Center Parking Facilities, and Common Easement Area improvements within the Project Site, including, but not limited to, all buildings, structures, Parking Garages, parking or loading areas, driveways, roadways, pathways, walkways, arcades, paseos, display or storage areas, 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), and fountains and sculptures, within the Project Site, including the Buildings and any replacements, additions, repairs or alterations thereto of any kind whatsoever, and anything erected, built, placed, installed or constructed on, over or under the Project Site.

**1.51.** "Invitees" shall mean the tenants, customers, guests, Occupants, employees, agents and other invitees of Owners in the Center.

**1.52.** "Land Use Approvals" shall mean the Land Use Approvals described in Introductory Paragraph C and listed on **Exhibit "C"** of this Declaration.

**1.53.** "Majority of the Voting Power" shall mean the vote of the Members that represent at least one vote greater than the votes represented by fifty percent (50%) of the Voting Power of the Members of the Center Association.

**1.54.** "Map" shall have the meaning set forth in Introductory Paragraph A on page 1 of this Declaration.

**1.55.** "Master Use Permit" shall mean and refer to the Master Use Permit for the Pruneyard referenced in Introductory Paragraph I on page 1 of this Declaration.

**1.56.** "Member" shall mean and refer to the members in the Center Association which shall be the Owner of each Building Parcel.

**1.57.** "Mortgage" shall mean a mortgage, deed of trust, assignment of rents, issues and profits or other proper instruments (including, without limitation, those instruments and estates created by sublease or assignment), given as security for the repayment of loan(s) or financing(s) which encumbers an Owner's interest in the Project Site, made in good faith and for value.

**1.58.** "Mortgagee" shall mean the holder of a Mortgage, including, without limitation, a beneficiary under a deed of trust as well as a mortgagee.

**1.59.** "Occupant" shall mean a Person that is entitled to use and occupy from time to time all or a portion of a Building Parcel, or any portion thereof, whether pursuant to ownership, lease, sublease or otherwise by other occupancy agreement.

**1.60.** "Official Records" shall mean the official records of the Office of the Recorder of the County.

**1.61.** "Office Facilities" shall mean the Office Parcel and all Improvements thereon.

**1.62.** "Office Owner" shall mean the Owner from time to time of the Office Parcel.

**1.63.** "Office Parcel" shall mean Parcel 1 that is the Building Parcel that is established and operated for office and other uses, and for the Center Parking Garage under the Land Use Approvals and this Declaration.

**1.64.** "Owner" shall mean the record owner from time to time, whether one (1) or more Persons, of fee simple title to any Building Parcel. The term Owner shall exclude (i) those Persons having merely a security interest in a Building Parcel for the performance of an obligation, until and unless such Person takes fee title thereto, and (ii) those parties who have leasehold interests in a Building Parcel.

**1.65.** "Parking Management Plan" shall mean the Parking Management Plan that is to be established by Declarant and maintained, operated and revised pursuant to Section **6.1.(B)** of this Declaration to govern the parking operations within the Center, including any rights of the Center Association to erect or place signage and barriers, establish loading/unloading zones, fencing, gates or dividers within the Center Parking Facilities, manage the distribution of spaces in the Center Parking Facilities that are to be used by the Building Parcels and establish use limitation for the Center Parking Facilities.

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

**1.67.** "Person" means natural persons, corporations, partnerships, limited liability companies, firms, associations, trusts, trustees, or any other form of governmental or business entity and the singular shall include the plural.

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

**1.69.** "Private Vehicular Access Easement" shall mean and refer to the easements for ingress and egress of motor vehicles within the Center that are private non-exclusive easements over and across the Building Parcels for vehicular ingress and egress as set forth in Section **2.7** hereof.

**1.70.** "Private Pedestrian Access Easements" shall mean and refer to those areas of the Center that are established by the Declarant as private non-exclusive easements over and across portions of Building Parcels for pedestrian ingress and egress as set forth in Section **2.8** hereof.

**1.71.** "Pruneyard" shall mean and refer to the Center.

**1.72.** "Project Site" shall mean and refer collectively to the real property described and defined as the "Project Site" as referred to in **Introductory Paragraph A** and as described **Exhibit "A"** attached hereto.

**1.73.** "Reimbursement Assessment" shall mean the assessments levied and assessed by the Center Association in accordance with Section **4.7** to reimburse the Center Association for costs and expenses incurred to: (a) repair damage to those portions of the Center as to which the Center Association has responsibility for maintenance and repair, including, but, not limited to, landscaping, but for which damage an Owner or its Invitees were responsible; (b) enforce this Declaration; or (c) bring an Owner and/or the Owner's interest in a Building Parcel into compliance with the provisions of the Center Governance Documents.

**1.74.** "Retail Facilities" shall mean the Retail Parcel and all Improvements thereon.

**1.75.** "Retail Owner" shall mean the Owner from time to time of a Retail Parcel.

**1.76.** "Retail Parcel" shall mean Parcel 2, which is the Building Parcel that is established and operated for retail and other uses under the Land Use Approvals and this Declaration.

**1.77.** "Retail Space" shall mean those areas within the Retail Parcel, the Office Parcel or the Hotel Parcel that are used exclusively by the Owner of the Parcel, or its tenant, or other Occupant as a commercial retail space, including restaurant use, as distinguished from common areas of the Building or Buildings in such Parcel or areas that are used by other Owners or Occupants of the Building in which the Retail Space is located or areas that are used for office uses or hotel uses. The term Retail Space shall include applicable storefronts and any loading dock or exterior seating or dining areas designated pursuant to Section **2.5** exclusively for use by the Occupant of the Retail Space.

**1.78.** "Rules" shall mean rules and regulations adopted from time to time by the Center Association regarding the use of the Common Easement Areas, and other portions of the Center.

**1.79.** "Special Assessments" shall mean the assessments levied and assessed by the Center Association in accordance with Section **4.5** for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board, in its discretion, considers appropriate.

**1.80.** "Supplemental Declaration" shall mean any supplemental declaration executed and recorded in the Official Records in accordance with this Declaration.

**1.81.** "Trash Management Plan" shall mean the Trash Management Plan as adopted by the Declarant for the Center and maintained, operated and revised pursuant to Section **7.1. (C)**

of this Declaration to govern the collection and disposal of trash, garbage, recycling, refuse and other waste within the Center.

**1.82.** "Utility Facilities" shall mean sanitary sewer, drainage, water, electric, gas, radio, television receiving, telephone, data and telecommunications facilities, pipes, equipment, cables and lines within the Common Easement Areas and/or Utility Facility Easement Areas.

**1.83.** "Utility Facility Easement Area" shall an area designated on the Map as an area in which Utility Facilities are located or to be located, including but not limited to sanitary sewer, drainage, water, electric, gas, radio, television receiving, telephone, data and telecommunications facilities, pipes, equipment, cables and lines.

**1.84.** "Voting Power" shall mean and refer to the total number of votes attributable to all of the Members of the Center Association who are Owners of Building Parcels as set forth in Section 3.3.

## **ARTICLE 2.**

### **DESCRIPTION OF CENTER, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS**

**2.1.** Description of Center. The Center is a mixed use development consisting of the three (3) Building Parcels and the Common Easement Areas. The Common Easement Areas including (i) the Private Vehicular Access Easements; and (ii) the Private Pedestrian Access Easements (iii) the Center Parking Facilities and (iv) Emergency Vehicle Access Ways.

**2.2.** Building Parcels. The Center consists of the three (3) Building Parcels. The Building Parcels have been and may in the future be improved with one or more Buildings and related Improvements.

**2.3.** Rights of Owners. No Owner, Occupant, or its Invitees, shall take any action within the Center that would materially interfere with the rights granted to other Owners, Occupants, or their Invitees pursuant to this Declaration, except as permitted by the Board, or adversely affect the structural integrity or safety of any Building or improvements within the Center.

**2.4.** Common Easement Areas. The Common Easement Areas have been or may be improved in the future with private roadways and driveways, Center Parking Facilities, landscaping, sidewalks, walkways, courtyards, parks, road improvements, signage, Utility Facilities, monumentation and other facilities and improvements for the common use and benefit of the Owners, Occupants and their Invitees, subject to the rights and limitations stated in this Declaration.

**2.5.** Exclusive Use of Common Easement Areas. The Declarant, as long as Declarant holds Declarant's Reserved Rights under this Declaration, or if Declarant does not hold such Declarant's Reserved Rights under this Declaration, the Center Association Board, or the Center Association Manager as authorized by the Board, shall have the right to permit the Owner or the Occupants of a Parcel the exclusive use of designated portions of the Common Easement Areas adjacent to a particular Building as "Exclusive Use Areas" for exterior use ancillary to a restaurant or retail use that is conducted within the Building, limited to outdoor seating/patio areas and merchandise displays as are allowed under the Master Use Permit or other Land Use Approvals or as otherwise approved by the City, subject to such criteria for such use as are established by the Land Use Approvals, by the Declarant, or by the Center Association. Notwithstanding the foregoing, once an area is established as an Exclusive Use Area for exterior use ancillary to a use of a Building, the use of such Exclusive Use Area cannot be terminated by the Declarant or the Center Association without the consent of the Owner of the Parcel in which the Building is situated to which Exclusive Use Area was designated, unless such termination is for cause, after written notice and a hearing before the Board of the Center Association has been provided to the Owner of the Parcel. The Center Association may terminate the designation of an area as an Exclusive Use Area if the Center Association's Board finds that the Owner or other Occupant of a Building has violated in a material respect the provisions of this Declaration as to the use of the Exclusive Use Area or violated the provisions of the Master Use Permit or other Land Use Approvals. The Center Association shall establish and maintain an

Exclusive Use Area Plan as a record of the areas within the Center Easement Areas that have been established and designated as Exclusive Use Areas, as such designations may be modified from time to time. The Association shall revise the Exclusive Use Area Plan from time to time as revisions or additions are made to the areas established and designated as Exclusive Use Area and shall distribute any revisions to the Exclusive Use Area Plan to the Owners. An area that has been established as an Exclusive Use Area may be altered by the Declarant or the Center Association pursuant to the provisions of Section 2.22 with respect to revisions or modifications to the Center Common Easement Areas provided however that any such revisions or modifications that materially and adversely impact the area that has been established for such exterior ancillary use as an Exclusive Use Area must be approved in writing by the Owner of the Parcel in which the affected Building is situated.

**2.6. Common Easement Area Easements and Use Rights.** The Common Easement Areas are hereby reserved and established for the use and benefit of the Center Association, the Owners, Occupants and their Invitees, and may be improved by the Declarant and the Center Association with Center Parking Facilities, landscaping, sidewalks, walkways, courtyards, parks, road improvements, signage, Utility Facilities, monumentation and other facilities and improvements for the common use and benefit of the Owners, the Occupants and their Invitees. Each Owner shall have as appurtenant to its ownership interest in a Building Parcel or portion thereof, a limited, non-exclusive right and easement over and across the Common Easement Areas, for a term and duration coextensive with the Owner's Unit Owner's title or interest in such Building Parcel, for ingress and egress, use and enjoyment for that Owner, the Occupants in such Building Parcel Project, and the Invitees of such Owner as herein described. The Common Easement Areas may be modified, altered, relocated and otherwise revised as provided in Section 2.22.

**(A)** Such rights (1) shall include the non-exclusive rights to use the Common Easement Areas, including, without limitation, the sidewalks, walkways and other improvements and facilities located therein, (2) shall be subject to the rights established under this Declaration that are reserved or granted to the Center Association and the Declarant regarding the use, operation, management, maintenance and repair of the Common Easement Areas, and (3) shall be subject to the Rules. No Owner, Occupant or its Invitees shall take any action within the Common Easement Areas that would materially interfere with the use of Common Easement Areas by other Owners, Occupants or Invitees, except as otherwise provided in this Declaration, which are undertaken pursuant to Declarant's Reserved Rights, or as permitted by the Board, or that would adversely affect the structural integrity or safety of any Building or improvements within the Center.

**(B)** The location and use of the Common Easement Areas shall be subject to modifications and changes to Buildings and the Common Easement Areas as are approved by the City, by the Declarant as long as Declarant retains Declarant's Reserved Rights, and the Owner or Owners of the Building Parcel in which any such Common Easement Area is located as provided in Section 2.22.

**2.7. Private Vehicular Access Easements.** Private Vehicular Access Easements are hereby established by the Declarant over and across those portions of the Building Parcels that are located exterior of any Building situated now or in the future on a Building Parcel upon which there are or will be constructed private driveways or roadways for motor vehicle ingress, egress and passage for the use and benefit the Owners and Occupants within the Center. The use of the Private Vehicular Access Easements shall be subject to the Rules and other limitations established from time to time by the Declarant, as long as Declarant as long as Declarant holds Declarant's Reserved Rights under this Declaration. After such time as Declarant no longer holds Declarant's Reserved Rights under this Declaration, or after Declarant relinquishes its rights under this Section in a recorded written document, the Center Association Board may establish the rules and regulations regarding the conduct of activities within the Private Vehicular Access Easements. The location of the Private Vehicular Access Easements shall be subject to the present and future location of Buildings in the Center in accordance with the Land Use Approvals, including the Master Use Permit, and modifications and changes to Buildings and the Private Vehicular Access Easements as are approved by the City, and by the Declarant as long as Declarant retains Declarant's Reserved Rights, as provided in Section 2.22.

**2.8. Private Pedestrian Access Easements.** The Private Pedestrian Access Easements are hereby established by the Declarant over and across those portions of the Building Parcels that are located exterior of any Building, or in emergency situations through the exit passageway at the East end of the hotel on the Hotel Parcel, situated now or in the future on a Building Parcel upon which there are or will be constructed private walkways or pathways for pedestrian ingress, egress and passage for the use and benefit of the Owners and Occupants within the Center. The use of the Private Pedestrian Access Easements shall be subject to the Rules and other limitations established from time to time by the Declarant, as long as Declarant holds Declarant's Reserved Rights under this Declaration. After such time as Declarant no longer holds Declarant's Reserved Rights under this Declaration, or after such earlier time Declarant relinquishes its rights hereunder in a recorded written document, the Center Association Board may establish the rules and regulations regarding the conduct of activities within the Private Pedestrian Access Easements. The location of the Private Pedestrian Access Easements shall be subject to the present and future location of Buildings in the Center in accordance with the Land Use Approvals, including the Master Use Permit, and modifications and changes to Buildings and the Private Pedestrian Access Easements as are approved by the City, and by the Declarant as long as Declarant retains Declarant's Reserved Rights, as provided in Section **2.22**.

**2.9. Center Parking Garage and Center Parking Facilities.**

**(A)** The Owner or Owners of the Retail Parcel, the Hotel Parcel and the Office Parcel shall have, as appurtenant to its respective ownership interest in and to the Retail Parcel, the Hotel Parcel or the Office Parcel, or any portion thereof, for use by such Owner and its Permittees, a limited, non-exclusive right and easement over and across the Center Parking Garage and the other Center Parking Facilities in such areas as are permitted and established under this Declaration in such locations as provided in this Declaration, and for a term and duration as is coextensive with the Owner's title or interest in such Retail Parcel, Hotel Parcel or Office Parcel, or portion thereof, for ingress and egress and the parking of motor vehicles of that Owner and the Permittees of that Owner as described and proscribed in Section **6.3**. Such rights shall be subject to the rights established under this Declaration that are reserved or granted to the Center Association and the Declarant regarding the use, operation, management, maintenance and repair of the Center Parking Facilities and shall be subject to the Rules. The Declarant or the Center Association may establish certain areas within the Center Parking Facilities for the exclusive use of a specific Owner or Owners as provided in Section **6.2.(A)**, Section **6.3.(A)** and Sections **6.4.(A)** and **6.4.(B)**.

**(B)** No Owner of a Building Parcel or their respective Permittees shall take any action within the Center Parking Facilities as that would materially interfere with the use of the Center Parking Facilities by any Owner of the Retail Parcel, the Hotel Parcel, or the Office Parcels, or their respective Permittees, except as otherwise provided in this Declaration, undertaken pursuant to Declarant's Reserved Rights or as permitted by the Board, or that would adversely affect the structural integrity or safety of the Parking Garages within any Center Parking Facilities, any Building or other improvements within the Center.

**(C)** The Center Parking Garage may be modified and expanded in accordance with the provisions of the Master Use Permit. All rights of use of the Center Parking Garage are and shall be subject to the rights to so modify and expand the Center Parking Garage.

**2.10. Encroachment Easements.** Each Owner shall have, as appurtenant to its ownership interest in and to a Building Parcel or any portion thereof, for the benefit of its ownership interests in such Building Parcel as the dominant tenement, for a term and duration coextensive with the Owner's title or interest in such Building Parcel, a continuing right and easement over the Common Easement Areas, as the servient tenements, for the purpose of accommodating any encroachment due to foundations, exterior walls, windows, roof overhangs, balconies and fences, walls or other similar items which are built in accordance with the original design, plans and specifications of Declarant, or due to engineering errors, errors or adjustments in original construction, settlement or shifting of a Building, or similar causes. There shall be valid easements that permit such encroachments to remain for as long as they shall exist, and the rights and obligations of Owners, shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner, if said encroachment occurred due to the intentional conduct of said Owner, other than adjustments by Declarant or

Declarant's successors in the original construction of the improvements. If a structure is partially or totally destroyed which had such permitted encroachments, and such structure is repaired or rebuilt in accordance with its original design and location, the encroachments over the Common Easement Areas shall be permitted to continue, and there shall be valid easements that permit such encroachments to remain for so long as they shall exist.

**2.11. Maintenance and Construction Easements.**

**(A)** Declarant hereby reserves for and on behalf of the Center Association non-exclusive easements and rights of access over the Common Easement Areas, including the Center Roadways, each Building Parcel (exterior of the Building on such Building Parcel) for the purpose of performing such maintenance, repair, replacement, construction, reconstruction or restoration as the Center Association may do in accordance with the provisions of this Declaration, and for the purpose of maintaining, repairing, replacing, installing, reconstructing, or restoring Utility Facilities lying or otherwise located within the Common Easement.

**(B)** Non-exclusive easements are hereby reserved by Declarant, for a term and duration coextensive with Declarant's title or interest in any portion of a Building Parcel, for access to, and ingress and egress over, above and across, the Common Easement Areas and Center Roadways as reasonable and necessary to undertake and complete the development and construction of the Buildings, the Common Easement Areas, and the other improvements and facilities of the Center.

**(C)** Subject to the terms of this Declaration and the Rules, limited non-exclusive easements for access to, and ingress and egress over and across, Common Easement Areas and Center Roadways are hereby established, reserved and granted to each Owner for purposes of allowing such Owner to undertake and complete development and construction of the Building Improvements within a Building Parcel owned by such Owner, and to repair, replace or restore the Building Improvements situated within the Building Parcel owned by such Owner. Any scaffolding and similar structures for undertaking any such maintenance, repair, replacement or restoration of improvements that intrudes into the Common Easement Areas and Center Roadways shall be subject to the prior approval of the Board not to be unreasonably withheld or delayed or inequitably applied, and shall be permitted to remain only for as long as reasonably necessary under the circumstances to accomplish such maintenance, repair, replacement or restoration.

**2.12. Drainage Easements.** There is hereby established, reserved and granted for the benefit of each Owner non-exclusive easements over and under the Center Roadways and the Common Easement Areas in favor of each the ownership interests in each Building Parcel, for a term and duration coextensive with the Owner's title or interest in such Building Parcel, for the purposes of permitting drainage of storm waters from the Building Parcels and allowing the Center Association's agents to enter a Building Parcel, exterior of the Building situated thereon, as necessary to maintain the storm drainage system that is located thereon and keep the system free of debris and other obstacles. No Owner, Occupant or Invitee shall commit any act that would interfere with the operation of any drainage system (including surface drainage and drainage swales) installed on any Building Parcel or elsewhere in the Center. Reciprocal appurtenant easements between and among each Building Parcel and the Common Easement Areas and the Center Roadways over and across the Common Easement Areas, the Center Roadways and adjoining Building Parcels are hereby established, reserved and granted for the benefit of the Center Association and each Owner of an interest in a Building Parcel, for the flow of surface and subsurface water from each of the Building Parcels, the Common Easement Areas and the Center Roadways.

**2.13. Utility Facilities Easements.** Declarant hereby reserves on behalf of the Declarant and the Center Association non-exclusive easements and rights of access over the Common Easement Areas for the purpose of performing such installation, maintenance, repair, replacement, construction, reconstruction or restoration as the Center Association may do in accordance with the provisions of this Declaration, and for the purpose of maintaining, repairing, replacing, installing, reconstructing, or restoring Utility Facilities within the Common Easement Areas.

(A) There are hereby reserved by Declarant for the benefit of the Declarant, the Center Association, their agents and assigns, including parties to operating agreements with the Center Association or the Declarant for operation of the Utility Facilities, and utility companies or districts, non-exclusive easements and rights of access over and across the Center Roads and Common Easement Areas for the pipes, lines and other Utility Facilities which serve or provide service to or from the Utility Facilities, which easements shall be located in the locations where such pipes, lines, and other Utility Facilities are constructed or installed, and shall include the right to install, operate, maintain, repair and replace such pipes, lines and other Utility Facilities to the Center. The Center Association shall have the right to provide the services of the Utility Facilities within the Center and may enter into operating and other agreements with Declarant or any other party to operate, repair, replace and maintain such Utility Facilities and to provide the utility services from such Utility Facilities.

**2.14. Limitations and Conditions on Owner's Easements.** The grant of the non-exclusive easements in and to the Common Easement Areas and Center Roadways to Owners, described in Sections 2.4 through 2.13 above, and elsewhere herein, shall be subject to the following:

(A) The right of the Center Association and the Declarant to adopt Rules and to enforce the provisions of this Declaration, the Bylaws and the Rules in accordance with the provisions of this Declaration and as stated in the Bylaws and Rules.

(B) The Center Association's access rights to maintain, repair or replace improvements or real or personal property located in the Common Easement Areas and Center Roadways as provided in this Declaration.

(C) The easement rights of Declarant and Owners for work necessary to complete development and construction of the improvements and infrastructure within the Center, the Building Parcels as provided herein.

(D) The easement rights of Declarant, the Center Association, and the Owners for work necessary to repair, replace or restore the Improvements situated within Building Parcels as provided in this Declaration; and

(E) The rights of the Center Association and Declarant to install, repair or replace Utility Facilities and communications systems within the Common Easement Areas and Center Roadways as provided in this Declaration.

(F) Declarant's Reserved Rights hereunder.

**2.15. Declarant's Reserved Rights in Common Easement Areas.** Subject to the Land Use Approvals, as long as Declarant holds Declarant's Reserved Rights under this Declaration, Declarant reserves the right to use portions of the Common Easement Areas for promotional activities for the commercial and retail uses in the Center and to charge for the use of such promotional activities. After such time as Declarant no longer holds Declarant's Reserved Rights under this Declaration, the rights under this Section 2.15 shall become the rights of the Center Association to use portions of the Common Easement Areas for promotional activities for the commercial and retail uses in the Center as determined by the Board, and to charge for the use of such promotional activities, subject to the Land Use Approvals.

**2.16. Emergency Vehicle Access Ways.** Emergency Vehicle Access Ways shall be those areas within the Common Easement Areas of the Center in which the private roads, driveways and parking spaces of the Center are situated over which the emergency vehicles of the City and of other authorities operating emergency vehicles shall have access as needed and required for emergency purposes for access, ingress and egress over and across the Center Roadways to the public streets on the periphery of the Center for providers of police, fire and emergency vehicle services, and by representatives and agents of the City. The location of the Emergency Vehicle Access Ways shall be subject to modifications made to the Common Easement Areas pursuant to this Declaration and the Master Use Permit.

**2.17. Other Easements.** Each Building Parcel, Common Easement Areas and Center Roadways are subject to all easements, dedications, and rights of way, if any, granted or reserved in, on, over and under the Project Site as shown on the Map.

**2.18. Right of Entry and Use.** The Building Parcels, Common Easement Areas and Center Roadways shall be subject to the following rights of entry and use:

(A) Subject to Section **5.2.(E)**, the access rights of the Center Association to maintain, repair, operate or replace improvements or real or personal property located in the Common Easement Areas and Center Roadways;

(B) The easements described in this **Article 2**;

(C) The right of any Owner or its agents to enter the Common Easement Areas and Center Roadways to perform maintenance on any facility for which such Owner or its agent is responsible, subject to the Rules and such additional requirements as the Board may impose to protect the Common Easement Areas and Center Roadways; and

(D) The rights of Declarant and its contractors and subcontractors to do upon or above any Building Parcel that which is reasonably necessary or advisable in connection with the construction of the Center and the Buildings within the Center, provided that Declarant shall make reasonable efforts to minimize disturbing the use and enjoyment of any Building Parcel, the Common Easement Areas.

**2.19. Easements to Accompany Conveyance of Interest in Building Parcels.** The easements and rights of use, enjoyment and access established, reserved and granted by and pursuant to this **Article 2** that benefit or burden a Building Parcel, or any portion thereof, shall be appurtenant to that Building Parcel, or portion thereof, and shall automatically accompany the transfer, conveyance or demise of the Building Parcel or portion thereof, even though the description in the instrument of transfer may refer only to the interests in the Building Parcel, or portion thereof, as transferred, conveyed or demised. Said easements and rights of use, enjoyment and access are intended to be, and shall be deemed to be, established, reserved and granted upon the recordation of this Declaration. The easements and rights of use, enjoyment and access so established in this Declaration shall continue, remain and endure as easements appurtenant to the Building Parcels or portion thereof, and as covenants running with the land and equitable servitudes with respect to each Building Parcel, or portion thereof, and all ownership interests therein. The rights appurtenant to each Building Parcel, or portion thereof, as so described, shall be enforceable as appurtenant easements, covenants running with the land, equitable servitudes, or as any of the foregoing.

**2.20. Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws, its right of use and enjoyment of the Common Easement Areas and Center Roadways and the facilities located thereon, and the duties with respect thereto to tenants, or installment contract purchasers, and to any Occupant of the Owner's Building Parcel, or any portion thereof, provided that such delegation shall be subject to the terms of this Declaration and that no such delegation shall relieve such Owner of responsibility therefor.

**2.21. Modifications of the Common Easement Areas.** The Common Easement Areas, including the Center Roadways, the Private Vehicular Access Areas, the Private Pedestrian Access Areas, the Center Parking Garage and the Utility Facility Easement Areas may be altered, modified, and/or relocated pursuant to review and approval by the Construction Work Review Body the provisions of Section **2.22** and Article 9 (Sections **9.2 and 9.4**) of this Declaration.

**2.22. Further Development of the Project Site.**

(A) As long as Declarant has the Declarant's Reserved Rights established under this Declaration, the Declarant reserves the right to obtain new permits and/or approvals permitting development on any Building Parcel [owned by the Declarant] and to develop the Center in accordance with the Master Use Permit and other applicable Land Use Approvals, including the right, subject to the Land Use Approvals and subject to the review and approval of the City, to file lot line adjustments and Supplemental Declarations to provide for revisions to the Common Easement Areas within the Project Site. Declarant shall be entitled to delegate each and all of the foregoing rights to one or more Building Parcel Owners.

(B) The Office Owner shall have the right to construct an additional Office Building on the Office Parcel in accordance with the provisions of the Master Use Permit and other applicable Land Use Approvals] and Article 9 of this Declaration and to develop the Office Parcel in accordance with the Master Use Permit and other applicable Land Use Approvals, including the right, subject to the Land Use Approvals and subject to the review and approval of the City, to file lot line adjustments and Supplemental Declarations to provide for revisions to the Common Easement Areas within the Office Parcel of the Project Site. The Center Parking Garage situated on the Office Parcel may be expanded in accordance with the provisions of the Master Use Permit and other applicable Land Use Approvals and Article 9 of this Declaration.

(C) The Retail Owner shall have the right to construct additional Buildings for retail purposes on the Retail Parcel in accordance with the provisions of the Master Use Permit and other applicable Land Use Approvals and Article 9 of this Declaration and to develop the Retail Parcel in accordance with the Master Use Permit and other applicable Land Use Approvals, including the right, subject to the Land Use Approvals and subject to the review and approval of the City, to file lot line adjustments and Supplemental Declarations to provide for revisions to the Common Easement Areas within the Retail Parcel of the Project Site.

### **ARTICLE 3.**

#### **CENTER ASSOCIATION - MEMBERSHIP, VOTING AND ADMINISTRATION**

**3.1. Center Association.** The Center Association has been formed for the operation and administration of the Center for the benefit of all Owners, including the levying of assessments, and for the operation, administration, maintenance, repair and replacement of all of the improvements within the Common Easement Areas and Center Roadways, as provided in this Declaration.

**3.2. Voting.** The voting rights in the Center Association shall be established and allocated as follows:

Office Parcel [Parcel 1]: two (2) votes  
Retail Parcel [Parcel 2]: four (4) votes  
Hotel Parcel [Parcel 3]: one (1) vote

Voting Power shall mean the total of seven (7) votes. A Majority of Voting Power shall mean five (5) votes.

**3.3. Transferred Membership.** Membership rights and interests in the Center Association shall not be transferred, encumbered, pledged, or alienated in any way separately from the transfer, encumbrance, pledge, or alienation of the Owner's interest in its Building Parcel. Any attempt to make a prohibited transfer is void. No Owner nor any Building Parcel Association nor can avoid its obligations or duties under this Declaration by resigning, waiving or failing to exercise its membership or other rights in the Center Association under the Center Governance Documents.

**3.4. Board.**

(A) Except as otherwise set forth in this Declaration the activities and affairs of the Center Association shall be administered and overseen by the Board, and the powers of the Center Association shall be exercised under the direction of the Board. The Board shall initially consist of three (3) directors appointed by Declarant to serve until the date that is five (5) years after the date of recordation of this Declaration in the Official Records. After the date that is five (5) years after the date of recordation of this Declaration in the Official Records, the Board shall be expanded as provided in Section **3.4.(B)** and the directors serving on the Board, subject to Section **3.5**, below, shall be selected pursuant as provided in Section **3.4.(B)**.

(B) After the date that is five (5) years after the date of recordation of this Declaration, the Board shall be expanded to seven (7) Directors. Upon such expansion, except as provided in Section **3.5**, four (4) Directors shall be appointed by the Retail Owner; two (2) Directors shall be appointed by the Office Owner and one (1) Director shall be appointed by the Hotel Owner.

**3.5. Class C.** The Class C Member of the Center Association shall be the Declarant. The Declarant as the Class C member shall be entitled to appoint three (3) of the directors to

the Board as provided in this Section **3.5**. Following the term of office of those initial three (3) directors appointed by the Declarant pursuant to Section **3.4** of this Declaration, and until such time as the Class C Membership Termination Date occurs, the seven (7) directors shall be appointed as follows: Class C Member shall be entitled to select and appoint four (4) directors; one (1) Director shall be appointed by the Retail Owner; one (1) Directors shall be appointed by the Office Owner and one (1) Director shall be appointed by the Hotel Owner. The rights of Declarant to exercise the rights as a Class C Member shall terminate on the earliest to occur of the following events (such earliest date being hereinafter referred to as the "Class C Membership Determination Date"):

(A) The date upon which Declarant no longer owns a Building Parcel; or

(B) The date that is the twenty-fifth (25th) anniversary of the recordation of this Declaration in the Official Records of the County.

**3.6. Declarant's Veto Right.** As long as Declarant holds Declarant's Reserved Rights, Declarant shall have the right to veto the following actions, whether they were taken by the Board or the Members of the Center Association:

(A) Design Changes. Any change in the general, overall architectural style and design of the Common Easement Areas, and the landscaping design of the Common Easement Areas in the Center.

(B) Changes in Use. Any change in the permitted or prohibited uses in the Common Easement Areas and the Center Parking Facilities or under the Planned Development Zoning or the Master Planned Development Permit.

(C) Center Operational Standards. Any change to the Center Operational Standards.

(D) Changes or Reductions in Services to Center. Any material changes or reductions in the services of the Center Association as set forth in this Declaration.

(E) Any alteration, modifications or relocation of any Common Easement Areas.

The foregoing veto rights shall terminate when Declarant no longer holds Declarant's Reserved Right as set forth in Section **13.24**.

#### **ARTICLE 4. CENTER ASSESSMENTS**

**4.1. Creation of Assessments.** The Center Association shall establish, levy and collect the Assessments.

**4.2. Covenant to Pay Assessments.** Each Owner of a Building Parcel, or any portion thereof, and including the Declarant for all of the interests in Building Parcels owned by the Declarant, hereby covenants and agrees as follows:

(A) to pay to the Center Association each and all of the Assessments that are levied to and assessed against the Owner's Building Parcel in accordance with this Declaration, and

(B) to allow the Center Association to enforce any rights established hereunder for enforcement of the payment of the Assessments to the Center Association by any means authorized in this Declaration or by law.

**4.3. Base Assessments.** Base Assessments shall be calculated, allocated and levied as follows:

**(A) Base Budget.** The Board shall establish the Base Budget for Base Budget Common Operational Costs for each fiscal year, including such reserves as the Board, in its discretion, deems necessary and appropriate to meet the anticipated future costs of maintaining, replacing and repairing the Improvements and other property or improvements that the Building Association is obligated to maintain, repair and replace pursuant to this Declaration taking into consideration any tax implications that may result because of the Building Association holding reserve funds.

**(B)** The Base Budget Common Operational Costs shall mean and include, but shall not be limited to, the following Common Operational Costs incurred by the Center Association in connection with the operation, maintenance, equipping and repair of the Common Easement Areas, the fulfillment by the Center Association of its duties, obligations and powers set forth in this Declaration:

- (1) operating, equipping, maintaining, repairing, replacing, lighting, cleaning, striping, and removing garbage, trash and debris from all Common Easement Areas;
- (2) all premiums, fees and other charges for insurance required to be maintained by the Center Association pursuant to this Declaration;
- (3) landscaping of Common Easement Areas;
- (4) all replacement and improvements of or to the Common Easement Areas, including the Center Parking Facilities;
- (5) reasonable amounts for capital replacements and reserves for the Common Easement Areas but expressly excluding the Center Parking Facilities;
- (6) machinery and equipment for the Common Easement Areas;
- (7) all license and permit fees;
- (8) employing the Center Association Manager and other personnel, including the salaries, benefits and insurance costs of the Center Association Manager and other personnel but expressly excluding those that are personnel that are solely for operation of the Center Parking Facilities;
- (9) all costs of utility services provided to the Common Easement Areas;
- (10) costs for operating common trash and refuse collection facilities for the Parcels;
- (11) operating, maintaining, repairing and replacing the Common Utility Facilities;
- (12) administration of any storm water management program;
- (13) costs of traffic regulation and control signs and devices within the Common Easement Areas;
- (14) legal, accounting and other fees and expenses incurred by the Center Association in maintaining its status and qualification as an entity in good standing and entitled to do business under the laws of the State of California and preparing any financial statements, tax returns, audits and other financial statements and documentation required to be prepared by the Center Association pursuant to this Declaration or otherwise;
- (15) the costs and expenses incurred by the Center Association for the administration, management and operation of the Center Association including, but not limited to, compensation for the Center Association Manager, accountants, attorneys, and employees, and
- (16) All costs and expenses incurred by the Center Association for security patrols and monitoring for the Common Easement Areas.
- (17) All costs and expenses paid to third parties (including the Declarant) by the Center Association for providing any of the foregoing services.
- (18) All costs and expenses incurred for administration of the Parking Management Plan.

**(C)** The Base Assessments computed and levied by the Board shall be in an amount necessary to pay for Base Budget Common Operational Costs, including, without limitation, reserve contributions, in each fiscal year as reflected in the Base Budget.

**(D)** Each fiscal year of the Center Association, the Board shall determine the amount of the Base Assessments based upon the Base Budget for Base Budget Common Operational Costs for each fiscal year.

(E) The Base Assessments shall be levied and assessed against each Building Parcel in two separate Assessment Pools as (i) Cost Pool A: General Common Area Maintenance Expense Assessment Pool and (ii) Cost Pool B: Specialty/Traffic Impact Expense Assessment Pool as set forth on **Exhibit "B"** attached to this Declaration.

The Owners shall have the right and obligation to adjust the allocations set forth on Exhibit "B" for the Assessment Pools to reasonable account for future operations or changes to the Center, such as the addition or modification of Buildings within the Center and the impact of such changes as to relative use of Center Facilities, if and when Buildings are constructed or modified within the Center. The Board shall present any such proposed adjustments to the Owners. Approval of any such adjustments by the Owners shall not be unreasonably withheld or delayed.

#### **4.4. Date of Commencement of Base Assessments.**

(A) Unless the Declarant agrees to an earlier date of commencement, Assessments shall commence as to all Building Parcels for the Center Association's first fiscal year or portion thereof, on the date that Declarant records in the Official Records of the County a grant deed or other conveyance of a Building Parcel to a third party that is not an Affiliate of Declarant.

(B) For the fiscal year or remainder thereof of the year after recordation of the grant deed or other conveyance of a Building Parcel to a third party that is not an Affiliate of Declarant as provided in Section **4.4.(A)**, above, the Center Association shall send written notice of the Base Assessment for each Building Parcel, at least thirty (30) days prior to the date that such Base Assessment is due and payable. For each fiscal year of the Center Association after the initial fiscal year of the Center Association's operations, the Board shall use its best efforts to send written notice thereof to the Owner of each Building Parcel at least ninety (90) days in advance of the beginning of each calendar year, provided that failure to comply with the foregoing shall not affect the validity of any Assessment levied by the Board.

(C) Unless otherwise determined by the Board, Base Assessments shall be payable by each Building Parcel in monthly installments; however, the Board may determine to levy such Base Assessments in quarterly installments [or other installment periods as determined by the Board] by written notice to each Owner of an interest in a Building Parcel.

**4.5. Special Assessments.** The Board, at any time, may levy a Special Assessment to account for Common Operational Costs that were not covered by the Base Budget or the Base Assessments. Any Special Assessment that exceeds [Five Thousand Dollars (\$5,000)][Ten Thousand Dollars (\$10,000)] as assessed to any one Parcel shall be presented to the Members for approval. Any Special Assessment that requires a vote of the Members shall be deemed approved if approved by a vote of Owners holding a Majority of the Voting Power.

(A) **Allocation of Special Assessments.** Special Assessments shall be allocated between and among all Building Parcels in the same manner as Base Assessments, as set forth in Section **4.3.(D)**, except in the case of a Special Assessment for a Cost Center Service, which shall be allocated in the same manner as a Cost Center Assessment pursuant to Section **4.6**.

(B) **Payment.** Special Assessments may be due and payable in one (1) payment or periodically as the Board shall direct at the time that the Special Assessment is levied; provided, however, that no installment of a Special Assessment shall be due sooner than thirty (30) days after notice of the Special Assessment has been delivered to the Owner or Owners of the Building Parcel by the Board.

(C) **Notice.** The Center Association shall provide written notice to each Owner by first-class mail or other means allowed under Civil Code section 6514, subsection (a), of any Special Assessments not less than thirty (30) nor more than sixty (60) days prior to the Special Assessment becoming due.

#### **4.6. Cost Center Assessments.**

**(A) Cost Center Assessments Budgets and Assessments.** The Board may establish the Cost Center Assessments for Cost Center Services based upon Cost Center Budgets for Common Operational Costs for each fiscal year for each of the designated Cost Center Services, including such reserves as the Board deems necessary. The Cost Center Assessments computed and levied by the Board shall be in an amount necessary to pay for Common Operational Costs, including, without limitation, reserve contributions, in each fiscal year as reflected in the Cost Center Budget for each of the Cost Center Services.

**(B) Cost Centers for Utility Use.** Costs for utility services provided to some or all of the Building Parcels that are incurred by the Center Association which are not separately metered may be allocated and assessed as Cost Center Assessments to those Building Parcels based upon a commercially reasonable determination by the Center Association as to proportionate use of such utility services. If and when the use of such utility services are metered or submetered, then the allocated share of the costs of use of such utility services shall be based upon the metering or the submetering of such use. If a utility service is used in combination with a Building within a Building Parcel and Common Easement Areas, including the Center Parking Garage or other Center Parking Facilities, and is metered to the Building Parcel, and not separately for use of the Common Easement Area, the Center Association shall determine the relative amount of the use of such utility service that is used by the Building or Building Parcel and by the Common Easement Areas, and shall reimburse the Owner of the Building Parcel for the amount of the utility service that is used for the Common Easement Areas. If and to the extent that water service for irrigation of the Common Easement Areas is not separately metered, but is metered to a Building or more than one Building, then the Center Association shall reimburse the Owner or Owners of the Building or Buildings for its ratable use of such water for irrigation, based upon the Center Association's commercially reasonable determination, which reimbursement shall be a Common Expense of the Center Association, until such time as such water service is separately metered. If any utility services are shared between or among Buildings on separate Building Parcels that are not separately metered, the Owners of those Buildings shall determine the relative share of the usage of such utility services and arrange for a reimbursement to the Owner that is billed for such services as is commercially reasonable and appropriate.

**(C) Allocation of Cost Center Assessments.** Notwithstanding the provisions of Section 4.3, if the allocation method for a Cost Center Service is not expressly specified in this Declaration, the Center Association may assess to each Building Parcel a Cost Center Assessment on the basis of the projected use and benefit of such Cost Center Services to the applicable Building Parcel. Unless the allocation and assessment of a Cost Center Assessment is based upon metering or other objective measurement, the allocation and assessment of a Cost Center Service shall be in accordance with the commercially reasonable projection and estimation by the Center Association of the amount of use made and the benefit received by each Building Parcel that is serviced by or has the use and benefit of the Cost Center Services. If there is any disagreement between the Center Association and any Owner regarding the allocation of Cost Center Assessments, such dispute shall be submitted to arbitration pursuant to Section 13.25.

**(D) Payment.** Cost Center Assessments shall be due and payable in advance on the first day of each month in equal monthly installments determined on the basis of an estimate, provided by the Board from time to time, of the annual Cost Center Assessment allocated to each Building Parcel that is serviced by or has the use and benefit of the Cost Center Services. The Board shall endeavor to provide to each Owner of a Building Parcel that is serviced by or has the use and benefit of the Cost Center Services which has a Cost Center Assessment, an estimate of the Cost Center Assessment to be paid by such Owner for the next fiscal year at least ninety (90) days prior to the beginning of each fiscal year; provided, however, failure to comply with the foregoing timing shall not affect the validity of any Cost Center Assessment levied by the Board. Each Owner which is required to pay a Cost Center Assessment shall continue to pay such Assessment on the basis of the last estimate provided by the Board until such time as the Board provides a new estimate for such Cost Center Assessment.

**(E) Reconciliation.** Within sixty (60) days after the end of each fiscal year, or as soon thereafter as is reasonably possible, the Board shall prepare and send to each Owner of a Building Parcel that is subject to a Cost Center Assessment, a statement setting forth the amount of the Cost Center Assessment to be paid by such Owner for the prior fiscal year and the amount of the estimates paid by such Owner therefor during the prior fiscal year. If such statement shows that the payments made by an Owner for estimated Cost Center Assessments were less than the actual costs allocable to such Owner for the Cost Center Assessment, then such Owner shall pay the difference as a Reimbursement Assessment to the Center Association within ten (10) days after receipt of such statement. If such statement shows that the estimated payments made by an Owner for the Cost Center Assessment were greater than the actual Cost Center Assessment to be paid by such Owner, the Board shall credit the difference toward the next payment(s) of Cost Center Assessment payable by such Owner until the full amount of such credit has been utilized. The Board may provide for interim reconciliations of Cost Center Assessments but not more frequently than quarterly.

#### **4.7. Reimbursement Assessments.**

**(A) General Provisions.** The Board may levy a Reimbursement Assessment against any Owner of an interest in a Building Parcel. All costs and expenses incurred by the Center Association which are part of a Reimbursement Assessment shall bear interest at the rate of three percent (3%) per annum over the Prime Rate (but not to exceed the maximum interest rate permitted by law) from the date the costs or expenses were incurred by the Center Association until the date the cost is paid in full by the Owner.

**(B) Notice.** Before the Center Association undertakes an action that will result in a Reimbursement Assessment being levied against an Owner, the Board shall provide a written notice to the Owner against whom the Board intends to assess a Reimbursement Assessment stating in reasonable detail the reason for any such Reimbursement Assessment and shall provide the opportunity of a hearing for such party before the Board in accordance with the Bylaws.

**(C) Payment.** Reimbursement Assessments shall be due and payable when levied by written notice to the applicable Owner, and shall be delinquent if not paid within thirty (30) days after levied.

**4.8. Verification of Assessments.** The Center Association shall, within twenty (20) days after request by any Owner, any Mortgagee or potential purchaser of a Building Parcel, or a portion thereof, and for a reasonable charge, furnish a certificate signed by an officer of the Center Association setting forth whether the Assessments on a specified Building Parcel, or a portion thereof, have been paid and identifying the amount of any unpaid Assessments levied against such Building Parcel, or portion thereof. Such a certificate shall be conclusive evidence of the accuracy of the statements made therein.

#### **4.9. Personal Obligation For Assessments.**

**(A)** The amount of each Assessment assessed to a Building Parcel, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall be the personal obligation of the Owner of the Building Parcel at the time when the Assessment fell due.

**(B)** The personal obligation for delinquent Assessments shall pass to the successors in title to the Building Parcel whether or not expressly assumed by them; provided however that the prior Owner shall not be relieved of its personal obligation hereunder until such obligation is paid in full.

**(C)** No Owner shall be exempt from liability for payment of the Assessments that are levied against its Building Parcel by waiver of the use or enjoyment of any of the Common Easement Areas or any other portions of the Center, or by the abandonment of such Owner's interest.

**4.10. Effect of Nonpayment of Assessments.** Any Assessment not paid within fifteen (15) days after the due date shall be delinquent, shall bear interest at the rate of twelve percent (12%) per annum commencing thirty (30) days after the due date until paid in full, and shall incur a late payment fee in an amount of ten per cent (10%) of the delinquent amount or ten dollars (\$10), whichever is greater; provided that in no event shall the interest or late charges payable hereunder exceed the maximum permitted by applicable law.

**4.11. Transfer of Building Parcel.**

**(A)** The sale, transfer or demise of any Building Parcel or other interest therein shall not affect the obligations for Assessments as to such Building Parcel. The sale or transfer of any Building Parcel pursuant to foreclosure of a Mortgage shall not extinguish the Assessment obligation (including fees, late charges, fines or interest levied in connection therewith) as to such Building Parcel so transferred. No sale or transfer shall relieve such Building Parcel from liability for any Assessments thereafter becoming due.

**(B)** If a Building Parcel is transferred, the transferor shall remain liable to the Center Association for all unpaid Assessments against such Building Parcel through and including the date that written notification of the transfer is delivered to the Center Association. If a transferee receives a statement of the type described in Section 4.8, such transferee shall not be subject to personal obligation, and the applicable Building Parcel shall not be subject to an Assessment Lien, for unpaid Assessments in excess of the amounts identified in such statement. Notwithstanding the foregoing, the transferee shall be liable for any additional Assessments that become due after the date of the written notification of the transfer.

**4.12. Enforcement and Remedies.** If any Assessment is delinquent, the Center Association shall be entitled to the following separate and cumulative rights and remedies, which the Center Association shall have the right to select and use in any order as it determines reasonable and prudent, in the discretion of the Board, without exclusion, waiver or prejudice:

**(A)** The Center Association shall have the continuing right to bring legal action for collection of such delinquent Assessment against any current or prior Owner of a Building Parcel, or portion of a Building Parcel, who is delinquent in payment of such Assessment as a debt and obligation of such Owner.

**(B)** Suit to recover a money judgment for unpaid Assessments, including all interest, late charges, attorneys' fees and other costs of collection, shall be maintainable without foreclosing or waiving the Assessment Lien in favor of the Center Association securing repayment of such amounts.

**(C)** Levy an Assessment Lien as set forth in Section 4.13.

**4.13. Assessment Lien.** At any time not earlier than ten (10) days, and not later than sixty (60) days, after default by an Owner in payment of an Assessment levied by the Center Association, the Center Association may give a pre-lien notice to a defaulting Owner, which said notice shall state the date of the delinquency, the amount of the delinquency, make demand for payment thereof and state that failure to make payment shall result in a lien against the Building Parcel Owner for the amount of the delinquency, plus costs and attorneys' fees. If the delinquency is not paid within ten (10) days after delivery of such notice, the Center Association may elect to file a claim of lien against the Building Parcel of such delinquent Owner. The claim of lien shall state (1) the name of the delinquent Owner or reputed Owner, (2) a description of the Building Parcel against which claim of lien is made, (3) the amount claimed to be due and owing (with any proper offset allowed), (4) that the claim of lien is asserted pursuant to this Declaration (referring to the recording data in the Official Records of the County), and (5) that a lien is claimed against the Building Parcel of the delinquent Owner in the amount of the stated delinquency (including interest, costs and attorney's fees). Any such claim of lien shall be signed and acknowledged by any officer of the Center Association. Upon recordation of a duly executed original of such claim of lien by the Recorder of the County, the lien claimed therein shall immediately attach to the Building Parcel and become effective, subject only to the limitations hereinafter set forth. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a mortgage with power of sale by the

Center Association, its attorney or other Person authorized to make such sale. Such sale shall be conducted in accordance with the provisions of sections 2924 and 2924b of the California Civil Code (as amended from time to time or similar laws adopted that: supersede said sections) that apply to the exercise of powers of sale in mortgages and deeds of trust. The Center Association shall have the power to bid at the foreclosure sale and if successful, hold, lease, mortgage, and convey the Building Parcel acquired pursuant to such sale. If foreclosure is by action in court, reasonable attorneys' fees shall be allowed to the extent permitted by law. If foreclosure is by power of sale, any Person designated by the Center Association in writing shall be entitled to actual expenses and such fees (including reasonable attorneys' fees) as may be allowed by law or as may be prevailing at the time the sale is conducted. The certificate of sale shall be executed and acknowledged by any two members of the Board or by the Person who conducted the sale. A deed upon foreclosure shall be executed in like manner. The Assessment Lien hereby established shall be subject to the provisions of Section **13.6** hereof.

**ARTICLE 5.**  
**DUTIES AND POWERS OF THE CENTER ASSOCIATION**

**5.1. Duties.** In addition to the duties enumerated in the Articles, Bylaws and elsewhere in this Declaration, and without limiting the generality thereof, the Center Association, acting through the Board and its officers in accordance with the Bylaws, shall perform the following duties:

**(A) Maintenance and Operation.** The Center Association shall operate, maintain, repair and replace all Improvements within the Common Easement Areas and all Common Utility Facilities that are not maintained by the City, another public entity, utility company, or improvement district in accordance with the provisions of this Declaration and the Master Use Permit.

(1) Such operations, management, maintenance and repair by the Center Association of the Common Easement Areas shall be undertaken in a condition and state of repair commensurate with a First-Class Project.

(2) The Center Association may delegate the responsibility of and costs for cleaning, maintaining or repairing a portion of the Common Easement Areas to an Owner who has been granted or assigned exclusive use of a portion of the Common Easement Area as an Exclusive Use Area, whether on a permanent or temporary basis, or to an Owner of a Building Parcel that elects to undertake with the Center Association's consent such responsibility for and costs of cleaning, maintaining or repairing a portion of the Common Easement Areas.

(3) Further, if any maintenance, repairs or replacements to any Common Easement Areas, or the improvements therein, or the Common Utility Facilities become necessary as a result of the willful or negligent acts or omissions of an Owner or its Invitees, the Center Association shall perform such maintenance, repair and/or replacement and the costs and expenses thereof shall be reimbursed to the Center Association by the responsible Owner as a Reimbursement Assessment. Notwithstanding the foregoing, the Board shall have the right to require by written notice that such maintenance, repair or replacement be undertaken by the Owner who caused the condition to exist, in which event the Board shall have approval rights over the Person actually doing the maintenance, repairs or replacements and actual performance thereof. Notwithstanding the foregoing, in the event of an emergency, or if the responsible Owner fails to complete the maintenance, repairs and/or replacements within a reasonable time under the circumstances, as determined by the Board, the Center Association shall perform such work and charge the cost thereof to the responsible Owner as a Reimbursement Assessment.

(4) If an Owner disputes its responsibility for any such maintenance, repairs or replacement after written notice is delivered by the Center Association, the Owner shall be entitled to a hearing before the Board as provided in the Bylaws. If the Owner or its Invitees are determined to have caused such condition, the Owner shall not have the right to challenge the amount incurred by the Center Association to remedy such condition.

The Center Association shall be responsible for the operational standards for the Center set forth in Article VI of the Master Use Permit, including:

(1) The Center Association shall implement the parking management strategy and submit a report annually to the City set forth in Paragraph A of Article VI of the Master Use Permit.

(2) The Center Association shall implement the transit demand management (TDM) program for the Center as set forth in Paragraph B of Article VI of the Master Use Permit.

(3) The Center Association shall be responsible for undertaking trip generation studies and other employee surveys required under the MUP pursuant to Paragraph C of Article VI of the Master Use Permit.

(4) The Center Association shall be responsible for developing and implementing a security plan for the Center pursuant to Paragraph D of Article VI of the Master Use Permit, including security patrols, video surveillance, and emergency assistance stations.

(5) The Center Association shall be responsible for administering special events within the main plaza and other areas of the Center pursuant to Paragraph E of Article VI of the Master Use Permit.

(6) The Center Association shall comply with the requirements of Paragraph F of Article VI of the Master Use Permit regarding property maintenance of the Center, including the requirement that the Center shall be maintained in good order by the Owners and by the Center Association.

(7) Pursuant to Paragraph G of Article VI of the Master Use Permit, the Center Association shall be responsible for operation and maintenance of the garbage enclosure locations within the Center.

**(B)** Storm Water Management Program. The Center Association shall administer any the storm water management program that has been established for the Center, pursuant to the terms of the Covenants for Operation And Maintenance Of Stormwater Runoff Facilities, including, Best Management Practices ("BMPs") for storm water management required by the National Pollution Discharge Elimination System ("NPDES), prohibition of rinse and cleaning water into the storm drain system, keeping outside parking and loading areas clean, maintaining onsite spill prevention and cleanup materials, and keeping landscaping materials and debris away from storm drain system, including actively preventing refuse from entering storm-drain inlets.

**(C)** Insurance. The Center Association shall obtain and maintain the insurance required under Section **8.1**.

**(D)** Electrical Service. The Center Association shall obtain electrical utility service for the Common Easement Areas from a public utility, other provider, or other generation sources.

**(E)** Parking and Traffic. Except as provided otherwise in this Declaration, the Center Association shall manage all parking and vehicular traffic within the Common Easement Areas and all Center Parking Facilities in accordance with the provisions of **Article 6**. The Center Association shall operate or cause to be operated those parking facilities that are defined and described and comprise the Center Parking Facilities in good order condition and repair, consistent with a First Class Project and consistent with the Parking Management Plan.

**(F)** Rules. The Center Association shall adopt and be entitled to enforce Rules that are not inconsistent with the provisions of this Declaration to (i) to regulate the use of the Common Easement Areas; (ii) to regulate the conduct of Owners and their Invitees with respect to the use of Common Easement Areas (iii) to provide standards for the maintenance and repair of the Common Easement Areas and of the Buildings and to provide for Center Design Guidelines for Construction Work Review pursuant to Article 9 to be created by the Center Association that are equitably applied and supplements and amended from time to time. In no event shall any such Rules in any way restrict or limit, or be construed as restricting or limiting the use or operation of any Building other than with respect to the Common Easement Areas, if any, situated within the Building Parcel in which the Building is situated. As long as Declarant owns a Building Parcel, the Rules shall be approved by the Declarant.

(G) Discharge of Liens. The Center Association shall discharge by payment, if necessary, any lien against the Common Easement Areas, other than Assessment Liens, and charge the cost thereof as a Reimbursement Assessment to the Owners responsible for the existence of the lien after notice and hearing as provided in the Bylaws.

(H) Assessments. The Center Association shall determine, levy, collect and enforce Assessments as set forth in **Article 4.**

(I) Payment of Expenses. The Center Association shall pay all expenses and obligations incurred by the Center Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the Center Association or the property of the Center Association.

**5.2. Powers.** In addition to the powers enumerated in the Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Center Association shall have the following powers:

(A) Utility and Other Services. The Center Association shall have the right and power to contract for the provision of utilities and other services necessary for the operation of the Common Easement Areas (collectively, "Services"), including, without limitation, the following: (i) water service; (ii) garbage removal, recycling and waste disposal services; (iii) electrical utility service from a public utility, other provider, or other generation sources; and (iv) other utility services, including, but not limited to, telephone, data cabling and cable television, that the Center Association determines to be reasonable and prudent for operation of the Common Easement Areas.

(B) Common Easement Area Security Monitoring. The Center Association shall provide for staff, equipment and systems for the monitoring of the Common Easement Areas, including the Center Parking Facilities (the "Monitoring Program") in accordance with the requirements of the Master Use Permit. If the Center Association elects to provide a Monitoring Program, the costs and expenses incurred by the Center Association in providing such a Monitoring Program shall be assessed as a Base Budget Common Operational Costs. In no event shall such a Monitoring Program include the providing of monitoring or security service for Buildings or other internal parts or portions of a Building. Notwithstanding the foregoing, and regardless of whether the Center Association elects to provide a Monitoring Program, neither the Center Association nor the Board shall be deemed to have made any representation or warranty to any Owner, tenant, employee of an Owner or tenant, Occupant, Invitee, or any other person entering into the Center regarding security or safety. The Center Association may adopt Rules pertaining to security and safety issues within the Center.

(C) Lighting. The Center Association shall have the power to provide for and operate lighting throughout the Common Easement Areas, including the Center Parking Facilities. Declarant and/or the Association may adopt a "Lighting Plan". The Lighting Plan means a plan for lighting within the Center, including the parking garage and other site improvements lighting, including photometrics, that was included as part of the Land Use Approvals for the Center and Project site. The Center Association may establish requirements for maintenance of lighting installed and operated on or within the facades of any Building, and such other areas on the external portions of Buildings that the Center Association deems necessary and appropriate consistent with any adopted Lighting Plan. If needed the Center Association may undertake maintenance or repair of such lighting on a Building if the Owner fails to meet the standards established by the Center Association for such lighting and the Association shall have the right to charge the costs of such maintenance and repair to the Parcel Owner of the Building as a Reimbursement Assessment or Charge. The Center Association shall have non-exclusive easements over and across the Building Parcels, external of Buildings thereon, to install, operate, maintain, repair and replace lighting within Common Easement Areas and external portions of Buildings which are not maintained by the applicable Owner. The costs and expenses incurred by the Center Association in providing such common lighting shall be assessed by the Center Association to the Owners as part of the Base Assessments; provided however that any such lighting provided to any Center Parking Facilities shall be charged to that Center Parking Facilities Cost Center.

**(D) Center Association Manager and Employees.** The Center Association shall employ a professional manager or professional management company as the Center Association Manager to perform all or any part of the duties and responsibilities of the Center Association as may be delegated in writing to the Center Association Manager, including, but not limited to managing and operating the Center Association and the Center's Common Easement Areas and the Center Parking Garage, except as may be otherwise prohibited by this Declaration. The Center Association may employ other professional consultants, staff and employees as the Board determines to be reasonable or appropriate for performing all or any part of the duties and responsibilities of the Center Association. The Center Association Manager shall be responsible for the enforcement of this Declaration. The Center Association Manager shall cause the Center to be operated, maintained, and repaired in a fashion consistent with the City Municipal Code and all City Conditions of Approval for the Center and this Declaration.

**(E) Access.** For the purpose of performing construction, maintenance or repair for the benefit of the Common Easement Areas, or for taking action to remedy a failure of an Owner or Occupant to fulfill its obligations under the terms of this Declaration, the Center Association, the Center Association Manager, and their agents or employees, shall have the right, after reasonable notice (of not less than twenty-four (24) hours) to the Owner thereof, except in emergencies, where no such notice shall be required, to enter any Building Parcel, exterior of the Building[s] thereon, within the confines of those areas reasonably necessary to gain access to the Common Easement Areas or other required areas necessary for the Center Association to perform such construction, maintenance or repair. Such entry shall be made with as little inconvenience to the Owner or Occupant as practicable and any damage caused thereby shall be repaired by the Center Association at the expense of the Center Association.

**(F) Enforcement.** The Center Association shall have the power to enforce this Declaration.

**(G) Acquisition, Alteration and Disposition of Property.** The Center Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of personal property in connection with the affairs of the Center Association. Any disposition of any interest in the Common Easement Areas, or other real property interests owned by the Center Association, shall require the prior written consent of: (i) the Declarant, as long as Declarant holds Declarant's Reserved Rights under this Declaration; and (ii) if the value of the interest to be disposed of exceeds One Hundred Thousand Dollars (\$100,000), which amount shall be increased annually, on a cumulative basis, by three percent (3%) beginning with the anniversary date of the recordation of this Declaration, the written approval of no less than a 2/3rds vote of the Voting Power in the Center Association.

**(H) Loans.** The Center Association shall have the power to borrow money on a reasonable and prudent basis to fund operations of the Center Association that cannot be readily funded from Assessments on a timely basis. Notwithstanding the foregoing, the Center Association may not borrow an amount greater than five per cent (5%) of the Base Budget Common Operational Costs without obtaining the prior written approval of no less than a majority of the Voting Power of the Members. The provisions of this subsection (H) shall not be amended, revised, modified or deleted without the prior written consent of a majority of the Voting Power of the Members.

**(I) Dedication or Grant of Easements.** The Center Association shall have the power to dedicate, convey or transfer easements over any part of the Common Easement Areas to any public agency, authority or utility for purposes of ingress, egress, installation of utility systems or otherwise as the Board deems necessary or appropriate for the operation of the Center on such terms and conditions as may be agreed to by the Board. The dedication, conveyance or transfer of any such easement shall be subject to the prior written consent of the Declarant, as long as Declarant holds Declarant's Reserved Rights under this Declaration, and in the event any such easement is to be located on a portion of property not owned by the Center Association, the prior written consent of the Owner on whose Building Parcel the easement is to be located and its Mortgagee, if any.

(J) Contracts. The Center Association shall have the power to contract for goods and/or services for the Common Easement Areas and the facilities and interests of the Center Association, and as required for the Center Association to carry out its duties and powers, subject to limitations set forth in the Bylaws or this Declaration.

(K) Delegation of Authority and Power. The Board, and the officers of the Center Association, shall have the power to delegate their authority and powers to committees, officers or employees of the Center Association, or to the Center Association Manager employed by the Center Association.

**5.3.** Commencement of Center Association's Duties and Powers. The duties, rights and powers of the Center Association as described in this Declaration shall commence from and after the date of recordation by the Declarant in the Official Records of a conveyance of a Building Parcel to an Owner other than an Affiliate of the Declarant, as described in Section **4.4.(A)** or such earlier date that Declarant elects to have such duties, rights and powers commence.

## **ARTICLE 6.**

### **PARKING AND PRIVATE VEHICULAR ACCESS**

**6.1.** Center Parking Facilities. The Center Association shall operate, manage, maintain, repair and replace the Center Parking Facilities as set forth in this **Article 6**. The Center Association shall operate or cause those Center Parking Facilities defined and described and comprising the Center Parking Facilities in good order condition and repair, consistent with a First Class Project. The Center Parking Garage and all other Center Parking Facilities shall be and remain a Common Easement Area that is operated by the Center Association.

(A) Center Parking Facilities shall not include any garage that is constructed within the Office Parcel that is part of an office Building that is constructed within the Office Parcel after the date of recordation of this Declaration which garage is intended and dedicated solely for the use of the Occupants of that office Building. Such separate office Building garage shall be operated and managed by the Owner of that office Building.

(B) The Center Association shall operate parking and traffic within the Center pursuant to the Parking Management Plan. The Parking Management Plan shall apply to parking utilized in the shared Parking Garage, surface parking, and bicycle parking facilities as included as part of the Land Use Approvals for the Center and at the Project Site. The Parking Management Plan shall include provisions for sharing of parking within the Center, including sharing of parking spaces by different uses at different time intervals, the provision of designated time limits for the use of certain parking spaces as "short term" parking spaces, provisions for effectuating an employee parking plan to direct employees to park in areas with the lowest demand for customer parking, provisions for placement of accessible parking stalls, placement of electrical vehicle charging stations, establishment of as valet parking programs pursuant to the provisions of the Master Use Permit. The Declarant shall establish the initial Parking Management Plan for the Center upon the Community Development Director's approval of relevant provisions pertaining to "short term" and employee parking as specified by the Master Use Permit. The Center Association shall review the Parking Management Plan from time to time to appropriately manage parking and traffic in the Center and may change the Parking Management Plan as the Center Association deems reasonable and appropriate, subject to review and approval of any such changes by the Declarant as long as Declarant retains Declarant's Reserved Rights. The Center Association shall distribute any revisions to the Parking Management Plan to the Owners upon such revisions being made and approved. The Center Association shall submit reports to the City as required under the Master Use Permit regarding the Center's Parking Management Plan.

**6.2.** Center Parking. Parking within the Center, including, but not limited to the Parking Garage, shall be used and operated by the Center Association for parking for the shared joint use and benefit of the Owners and Occupants of the Center as set forth in this Declaration and the Parking Management Plan.

(A) The initial Parking Management Plan designates and allocates specific parking areas and parking spaces of the Center, including, but not limited to portions of the Parking Garage, for the exclusive use of certain of the Owners of certain of the Parcels. Any such designation and allocation of exclusive use of parking areas and parking spaces cannot be modified or otherwise changed without the prior written approval of the Declarant as long as Declarant retains Declarant's Reserved Rights. The designation and allocation of parking spaces under the Parking Management Plan shall be subject to modifications by the Declarant as long as Declarant retains Declarant's Reserved Rights.

(B) Subject to the approval of the Declarant as long as Declarant retains Declarant's Reserved Rights, the Center Association shall have the right to erect or place barriers, establish loading/unloading zones, fencing, gates, or dividers within the Center Parking Garage to separate use of the Center Parking Garage, on a temporary or permanent basis in a manner that conforms to the Parking Management Plan.

(C) There shall be no Change in Use of the Center Parking Garage from its use as a parking garage without prior written approval of the City.

(D) Maintenance and Operations of Center Parking Facilities. Without regard to the ownership or use of any Parking Facility, the Center Association shall maintain, paint, repair and replace the structural and non-structural elements situated within the Improvements within the Center Parking Facilities, including the Center Parking Garage.

(E) The costs and expenses incurred by the Center Association to operate, maintain, Repair and replace the Center Parking Facilities, including, without limitation, any real estate tax assessments levied against the Center Parking Facilities shall be assessed to the Owners of the Retail Parcel, the Hotel Parcel and the Office Parcels as part of the Common Operational Costs as pursuant to Section 4.3.(E) of this Declaration as part of Cost Pool B: Specialty/Traffic Impact Expense Assessment Pool.

(F) The Center Association shall be authorized to enter into operating agreements with third parties, including the Declarant, for the operation, management, maintenance and repair of the Center Parking Facilities, the costs of which shall be included in the Common Operational Costs.

### **6.3. Rights to Use Center Parking Facilities.**

(A) Center Parking Garage. There shall be no public parking in the Center Parking Garage; the use of the Center Parking Garage shall be limited to the (1) the Retail Owner, the Occupants of the Retail Parcel and their Permittees, (2) the Hotel Owner, the Occupants of the Hotel Parcel and their Permittees and (3) the Office Owners, the Occupants of the Office Parcels and their Permittees as provided in the Parking Management Plan as stated in Section 6.2.(A).

(1) As provided in Section 6.2.(A), certain designated portions of the Center Parking Garage may be utilized for the exclusive use of the Hotel Owner, the occupants of the Hotel Parcel and their Permittees, the Retail Owner and the Occupants of the Retail Parcel and their Permittees, and the Office Owner and the Occupants of the Office Parcel and their Permittees.

(2) The Retail Owner, and the Occupants of the Retail Parcel and their respective tenants and other Invitees, the Hotel Owner, and the Occupants of the Hotel Parcel and their respective tenants and other Invitees, and the Office Owner, and the Occupants of the Office Parcel and their respective tenants and other Invitees, shall have rights of ingress and egress over and across the ramps, stairs, elevators, drive aisles and other common use areas of the Center Parking Garage for vehicular and pedestrian access to and from the designated portions of the Center Parking Garage to use they have been provide and allocated exclusive use appurtenant to its Parcel as a non-exclusive right and easement over and across the Center Parking Garage for a term and duration coextensive with the Owner's title or interest in the respective Parcel, for ingress and egress, use and enjoyment of the Center Parking Garage as described and set forth in this **Article 6**. Such permitted uses of the designated areas of the Center Parking Garage shall be subject to the Parking Management

Plan and any other criteria established by the Declarant and the Center Association for parking use, including, but not limited to, time limitations on such parking, the types of vehicles that can use the Center Parking Garage, prohibitions on such parking in such areas at certain times, such as after certain hours or overnight.

(3) No overnight parking shall be permitted in the Center with the exception of the area[s] of the Center Parking Garage allocated to parking for the Hotel Parcel.

(4) The Office Owner shall be authorized and permitted to set aside and reserve up to seventy five (75) parking spaces within the Center Parking Garage, in a location approved by the Board, not to be unreasonably withheld, for exclusive use of tenants or other occupants of the Office Buildings (which shall be reflected in the Parking Management Plan).

(5) If the Owners, by Majority Vote, determine that charging for use of the Center Parking Garage is a commercially reasonable to implement, and such is permitted under the City Land Use Approvals, the Owners may establish a system for charging for the use of the Center Parking Garage provided that the revenue from such charging for parking garage use shall be used by the Center Association Manager to (i) first offset Center Parking Garage operational expenses and then, (ii) if additional revenue is available for offsetting Common Operational Costs, including for other Center Parking Facilities in the Center.

**(B) Center Parking Facilities – Exterior Parking Spaces.** The exterior surface parking spaces of the Center Parking Facilities, expressly other than the Center Parking Garage, shall be available for use in accordance with the Parking Management Plan by (1) the Retail Owner, for the use of such Retail Owner and the Occupants of a Retail Component or Retail Facilities, their respective tenants and other Invitees, and other Permittees; (2) in certain designated areas, the rights of use by visiting Invitees and guests of the Office Parcel Owner in accordance with Rules adopted by the Declarant and the Center Association for such visitor parking and (3) in certain designated areas, the rights of use by visiting Invitees and guests of the Hotel Parcel Owner in accordance with Rules adopted by the Declarant and the Center Association for such Hotel Parcel parking.

**(C) Easements for Access to Parking – Retail Owner:** The Retail Owner, and the Occupants of a Retail Parcel, their respective tenants and other Permittees, in conjunction with the rights of Owner of the Hotel Parcel and the Office Parcel Owner as herein set forth shall have, appurtenant to the Retail Parcel, a non-exclusive right and easement to those specific and particular portions of the Center Parking Facilities described in this Article 6 established for use by the Retail Parcel for a term and duration coextensive with the Owner's title or interest in the Retail Parcel, for ingress and egress, use and enjoyment of the Center Parking Facilities as described, set forth and limited in this **Article 6**.

**(D) Easements for Access to Parking – Hotel Owner:** The Hotel Owner, and the Occupants of a Hotel Parcel, their respective tenants and other Permittees, in conjunction with the rights of Owner of the Retail Parcel and the Office Parcel Owners as herein set forth shall have, appurtenant to the Hotel Parcel, a non-exclusive right and easement to those specific and particular portions of the Center Parking Facilities described in this Article 6 established for use by the Hotel Parcel for a term and duration coextensive with the Owner's title or interest in the Hotel Parcel, for ingress and egress, use and enjoyment of the Center Parking Facilities as described, set forth and limited in this **Article 6**.

**(E) Easements for Access to Parking – Office Owner:** The Office Parcel Owner, and the Occupants of the Office Parcel, their respective tenants and other Permittees, in conjunction with the rights of Owner of the Retail Parcel and the Hotel Parcel Owner as herein set forth shall have, appurtenant to the Office Parcels, a non-exclusive right and easement to those specific and particular portions of the Center Parking Facilities described in this Article 6 established for use by the Office Parcels for a term and duration coextensive with the Owner's title or interest in the Office Parcel, for ingress and egress, use and enjoyment of the Center Parking Facilities as described, set forth and limited in this **Article 6**.

**(F) Restrictions.** The easements and licenses granted to Owners or other Occupants or Invitees of Owners pursuant to Sections **6.3(A), (B), (C) (D), and (E)** shall be subject to the rights and limitations established under this Declaration that are reserved or granted to the Center Association and to the Declarant regarding their use, operation, management and maintenance and repair of the Center Parking Facilities, including, without limitation, the right to set aside portions of the Parking Facilities for exclusive use by one or more Owners, and to the limitations set forth in the Rules pursuant to and as described and set forth in this **Article 6**.

**6.4. Regulation of Center Parking Facilities.**

**(A)** Subject to Project's Land Use Approvals, and the provisions set forth in Sections **6.1, 6.2** and **6.3**, as long as the Declarant holds Declarant's Reserved Rights under this Declaration, the Declarant shall have the power to adopt the Parking Management Plan, consistent with the requirements of the Land Use Approvals, to, among other things: (a) regulate the use of the Center Parking Facilities, and the use of any Owner or Occupant, and their respective Invitees of parking spaces and other areas within the Center Parking Facilities; (b) allocate to Owners, on a reasonable basis as determined by the Declarant, the exclusive or non-exclusive use of parking spaces within the Center Parking Facilities; (c) reserve certain spaces for parking by handicapped persons or for car/van pool parking to meet the requirements of government agencies (d) provide for sharing of parking within the Center, including sharing of parking spaces by different uses at different time intervals, (e) provision for of designated time limits for the use of certain parking spaces as "short term" parking spaces; (f) provide for an employee parking plan within the Center; (g) provide for placement of accessible parking stalls and placement of electrical vehicle charging stations; and (h) provide for the establishment of as valet parking programs pursuant to the provisions of the Master Use Permit.

**(B)** Subject to Project's Land Use Approvals and the provisions set forth in Sections **6.1, 6.2,** and **6.3**, and in this Section **6.4**, after such time as Declarant no longer holds Declarant's Reserved Rights under this Declaration, or Declarant has relinquished in writing the foregoing powers, the Board shall have the power to modify the Parking Management Plan, consistent with the requirements of the Land Use Approvals, to, among other things: (a) regulate the use of the Center Parking Facilities, and the use of any Owner or Occupant, and their respective Invitees of parking spaces and other areas within the Center Parking Facilities; (b) allocate to Owners, on a reasonable basis consistent with the Parking Management Plan as determined by the Center Association, the exclusive or non-exclusive use of parking spaces within the Center Parking Facilities; and (c) reserve certain spaces for parking by handicapped persons or for car/van pool parking to meet the requirements of government agencies. Notwithstanding the foregoing, the Board may not revoke or change any allocations of the use of Center Parking Facilities made under this Declaration or by Declarant to the Owner of the Retail Parcel or the Owner of the Hotel Parcel or the Owners of an Office Parcel without the consent of the Owner and the Declarant as long as Declarant holds Declarant's Reserved Rights.

**6.5. Alteration of Center Parking Facilities.** During the development of any portion of the Center, subject to the Land Use Approvals, the Declarant, as long as Declarant holds Declarant's Reserved Rights under this Declaration, shall have the right to revise and alter the parking facilities within the Center Parking Facilities including increasing or decreasing the number of spaces available in the Center Parking Facilities, and to establish interim parking facilities within the Center or outside of the Center.

**(A)** Expansion of the Center Parking Garage. Under the provisions of the Master Use Permit, the Center Parking Garage may be expanded within the Office Parcel in connection with future development within the Center. The Owners agree to cooperate to effectuate the expansion of the Center Parking Garage at the time that such expansion is needed to provide for parking under the Master Use Permit requirements in conjunction with the development and construction of additional Buildings within the Office Parcel and/or the Retail Parcel pursuant to the Master Use Permit and the provisions of this Declaration. Upon any such expansion of the Center Parking Garage, the allocation of the costs and expenses for operation of the Center Parking Garage as part of Cost Pool B: Specialty/Traffic Impact Expense

Assessment Pool as provided in Section 4.3.(E) and on Exhibit "B" shall be revised and reallocated to reflect any changes in relative use of the Center Parking Garage.

(B) During development and construction within the Center, the Declarant may provide revocable licenses to Owners of some or all of the Occupants of Building Parcels for parking within the Common Easement Areas, subject to the requirements of the Master Use Permit and such limitations as the Declarant deems appropriate. Notwithstanding the foregoing, no such revision, modification and alteration of the parking spaces or other facilities in the Center Parking Facilities shall deprive or materially interfere with the right of any Owner, Occupant or other Permittees from the use of a parking space or parking area to which that Person has been provided the dedicated rights to park vehicles as set forth in this Article 6. The Declarant shall be entitled to terminate any license for such interim parking facilities or move such interim parking facilities to any other part of the Center or areas outside of the Center. The costs and expenses of the operation, maintenance and repair of any such interim parking facilities by the Center Association will be established and budgeted by the Center Association, and shall be assessed as part of the Base Assessments, or as a Cost Center Assessment in the event such additional parking facilities or portion thereof are designated for exclusive use by one or more Owners, all as the Board determines as being appropriate.

(C) After the Center has been developed, and after such time as no Declarant holds Declarant's Reserved Rights under this Declaration, the Center Association shall have the right to revise, modify and alter the parking facilities in the Center Parking Facilities, including increasing or decreasing, permanently or temporarily, the number of spaces available in the Center Parking Facilities, from time to time as the Board determines appropriate, provided that any changes to such Center Parking Facilities shall be consistent with the Master Use Permit and any other applicable Land Use Approvals. Notwithstanding the foregoing, no such revision, modification or alteration of the parking spaces and facilities in the Center Parking Facilities shall deprive or materially interfere with the right of any Owner, Occupant or other Permittees from the use of a parking space or parking area to which that Person has been provided the dedicated rights to park vehicles as set forth in this Article 6. In no event shall the provisions of this Section 6.6 be deemed, construed or interpreted to diminish or alter the rights provided as to the parking for the Retail Parcel or Hotel Parcel or Office Parcels as set forth in Section 6.3. The provisions of this foregoing sentence cannot be amended, revised, modified or deleted without the written consent of the Retail Owner, the Hotel Parcel Owner or the Office Parcel Owners.

**6.6. Vehicle Restrictions.** Subject to the Land Use Approvals, as long as the Declarant holds Declarant's Reserved Rights under this Declaration, the Declarant shall have the power to establish by the Rules or in the Parking Management Plan the nature and types of vehicles that may be operated and parked within the Center. No vehicle of any type shall be used, parked or otherwise be permitted to remain within the Center other than in a manner permitted and authorized by this Declaration, the Rules or in the Parking Management Plan. The Rules or Parking Management Plan concerning vehicles and parking within the Center may include provisions regulating the operation and parking of passenger cars and other passenger vehicles, trucks, buses and other large vehicles within the Center, the use of accessible parking spaces, loading zones and other restricted, designated or reserved parking areas in the Center, establishing car and van pool parking, establishing time-limited parking, and other parking regulations and measures required by the City or other government agencies or considered necessary by the Declarant. After such time as Declarant no longer holds Declarant's Reserved Rights under this Declaration, or after the Declarant relinquishes in writing the powers hereunder, subject to the Land Use Approvals, the Center Association shall have the power to establish by Rules or in the Parking Management Plan the nature and types of vehicles that may be operated and parked within the Center and enforce such Rules or Parking Management Plan. Notwithstanding the foregoing, no such Rules or Parking Management Plan for Center Parking Facilities shall deprive or materially interfere with the right of any Owner, Occupant or other Permittees from the use of a parking space or parking area to which that Person has been provided the dedicated rights to park vehicles as set forth in this Article 6.

**6.7. Removal of Vehicles.** The Center Association may cause the removal of any unauthorized vehicle or vehicle that is wrongfully parked within the Center, including a vehicle owned by an Owner, Invitee or other Occupant. Any such removal shall be in accordance with the requirements of the California Vehicle Code or any other applicable laws. The Center Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this Section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentionally wrongful or negligent act of the Center Association or any person causing the removal of or removing the vehicle.

**6.8. Declarant's Reserved Rights for Valet Services.** Subject to the Land Use Approvals and the provisions of the Parking Management Plan, as long as the Declarant holds Declarant's Reserved Rights under this Declaration, the Declarant reserves the right to establish and operate or cause to be operated valet services for parking by hotel customers, retail customers or office occupants within the Common Easement Areas for the benefit of some or all of the Owners and to charge the Owners or a designated group of Owners for the costs of such valet services. Declarant shall have the right to designate a reasonable number of areas within the Common Easement Areas for vehicle drop off locations for such valet services and shall have the right to a park reasonable number of motor vehicles in the Parking Garages and other Parking Areas of the Center in conjunction with such valet services. After such time as Declarant no longer holds Declarant's Reserved Rights under this Declaration, or after the Declarant relinquishes in writing the powers hereunder, subject to the Land Use Approvals and the provisions of the Parking Management Plan, the Center Association shall have the power to establish and operate such valet services.

**6.9. Private Vehicular Access Easement Areas.** Subject to the Land Use Approvals, the Center Association shall manage and operate the Private Vehicular Access Easement Areas, including the installation of traffic signs and signals and developing and administering a traffic circulation program for the Center. The Rules may specify any traffic regulations and measures required by any traffic mitigation measures imposed by the City or other government agencies or considered necessary by the Board. Subject to the Land Use Approvals, the Center Association shall have the right to temporarily close off portions of the Private Vehicular Access Easement Areas and portions of the Parking Areas for commercial uses and for events, activities and functions approved by the Board. Subject and pursuant to the Land Use Approvals, the Center Association shall maintain, repair and replace all landscaping, signage and improvements within the Private Vehicular Access Easement Areas and other portions of the Common Easement Areas which indicate the principal path of motor vehicle traffic within the Center, consistent with requirements of the City. As provided in Section 2.7, the location of the Private Vehicular Access Easements shall be subject to the present and future location of Buildings in the Center in accordance with the Land Use Approvals, including the Master Use Permit, and modifications and changes to Buildings and the Private Vehicular Access Easements as are approved by the City, and by the Declarant, as long as Declarant retains Declarant's Reserved Rights, as provided in Section 2.22.

**6.10. Transportation Demand Management Plan.** The Center Association shall adopt, manage and operate a Transportation Demand Management Plan which conforms to Paragraph B of Article VI of the Master Use Permit that specifies requirements and measures to be undertaken for compliance by the Center Association, Owners, Occupants and employees of the Center. The Center Association shall be responsible for undertaking trip generation studies and other employee surveys and reports required under the MUP pursuant to Paragraph C of Article VI of the Master Use Permit.

## **ARTICLE 7. BUILDING MAINTENANCE AND OPERATION**

**7.1. Building Parcel Maintenance.** All Improvements, and any landscaping within Building Parcels, other than Common Easement Areas or any other areas that are required to be maintained and repaired by the Center Association pursuant to this Declaration, shall be maintained, repaired and replaced by the Owner of the Building Parcel in compliance with the Land Use Approvals, including the MUP, good condition and repair in accordance with the Center Operational Standards consistent with the Project Site being a First-Class Project.

(A) The Center Association may maintain, repair and replace the lighting fixtures on the exterior of Buildings (including replacement of bulbs and ballasts) that are intended to illuminate Common Easement Areas.

(B) The Center Association shall adopt, maintain and enforce the following: a Parking Management Plan, Trash Management Plan and a Center Signage Program, in compliance with the Master Use Permit and any other Conditions of Approval, and other operational plans and programs for the Center Common Easement Areas, subject to the prior written approval of the Declarant as long as Declarant retains Declarant's Reserved Rights. Any changes to any of these plans or programs shall be subject to the prior written consent of the Declarant as long as Declarant retains Declarant's Reserved Rights.

(C) Trash management, operations, and associated activities shall be conducted, as set forth in this Section 7.1 and pursuant to the Trash Management Plan adopted initially by the Declarant. The Declarant shall establish the initial Trash Management Plan for the Center to appropriately administer and manage the collection of trash, garbage, recycling, refuse and other waste in the Center. The Center Association shall review the Trash Management Plan from time to time to appropriately administer and manage the collection of trash, garbage, recycling, refuse and other waste in the Center. The Center Association may change the Trash Management Plan as the Center Association deems reasonable and appropriate, subject to review and approval of any such changes by the Declarant as long as Declarant retains Declarant's Reserved Rights. The Center Association shall provide the necessary access from one Building Parcel to another if necessary, to permit the maintenance, access, storage, and pickup of trash in the locations to be determined as part of the Trash Management Plan. The Center Association shall abide by the terms and restrictions of the Agreement for Private Improvements in the Public Easement allowing for placement of a refuse enclosure, including appurtenant equipment and utilities, within the 20-foot Storm Drain Easement recorded by Document No. 14849919 of the Official Records of the Office of the Recorder of Santa Clara County.

(D) The Center Association shall ensure that all conditions of approval contained in any Land Use Approvals, including the MUP, and any Construction Work Review pursuant to the provisions of this Article 9 shall be enforced. This shall apply to future Land Use Approvals and Construction Work Review that is provided for new or subsequent construction. The Center Association shall ensure that all decorative or structural items required by the Land Use Approvals, including the MUP, or by Construction Work Review are maintained in the same manner as a First Class Project.

(E) The Declarant, as long as Declarant holds Declarant's Reserved Rights shall be entitled to establish adopt, modify and amend the Center Operational Standards. The Center Operational Standards may not be modified without the prior written consent of the Declaration, as long as Declarant holds Declarant's Reserved Rights. After such time as Declarant no longer holds Declarant's Reserved Rights, the Center Operational Standards shall be adopted, modified and amended by the Center Association Board by written notice to all of the Owners, provided that any such Center Operational Standards adopted, modified and amended by the Center Association Board shall be subject to ratification by a Majority of the Voting Power of the Owners if within thirty (30) days after any such adoption, modification or amendment, the Owners call a meeting or a ballot for a vote for such ratification. If no such meeting is called or ballot circulated within such thirty (30) days, then the adoption, modification or amendment shall be deemed operative.

**7.2. Security.** The Owner of a Building Parcel shall be responsible, at its option, for providing security for such Building Parcel. The foregoing is not intended to and shall not be construed as requiring any Owner of a Building Parcel to provide security for such Building Parcel.

**7.3. Responsibility for Building Maintenance.**

(A) The management, maintenance, repair and replacement of the Improvements, facilities and structure within the Building situated on a Building Parcel, and the Building Parcel, shall be undertaken by the Owner of the Building Parcel.

(B) All operation, management, maintenance, repair and replacement of the Improvements, facilities and structure of a Building Parcel hereunder shall be consistent with the Project Site being a First-Class Project, including compliance with the provisions of the MUP.

**7.4. Legal Action to Enforce.** If the Owner of any Building Parcel fails to maintain or repair any portion of its Building Parcel as provided in this Declaration, the Center Association may, after notice and a hearing to the extent required by the Bylaws, (a) undertake the maintenance or repair on behalf of the Owner, or (b) bring legal action to compel such maintenance or repair by responsible Owner. The costs of undertaking any such maintenance or repair or of any such legal action shall be paid to the Center Association by the Owner of such Building Parcel therefor that is responsible for such maintenance or repair, as a Reimbursement Assessment.

## **ARTICLE 8.** **INSURANCE**

**8.1. Insurance - Center Association.** The Center Association shall obtain and maintain the following insurance coverages:

(A) **Property Insurance - Common Easement Areas.** All-Risk or Special form property insurance providing reasonable coverage on a Replacement Cost (as defined below) basis for the costs of repairing, rebuilding and replacing all improvements owned and/or operated by the Center Association within the Common Easement Areas, including the Center Parking Facilities, except as hereinafter may be excluded, Utility Facilities and all personal property and fixtures owned by the Center Association.

(1) Such property insurance policy or policies shall be written to insure, under the All-Risk or Special form, losses or damage by theft, fire, windstorm, hail, explosion, damage from aircraft and vehicles, smoke damage, extended coverage, debris removal, vandalism and malicious mischief and sprinkler leakage.

(2) The amount of coverage for such property insurance shall be in the full amount of the full replacement cost (without deduction for depreciation) ("Replacement Cost") of the improvements and other covered property (excluding foundation and excavation costs and costs of underground flues, pipes and drains). The Center Association shall obtain a waiver of any co-insurance provisions.

(3) Such property insurance shall include coverage or endorsements for increased construction costs due to changes in building codes, regulations and similar laws and for demolition costs, including, but not limited to, an ordinance or law coverage endorsement providing coverages A, B and C and an ordinance law – increased period of restoration endorsement.

(4) The Center Association may, but shall not be required to, carry (i) earthquake insurance; (ii) pollution liability insurance; and (iii) flood insurance.

(5) Such property policy or policies shall name the Owner of each Building Parcel and the Center Association, as a loss payee, as their interests may appear.

(6) The foregoing property insurance may contain reasonable deductibles or self-insured retentions approved by the Board.

(7) Such property insurance to be obtained by the Center Association shall not cover any improvements within the Building Parcels, except for those improvements within the Center Parking Facilities and Common Easement Areas, and shall not cover any improvements within Retail Spaces, any other tenant improvements installed or made by an Owner of Occupant at that Owner's or Occupant's own cost, nor any trade fixtures, inventory, or other personal property of Owners or Occupants.

(8) Whenever any improvements or alterations that are owned or operated by the Center Association are in the course of construction, the property insurance required under this subsection for such improvements or alterations shall be carried by the Center Association on a builder's risk or course of construction policy form, written on a completed value basis, insuring against loss or damage to the full extent of the Replacement Cost of that which is being covered, without any co-insurance requirements or penalties. The Center Association and its contractors, subcontractors and sub-subcontractors of any tier, as

their interests may appear, shall be insureds under the builder's risk or course of construction insurance. The policy coverages shall include, without limitation, the perils referred to in Section **8.1.(A)(1)**. The policy shall cover materials located on-site, off-site and in transit. The policy shall provide business income, extra expense and delayed opening/delayed start-up coverages, without any co-insurance requirements or penalties. These time element coverages shall include a waiting period of no more than fourteen (14) days and shall provide proceeds which will cover actual loss sustained during a period of not less than twelve (12) months from the date of loss. The policy must be endorsed to include ordinance or law coverage no less broad than that required by Section **8.1.(A)(3)**.

(9) Notwithstanding the foregoing provisions of Section **8.1.(A)**, the Center Association may elect to agree with the Office Parcel Owner that the Office Parcel Owner will obtain and maintain property insurance insuring the garage improvements within the Office Parcel with the agreement and understanding that the Center Association, as a Common Expense, shall reimburse the Office Parcel Owner for the cost of the premiums for any such insurance coverage with the understanding that such insurance coverage shall conform provisions of this Section **8.1.(A)**.

**(B)** Liability Coverage – Center Association. A policy or policies of commercial general liability insurance in an amount of not less than Five Million Dollars (\$5,000,000) bodily injury and property damage per occurrence limit, Five Million Dollars (\$5,000,000) general aggregate limit, Five Million Dollars (\$5,000,000) personal and advertising injury limit, and Five Million Dollars (\$5,000,000) products-completed operations limit and providing coverage, including without limitation, premises-operations and products-completed operations, insurance against liability for bodily injury, death, personal injury, advertising injury, and property damage occurring or arising from an occurrence in, on or about the Common Easement Areas or incident to the ownership, maintenance or use of the Common Easement Areas or any other Center Association owned or maintained real or personal property. The Center Association shall be the first named insured on the commercial general liability insurance policy. Such commercial general liability insurance shall name the Center Association's agents and representatives, the Board, and the Owners, as additional insureds. The amount and scope of such commercial general liability insurance coverage shall be increased by the Center Association over time to reflect the amount and types of coverage generally maintained by prudent commercial building owners in the County. No such liability insurance shall be deemed to limit the parties' respective indemnity obligations or such other obligations of the parties under this Declaration. Such insurance shall be written on an occurrence policy form and not a "claims made" or "modified occurrence" form, except to the extent that occurrence form policies are not commercially reasonably available to the Center Association and claims made or "modified occurrence" policy forms are purchased by a substantial majority of associations for similar developments in the County.

**(C)** Workers' Compensation Insurance. Workers' compensation insurance (statutory limits) for employees of the Center Association to the extent required by law and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) bodily injury by accident (each accident), One Million Dollars (\$1,000,000) bodily injury by disease (policy limit) and One Million Dollars (\$1,000,000) bodily injury by disease (each employee). Such policy or policies shall include a waiver of subrogation in favor of the Declarant and each Owner.

**(D)** Business Automobile Liability. Business automobile liability insurance, insuring against liability arising from the maintenance and use of all owned, non-owned, hired, leased and rented trucks, automobiles and other vehicles for bodily injury, death or property damage. Such coverage shall be obtained with a combined single limit for each occurrence of not less than Three Million Dollars (\$3,000,000.00) without any annual aggregate.

**(E)** Fidelity Bond or Crime Insurance. Fidelity bonds or crime insurance covering officers, directors, and employees of the Center Association with access to any Center Association funds in an amount of coverage of not less than three (3) months of estimated Center Association revenues.

**(F) Directors and Officers Liability Insurance.** Directors and officers liability insurance covering all past, present and future directors and officers of the Center Association. The limits of liability of the directors and officers insurance shall be not less than Two Million Dollars (\$2,000,000) per claim/annual aggregate.

**(G) Garage Operations Insurance.** Such insurance for the operations of the Center Parking Garage, including garage liability coverage with a broadened coverage - garages endorsement and garage-keepers coverage, including comprehensive coverage and coverage for collision or overturn, insuring the Center Association, or any property owned or controlled by the Center Association, as the Board, in its discretion, considers necessary or advisable. Such garage operation insurance shall be levied to the Owners as part of Cost Pool B: Specialty/Traffic Impact Expense Assessment Pool as provided in Exhibit "B".

**(H) Other Insurance.** Such other insurance insuring the Center Association, or any property owned or controlled by the Center Association, as the Board, in its discretion, considers necessary or advisable.

**8.2. Assessments for Insurance.** The cost of insurance coverage required to be maintained by the Center Association shall constitute a Common Operational Cost and be included as part of the Base Assessments. Notwithstanding the foregoing, the Board may allocate the cost of insurance as a Cost Center Assessment to more accurately reflect the benefits arising from such insurance coverage due to the specific use or uses within a Building Parcel or Cost Center as reasonably determined from time to time by the Board and the insurer(s) of the policies described herein.

**8.3. Insurance Administration.**

**(A)** Each Owner will be deemed to have appointed the Center Association or any insurance trustee designated by the Center Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Center Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

**(B)** Any insurance maintained by the Center Association shall contain a "waiver of subrogation" as to the Owners (including the Declarant), and all Mortgagees, and, if commercially reasonably available, a cross-liability or severability of interest (separation of insureds) endorsement or provision insuring each insured against liability to each other insured.

**(C)** The Center Association, its directors, officers, and Center Association Manager, shall have no liability to any Owner, or Mortgagee if, after a good faith effort, it is unable to obtain or maintain the insurance required hereunder, because the insurance is no longer available at commercially reasonable rates or terms, or, if available, cannot be obtained or maintained because the Owners have failed to fund the insurance premiums. In such event, the Board immediately shall notify each Owner and any Mortgagee entitled to notice from the Center Association that the insurance will not be obtained or renewed.

**(D)** The Center Association shall annually review all insurance policies maintained by the Center Association to determine the adequacy of the coverage and to adjust the scope, types and limits of the policies accordingly.

**(E)** No Owner shall separately insure the improvements within a Building Parcel against loss by fire or other peril covered by any insurance carried by the Center Association in a manner that will result in any diminution in insurance proceeds otherwise payable under the Center Association's policies. The Center Association shall make available to all Owners a copy of the Center Association's property policy or policies, or such other written evidence of the Center Association's insurance coverages, to enable an Owner to insure its Building Parcel without duplicating insurance carried by the Center Association, including, without limitation, to avoid inadvertently triggering any co-insurance clause in the Center Association's policy or policies. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Center Association's policy or policies that results from the existence of such other insurance will be chargeable to the Owner, as applicable, who acquired other insurance.

**8.4. Insurance of Building Parcels.** The Owner of each Building Parcel shall comply with the insurance requirements and standards stated in this Declaration.

**(A) Property Insurance - Building Parcels.** The Improvements within each Building Parcel, including any tenant improvements installed or constructed by the Owner or a tenant or other Occupant of a Building Parcel, shall be insured by the Owner of the Building Parcel or by the tenant or other Occupant of the Building Parcel, with property insurance coverages that are no less than commercially reasonable standards for such property insurance as established from time to time by the Board. The property insurance for the Improvements within a Building Parcel shall comply with the following requirements and standards:

(1) The property insurance shall be written on an all-risk (special causes of loss) form on a Replacement Cost basis, in an amount equal to the full cost of repairing, rebuilding and replacing all improvements of the Building, excluding non-structural improvements installed within Retail Spaces or within the interior areas of Buildings complying with the requirements of Sections **8.1.(A)(1), (2) and (3)**.

(2) The foregoing insurance may contain reasonable deductibles or self-insured retentions approved by the Board or established by the Board in the Rules.

(3) Whenever any improvements or alterations are in the course of construction, the insurance required under this subsection, to the extent appropriate, shall be carried on a builder's risk policy form complying with the requirements of Section **8.1(A)(8)**.

**(B) Liability Insurance - Building Parcels.** The Owner of each Building Parcel shall obtain and maintain [or cause to be obtained and maintained by its tenants or other Occupants] a policy or policies of commercial general liability insurance, insuring against liability for personal injury, advertising injury, bodily injury, death and property damage occurring or arising from an occurrence in, on or about the Building Parcel. Upon written notice from the Board, the amount and scope of such liability insurance coverage shall be increased over time to reflect the amount and types of coverage generally maintained by prudent commercial building owners in the County.

(1) Such commercial general liability insurance shall be obtained as follows: such insurance shall be written on an occurrence policy form with limits of liability not less than Three Million Dollars (\$3,000,000) bodily injury and property damage per occurrence limit, Three Million Dollars (\$3,000,000) general aggregate limit, Three Million Dollars (\$3,000,000) personal and advertising limit, and Three Million Dollars (\$3,000,000) products-completed operations limit. Such liability insurance for any commercial or retail uses shall provide, without limitation, coverage for premises-operations, explosion, collapse, and underground hazards, products-completed operations, blanket contractual liability insurance, broad form property damage (including completed operations), liquor legal liability, if applicable, independent contractors and cross-liability coverage (separation of insureds). The operator of any Parking Garage or other parking area or parking facility within the Center shall obtain and maintain garage operations liability insurance coverage and other types of insurance coverages that are normally and customarily obtained and maintained by the operators of parking garages and facilities in the City.

(2) No such insurance shall be deemed to limit the parties' respective indemnity, defense and hold harmless obligations or such other obligations of the parties under this Declaration.

**(C) Boiler, Machinery and Pressure Vessel.** The Owners of each Building Parcel shall obtain broad form boiler, machinery and pressure vessel insurance (without exclusion for explosion) with coverage in the full amount of the replacement value of the improvements within the Building Parcel, covering direct property loss and loss of income and providing coverage for all steam, mechanical and electrical equipment, including, without limitation, all boilers, unfired pressure vessels, piping and wiring owned or maintained by the Owners of each Building Parcel. The coverage shall include, without limitation, system breakdown coverage and insurance against loss of occupancy or loss of use arising from any breakdown and shall include, without limitation, the Replacement Cost of the improvements housing the boiler, machinery and/or pressure vessels.

**(D) Business Income.** Business income insurance shall be provided for any Building Parcel, covering loss of revenue, extra expense, loss of rents and necessary continuing expenses for interruptions caused by any occurrence or peril covered by the insurance required hereunder, extending the business interruption and extra expense coverage to include loss caused by action of a civil authority that prohibits access to the improvements due to any covered cause of loss. These time element coverages shall be in an amount sufficient to avoid co-insurance penalty and provide proceeds which will cover actual loss sustained (i) during a period of not less than twelve (12) months from the date of casualty or loss; or (ii) until that date on which the improvements are fully reconstructed or repaired and generating the amount of income/rents which would have been realized but for the casualty or loss, whichever is later. The insurance obtained shall include an endorsement for an extended period of indemnity of one hundred eighty (180) days. The coverages required by this Section **8.4(D)** shall include a waiting period of not more than fourteen (14) days and must be endorsed to provide ordinance or law coverage no less broad than that required by Section **8.1(A)(3)**.

**(E) Business Automobile Liability.** Business automobile liability insurance, insuring against liability arising from the maintenance and use of all owned, non-owned, hired, leased and rented trucks, automobiles and other vehicles for bodily injury, death or property damage, shall be obtained with a limit for each occurrence of not less than Three Million Dollars (\$3,000,000) with no annual aggregate.

**8.5. Insurance for Design Professionals, Contractors and Vendors.** All design professionals, contractors and vendors performing services or work for or on behalf of the Center Association or any Owner shall comply with such minimum insurance requirements as are stated in **Exhibit "F"** or established from time to time by the Board in its discretion.

**8.6. General Requirements.** All insurance policies required to be obtained under this **Article 8** shall be issued by responsible companies licensed and qualified to do business in the State of California. All such companies shall maintain a rating from A.M. Best & Co. of not less than A:VIII or an equivalent rating from a similarly qualified rating firm if Best's ceases to exist or provide a rating. Deductibles shall not be greater than deductibles generally acceptable for the type of insurance obtained by prudent property owners in the Santa Clara County.

**8.7. Revision of Insurance Requirements.** The Declarant, as long as Declarant has Declarant's Reserved Rights hereunder, may modify the minimum and maximum of amounts of insurance required under this Article 8 to the extent that Declarant deems it necessary and appropriate to protect the Declarant, the Center Association and the Owners and other Occupants as commercially reasonable and appropriate. After such time as Declarant no longer has such Declarant's Reserved Rights, the Board of the Center Association may modify the minimum and maximum of amounts of insurance required under this Article 8 to the extent that the Board deems it necessary and appropriate to protect the Declarant, the Center Association and the Owners and other Occupants as commercially reasonable and appropriate.

**ARTICLE 9.**  
**CONSTRUCTION WORK**

**9.1. Proceeding with Work.** All Construction Work shall be undertaken and performed by the Owner of the Building Parcel in full compliance in all material respects with the Master Use Permit and other Land Use Approvals and all necessary building permits and other permits in compliance with City requirements and the provisions of this Article 9. Promptly after obtaining the necessary governmental permits, the Owner shall commence and diligently proceed with the construction and completion of the Construction Work as approved by the City. Any such Construction Work must be commenced and completed diligently, subject to Force Majeure, meaning delays in performance of any obligation under this Declaration (excluding in any case any obligation to pay money) arising from or on account of any cause whatsoever beyond the reasonable control of the Person required to perform, including (i) strikes, (ii) labor troubles, (iii) governmental preemption in connection with a national, state or municipal emergency, (iv) any act of terrorism, (v) any rule, order or regulation of any governmental agency, (vi) conditions of supply or demand which are affected by war, acts of terrorism or other national, state or municipal emergency, (vii) acts of God or the elements (such as tornado, hurricane, flood, snow, etc. and abnormally inclement weather for the season), and (viii) other causes beyond such party's reasonable control, whether similar or dissimilar to the causes specifically enumerated in this paragraph. In no event shall Force Majeure be deemed to include any delay caused by a Person's lack of funds or financial condition or failure to comply with permits (including the Land Use Approvals, including the Master Use Permit) or legal requirements.

**9.2. Construction Work Review.**

**(A)** Article V of the Master Use Permit pertains to Design Guidelines and Architecture Standards of the Center. The Center Association shall be responsible for oversight of the design compliance of the Center pursuant to Article V of the Master Use Permit.

**(B)** All Construction Work which is new construction on a Building Parcel by an Owner or any Person on behalf of an Owner, or by a tenant or other Occupant, shall require the completion of a Construction Work Review by the Declarant, as long as Declarant holds Declarant's Reserved Rights under this Declaration. After such time as Declarant no longer holds Declarant's Reserved Rights, or after such time as Declarant relinquishes such right of review in a written document that is recorded in the Official Records of the County, such Construction Work Review shall be undertaken by Center Association Board (collectively the "Construction Work Review Body"). The Construction Work Review Body shall adopt rules and procedures for Construction Work Review. Notwithstanding the foregoing, the construction of any Building that has been approved for construction by the City pursuant to the Master Use Permit and other applicable Land Use Approvals shall not require any further review under the provisions of this Section **9.2.**

**(C)** Alterations and modification to any Improvements of a Building or on a Building Parcel ("Alterations") shall be subject to Construction Work Review if such Alterations are made to the exterior of any Building or are made to the areas of a Building Parcel exterior of a Building, such as landscaping, hardscape or other such areas of the Building Parcel that are part of the Common Easement Areas or are visible from another Building Parcel or from the Common Easement Areas.

**(D)** Prior to commencement of any such new Construction Work on a Building Parcel, or prior to commencement of Alterations, the Owner of the Building Parcel, shall submit or cause to be submitted, the proposed Construction Work to the Construction Work Review Body for Construction Work Review pursuant to this Section **9.2.** Construction Work Review submittals shall be made by a Building Parcel Owner for such Construction Work after the Building Parcel Owner has obtained entitlement and design review for the proposed new Building or Alterations, but prior to the Building Parcel Owner's submittal for building permits for the Construction Work.

**(E)** The scope of the Construction Work Review for new Construction Work or for Alterations by the Construction Work Review Body shall pertain to the following:

(1) Center Association Documentation: Review and memorializing the Building Area, parking requirements, the areas and uses within a Building Parcel, and any other information necessary for the effective ongoing management of the Center by the Center Association.

(2) Design Review: Review of the design of the Improvements or the Alterations as meeting the requirements set forth in Section 9.4 of this Declaration.

(3) Insurance: Review of any insurance or agreements necessary to protect the Center Association and Declarant.

(4) Construction Documentation: Review of requirements for delivery of future construction documentation, such as permits, certificates of occupancy, warranties for work related to the Common Easement Areas and/or infrastructure, as well as as-built drawings upon completion.

(5) Infrastructure Requirements: Review of capacity of and extension to utilities, roadways, services and Center Association infrastructure, including transformer and meter location, circuiting, method of connecting, and timing and expected duration of work.

(6) Construction parameters: General review of technical (not design) aspects of the construction drawings to determine if there are any material impacts to neighboring buildings, including sound, vibration, fire hazards, code related, or operational hardships that will result.

(7) Constructability Issues: Review of timing, duration, staging, worker parking, pedestrian safety, barrier erection and design, traffic flows of the work, and entering into an agreement to restore any damage to Common Easement Areas or neighboring properties.

(8) Operational Issues: Review of any matters impacting the operation of other buildings in the Center, including but not limited to rubbish storage (i.e. refrigerated for a restaurant), rubbish removal and deliveries, parking (location, proposed queuing, valet service and traffic flows), signage and public area lighting (i.e. circuit of shop signs consistent with the rest of the project so all store signs go on at once), and landscaping to be maintained by the Center Association on an ongoing basis.

(9) Confirmation of issuance of all required City permits for the Construction Work or for Alterations, including, but not limited to, building permits.

**9.3. Forms of Approvals and Denials by Construction Work Review Body.** All approvals and denials by the Construction Work Review Body shall be in writing. Any denial of a proposal shall state the reasons for the decision made with respect to said denial. The Construction Work Review Body may impose reasonable written conditions and requirements with respect to any approval that the Construction Work Review Body determines to grant. All records of the Construction Work Review Body shall be kept in the Center Association Manager's office and be available for review by Owners during the management office's office hours. It shall be the responsibility of any applicant whose project has undergone the review of the Construction Work Review Body to submit evidence of the Construction Work Review Body's approval to City in conjunction with an application for a building permit or similar application to the City.

**9.4. Basis for Approval of Improvements.** The Construction Work Review Body shall not approve as part of any Construction Work the construction of any new Improvements or Alterations unless it finds that:

(A) The general architectural considerations, including the character, scale and quality of the design of such Improvements meet the standards established by the Construction Work Review Body;

(B) The architectural relationships of such Improvements with the site and other Buildings, building materials, colors, screening of exterior appurtenances, exterior lighting, and other similar elements have been incorporated in order to ensure the compatibility of the proposed Improvements and its design concept with the character of adjacent Buildings and the

general character of the Center and the compliance with the Rules and any Center Design Guidelines and the related terms and conditions of the Land Use Approvals;

(C) The architectural design, layout and setbacks of the proposed Improvements are compatible with the existing Buildings and Common Easement Areas;

(D) The general site considerations, including site layout, open space and topography, orientation and location of buildings, vehicular access, circulation and parking setbacks, heights, walls, fences and similar elements have been designed to provide a desirable environment, and are otherwise in compliance with the Land Use Approvals and any Center Design Guidelines;

(E) General landscape considerations, including the location, types, size, color, texture and coverage of plant materials, provisions for irrigation, maintenance and protection of landscaped areas and similar elements, have been considered to ensure visual relief, to complement buildings and structures within the Center, and to provide an attractive environment for the enjoyment of the Owners in general, and their Invitees, and enhancement of the property values in the Center in general; and

(F) Electrical transformers, telephone vaults, and similar above ground equipment enclosures are located in areas designated for such uses by the Land Use Approvals and any Center Design Guidelines or if not so designated, screened with fencing and landscaping acceptable to the Construction Work Review Body, or if required by the Construction Work Review Body located underground so that such equipment shall not be visible from the Buildings.

(G) Any Alterations to Common Easement Areas shall be made in such a manner as to provide continuing reasonable access and use of the Common Easement Areas as so altered, including the temporary or permanent relocation of access or parking, or temporary construction staging areas, as is determined by the Construction Work Review Body as being reasonable and appropriate.

(H) When Alterations to Common Easement Areas affect or impact parking within a Parcel appropriate arrangements shall be made to provide continuing reasonable alternative parking as is determined by the Construction Work Review Body as being reasonable and appropriate.

(I) The Construction Work Review Body shall determine that the proposed program for construction staging of the proposed Construction Work, including the location of construction staging areas for materials and equipment, is reasonable and appropriate.

If the Construction Work Review Body makes a negative finding on one or more of the items set forth in this Section, it shall disapprove such a matter or condition its approval so as to allow such findings to be made.

**9.5. Exclusions From Review.** Notwithstanding the foregoing, no Construction Work Review Body approval shall be required for: (i) repainting a Building in accordance with the color scheme that has been most recently approved by the Construction Work Review Body for the portion of the Improvements in the Center that are being repainted, or is currently, as of the repainting, set forth in the Rules; (ii) repairing, rebuilding or restoring a portion of a Building or other part of the Center in accordance with the plans and specifications previously approved by the Declarant as Declarant's Improvements or as initial Construction Work or by the Construction Work Review Body for the particular portion of the Building or other part of the Center that is being repaired, rebuilt or restored; (iii) for construction or alteration of store fronts of retail or commercial establishments located in commercial spaces and (iv) any Construction Work excluded under Section 9.2.(B). In addition, no Construction Work Review Body approval shall be required for construction of walls or partitions or other improvements to create units in the interior of a Building that does not entail any structural alterations of the Building or modification of the Common Easement Areas. All work performed under this Section 9.5 shall be consistent with the Land Use Approvals.

**9.6. Construction Work Review Body Review Procedures.** The following procedures shall govern the actions of the Construction Work Review Body as to submittal to and review by the Construction Work Review Body of Construction Work or Alterations:

**(A) Submittals.** Any Owner seeking review and approval of Construction Work or Alterations by the Construction Work Review Body shall submit to the Construction Work Review Body an application for approval of such Construction Work or Alterations, together with such plans, specifications, and other documentation as may be required pursuant to any Rules or Center Design Guidelines to enable the Construction Work Review Body to make a determination with respect to such proposed Construction Work or Alterations ("Construction Work Review Submittal"). Any Owner seeking approval of a Change in Use by the Construction Work Review Body shall submit to the Construction Work Review Body an application for approval of such Change in Use, together with such other information and documentation as may be required pursuant to the Rules or any Center Design Guidelines to enable the Construction Work Review Body to make a determination with respect to such proposed Change in Use ("Proposed Use Documents"). The Construction Work Review Body shall define what constitutes a full set of a Construction Work Review Body or Proposed Use Documents for Construction Work or Alterations.

**(B)** If the Construction Work Review Body determines that the application for approval of Construction Work, Alterations or a Change in Use or the Construction Work Review Submittal or Proposed Use Documents does not comply with this Declaration, any Center Design Guidelines or are otherwise inadequate to permit the Construction Work Review Body to make a final determination on the application, the Construction Work Review Body shall notify the Owner in writing of such deficiency within twenty (20) days after such submittal is made by the Owner. An Owner shall be entitled to submit a remedial package to correct the deficiency identified by the Construction Work Review Body and the Construction Work Review Body again shall notify the Owner in writing of such deficiency within ten (10) days after such submittal including therein reasonable detail describing any continuing deficiency. If the Construction Work Review Body fails to notify an Owner of a deficiency within any such ten (10) day period, the information submitted to the Construction Work Review Body shall be deemed complete.

**(C)** Within sixty (60) days after a complete submittal package has been delivered to the Construction Work Review Body, the Construction Work Review Body shall notify the Owner whether the application for the Construction Work, Alterations or a Change in Use has been approved or disapproved. If the application has been disapproved, the Construction Work Review Body shall specify in reasonable detail the reasons for such disapproval. If the Construction Work Review Body fails to approve or disapprove an application within such sixty (60) day period, the application will be deemed to have been disapproved.

**9.7. Commencement and Completion of Construction Work.** All Construction Work shall be commenced within a reasonable time after Construction Work Review by the Construction Work Review Body, if Construction Work Review is required for such Construction Work, and the issuance of building permits for such Construction Work, and shall thereafter be prosecuted continuously to completion in a manner that is consistent in all material respects with any required Construction Work Review and the building permits, and all other applicable Land Use Approvals for the Project Site, without significant interruption.

**9.8. Quality of Construction.** All Construction Work shall be done in a first class and workmanlike manner in accordance with good construction practices that are in compliance with all applicable laws and regulations and this Declaration. First class shall mean a quality, condition, nature or operation that is consistent with the initial construction of the improvements in the Center by the Declarant.

**9.9. Compliance with Laws.** All Alterations and Construction Work shall be undertaken only after the Owner, or any Person, such as a tenant or other Occupant, has obtained all necessary and required permits, including, but not limited to, building permits, if required, from the City. None of the Owners shall make any Alterations or undertake any Construction Work that would violate in any material respect any Land Use Approvals, including the Master Use Permit, or other permits, laws, ordinances or regulations affecting the Center. If joinder by the

Center Association or any other Owner is required for applications for building permits or other permits for any Construction Work undertaken by an Owner, the Center Association and such other Owner shall cooperate in such regard; provided however, that the Owner undertaking such Construction Work shall indemnify, defend (with counsel reasonably acceptable to the indemnified party) and hold harmless the Center Association and the other Owners from any and all claims for injuries, damages, losses, liabilities, judgments, costs or expenses that arise out of such Construction Work or arising from the execution of any such application by the Construction Work Review Body, the Center Association or other Owners for Construction Work not undertaken by them.

**9.10. Compliance with Land Use Approvals.** No Construction Work shall be undertaken by an Owner or any other Person within the Center that does not comply with the requirements of the Land Use Approvals for the Center.

**9.11. Lien Protection.** An Owner performing any Construction Work in the Center shall include in any construction contract a provision pursuant to which the contractor recognizes the separate ownership of the Building Parcel of the Owner and agrees that any lien rights of the contractor or subcontractors under the mechanics lien laws of the State of California shall only be enforceable against the Building Parcel of the contracting Owner which is the subject of the construction contract.

**9.12. Harm to Common Easement Areas.** If any Construction Work by an Owner or its agents or contractors, including any repairs, replacement or restoration of damaged or destroyed improvement on a Building Parcel, causes any injury, damage or harm to the improvements within the Common Easement Areas, the Owner who has undertaken such Construction Work shall repair any such injury, damage or harm within a reasonable time, in a first class and workmanlike manner, at no cost or expense to the Center Association or the other Owners.

**9.13. Approval of Declarant.** No applications or requests for Changes in Use affecting any portion of the Center shall be made by any Owner to the City without the prior written approval of the Declarant, as long as the Declarant holds Declarant's Reserved Rights under this Declaration.

**9.14. Liability for Review.** Review or approval of Construction Work Review or Proposed Use Documents by the Declarant or the Construction Work Review Body for Construction Work or a Change in Use shall in no way make the Declarant, the Construction Work Review Body or its members responsible or liable for the design or implementation of the proposed Construction Work or a Change in Use or be interpreted that the Declarant, the Construction Work Review Body or its members represent or warrant that the proposed Construction Work or a Change in Use is adequate in its design, of any particular quality, sufficient for its intended purpose or free from defects. The Proposing Owner whose proposed Construction Work or a Change in Use is approved shall indemnify, defend (with counsel reasonably acceptable to the indemnified party), and hold the Declarant and the Construction Work Review Body or its members harmless from any and all claims, demands, damages, losses, expenses, costs, judgments and liabilities, including but not limited to attorneys' fees, arising out of such approval. Approval of plans, drawings or specifications of any proposed Construction Work or a Change in Use or other matter requiring approval under this Article 9 shall not be deemed to constitute a waiver of the Declarant or the Construction Work Review Body's right to deny approval of any similar plan, drawing, specification or other matter subsequently submitted for approval.

**ARTICLE 10.**  
**USE RESTRICTIONS**

**10.1. Use of Center.** The Center, the Common Easement Areas, and each Building Parcel shall be used and operated in accordance with and subject to the provisions of the Land Use Approvals for the Center, the Tenancing Plan, and the Rules.

(A) As provided in the Land Use Approvals the Retail Parcels, Retail Spaces and Retail Components shall be used for retail and other commercial uses allowed by the City in retail use areas; the Hotel Parcel shall be used for hotel use and ancillary uses allowed by the City in retail and/or hotel use areas; the Office Parcel shall be used for office uses and related and ancillary uses allowed by the City for office uses in the City.

(B) Every Person that acquires an ownership interest of any portion of the Center shall be provided with a copy of the Conditions of Approval provided within the Land Use Approvals and a copy of this Declaration. Each Owner shall be responsible for having its tenants or other Occupants of its Building Parcel comply with the Conditions of Approval provided within the Land Use Approvals and with the provisions of this Declaration.

(C) All Owners, Tenants and other Occupants of the Pruneyard acknowledge the rights of the City and the Center Association to enforce the Master Use Permit for the Center pursuant to the provisions of the Master Use Permit and by taking title or other interest in a Building Parcel within the Center, each Owner, Tenant or other Occupant hereby acknowledges and agrees that the City and the Center Association have such enforcement rights.

(D) With respect to enforcement of violations of the Master Use Permit pursuant to Paragraph P of Article II of the Master Use Permit, violations within the commonly managed areas of the Center [Center Common Easement Areas] shall be the responsibility of the Center Association and each owner who shall be jointly responsible.

(E) The development and construction within the Center shall be subject to the Development Plans as the Approved Development Plans that are part of the Master Use Permit, subject to Architectural Modifications authorized in compliance with Paragraph C of Article III of the Master Use Permit.

(F) Paragraph I of Article III of the Master Use Permit provides General Performance Standards for operations within the Center. The Center Association shall be responsible for oversight of compliance with the General Performance Standards for operations within the Center as set forth in said Paragraph I.

(G) All storefronts and landscaping within the Center shall comply with the requirements of Paragraph H of Article V of the Master Use Permit – Approved Typical Storefronts - and Paragraph I of Article V of the Master Use Permit – Landscaping. The Center Association shall take responsibility for overseeing that these requirements are being fulfilled.

**10.2. Modification of Land Use Approvals or Use Permits:**

(A) The Master Use Permit and other Land Use Approvals for the Center may be modified, amended, supplemented or revised by the Center Association, acting through the Board, subject to obtaining the necessary approvals, permits and authorizations from the applicable governmental authorities and, as long as the Declarant holds Declarant's Reserved Rights under this Declaration, the Declarant. As long as Declarant holds Declarant's Reserved Rights, any amendment to the Master Use Permit shall only be initiated by the Declarant. After such time as Declarant no longer holds Declarant's Reserved Rights, any amendment to the Master Use Permit shall only be initiated by the Center Association, acting through the Board, or by an Owner of a Parcel only after that Owner has obtained the prior written consent of the Board of the Center Association.

(B) Notwithstanding the foregoing, the Center Association shall not implement or approve any modifications, amendments, supplements or revisions of the Land Use Approvals, including the Master Use Permit, or other use permits for the Center ("Change in

Use") that would deny any Owner or Occupant legal access to that portion of the Center which it owns, leases or legally occupies, or cause any Owner or Occupant to be denied reasonable use and enjoyment of the easements, rights and privileges set forth in this Declaration.

(C) An Owner shall be entitled to modify, amend, supplement or the Land Use Approvals, including the Master Use Permit, or other use permits for the Center and to obtain a new permits for any Building Parcel or other Change in Use only if such Owner has first satisfied the requirements of Section 9.6 of this Declaration as to such Change in Use and has obtained the prior written approval of the Declarant as long as the Declarant holds Declarant's Reserved Rights under this Declaration.

(D) The Master Use Permit includes the Center's Approved Development Plans. Applications with the City for Amendments to the Approved Development Plans or other amendments to the Master Use Permit may be initiated by written request of the Center Association or by an Owner or business operator within the Center with the prior written consent of the Center Association.

(E) The Master Use Permit authorizes Conditional Uses to be reviewed and authorized by the City in accordance with Paragraph F of Article III. No application may be made by an Owner, Tenant or other Occupant of a Parcel with the City until and unless reviewed and approved by the Declarant as long as the Declarant holds Declarant's Reserved Rights, or thereafter by the Center Association.

**10.3. Compliance with Law.** Each Owner, and the tenants and other Occupants of such Owner's Building Parcel shall comply with the Master Use Permits and all other laws, codes, rules, orders, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, State of California, the County and the City (in its respective governmental capacity) or any other governmental or quasi-governmental authority or agency now or hereafter having jurisdiction over the Center, a Building Parcel, or any parts thereof, with respect to its use of its Building Parcel or the Common Easement Areas, if noncompliance would subject the other Owners or Mortgagees to civil or criminal liability, jeopardize any certificate of occupancy of any Building Parcel, or any other Owner's rights to occupy or utilize beneficially their respective portions of the Center, any Building Parcel, or part thereof, or would result in the imposition of any lien against any part of the Center. Each Owner hereby agrees and covenants to indemnify and hold the Declarant and the other Owners or Mortgagees harmless from any and all claims, demands, damages, losses, expenses, costs, judgments and liabilities, including but not limited to attorneys' fees, arising out of any failure of the Owner or its tenants or other Occupants to comply with the provisions of this Section **10.3**.

**10.4. Insurance Requirements.** The Owners shall comply with all rules, regulations, and requirements of any insurance rating bureaus having jurisdiction over the Center, Common Easement Areas, Building Parcel, or any portion thereof, and the provisions of the insurance policies obtained by the Center Association. The Owners shall not do anything that would materially increase the premiums of any policy of insurance maintained by the Center Association, or any of the other Owners, would render any portion of the Center uninsurable, or create any valid defense to the Center Association's or any Owner's right to collect insurance proceeds, or cause any insurance policy to be cancelled, or cause a refusal to renew the same.

**10.5. Prohibited Activities.** Notwithstanding the provisions of the Master Use Permit that may be interpreted to allow any such uses or activities, those uses and activities that are listed on **Exhibit "D"** attached to this Declaration are prohibited uses and activities that are not allowed or undertaken in the Center. Each Owner shall comply with the provisions of **Exhibit "D"** and shall be responsible for obtaining compliance with the requirements of the Prohibited Uses stated in **Exhibit "D"** by its respective tenants and other occupants of its Parcel or Parcels.

**10.6. Illegal Activities and Nuisances.** No illegal activities shall be conducted within the Center, nor shall anything be done thereon which may be or may become a nuisance to or which may in a material way interfere with the quiet enjoyment of any Owner of its respective Building Parcel or which will impair the structural integrity of any Building or other improvement in the Center, or which will endanger lives or health of Occupants or Invitees.

**10.7. Outdoor Activities.** In accordance with and subject to the provisions of the Land Use Approvals for the Center, the Center Association shall have the authority and responsibility to oversee and control all outdoor activities within the Common Easement Areas. The display, sale or offering for sale of merchandise exterior of Buildings, and promotional or business activities within the Common Easement Areas, including, but not limited to, distribution of handbills, flyers and similar materials, shall only be conducted in compliance with the Rules, or as approved in advance by the Declarant, as long as Declarant holds Declarant's Reserved Rights under this Declaration, and, thereafter, by the Board. In addition, in accordance with and subject to the provisions of the Land Use Approvals for the Center and the Rules, outdoor dining shall be permitted for restaurants in the Center.

**10.8. Discharge of Waste or Hazardous Substances.** No use shall be permitted on any Building Parcel that discharges contaminated liquid or solid wastes or other toxic, noxious or harmful matter into the atmosphere or any creek, canal, flood control channel, ground water, or other body of water, which may adversely affect (i) the health or safety of persons or (ii) the use or enjoyment of the Center or any part thereof, or (iii) vegetation within the Center. No discharge of waste or any substance or materials of any kind shall be made into any public or private sewer serving the Center or any part thereof in violation of any regulations of any public body having jurisdiction. No highly flammable, explosive, corrosive, toxic or otherwise hazardous materials shall be manufactured or sold within the Center. Storage and use of any such hazardous materials shall be allowed only if in compliance with all applicable laws.

**10.9. Garbage and Refuse Disposal.** All rubbish, trash, garbage and recycling shall be regularly removed from the Common Easement Areas and the Building Parcels, deposited in the rubbish, trash, garbage and recycling repositories operated in accordance with the Rules, and the provisions of the Land Use Approvals, and the Trash Management Plan as adopted by the Declarant for the Center and maintained, operated and revised pursuant to Section 7.1 and shall not be allowed to accumulate. All trash, garbage, recycling and other waste shall only be kept in clean and sanitary containers. All containers and equipment for the storage or disposal of such trash, garbage, recycling and other waste materials shall be screened from view from Common Easement Areas and neighboring Building Parcels to the extent reasonably feasible. No toxic or hazardous materials shall be disposed of within the Center by dumping in the garbage containers or down the drains, or otherwise, except in accordance with applicable law. The Center Association shall have the right and option of collecting rubbish, trash, garbage and recycling from Building Parcels and to establish Cost Centers for the costs and expenses of such collection.

**10.10. Signs and Advertising.** All project signage, monument signage and building signage, ("signage") shall conform to the Center Signage Program.

**(A) Center Signage Program.** Signage within the Center shall comply with the Master Sign Plan that is attached as Appendix B to the Master Use Permit which shall be the Center Signage Program under this Declaration and comply with the provisions of Paragraph G of Article V of the Master Use Permit. All signage in the Center shall conform to the Center Signage Program, and shall be reviewed and approved as provided in Section 10.10(B) and by the City. Any changes or modifications to the Center Signage Program shall be reviewed and approved by the City after prior review as required in Section 10.10(B). The Center Association shall take responsibility for compliance with the signage requirements under the Master Sign Plan as stated in Paragraph G, Article V, of the Master Use Permit.

**(B) Approval of Center Signage.** Prior to submittal of any proposed signage for review by the City, all signage displayed to the public view from any Building or any portion of the Center must be reviewed and approved by the Declarant, as long as Declarant holds Declarant's Reserved Rights or until Declarant assigns such review to the Construction Work Review Body and shall conform to the Center Signage Program criteria. After such time as Declarant no longer holds Declarant's Reserved Rights any such proposed signage shall be reviewed and approved by the Construction Work Review Body, pursuant to the provisions of Article 9 and shall conform to the Center Signage Program criteria.

(C) Signs in General. Subject to Civil Code §§ 712 and 713, and this Section **10.10**, no signs shall be displayed to the public view on any Building Parcel or on any other portion of the Center except signs that comply with the Center Signage Program which are part of the Center Design Guidelines and the Rules.

(D) All other than signs, billboards, posters, or advertising materials within the Center shall conform to standards established by Declarant and the applicable laws and regulations of the City, including those located within the storefront windows of commercial spaces.

(E) For Sale or For Rent or For Exchange Signage. "For Sale" or "For Rent" or "For Exchange" signs shall be allowed to be displayed within areas of the Center that are designated in the Center Signage Program regarding such signs, and that conform to the requirements of State law, and applicable local ordinances, provided the design, dimensions and locations are reasonable.

**10.11. Radio and Television Antennas.** Except to the extent required to comply with the requirements of applicable State and federal laws and regulations, no Owner shall construct, install, use or operate external radio, or television or telecommunications transmitting or receiving antennas or other electronic antennas or dishes within the Center except in accordance with the Rules and in accordance with, and subject to, the provisions of the Land Use Approvals for the Center and, as long as Declarant holds Declarant's Reserved Rights under this Declaration, the written approval from Declarant.

**10.12. Building Parcel Restrictions.** Any Building Parcel may be subjected to a Building Declaration that provides additional covenants and restrictions applicable solely to that Building Parcel. No provision in a Building Declaration shall be less restrictive than the provisions of this Declaration. If there is any conflict in any provisions of a Building Declaration and this Declaration, the provisions of this Declaration shall prevail. As long the Declarant holds Declarant's Reserved Rights under this Declaration, the form and content of each Building Declaration, and any amendment, modification or termination thereof, shall be approved in writing by the Declarant before the Building Declaration or the amendment, modification or termination is recorded or becomes effective. If at the time of the making of a Building Declaration, or at the time of an amendment, modification or termination of a Building Declaration, the Declarant does not hold Declarant's Reserved Rights under this Declaration, the form and content of the Building Declaration, and any amendment, modification or termination thereof, shall be approved in writing by the Board before the Building Declaration or the amendment, modification or termination is recorded or becomes effective.

**10.13. Hotel Operations.** The hotel located on the Hotel Parcel shall be permitted to operate as a 24-hour late night business operation in compliance with the Master Use Permit. Hotel stays in the hotel located on the Hotel Parcel shall be subject to any limitations on maximum times of stays per reservation as may be required under the Land Use Approvals.

**10.14. Delivery Hours.** The Association shall adopt Rules regarding commercial deliveries or pickups, which Rules shall be consistent with the Land Use Approvals for the Center. Owners and their tenants and other Occupants of Parcels shall comply with such Rules regarding commercial deliveries or pickups.

## **ARTICLE 11. DAMAGE OR DESTRUCTION**

**11.1 Common Easement Areas.** If any Improvements within the Common Easement Areas, including Center Parking Facilities, are damaged or destroyed by fire or other casualty, then, subject to the provisions of Section **11.2**, the damaged or destroyed Common Easement Area Improvements shall be repaired or reconstructed by the Center Association in a manner and to a condition that provides substantially the same benefits as originally provided by such improvements, subject to such alterations as may be approved by the Board and the provisions of the Land Use Approvals, including the Master Use Permit, or other use permits for the Center ("Restoration Work").

## **11.2** Payment for Restoration Work.

(A) Sources of Funds. All costs for completing the Restoration Work shall be paid from: (i) proceeds of insurance required to be maintained by the Center Association ("Insurance Proceeds"); (ii) a Special Assessment in an amount which, when aggregated with the Insurance Proceeds is sufficient to pay for the Restoration Work; provided, however, in no event shall the amount of such Special Assessment in the aggregate exceed \$3,000,000, as increased on a cumulative basis every five (5) years by five percent (5%) ("Restoration Special Assessment"). The Restoration Special Assessment is hereby deemed approved by all Owners and shall be levied against each Building Parcel in the same proportion as Base Assessments are levied; and (iii) any Special Assessment approved by the Owners pursuant to Section **11.2(B)**.

(B) Additional Special Assessment. If costs of Restoration Work exceed the Insurance Proceeds and the maximum amount of the Restoration Special Assessment (such excess being hereinafter referred to as the "Excess Amount"), the Board, through the Center Association Manager, shall call a meeting of all Owners of Building Parcels within thirty (30) days after the Excess Amount is determined, but in no event later than one hundred twenty (120) days after the occurrence of the event which caused the damage or destruction. At such meeting, the Board shall present for approval by the Owners a request for a Special Assessment in the amount of the Excess Amount. Such Special Assessment shall be deemed approved if approved by a vote of Owners holding a Majority of the Voting Power. If such a Special Assessment for the Excess Amount is approved, such Special Assessment shall be levied against each Building Parcel in the same proportion as Base Assessments are levied and the Center Association shall undertake the Restoration Work pursuant to Section **11.3** of this Declaration. If a Special Assessment for the Excess Amount is not approved as aforesaid, the Center Association shall use the Insurance Proceeds and the Restoration Special Assessment as follows: (i) first, to make the Common Easement Areas safe and free from hazards; (ii) second, to remove all debris and make damaged areas reasonably attractive; and (iii) third, to make the Common Easement Areas as useable as reasonably possible under the circumstances. Notwithstanding the foregoing, if the damage that requires Restoration Work involves the Center Parking Garage, the Special Assessment for such Restoration Work for the Center Parking Garage shall be calculated separately from any other Restoration Work to the extent feasible and shall be levied only to the Hotel Parcel, the Retail Parcel and the Office Parcels in the percentage share of such Restoration Work Costs as Center Parking Cost Center Assessments are allocated under this Declaration.

**11.3** Procedures for Restoration Work. The Board shall designate a construction consultant, a general contractor, or an architect to administer the Restoration Work. All Insurance Proceeds and all proceeds from a Restoration Special Assessment or a Special Assessment for the Excess Amount shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds or other third party escrow agent as selected by the Board. The Center Association shall complete the Restoration Work as promptly as is reasonably possible under the circumstances, in a good and workmanlike manner and lien free.

## **11.4** Building Parcels.

(A) If all or any part of any Building Parcel or other improvements on any Building Parcel are damaged or destroyed by fire or other casualty, the Owner(s) of such Building Parcel or other improvements shall repair or reconstruct the damaged or destroyed Building Parcel or other improvements in accordance with this Declaration. If such Owners elect not to rebuild as aforesaid, such Owners shall remove all debris and damaged improvements, cause the improvements within the Building Parcel to be leveled, remove all safety hazards and render the Building Parcel safe and reasonably attractive and in accordance with and subject to the provisions of the Land Use Approvals for the Center.

(B) In the event of damage to Buildings on more than one Building Parcel, the Owners of each of the Building Parcels so affected shall cooperate in the repair and reconstruction of their respective Buildings by coordination of repair or reconstruction work and providing access where necessary over and across their respective Building Parcels. The Board of the Center Association shall coordinate repair or reconstruction work within the Common Easement Areas with the Owners and provide such access over and across the Common

Easement Areas as reasonably necessary for the Owners to effectuate such repair or reconstruction.

**11.5** Completion of Work. Any repair or reconstruction of improvements within a Building Parcel shall be commenced and completed within a reasonable time frame to be determined by the Board of the Center Association as appropriate, given the nature and extent of the repair or reconstruction to be accomplished. The Owners and the Center Association shall take all appropriate steps before repair or reconstruction is commenced or completed to erect necessary structures to preclude unauthorized access to areas being subjected to the repair and/or reconstruction and otherwise mitigate hazardous conditions within the Center.

**11.6** Reasonableness of Provisions. Declarant and each Owner hereby acknowledges that (A) the Center is a complex mixed use development requiring several years to design, develop and construct; (B) this Declaration specifically addresses the rights and obligations of the Center Association and each Owner with regard to the repair and reconstruction of the improvements in the Common Easement Areas and the Building Parcels; and (C) considering the foregoing, the provisions of this Declaration with regard to the repair and reconstruction of the improvements in the Common Easement Areas and the Building Parcels are reasonable, fair and appropriate.

## **ARTICLE 12. CONDEMNATION**

**12.1** Common Easement Areas. If all or any part of the Common Easement Areas are taken by eminent domain, the proceeds of condemnation shall be paid to the Center Association and shall be used to restore or replace the portion of the Common Easement Areas affected by condemnation, if and to the extent such restoration or replacement is possible. Any funds remaining, after payment of any and all fees and expenses incurred by the Center Association relating to such condemnation, restoration, or replacement, shall be held by the Center Association on behalf of the Owners, subject to the rights of Mortgagees. If necessary, the Center Association, as an Association expense, shall cause the remaining portions of the Center to be resurveyed to reflect such taking. The Center Association shall represent all of the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of part or all of the Common Easement Areas.

**12.2** Building Parcels. If all or any part of a Building Parcel is taken by eminent domain, the award shall be disbursed to the Owner(s) of the Building Parcel within such Building Parcel and/or the Mortgagees of such Owners as set forth in the Building Declaration for that Building Parcel. Any award for taking of Common Easement Areas (including Center Parking Facilities) within a Building Parcel shall be disbursed to the Center Association and all Building Declarations shall provide for such disbursement. If more than one Building Portion in a Building Parcel is the subject of a partial taking, the Owners of the Building Portions shall use the proceeds awarded to restore and operate the Building pursuant to the terms of the Building Declaration, to the extent that such restoration and operation is reasonable. In the event of a complete taking of a Building Parcel, or a partial taking which results in a reduction in the square footage of the Building within such Building Parcel, the allocation of Assessments shall be equitably adjusted as determined by the Center Association for the Building Parcels, or portions thereof remaining.

## **ARTICLE 13. GENERAL PROVISIONS**

**13.1.** Enforcement. Only the Board and the Declarant, and not any individual Owner, Invitee or Occupant, shall have the right to enforce, by any proceeding at law or in equity, the restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by this Declaration. Notwithstanding the foregoing, any Owner of a Building Parcel may petition the Board in writing requesting enforcement by the Board of an asserted violation of any provision of this Declaration. Upon receipt of such petition, the Board shall hold a hearing regarding the subject of the petition, after providing notice to all Members of no less than thirty (30) days. After such hearing has been conducted, the Board shall determine, in its discretion, exercising its reasonable business judgment, whether and how to pursue the subject matter of

the petition. The determination of the Board as to how to proceed with the subject matter of the petition shall be final and binding on all Owners.

(A) The City shall have the right, but not the obligation, to enforce the provisions of this Declaration as a third party beneficiary of this Declaration that pertain to the obligations of the Owners and the Association to operate and maintain the Center in accordance with the Master Use Permit and to comply with the Land Use Approvals.

(B) The Board, the Declarant, or City which brings such action shall be entitled to recover reasonable attorneys' fees, including any such fees as are ordered by the court or other adjudicating body. Failure by the Board, the Declarant, or City to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**13.2. Binding: Run With Land.** The covenants and restrictions of this Declaration shall run with and bind the Project Site and all interests therein, including, without limitation, the fee interest and any leasehold interests. All Owners, and tenants and other Occupants of the Center, or any part thereof, are subject to and bound by the provisions of this Declaration. Owners shall require their tenants, and other Occupants and Invitees, to observe all applicable provisions of this Declaration and shall incorporate this Declaration into the provisions of all leases of Building Parcels.

**13.3. Invalidity of Any Provision.** Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdictions where the Center is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

**13.4. Term.** The covenants and restrictions of this Declaration shall be binding upon the Project Site, and each portion thereof, and each Owner of any portion of the Project Site subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing terminating this Declaration signed by Owners having not less than a Majority of the Voting Power in the Center Association, has been recorded within the year preceding the end of the initial term or any extended term of beginning of this Declaration.

**13.5. Amendments.**

(A) Authority to Amend. This Declaration may be amended only by the written consent and approval of no less than a Majority of the Voting Power of the Center Association; provided, however that for so long as the Declarant holds Declarant's Reserved Rights under this Declaration, no such amendment shall be valid until and unless such amendment is consented to and executed by the Declarant. Any amendment must be certified in a writing executed and acknowledged by the President or Vice President of the Center Association and recorded in the Recorder's Office of the County.

(B) City and District Review and Approval. The City shall have the right and authority to review and veto any proposed amendment to this Declaration that pertain to the obligations of the Owners and the Association to operate and maintain the Center in accordance with the Master Use Permit and to comply with the Land Use Approvals. Prior to any proposed amendment to this Declaration being effective, a copy of the proposed amendment shall be delivered to the City Attorney and City Manager of the City. Such proposed amendment shall not be effective until the passage of sixty (60) days after the proposed amended has been submitted to the City Manager and City Attorney. If the City Manager and City Attorney have not provided written notice disapproving the proposed amendment within sixty (60) days after its submittal to the City Manager and City Attorney, the change shall automatically become effective.

(C) Neither the Articles nor Bylaws shall be amended so as to be inconsistent with this Declaration. If there should be any ambiguity in any provision of the Articles and Bylaws, then such provision shall be construed, to the extent possible, so as to be consistent with the provisions of this Declaration.

(D) Limitation on Amendments as to Specific Provisions. Notwithstanding the foregoing, no provision of this Declaration that provides specific rights of use of Center Parking Facilities or other portions of the Center to a specific or particular category or group of Owners shall be amended or deleted or otherwise revised or changed without the approval of at least a Majority of the Voting Power of such category or group of Owners. This Declaration shall not be amended or revised in any manner that imposes further or additional restrictions or limitations on the use of a Building Parcel, or any portion thereof, of upon a particular category or group of Owners, without the approval of at least a Majority of the Voting Power of such category or group of Owners.

(E) Certification of Approval. Any amendment of this Declaration shall contain a certification in writing executed and acknowledged by an officer of the Center Association that the required written consents and approvals set forth in this Section 13.5 have been obtained.

(F) Recordation. Any amendment of this Declaration shall be recorded in the Official Records.

### **13.6. Mortgagee Rights and Protections.**

(A) Subordination. No breach of any covenant and/or restriction, nor the enforcement of any lien provision contained in this Declaration, shall render invalid the lien of any Mortgage made in good faith and for value. All of the covenants, conditions and restrictions herein contained shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee sale, deed in lieu thereof, or otherwise.

(B) Right to Pay/Cure. Mortgagees may jointly or singly pay any Assessment which is in default and take any action reasonably necessary to cure any other default under this Declaration of the Owner who is subject to the Mortgage with the same effect as such cure by the Owner itself.

(C) Assignment of Voting Rights. Any Owner may assign all, but not less than all, of its voting rights under the Center Governance Documents to a Mortgagee holding a Mortgage lien on such Owner's Building Parcel, as security for the obligations secured by such Mortgage. Prior to actual receipt by the Center Association of notice from the Mortgagee of such Mortgagee's right to exercise the voting rights appurtenant to any Building Parcel, the Center Association shall be entitled to rely, without further inquiry, on the oral or written statement of any Owner that such Owner is entitled to exercise the voting rights appurtenant to such Owner's Building Parcel. Upon receipt of notice from a Mortgagee, the Center Association shall be entitled to rely on the Mortgagee's right to exercise the voting rights appurtenant to such Building Parcel, notwithstanding contrary instructions from the Owner of such Building Parcel.

(D) Restriction on Amendments to Center Governance Documents or Change in Relationship. Notwithstanding any provision to the contrary contained in this Declaration, without the prior written consent of fifty-one percent (51%) of the Mortgagees (which consent shall be exercised in good faith and within thirty (30) days after delivery to the Mortgagee of a written request from the Center Association), this Declaration, the Articles, or the Bylaws shall not be amended so as to:

(1) change the fundamental purpose for which the Center was created, terminate or abandon the status of the Center, or, except as otherwise allowed pursuant to this Declaration, permit or allow the Owners or the Center Association by act or omission to abandon, subdivide, encumber, sell or transfer the Common Easement Areas, or allow partition of the Common Easement Areas;

(2) change the provisions applicable to insurance so as to reduce the required coverage, or change the interest of any Owner in the allocation or distribution of insurance or condemnation proceeds;

(3) change the provisions applicable to reconstruction in the event of damage, or permit the use of insurance proceeds payable to or for the account of the Center Association or the Owners by reason of loss or damage to any portion of the Center to be used for other than the repair, replacement or reconstruction thereof; or

(4) change any provision which, by its terms, is specifically for the benefit of Mortgagees or specifically confers rights on Mortgagees, including this Section 13.6.

(E) Miscellaneous Rights of Mortgagees. Each Mortgagee whose name and address has been furnished to the Center Association, whether by an Owner or by such Mortgagee, shall have the right to:

(2) receive written notice of all meetings of the Owners and of the Board upon written request to the Center Association;

(3) be present at any meetings of the Center Association or the Board and participate therein by calling to the attention of the Center Association and/or the Board violations of this Declaration and by referring to other matters affecting the interests of the Mortgagee;

(4) furnish information to the Board concerning the status of any Mortgage affecting any Building Parcel;

(5) receive copies of any or all of the financial statements concerning the Center sent to the Owners at the same time and in the same manner as the Owners, upon written request therefor to the Center Association; and

(6) receive upon written request therefor to the Center Association notice of negotiations regarding the value and extent of any loss affecting a Building Parcel, subject to such Mortgagee's Mortgage (i) under a policy of insurance carried by the Center Association, or (ii) in any proceedings incident to any condemnation affecting such Building Parcel.

(F) Consent of a Mortgagee. Whenever the consent of a Mortgagee is required by this Declaration, any action taken without such consent shall not bind such Mortgagee or its successor.

(G) Title by Foreclosure. Except to the extent otherwise expressly provided herein, all of the provisions contained in this Declaration shall be binding on and effective against any Owner whose title to any Building Parcel, or any portion thereof, is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

(H) Copies of Center Governance Documents. The Center Association shall make available to Owners and Mortgagees, and to holders, insurers or guarantors of any Mortgage, who request such items in writing, current copies of the Center Governance Documents, including this Declaration, the Bylaws, Articles or other rules concerning the Center and the books, records and financial statements of the Center Association and operational records of the Center. "Available" means available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances. The Board may impose a fee for providing the foregoing which may not exceed the reasonable cost to prepare and reproduce the requested documents.

(I) Notice of Action. Upon written request to the Center Association, identifying the name and address of the Mortgagee, and the number or address of the applicable Building Parcel, such Mortgagee will be entitled to timely written notice of:

(1) any condemnation loss or any casualty loss which affects a material portion of the Center or the Building Parcel on which there is a Mortgage held, insured, or guaranteed by such Mortgagee;

(2) any default by the Owner of the Building Parcel on which such Mortgagee holds a Mortgage in performance of such Owner's obligations under the Center Governance Documents or delinquency in the payment of Assessments or charges owed by such Owner. Such notice shall be delivered to the Mortgagee concurrently with delivery of the default notice to the applicable Owner and thereafter, the Mortgagee shall have the opportunity to cure such default or delinquency until: (a) ten (10) days after the expiration of any cure period given to the defaulting Owner with respect to monetary defaults; and (b) thirty (30) days after the expiration of any cure period given to the defaulting Owner with respect to non-monetary defaults; provided, however, with respect to any default that a Mortgagee cannot under the terms of its loan document without obtaining possession of the Owner's Building Parcel, and provided further that the Mortgagee has promptly commenced and diligently pursues to completion proceedings to acquire such Owner's interest in its Building Parcel, such Mortgagee's cure period shall be extended by the amount of time reasonably necessary for such Mortgagee to acquire possession up to an additional six (6) months; and

(3) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Center Association.

(J) The Center Association shall discharge its obligation to notify Mortgagees by sending written notices required herein to such parties, at the address given on the current request for notice, in the manner prescribed by Section **13.10**.

**13.7. Termination of Any Responsibility of Declarant.** After such time as Declarant conveys all of its rights, title and interest in and to the Project Site and all Building Parcels by recorded instrument(s) to any other Person, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such transferee shall be obligated to perform all such duties and obligations of Declarant for such Building Parcels arising after the date of such transfers.

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

**13.9. Owners' Compliance.** Each Owner, tenant or Occupant shall comply with the provisions of this Declaration, and (to the extent they are not in conflict with this Declaration) the Articles and Bylaws, and the decisions and resolutions of the Center Association or the Board, as lawfully amended from time to time. Failure to comply with any such provisions, decisions, requirements or resolutions shall be grounds for an action (i) to recover sums due, (ii) for damages, (iii) for injunctive relief, (iv) for costs and attorney's fees, or (v) any combination of the foregoing.

**13.10. Notice.** Each Owner by acceptance of a deed of conveyance to a Parcel subject to this Declaration and the Center Association agree that, pursuant to Civil Code section 6514, any notices permitted or required by this Declaration or the Bylaws that are to be delivered to an Owner by the Association or by an Owner to the Association may be delivered to Owner or to the Association by either first-class mail, recognized overnight delivery services by an express service carrier addressed to the recipient at the address last shown on the books of the Association, or by electronic mail (e-mail), facsimile, or other electronic means, if the recipient has not revoked, in writing, its consent to such receipt by electronic means. This provision of the Declaration shall be deemed consent of each Owner to the above stated methods of delivery unless any particular method of delivery has been revoked in a writing delivered to the Association by such recipient. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, either first class, certified or registered, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Center Association or addressed to the Building Parcel of such person if no address has been given to the Secretary of the Center Association. Delivery by overnight delivery service shall be effective upon the earlier of receipt or one (1) business day after deposit with such delivery service. If a document is delivered by electronic means, delivery is complete at the time of transmission.

**13.11. Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Center to the general public, for the general public or for any public use or purpose whatsoever, it being the intention and understanding of the Owners and the Center Association that this Declaration shall be strictly limited to and for the purposes herein expressed for the development, maintenance and operation of the Project Site that constitutes the Center on private property as a private development solely for the benefit of the Center Association and the Owners. Pursuant to the provisions of this Section **13.11**, and except as otherwise expressly stated in this Declaration, the Center Association shall have the right to restrict public access as reasonably necessary to prevent public dedication and to prevent or prohibit the use of the Center, or any portion thereof, by any person, for any purpose inimical to the operation of the Center as a first class private development as contemplated by this Declaration. The Center Association, by appropriate rules and regulations shall have the right to regulate any use of the Center by any person and prohibit such use for any purpose which is inimical to such operation as contemplated by this Declaration.

**13.12. Estoppel Certificates.** The Center Association and each Owner, at any time and from time to time upon not less than ten (10) days' prior written notice from any other Owner or the Center Association, shall execute, acknowledge and deliver to the requesting party and to any prospective purchaser, tenant or mortgagee of any part of or interest in the Center, a certificate of the Center Association or such Owner stating: (i) 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), (ii) to the best of such party's knowledge, whether or not there are then existing any defenses against the enforcement of any of the obligations of such party under this Declaration (and, if so, specifying same), (iii) to the best of such party's knowledge, whether or not there are then existing any defaults by the Owner or the Center Association in the performance of its obligations under this Declaration (and, if so, specifying same), (iv) the dates, if any, to which Assessments and other charges under this Declaration have been paid by such party and the amounts of the most recently charged Assessments, and (v) any other information that may reasonably be required by any of such persons. It is intended that any such certificate delivered pursuant to this section may be relied upon by the Center Association, the requesting Owner, or any prospective purchaser, tenant or mortgagee of any part of the Center.

**13.13. Governing Law.** This Declaration shall be governed by, construed under, and enforced in accordance with the laws of the State of California. All Owners hereunder consent to the jurisdiction of the courts of the State of California and the United States of America, and agree that venue properly lies in the Superior Court of Santa Clara County and the United States District Court for the Northern District of California, as appropriate.

**13.14. Joint and Several Liability.** When the Owner of a Building Parcel is composed of more than one Person, each such Person shall be jointly and severally liable for payment of Assessments, and performance of all obligations (including without limitation, indemnification obligations) arising under any provision of the Center Governance Documents with respect to such Building Parcel, or the ownership thereof.

**13.15. Cooperation.** In fulfilling obligations and exercising rights under this Declaration, each Owner shall cooperate with each other and the Center Association to promote the efficient operation of the Center and harmonious relationships among the Owners and to protect the value of each of their respective interests in the Center. To that end, except for information which an Owner reasonably deems to be confidential, or which may be the subject of litigation, or which may be prohibited from disclosure by court order, each Owner shall share information with the other Owners relating to matters which are the subject of this Declaration.

**13.16. Reasonable Consents.** All consents and approvals of any of the Owners and of any holders of Mortgages shall not be unreasonably withheld or delayed. Any disapproval of or failure of consent to any matter hereunder shall be in writing and shall state in reasonable detail the reason or reasons therefore.

**13.17. Attorneys' Fees.** If there is any legal action or proceeding (other than arbitration proceedings which shall be governed by Section **13.25**) to enforce any provision of this Declaration or to protect or establish any right or remedy, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred by such prevailing party in such action or proceeding. In addition, the unsuccessful party shall pay any costs and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred by the prevailing party in enforcing or appealing any judgment rendered in any such legal action or proceeding, which costs and expenses shall be recoverable separately from and in addition to any other amount included in such judgment. This Section **13.17** is intended to be severable from the other provisions of this Declaration, and shall survive and not be merged into any such judgment.

**13.18. Covenants and Agreements Run With Land.** All of the easements, covenants, rights, agreements, reservations, restrictions and conditions herein contained touch and concern the Project Site and the Center, and each portion thereof and all interests therein, shall constitute covenants running with the land and equitable servitudes, shall run with the Project Site and each Building Parcel, or any portion thereof, and all interests in the Project Site, including the fee interest and the leasehold interests, and inure to the benefit of and shall be binding upon the Owners, and each holder of any interest in any portion of the Center, and their grantees, Mortgagees, heirs, successors, assigns and personal representatives, during each of their respective terms of ownership, with the same full force and effect as though set forth in full in every grant, conveyance or demise of the Center, or any part thereof.

**13.19. Construction.** The provisions of this Declaration shall be interpreted and construed to the end that the Center and each Building Parcel shall remain a first class mixed use development for the uses permitted under this Declaration.

**13.20. Possessive Usage.** This Declaration sometimes refers to a Building Parcel as being a Building Parcel "of" any entity or as an entity's Building Parcel. This usage is not intended to imply the existence of and shall not be construed to create any interest of an entity in a Building Parcel or relationship between an entity and a Building Parcel other than the interest or relationship specifically contemplated or provided in this Declaration.

**13.21. Conforming Exhibits.** The exhibits attached to this Declaration are incorporated herein by this reference. The legal descriptions of the Center, Property, Building Parcels, Building Portions or other portions or increments thereof as set forth in this Declaration, or on exhibits to this Declaration may become obsolete as a result of conveyances, annexations, lot line adjustments, takings, or similar such occurrences. Upon such occurrences, the terms Center, Property, Building Parcels or Building Portions shall continue to refer to the Center, Property, Building Parcels, Building Portions or other portions or increments thereof as set forth in this Declaration as any one or more of them are reconfigured or revised to conform to the exhibits to the changed legal descriptions of the affected Property, Building Parcels, Building Portions or other portions or increments thereof.

**13.22. Captions and References.** The captions in this Declaration are for convenience and reference only, and, except for **Article 1**, Definitions, in no way define, limit, or otherwise affect the scope, meaning or effect of any provision of this Declaration. All references to "herein" or "hereunder" refer to this Declaration as a whole unless specific references are made to specific articles, sections, subsections or exhibits of this Declaration.

**13.23. No Joint Venture or Partnership.** Nothing contained in this Declaration shall be construed to create the relationship between any party subject to this Declaration, including, but not limited to, the Declarant, or the mortgagees thereof, as being partners, joint venturers, or as principals and agents, or any other such relationship or association with and among each other, or so as to render any such parties as being liable for the debts or obligations of the others.

**13.24. Declarant's Reserved Rights; Limitation of Restrictions on Declarant.** Declarant is undertaking the work of construction of the Center, including the Common Easement Areas, Center Roadways, Center Parking Facilities, Buildings, Office Parcel, Office Facilities, Retail Components, Retail Facilities, Retail Spaces, Utility Facilities, and incidental improvements upon and within the Center. The completion of that work and the sale, leasing, rental, and other disposal of the Office Parcel, Office Facilities, Retail Parcel, Retail Facilities, or Retail Spaces, is essential to the establishment and welfare of the Center as a mixed use development project. In order that said work may be completed and the Center be established as a fully utilized and occupied mixed use development project as rapidly as possible, Declarant shall have the following rights within the Center and including the Common Easement Areas, Center Roadways, Center Parking Facilities, Buildings, Office Parcel, Office Facilities, Retail Parcel, Retail Facilities, Retail Spaces, Hotel Parcel, Hotel Facilities, Utility Facilities and incidental improvements upon and within the Center nothing in this Declaration shall be understood or construed to interfere or prevent Declarant from exercising such Declarant's Reserved Rights:

(A) Declarant and its contractors or subcontractors shall have the right to undertake and complete its construction work within the Common Easement Areas of the Center and any Building Parcels owned by Declarant, or any portion thereof, as reasonably necessary or advisable in connection with the completion of said work;

(B) Declarant, or its authorized representatives, shall have the rights to erect, construct and maintain within the Center, or any portion thereof that is within the Common Easement Area or owned by the Declarant such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing the Center as a combined mixed use development project and disposing of the same in Building Parcels, or portions thereof, by sale, lease or otherwise, which may include the erection of crane towers and the need for cranes to swing over a Building Parcel;

(C) Declarant and its representatives shall have the rights to conduct within the Center, or any portion thereof their business of completing said work and of establishing the operation of the Center as a fully operating mixed use development project;

(D) Declarant and its representatives shall have the rights to maintain or display such signs, pennants, banners, and flags within the Center, or any portion thereof as may be necessary for the sale, lease or disposition of Building Parcels, the Office Facilities, the Retail Facilities, the Hotel Facilities or any interests therein or any other properties within the Center;

(E) Declarant or its representatives shall have the right effectuate lot line adjustments of any Building Parcel or Building Portion for the on-going and future development of the Center. Any such lot line adjustments shall be approved by the City and shall be consistent with the Land Use Approvals.

(F) The Declarant's Reserved Rights herein provided shall endure and Declarant shall be entitled to exercise such Declarant's Reserved Rights as long as Declarant holds title to a Parcel in the Center. Declarant shall be entitled to assign Declarant's Reserved Rights to a Person, including a Mortgagee, who acquires Declarant's interest in a Parcel in the Center. Any Mortgagee who acquires an interest of Declarant in the Center shall be entitled to exercise Declarant's Reserved Rights, upon foreclosure or deed in lieu of foreclosure, and assign such Declarant's Reserved Rights to a Person who acquires an interest in the Center from such Mortgagee.

**13.25. MEDIATION AND ARBITRATION OF DISPUTES.** IN ANY CASE WHERE THIS DECLARATION PROVIDES FOR DISPUTES TO BE DECIDED BY ARBITRATION, OR WHERE ANY OWNER OR THE CENTER ASSOCIATION ELECTS TO ARBITRATE ANY DISPUTE ARISING HEREUNDER, EXCEPT AS SET FORTH HEREIN, THE PROCEDURE SHALL BE AS FOLLOWS:

(A) THE AGGRIEVED PARTY OR PARTIES SHALL NOTIFY THE OTHER PARTY OR PARTIES OF THE GRIEVANCE IN WRITING. WHEN A PARTY RECEIVES SUCH A NOTICE, SUCH PARTY SHALL PROMPTLY INVESTIGATE, INSPECT, MEET, DISCUSS, OR TAKE SUCH OTHER ACTION AS IS REASONABLY APPROPRIATE UNDER THE CIRCUMSTANCES. APPROPRIATE ACTION SHALL INCLUDE, WITHOUT LIMITATION, PROMPT COMMUNICATION



- (2) BODILY INJURY OR WRONGFUL DEATH ISSUES;
- (3) LATENT OR PATENT DEFECTS IN ANY PROPERTY IMPROVEMENTS; AND
- (4) RECORDATION OF NOTICE OF PENDING ACTION, OR ORDER OF ATTACHMENTS, RECEIVERSHIP, INJUNCTION OR OTHER PROVISIONAL REMEDY THAT MAY PROVIDE INTERIM PROTECTION DURING THE PENDENCY OF AN ARBITRATION PROCEEDING;
- (5) The City shall not be subject to these arbitration provisions.

**13.26. Name.** The names "Pruneyard", "The Pruneyard" and "Pruneyard Center" are registered trademarks of the Declarant and may not be used by any Person without the prior written consent of the Declarant. The name of the Center as "Pruneyard", "The Pruneyard" and Pruneyard Center" may not be changed without the prior written consent of the Declarant, as long as the Declarant holds Declarant's Reserved Rights under this Declaration. Any Owner may use the name of the Center to reflect location only in connection with the marketing of their respective Building Parcel; provided, however, no party or Owner other than Declarant shall use the name of the Center as part of its business name or operation or for any other use or other development or project.

**13.27. Number; Gender.** The singular and plural number and the masculine, feminine and neuter gender shall each include the other where the context requires.

**13.28. Statute and Law References.** All references to statutory sections in this Declaration are to California codes and statutes unless clearly stated otherwise. All references made in the Center Governance Documents to statutes are to those statutes as currently in effect or to subsequently enacted amendments to or replacements of such referenced statutes. In the event that any code section or statute referenced in the Center Governance Documents is in the future amended or renumbered, the reference to the code section or statute referred to or cited in the Center Governance Documents shall automatically be deemed to mean and refer to the same statute as so amended or re-numbered.

**IN WITNESS WHEREOF**, the undersigned, being the Declarant herein, has executed this Declaration effective as of MAY 17, 2017.

**CFEP Pruneyard LLC,**  
a Delaware limited liability company

By: CFEP Regular Holdings LLC,  
a Delaware limited liability company  
Its Sole Member

By: EPL Pruneyard LLC,  
a California limited liability company  
Its Administrative Manager

By: Ellis Partners LLC,  
a California limited liability company  
Its Managing Member

By:   
Name: James F. Ellis  
Its: Managing Member



**Exhibit A**

**"PROJECT SITE"**

The real property located in the City of Campbell, County of Santa Clara, State of California described as follows:

Parcels 1, 2 and 3 as shown on the Parcel Map of the Pruneyard that was recorded in the Official Records of Office of the Recorder Santa Clara County, California on May 18, 2017 in Book 64 of Maps at Pages 9 to 10 as Document No. 23653539.



**Cost Pool B: Specialty/Traffic Impact Expense Assessment Pool**

**The following Common Expenses listed as the Specialty/Traffic Impact Expense Assessment Pool shall be allocated to the Parcels as follows:**

**Parcel Percentage**

Parcel 1 - Office	46.00%
Parcel 2 - Retail	49.25%
Parcel 3 - Hotel	4.75%

**SPECIALTY / TRAFFIC IMPACT ASSESSMENT EXPENSE POOL**

GENERAL REPAIR & MAINTENANCE:	Operating, equipping, maintaining, repairing, replacing, lighting, cleaning, and removing garbage, trash and debris from all Common Easement Areas;
RESERVES:	Reasonable amounts for capital replacements and reserves for the Common Easement Areas but expressly excluding the Center Parking Facilities;
ADMINISTRATIVE FEES:	All license and permit fees;
ADMINISTRATIVE:	Employing the Center Association Manager and other personnel, including the salaries, benefits and insurance costs of the Center Association Manager and other personnel but expressly excluding those that are personnel that are solely for operation of the Center Parking Facilities;
REFUSE REMOVAL:	Costs for operating common trash and refuse collection facilities for the Parcels;
TRAFFIC / PARKING CONTROL:	Costs of traffic regulation and control signs and devices within the Common Easement Areas;
ADMINISTRATIVE:	The costs and expenses incurred by the Center Association for the administration, management and operation of the Center Association including, but not limited to, compensation for the Center Association Manager, accountants, attorneys, and employees; the cost of office space, supplies, equipment and utilities, general website maintenance and Board-approved marketing activities that support the promotion of the entire Pruneyard Center (as opposed to a single Parcel or single Owner)
SECURITY:	All costs and expenses incurred by the Center Association for security patrols and monitoring for the Common Easement Areas.
PROFESSIONAL FEES / ADMINISTRATION:	All costs and expenses paid to third parties (including the Declarant) by the Center Association for providing any of the foregoing services.
TRANSPORTATION MANAGEMENT:	All costs and expenses incurred for administration of the Parking Management Plan.
INSURANCE:	Any garage operation insurance

**Exhibit "C"**  
**Land Use Approvals**

The Project Site is subject to the approvals and land use regulations from the City of Campbell listed on this Exhibit "C" (the "Land Use Approvals"):

City Council of City of Campbell Ordinance No. 2212 – regarding Zoning Map Amendment - File PLN 2015-337;

City Council of City of Campbell Ordinance No. 2213 – Amendments to Zoning Code;

City Council of City of Campbell Resolution 12067 regarding mitigated negative declaration for Zoning Map Amendment PLN 2015-357; Master Use Permit PLN 2015-358; Vesting Tentative Parcel Map PLN 2015-77; Tree Removal Permit PLN 2015-335; Master Sign Plan PLN 2015-78 and Zoning Code Amendment PLN 2015-76;

City Council of City of Campbell Resolution 12068 regarding Master Use Permit PLN 2015-358;

City Council of City of Campbell Resolution 12069 with regard to Vesting Tentative Parcel Map PLN 2015-77;

City Council of City of Campbell Resolution 12070 with respect to Master Sign Plan PLN 2015-78;

City Council of City of Campbell Resolution 12071 with respect to Tree Removal Permit PLN 2015-335

**Exhibit "D"**  
**Prohibited Uses**

*"Prohibited Use"* means any of the following uses:

- (i) The operation of any massage parlor, hot tub facility, or suntan facility, unless approved by the Board and permitted by the Master Use Permit;
- (ii) Any facility used for gambling;
- (iii) Any store the principal business of which is the sale of alcoholic beverages for consumption off premises, except for a wine tasting room or wine shop that is approved by the Board and permitted by the Master Use Permit;
- (iv) Any check cashing store or services, except as an incidental part of another primary business or incident to the banking activities of a state or federally chartered bank or thrift, or pay day lending activities, pay day advances, pay check advances, or any similar type of non-banking lending activity;
- (v) Any type of sexually oriented business, adult entertainment or adult bookstore; including but not limited to any facility selling or displaying adult or pornographic books, literature, videotapes or materials in any medium, or any facility providing adult entertainment or other adult services (for purposes of this limitation, materials or activities shall be considered "adult" or "pornographic" if the same are not available for sale or rental to children under the age of eighteen (18) years old because they explicitly deal with or depict human sexuality);
- (vi) Escort services, dating services, or similar matchmaking or companion services;
- (vii) Without limitation of (ii) above, bingo or similar games of chance;
- (viii) the sale of any firearms, ammunition or weapons, or a shooting gallery of any type;
- (ix) The sale of fireworks;
- (x) Pawn shops, pawn brokers;
- (xi) Car title lender (which, for purposes of this limitation, will not include auto loans made by a state or federally chartered bank or thrift), or any similar type of lending activity;
- (xii) Debt collection activities, debt consolidation services, credit repair or credit restoration activities, except as such activities are incidental to banking activities conducted by a state or Federally chartered bank or thrift;
- (xiii) Bail bond services of any kind, or any activities of a bail bond agent;
- (xiv) Sale, distribution, marketing, or production of marijuana or marijuana products, including, but not limited to, medical marijuana, medical cannabis or any constituent cannabinoids such as THC (this limitation applies broadly, regardless of whether the activity is conducted by collectives, collective caregivers, co-ops, growers, or any other entity or organization);
- (xv) Sale, distribution, or manufacture of any type of drug paraphernalia or any drugs of any nature, other than the sale of drugs by and through a licensed pharmacy;
- (xvi) Tattoo parlors or any establishment that performs tattooing;
- (xvii) Any bar, tavern, or other establishment selling alcoholic beverages for on or off-premises consumption other than a duly licensed restaurant or café deriving at least 80% of its income from the sale of food and non-alcoholic beverages [unless approved by the Board and permitted by the Master Use Permit];
- (xviii) Businesses based predominantly on inbound or outbound telemarketing activities, except as such calls are an incidental part of another primary business;
- (xix) Multi-level marketing activities, the sale of multi-level business opportunities or network marketing activities;
- (xx) Any manufacturing, distilling, refining, smelting, agricultural or mining operation;
- (xxi) Any dumping, disposing, incineration or reduction of garbage;
- (xxii) Any bowling alley or skating rink, (xxiii) any mortuary or funeral home, (xxiii) any auto repair facility;
- (xxiv) Any on-premises dry cleaner unless approved by the Board as being operated in an appropriately environmentally compliant manner and permitted by the Master Use Permit;
- (xxv) Any business which produces environmental hazards regulated under applicable environmental laws;
- (xxvi) Any parole, juvenile detention or similar service;
- (xxvii) Pet shops, animal hospitals or veterinarian services;
- (xxviii) Uses involving the sale, use or other activities pertaining to smoking of cigarettes or similar devices or substances, other tobacco products, other smoke shops, hookah use, artificial or vapor cigarettes or other smoking related uses;

[continued]

- (xxix) Dance studios (studios for providing dancing lessons or training);
- (xxx) Musical training and/or practice;
- (xxxi) Child drop-off centers and live/work uses; child care centers;
- (xxxii) Church or other religious facilities, or;
- (xxxiii) Any manufacturing or assembly uses.

**Exhibit "F"**  
**Insurance Requirements - Contractors' And Subcontractors' Insurance**

(i) Except as provided hereafter, Center Association and any Owner shall require from contractors, subcontractors and vendors hired to perform work or provide services at the Project the following insurance, in the following minimum amounts:

<b>INSURANCE</b>	<b>MINIMUM LIMITS</b>
Workers' Compensation	As required by law in the state where the property is located and where any operations relating to the contract are located, with waiver of subrogation against Center Association and any Owner.
Employer's Liability	\$500,000 each accident and policy limit
Commercial General Liability*	\$1,000,000 per occurrence and in the aggregate
Excess/Umbrella Liability*	\$1,000,000 per occurrence
Comprehensive Auto Liability*	\$1,000,000 per occurrence (any auto/owned/non-owned/hired)

\*The intent is that these coverages shall be primary as to Center Association and Owner and will cover Center Association and Owner as distinct insured parties for any allegation, claim, loss, damage, demand, or judgment, or other causes of action arising out of their presence or out of the contractors' or subcontractor's presence upon or out of operations or operations or work done or services provided at the Project by the contractor or subcontractor for or on behalf of Center Association and Owner. Center Association and Owner shall be named as additional insureds on such all general liability policies both for operations and, to the extent available in the insurance market, for completed operations of the named insured for as long as Center Association and Owner may be exposed to loss arising out of such operations.

(ii) These insurance policies shall be written on an "occurrence" and not "claims-made" form basis. If contractor's work involves hazardous materials or environmental abatement work, contractor will be required to provide evidence of Contractor's Pollution Liability, with Center Association and Owner as additional insureds. If the contractor's work involves professional design or engineering, special evidence of design professional liability (also known as E&O) coverage will also be required.

(iii) Center Association or Owner may require additional coverage, may waive certain limits or requirements on a case by case basis in writing. Center Association or Owner shall obtain, not later than thirty (30) days after the date of hiring of each subcontractor or vendor performing work or providing services at the Project, and keep on file certificates of insurance evidencing compliance with these requirements for each subcontractor and vendor. The policies of insurance must provide at least thirty (30) days' prior written notice of cancellation or any material change in coverage to Center Association or Owner. Center Association and Owner shall be named as additional insureds under such policies.

(iv) If Contractor's insurance is provided by means of a so-called "blanket policy," the aggregate must apply per project, or per location. All such policies shall be issued by insurers with a rating of A-VIII or better as reported by Best's Property & Casualty Reports Key Rating Guide for the most current reporting period.

(v) Any subcontractor, vendor or other supplier hired to perform work at the Project agree in writing to indemnify, defend and hold harmless Center Association and Owner from and against any and all claims, allegations, lawsuits, or other causes of action arising out of such party's work done at the Project on behalf of Center Association or Owner due to, or alleged to be due to such party's acts or omissions.