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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR SAN DIEGO SPECTRUM

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR SAN DIEGO SPECTRUM

THIS DECLARATION is made this 10th day of September, 1999, by LNR KEARNY MESA, INC, a California corporation (hereinafter referred to as "Declarant").

RECITALS

A. **Property Owned by Declarant.** Declarant is the owner of the real property described in **Exhibit A** attached hereto and incorporated by this reference as though set forth in full (the "Property").

B. **Annexable Property.** Declarant may annex or permit the annexation of certain additional real property described in **Exhibit B** attached hereto and incorporated herein ("Annexable Property"). Declarant intends to transfer the Property and the Annexable Property in phases to other persons or entities for purposes of development thereof. From time to time, Declarant or appropriate transferees shall have the right, but not the obligation, to annex all or any portion of the Annexable Property to this Declaration. After such annexation and the commencement of assessments against the Owners of the annexed lands, such Owners shall enjoy the rights and be subject to obligations of Owners hereunder.

C. **Nature of Project.** Declarant desires that the transferee or transferees create on the Property an integrated development providing for a mixture of office, retail, commercial, hotel, public service, residential and industrial uses, to the extent permitted under the Project Approval Documents (as defined below). Declarant further desires to develop the Property as a planned development, as defined in California Civil Code Section 1351(k) pursuant to the Davis-Stirling Common Interest Development Act and to subject the Property to certain limitations, restrictions, conditions and covenants and as hereinafter set forth, in accordance with the provisions of California Civil Code Sections 1350 *et seq.* or any successor statutes or laws. The development of the Property shall be subject to this Declaration and the zoning and land use requirements of the City of San Diego.

D. **Establishment of Covenants, Conditions and Restrictions.** Declarant has deemed it desirable to establish covenants, conditions and restrictions affecting the Property and each and every portion thereof, which shall constitute a general scheme and planned development program for the management of the Property, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of environment within the Property.

E. **Creation of Association.** It is desirable for the efficient management of the Property and preservation of the value, desirability and attractiveness of the Property to create an incorporated

association delegated and assigned the powers of managing the Property, maintaining and administering the Lots devoted to common or joint use, administering and enforcing these covenants, conditions and restrictions, collecting and disbursing funds pursuant to the assessments and charges hereinafter created and to perform such other acts as shall generally benefit the Property. The San Diego Spectrum Owners Association, a California nonprofit mutual benefit corporation ("Association"), has been (or will be prior to the sale of any Lot for development) incorporated under the laws of the State of California for the purpose of exercising the powers and functions hereinafter set forth. All Owners shall be Members of the Association and shall be subject to its powers and jurisdiction.

DECLARATION

Declarant declares that the Property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, restrictions, easements, covenants, conditions, liens and charges, all of which are declared and agreed to be in furtherance of a plan of Lot ownership as described in California Civil Code Section 1350 et. seq. or any successor statutes or laws for the subdivision, improvement, protection, maintenance, use and sale of Lots within the Property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Property. All of the limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land, shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in the Property, shall be enforceable equitable servitudes and shall be binding on and inure to the benefit of the successors-in-interest of such parties. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of California Civil Code Section 1355 or any successor statutes or laws.

ARTICLE 1 DEFINITIONS

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

1.1 "Allocable Share of Assessments" shall mean the portion of certain Assessments to be paid by the Owner of each Lot, which shall initially be as set forth on Exhibit D and may thereafter be modified as set forth in a Declaration of Annexation upon the annexation of additional Lots and Common Lots into the Property.

1.2 "Annexable Property" shall mean any or all of the real property delineated on Exhibit B which may be made subject to this Declaration by Annexation pursuant to the provisions set forth in the Article hereof entitled "Annexation."

1.3 "Articles" shall mean and refer to the Articles of Incorporation of the Association as the same may, from time to time, be duly amended.

1.4 "Assessments" shall mean and refer to the following:

(a) "Capital Improvement Assessment" shall mean a charge against each Owner and its Lot, representing a portion of the cost to the Association for installation or construction of any capital repairs or improvements to the Common Area, which the Association may, from time to time authorize pursuant to the provisions of this Declaration.

(b) "Enforcement Assessment" shall mean a charge against a particular Owner and its Lot directly attributable to the Owner, to reimburse the Association for costs incurred for damage caused by such an Owner to the Common Area or in bringing the Owner's Lot into compliance with the provisions of this Declaration, the Articles, Bylaws or Association Rules, or any other charge designated as an Enforcement Assessment in this Declaration, the Articles, Bylaws or Association Rules, together with attorneys' fees and other charges payable by such Owner, pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

(c) "Reconstruction Assessment" shall mean a charge against each Owner and its Lot representing a portion of the cost to the Association for reconstruction of any portion or portions of the Common Area pursuant to the provisions of this Declaration.

(d) "Regular Assessment" shall mean the amount, a charge against each Owner and its Lot, to be paid by each Owner to the Association for Common Expenses and shall include capital contributions to the Association for reserves.

(e) "Special Assessments" shall mean a charge against each Owner and its Lot for certain unanticipated Common Expenses or other expenses of the Association when the estimate amount of funds necessary to defray such expenses for a given fiscal year is inadequate due to unanticipated delinquencies, costs of additional maintenance or unexpected repair or maintenance of the Common Area, or funds otherwise required for any authorized activity of the Association.

1.5 "Association" shall mean and refer to the San Diego Spectrum Owners Association, a California nonprofit mutual benefit corporation, incorporated under the laws of the State of California, its successors and assigns.

1.6 "Association Rules" shall mean rules and regulations adopted by the Association pursuant to the Article hereof entitled "Duties and Powers of the Association."

1.7 "Board" shall mean the Board of Directors of the Association.

1.8 "Building" shall mean any Improvements erected on the Property and available for occupancy or other use by an Owner.

1.9 "Building Plans" shall mean reasonably detailed plans and specifications with respect to any Improvements to be constructed on a Lot subsequent to the Design Review Committee's approval of the Site Plan Submissions, which plans and specifications require the approval of the Design Review Committee pursuant to the terms of Section 5.3 hereof.

1.10 "Bylaws" shall mean and refer to the Bylaws of the Association.

1.11 "City" shall mean and refer to the City of San Diego, State of California.

1.12 "City Requirements" shall mean all ordinances, resolutions, policies, guidelines, and requirements duly adopted by the City.

1.13 "Common Area" shall mean collectively, the Common Easements, Common Improvements and Common Lots. The Common Area initially included in the Project is shown and described on Exhibits A and C. The Common Area which may be included in the Project pursuant to a Declaration of Annexation is generally shown and described in Exhibit E, subject to modifications, additions or deletions pursuant to the Project Approval Documents, as the same may be modified or amended by Declarant or with the Declarant's consent as provided herein or to re-subdivision by Declarant to create separate legal lots for such areas.

1.14 "Common Easements" shall mean those easements reserved by Declarant for the benefit of the Association pursuant to Section 14.3 hereof to the extent such easements are not located within the Common Lots, together with any Common Improvements constructed thereon. The Common Easements shall initially mean the Common Easements so designated on Exhibit C. Additional Common Easements may also be designated in a Declaration of Annexation.

1.15 "Common Improvements" shall mean those Improvements to be conveyed to the Association by Declarant and maintained by the Association as provided herein. The Common Improvements shall initially mean the Improvements so designated on Exhibit C. Additional Common Improvements may also be designated in a Declaration of Annexation. The Common Improvements do not include any Financing District Improvements, except as provided in Section 7.5 below.

1.16 "Common Lots" shall initially mean the Lots so designated in Exhibits A and C to be owned by the Association and to be maintained by the Association or a Financing District as provided herein. Common Lots shall also mean any such Lots so designated on a Declaration of Annexation.

1.17 "Common Expenses" shall mean and refer to the actual and estimated costs of:

(a) maintenance, management, operation, repair and replacement with respect to the Common Area;

(b) maintenance by the Association of areas within the public right-of-way of public streets within and in the vicinity of the Property if provided in this Declaration or pursuant to agreements with the City and not otherwise maintained by a Financing District;

(c) management and administration of the Association including but not limited to, compensation paid by the Association to managers, accountants, attorneys, other professionals and employees;

(d) the following, to the extent not metered or billed directly to Owners by the provider thereof: utilities, refuse storage, collection and disposal, gardening and other services which arise in connection with the Common Area, that generally benefit and enhance the value and desirability of the Property;

(e) fire, casualty, liability, workers' compensation and other insurance covering the Common Area as provided herein;

(f) any other insurance obtained by the Association as provided herein;

(g) reasonable reserves as deemed appropriate by the Board with respect to the Common Area;

(h) bonding and insurance with respect to the directors serving on the Board, any professional managing agent or any other person handling the funds of the Association as provided herein;

(i) taxes paid by the Association with respect to the Common Area;

(j) expenses incurred by the Design Review Committee or other committees established by the Board;

(k) expenses incurred in administering or implementing the TDM Requirements including, without limitation, any expenses incurred in operating the Shuttle System;

(l) other expenses incurred by the Association for any reason whatsoever in connection with the Common Area, or the costs of any other item or items designated by this Declaration, the Articles, Bylaws or the Association Rules, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

1.18 "Conservation Area" shall mean the area so designated on Exhibits B and E within the Annexable Property, which may be owned and/or maintained by the Association or the City pursuant to the Project Approval Documents.

1.19 "Declarant" shall mean by LNR Kearny Mesa, Inc, a California corporation, any entity succeeding thereto by merger, consolidation or acquisition of its assets substantially as an entirety and any assignee of Declarant who, pursuant to a purchase of Declarant's remaining interest in the Project then held by Declarant for purposes of development and sale thereof, agrees to accept by recorded instrument assignment of Declarant's rights and delegation of all or any portion of Declarant's duties as set forth in this Declaration with respect to such Lots. Every assignee of a Declarant may further assign and delegate such assignee's rights and duties as Declarant by recorded instrument. To the extent that Declarant intends to reserve any of its rights or duties as such in connection with an assignment, it shall expressly set forth the rights or duties reserved in the instrument of assignment and shall remain Declarant as to the rights and duties so reserved.

1.20 "Declaration of Annexation" shall mean those certain Declaration(s) of Annexation that may be recorded to annex all or any portion of the Annexable Property to the Property, as further provided herein.

1.21 "Design Guidelines" shall mean the New Century Center Development Standards, Master PCD/PID and Design Manual, each as adopted, modified, or supplemented, from time to time and approved by the City.

1.22 "Design Review Committee" shall mean and refer to the committee or committees provided for in Article 5 of this Declaration.

1.23 "Drainage and Retention Facilities" shall mean those certain drainage and retention facilities required to be constructed within the Project pursuant to the Project Approval Documents which shall be maintained by a Financing District, and which are located on Lots 6 and 30 of the Phase 2 final subdivision map for the Project referenced in Exhibit A and on a portion of Parcel 1 shown on Exhibit E.

1.24 "Entry Monuments" shall mean those entry monuments and associated signage described more fully in Exhibits C and E attached hereto.

1.25 "Financing Districts" shall mean a maintenance assessment district, landscape and lighting district, community facilities district, or other assessment district formed for the purpose of providing revenues for the operation and maintenance of certain facilities benefitting the Project further described in Section 7.5 below.

1.26 "Financing District Improvements" means any Improvements constructed within the Project by Declarant at Declarant's sole cost and expense, which are to be maintained by the City

through revenues from a Financing District, including, but not limited to those certain Improvements described in Exhibit F attached hereto.

1.27 "Foreclosure Event" shall mean a judicial or non-judicial foreclosure sale or a conveyance in lieu thereof.

1.28 "Governing Documents" shall mean this Declaration, the Articles, Bylaws, Association Rules, Design Guidelines, Project Approval Documents and Supplemental Design Standards.

1.29 "Improvement" or "Improvements" shall mean and refer to all structures and appurtenances thereto of every type and kind in the Project constructed by an Owner or Declarant, including but not limited to, Buildings, structures, outbuildings, utility installations, roads, sidewalks, walkways, driveways, parking areas, fences, screening walls, block walls, retaining walls, awnings, patio and balcony covers, stairs, landscaping, hedges, slopes, windbreaks, the exterior surfaces of any visible structure, signs, planted trees and shrubs, irrigation systems, antennae, poles, signs, solar or wind powered energy systems or equipment, and water softener, heater or air conditioning and heating fixtures or equipment; the demolition or destruction by voluntary action of any structure or appurtenance thereto of every type and kind; the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed; landscaping, planting, clearing or removing of trees, shrubs, grass or plants; and any change or alteration of any previously approved Improvement including painting or any change of exterior appearance color or texture.

1.30 "Lot" shall mean each legal lot identified on Exhibit A, or any legal Lot described on Exhibit B subsequently annexed into the Project, and each additional legal Lot created pursuant to and in compliance with the California Subdivision Map Act, Chapter X, Article 2 of the Municipal Code of the City, or any laws or amendments succeeding, or amending such laws that is permitted to be created pursuant to Section 5.10 hereof; provided, however, that "Lot" shall not include any Common Lot.

1.31 "Maintenance" or "Maintain" as used in the context of either the Common Area or the Lots shall mean keeping the Improvements and the Common Improvements in the Project, including but not limited to, walkways, driveways, parking areas, landscaping, lighting, retention basins, drainage, monuments, signage and other related fixtures in a state consistent with other similar first-class mixed-use developments in San Diego County. Maintenance of landscaping shall further mean the exercise of regular fertilization, irrigation and other garden management practices necessary to promote a healthy weed free environment for optimum plant growth. Maintenance also includes re-painting or otherwise maintaining other exterior surfaces, repairs, restoration, replacement and reconstruction of such Improvements as the need arises. Maintenance shall also mean maintenance, repair, restoration, replacement of Improvements as may be necessary to conform to the requirements of the Project Approval Documents, as the same may be amended.

1.32 "Market Square" shall mean that portion of the Annexable Property denominated as Planning Area 2A in the Master Plan and Development Standards incorporated in the Project Approval Documents, as the same may be awarded.

1.33 "Market Square Improvements" shall mean those Improvements, if any, which the Declarant is obligated to construct and the Association or the City through revenues from a Financing District may be obligated to own, maintain and/or operate within Market Square pursuant to the Project Approval Documents or any City Requirements.

1.34 "Member" shall mean and refer to every person or entity holding a membership in the Association in accordance with the terms of this Declaration.

1.35 "Missile Park" shall mean the existing park located within the Annexable Property which may be maintained, owned and/or operated by the City through revenues from a Financing District, the Association or a third party, or any combination of the foregoing, pursuant to Project Approval Documents.

1.36 "Mortgage" shall mean and refer to any duly recorded mortgage or deed of trust encumbering a Lot. A "First Mortgage" shall refer to a Mortgage which has priority over all other Mortgages encumbering a specific portion of or interest in the Project.

1.37 "Mortgagee" shall mean and refer to the mortgagee or beneficiary under any Mortgage. A "First Mortgagee" shall mean the holder of a first priority Mortgage.

1.38 "Owner" shall mean and refer to one or more persons or entities, including Declarant, who are alone or collectively the record owner of a Lot. Owners include vendees under real property sales contracts, as defined in Civil Code Sections 2985 seq. Owners do not include persons holding title merely as security for the performance of an obligation.

1.39 "Plans and Specifications" shall mean the Site Plan Submissions and the Building Plans, as applicable.

1.40 "Potential Fee Credits" shall mean those fees for which a credit is available or due as a result of the Project Approval Documents, provisions of law or City or school district policies or ordinances applicable to the Housing Trust Fund fees, school mitigation fees, water and sewer capacity charges and transportation development impact fees for the Project.

1.41 "Project" shall mean the Property together with all Buildings and other Improvements constructed thereon.

1.42 "Project Approval Documents" shall mean the New Century Center Master Plan, Development Standards, Master PCP/PID and Design Manual, each as adopted November 18, 1997,

the Conditions Of Approval adopted pursuant to Resolution No. R289451, the Final Environmental Impact Report for the New Century Center Project certified by the City and the Mitigation Monitoring Program adopted in conjunction therewith, and the Development Agreement executed by the City and Declarant's predecessor in interest, General Dynamics Properties, Inc. dated December 2, 1997, all as the same may be amended, modified, or supplemented by Declarant or its designees in their sole discretion from time to time.

1.43 "Property" shall mean and refer to the real property described on Exhibit A attached hereto, together with those portions of the real property described in Exhibit B attached hereto which are annexed to this Declaration.

1.44 "Purchase Agreement" shall mean and refer to any purchase agreement entered into between Declarant and an Owner with respect to such Owner's acquisition of a Lot from Declarant.

1.45 "Shuttle System" shall mean a system for providing transportation along a portion of the internal circulation system for the Project to the extent required by the City in conjunction with the implementation of the TDM Requirements.

1.46 "Site Plan Submissions" shall mean those submissions required to obtain Site Plan Review pursuant to the terms of the Project Approval Documents (including those items specifically denominated as "Site Plan Submissions" therein) together with (a) a waste management plan with respect to all property to be developed pursuant to the Site Plan; and (b) such additional materials as may be reasonably requested by the Design Review Committee in order to review such materials as contemplated in the Project Approval Documents.

1.47 "Supplemental Design Standards" shall mean the Supplemental Design Standards adopted by the Design Review Committee in accordance with Section 5.3 hereof.

1.48 "Supplementary Declaration" shall mean those certain Supplementary Declarations that may be recorded by Declarant as further provided herein.

1.49 "TDM Requirements" shall mean any transportation demand management programs and procedures, including, without limitation, the operation of the Shuttle System, to the extent required by the City in accordance with the implementation of the Project Approval Documents or any City Requirements applicable to the Project.

1.50 "Utilities" shall mean all physical installations necessary or appropriate for the service to any Lot or the Common Lots or any part thereof of water, sewer, electricity, gas, drainage, irrigation, communication systems, cable television, energy monitoring functions, security services, traffic metering facilities, or other physical installations of a similar motive for the benefit of any Lot or the Common Lots or any part thereof.

1.51 "Voting Power" shall mean the voting rights applicable to each Lot set forth in Exhibit D or in any Declaration of Annexation or as reallocated by the Board as provided in this Declaration.

ARTICLE 2 ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

2.1 Membership. Every Owner shall be a Member of the Association. The Declarant shall be an Owner for purposes of membership in the Association and be subject to the rights and duties of an Owner under this Declaration to the extent that it owns any Lots. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, and Owners shall, in addition, be subject to the terms and provisions of the Articles, Bylaws and Association Rules to the extent those provisions are not in conflict with this Declaration. Membership of Owners in the Association shall be appurtenant to and may not be separated from an Owner's Lot. Ownership of a Lot shall be the sole qualification for membership; provided, however, a Member's voting rights may be regulated or suspended as provided in this Declaration, the Bylaws or the Association Rules.

2.2 Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except that such membership shall automatically be transferred to the transferee of the Lot. Any attempt to make a prohibited transfer is void.

2.3 Voting Rights. An Owner's right to exercise its Voting Power shall vest immediately upon the date Regular Assessments commence upon such Owner's Lot as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws and Association Rules.

2.4 Classes of Voting Membership. The Association shall have two classes of voting membership as described below.

(a) Class A. Class A Members shall be all Owners, with the exception of the Declarant, until the Class B membership has been converted to Class A membership. Each Class A Member shall be entitled to the number of votes represented by its Voting Power. If the Owner is a corporation, partnership, limited liability company or other legal entity, such entity shall delegate an individual to act and vote on behalf of such entity with respect to Association matters. When more than one person or entity owns a portion of the interest in an Lot required for membership, each such person shall be a Member and the vote(s) for such Lot shall be exercised as they among themselves determine, but in no event shall more than the total number of votes attributable to the Lot be cast with respect to any Lot. Unless the Board receives a written objection in advance from a Co-Owner, it shall be conclusively presumed that a Co-Owner who is present and voting is acting with the consent of its Co-Owners. If any Lots originally subdivided by Declarant are further subdivided by a subsequent Owner (with the prior consents required pursuant to Section 5.11 of this

Declaration) into separate legal lots, the Voting Power allocable to the re-subdivided Lot shall be reallocated by the Board based on its reasonable determination of the relative acreage of such Lots.

(b) Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to four (4) votes for each vote allocated in the Voting Power to any Lot for which Declarant is the Owner; provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) when Declarant no longer owns at least one (1) Lot within the Property;

(ii) when Declarant notifies the Board in writing that it has elected to become a Class A Member; or

(iii) the expiration of ten (10) years after the date of the recordation of this Declaration.

2.5 Approval of Members; Total Voting Power as Quorum. Unless elsewhere otherwise specifically provided in this Declaration or the Bylaws, any provision of this Declaration or the Bylaws which requires the vote or written assent of the Voting Power of the Association or any class or classes of membership shall be deemed satisfied by the following:

(a) The vote in person or by proxy if a meeting is held or by written ballot if no meeting is held of the required percentage of a quorum of the Voting Power of the Association. If not by written ballot, said vote shall be at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members.

(b) Written consents signed by the entire membership of the Association if the action is taken without meeting or written ballot. Said written consent shall be solicited pursuant to the procedures provided in the Bylaws.

(c) In any matter requiring the vote of the Members, but not specifically provided for in this Declaration or the Articles, Bylaws, Association Rules or any contract executed by the Association, a simple majority of the Voting Power of a quorum of the Members entitled to vote on such matters shall suffice.

(d) Except with respect to amendments to this Declaration, the Articles or the Bylaws themselves, or with respect to matters specified in such documents as requiring a stipulated percentage of the "total Voting Power" of the Members or Association, in which event the specified percentage shall be of all of the votes in the Association eligible to be cast, wherever the Declaration, the Articles or the Bylaws provide that an action requires a majority or other specified percentage of the "Voting Power" of the Members, Owners, or Association such percentage is only of that

portion of the Voting Power of the Members or Owners necessary to constitute a quorum as established in the Bylaws. The actual minimum percentage of the total Voting Power required with respect to an action is the product of the percentage thereof constituting a quorum multiplied by the percentage set forth in the Declaration, Articles or Bylaws as necessary to approve the action proposed to be taken.

ARTICLE 3 COVENANT FOR ASSESSMENTS

3.1 Creation of the Lien and Personal Obligation of Assessments.

(a) Covenant to Pay Assessments. Each Owner, by acceptance of a deed or other conveyance of a Lot, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: Regular Assessments, Special Assessments, Capital Improvement Assessments, Enforcement Assessments and Reconstruction Assessments, if applicable. Such Assessments are to be fixed, established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall become a lien against a Lot upon recordation of a notice thereof as provided in Section 3.1(b) or upon receipt by Owner, pursuant to Section 1360 of the Civil Code or any successor statute thereto, of actual notice of delinquency.

(b) Notice of Delinquent Assessment. An Assessment shall become a lien against a Lot so assessed upon recordation of a notice of delinquent assessment in the office of the San Diego County Recorder duly signed and acknowledged by the President or Secretary of the Association. Such notice shall set forth the amount of the delinquent Assessment, a description of the Lot to which the lien attached, the name of the record owner thereof and the name and address of the trustee entitled to conduct a nonjudicial foreclosure thereof. Such notice shall also provide that the lien secures any additional sums which may be levied pursuant to this Declaration if the Assessment is not paid when due. When the Association records a notice of delinquency, it shall also record a notice of satisfaction and release of lien upon timely payment of the sums secured thereby.

(c) Personal Obligation. Each such Assessment, together with such interest, late charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of the Lot at the time when the Assessment becomes due. The personal obligation shall not pass to the successors in title of an Owner unless expressly assumed by such successors but each such successor shall take subject to the notice of assessment (or notice of delinquency) or to any Assessment of which it has actual notice pursuant to Section 1368 of the Civil Code or any successor statute.

3.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of managing the Project as provided in this Declaration; promoting the

use, occupancy and enjoyment of the Project as provided in this Declaration; enhancing and protecting the value, desirability and attractiveness of the Project and the quality of environment within the Project as provided in this Declaration, including, without limitation, the improvement, maintenance and administration of the Property; administering and enforcing this Declaration; collecting and disbursing funds pursuant to this Declaration; improving and maintaining the Common Area or furthering any other duty or power of the Association as provided in this Declaration.

3.3 Regular Assessments.

(a) Calculation of and Date of Commencement of Regular Assessments. Each Owner's share of Regular Assessments shall be determined by multiplying the Common Expenses budgeted as provided herein by each Owner's Allocable Share of Assessments. Each Owner's Allocable Share of Assessments shall be recalculated upon the annexation of additional Lots (other than Common Lots) to the Property, as provided in a modification to Exhibit D set forth in a Declaration of Annexation. The Regular Assessments shall commence as to all Lots on the first day of the month immediately succeeding the date that Declarant charges the Association with the duties and powers provided for in this Declaration, including, but not limited to, the transfer to the Association of the maintenance responsibilities for the Common Area. The first Regular Assessment payments shall be adjusted according to the number of months remaining in the Association's fiscal year. As to any real property which is thereafter annexed into the Property pursuant to a Declaration of Annexation, Regular Assessments shall commence as to all of the property described in a Declaration of Annexation upon the first day of the first month following the annexation of such property.

(b) Budget. Not less than forty-five (45) or more than sixty (60) days prior to the beginning of each fiscal year, the Board shall distribute to each Owner a pro forma operating budget for the upcoming fiscal year which shall estimate the total Common Expenses and the cash requirements to meet Common Expenses for such fiscal year. The budget shall be accompanied by a schedule setting forth the apportionment of Regular Assessments among the Lots based upon the Allocable Shares of Common Expenses. Each Owner shall thereafter pay to the Association its Regular Assessment on the first day of each calendar month of the Association's fiscal year; provided that the Board may elect to require such payments to be made on a quarterly basis by written notice thereof to the Owners. The amount of the installments shall be adjusted during the course of the fiscal year, as necessary, to reflect the commencement of the obligation to pay Assessments by Owners not so required as of the beginning of the fiscal year and related adjustments to the Allocable Shares of Assessments. The Board shall comply with all provisions of the other Governing Documents and the California Civil Code applicable to the Project with respect to budgets, financial statements and information to be generated and provided to Owners and books and records to be maintained by owners associations.

(c) **Surplus.** The Association's budget shall include an estimate of cash receipts from sources other than Assessments, if any, and a provision for reserves for contingencies, repairs and replacements which are the obligation of the Association. The estimate of cash requirements shall be subject to offset for any surplus from Regular Assessments ("Surplus") accrued for the fiscal year then ending. For purposes of this Section, Surplus for any fiscal year means the amount by which the sum of collected Regular Assessments plus cash receipts from sources, other than Capital Improvement Assessments, Special Capital Improvement and Reconstruction Assessments, exceeds the sum of the actual outlays for Common Expenses plus unexpended reserves for contingencies, repairs and replacements.

(d) **Capital Contributions for Reserves.** The Regular Assessments shall include reasonable amounts as determined by the Board collected as reserves for the future repair or replacement of all or a portion of the Common Area, or any other purpose as is within the scope of the Board's authority. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in separate bank accounts to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. The Board may require that the sums representing capital contributions for reserves be paid by separate check or in such other manner as clearly segregates such sums from those which are being paid on account of current expenses.

3.4 **Special Assessments.** In the event that during any fiscal year, the Board determines that the estimated total amount of funds necessary to defray Common Expenses or other expenses of the Association for a given fiscal year is or will be inadequate to pay such Common Expenses or expenses due to unanticipated delinquencies, costs of additional maintenance or unexpected repair or replacement of portions of the Common Area, or of funds otherwise required for any authorized activity of the Association, the Board may levy a Special Assessment chargeable to each Owner based on each Owner's Allocable Share of Assessments to defray such costs. The Board may, in its discretion, prorate such Special Assessment payment over the remaining months of the Association's fiscal year or may levy it immediately against each Lot. Each such Special Assessment payment shall be due and payable within fifteen (15) days after an Owner receives written notice with respect thereto (unless such notice specifies a later date for payment) and shall be subject to charges for late payment and interest set forth in Section 3.10 below.

3.5 **Limitations on Assessments.** After the Association's first fiscal year of operation, it shall not, except in case of an Emergency (as defined below), levy Regular Assessments during any fiscal year (including increases during any such year) which exceed twenty percent (20%) greater than the Regular Assessment for the immediately preceding fiscal year without the approval of the a majority of the Voting Power of the Association or levy a Special Assessment during any fiscal year which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the approval of a majority of the Voting Power of the Association, constituting a quorum at a meeting or election of the Association conducted in accordance with the provisions of California Corporations Code Section 7613 or any successor

statute or law, if and to the extent required under Section 1366(b) of the Civil Code, so long as such statute or any successor statute remains in force and effect. For the purpose of this Section, quorum shall mean more than fifty percent (50%) of the Owners in the Association and an Emergency shall mean any one of the following:

- (i) an extraordinary expense required by an order of a court;
- (ii) an extraordinary expense necessary to repair or Maintain the Common Area where a threat to personal safety on the Project is discovered; or
- (iii) an extraordinary expense necessary to repair or Maintain the Common Area that could not have been reasonably foreseen by the Board in preparing and distributing the Association's budget required under this Declaration and the Bylaws; provided, however, that prior to the imposition or collection of a Regular Assessment under this Section, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense which is involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Owners with the notice of Regular Assessment. The foregoing limitations shall not apply to increases to Regular Assessments included in the Association's budget upon the annexation of additional Common Areas into the Association and recalculation of Regular Assessments as provided in Section 3.3(a) above.

3.6 Capital Improvement Assessments. In addition to the Regular Assessments, the Association may levy in any calendar year a Capital Improvement Assessment for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement in the Common Area to the extent the same is not covered by the provisions affecting Reconstruction Assessments in the Article hereof entitled "Destruction of Improvements" (including the necessary fixtures and personal property related thereto), provided, however, that Capital Improvement Assessments shall not be levied to defray the cost of the initial construction of Common Area Improvements required to be completed by Declarant pursuant to the Project Approval Documents as provided in Section 7.1 hereof. Capital Improvement Assessments shall be allocated among the Owners in the manner provided for Regular Assessments. A Capital Improvement Assessment may be levied on account of a capital improvement to be made in the year of the levy or to be completed in a future year. For any fiscal year the Association shall not impose Capital Improvement Assessments, the total amount of which exceeds five percent (5%) of the Common Expenses without the approval of a majority of the Voting Power of the Association as provided in Section 3.5 above. Any reserves collected by the Association for the future maintenance and repair of the Common Area, or any portion thereof, shall not be treated as Capital Improvement Assessments in determining said annual capital improvement limitation. Rather, such reserves shall be treated as Common Expenses. All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association.

3.7 **Enforcement Assessments.** The Association may levy an Enforcement Assessment against any Owner who causes damage to the Common Area or for bringing an Owner or its Lot into compliance with the provisions of the Governing Documents, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. In the event that the Association undertakes to provide materials or services which benefit an Owner, then such Owner in accepting such materials or services, agrees that the costs thereof shall be an Enforcement Assessment. The Board shall have the authority to adopt a reasonable schedule of Enforcement Assessments for any violation of the Governing Documents. If, after notice and a hearing which satisfies the requirements of this Declaration and the Bylaws, an Owner fails to cure or continues such violation, the Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Enforcement Assessment as provided herein. All Enforcement Assessments shall be payable within ten (10) days of written notice thereof from the Association.

3.8 **No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration or that a Member has made or elects to make no use of the Common Area.

3.9 **Funds Held in Trust.** The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used for the operation, care and maintenance of the Common Area, administration and governance of the Association, performance of the Association's obligations hereunder and to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Governing Documents, as provided for in this Declaration. Upon the sale or transfer of any Lot, the Owner's interests in said funds shall be deemed automatically transferred to the successor in interest of such Owner.

3.10 **Late Payments.** If an Owner shall fail to pay such Owner's Regular Assessments or any other Assessments due under this Declaration, including without limitation, Special Assessments, Capital Improvement Assessments, Reconstruction Assessments and Enforcement Assessments within fifteen (15) days after the due date therefor, then a late charge of ten percent (10%) of the amount of the delinquent amount due, interest charged at the maximum rate then permitted at law commencing thirty (30) days from the date of delinquency, and reasonable costs of collection, including attorneys' fees and costs, shall be levied by the Association; provided, however, that upon any amendments to California Civil Code Section 1366 or any successor statute or law, the amount of such interest rate and the late charge shall be adjusted to comply with the provisions of any such applicable statute or law. All amounts due from any Owner with respect to delinquent payment of its Allocable Share of Assessments shall be a lien against the Lot, which lien shall attach to and be enforced as provided below.

3.11 **Failure to Fix Regular Assessments.** The failure by the Board to fix the Regular Assessments hereunder before the expiration of any year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a relief

of any Owner from the obligation to pay Regular Assessments or any installment thereof for that or any subsequent year, but the Regular Assessment fixed for the preceding year shall continue until a new Regular Assessment is fixed.

ARTICLE 4 NONPAYMENT OF ASSESSMENTS

4.1 Delinquency. The right to collect and enforce Assessments is vested in the Board acting for and on behalf of the Association. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent on said date (the "delinquency date"). In addition to all remedies set forth herein, the Board may levy a late charge and assess interest and other charges with respect to such delinquent Assessment, as provided in Section 3.10 hereof. The Association may, at its option, and without waiving the right to judicially foreclose its lien against the delinquent Owner's Lot, pursue any available remedies, including, without limitation, bringing an action at law against the Member personally obligated to pay the same, and/or proceed under the power of sale contained in this Declaration against the delinquent Owner or his successor in interest. If action is commenced, there shall be added to the amount of such Assessment the late charge, interest, the costs of such action, and attorneys' fees incurred in connection with such action or any other attempt to collect the delinquent Assessments; and in the event a judgment is obtained, such judgment shall include said late charge, interest and reasonable attorneys' fees, together with the costs of the action. Each Owner vests in the Association or its assigns, the right and power to bring all actions at law to foreclose the lien against the Owner's Lot for the collection of such delinquent Assessments.

4.2 Notice of Delinquency. No action shall be brought to foreclose said Assessment lien or bring a personal action against the delinquent Owner until thirty (30) days after the date a notice of delinquency is deposited in the United States mail, certified or registered, postage prepaid, to all Owners of record of said Lot, and a copy thereof is recorded by the Association in the office of the County Recorder of San Diego County as provided in Civil Code Section 1367 or any successor statute. A notice of delinquency may be filed only if the Board or its authorized representative has sent to the delinquent Owner or Owners, not less than fifteen (15) days before the recordation of such notice, a written notice of default and a demand for payment by certified mail, which notice shall contain all of the information specified in Civil Code Section 1367 or any successor statute, and unless such delinquency has not been cured within such 15-day period. If the Association elects to proceed under the power of sale contained in this Declaration, then the recording of a notice of default, as provided in Civil Code Sections 2924 *et seq.* shall be deemed to satisfy all requirements for issuance of a notice of delinquency provided that it contains the information required under Section 1367 of the Civil Code or any successor statute.

4.3 Foreclosure Sales. Said Assessment lien may be enforced by sale by the Association after failure of the owner to make the payments specified in the notice of delinquency within said thirty (30) day period. If notice of default, pursuant to Section 2924 of the Civil Code has been filed then said thirty (30) day period shall be deemed included in and not in addition to the statutory

period following such filing and preceding the filing of a notice of sale. Each of the Owners' does, by mere acceptance of a deed to or lease of an Lot grant to and appoint the Association as trustee and as attorney in fact by special power of attorney to enforce and foreclose the Assessment lien by private power of sale as provided in Division Third, Part 4, Title 14, Chapter 2, Article 1, Sections 2920 et seq. of the Civil Code of the State of California and further grants to the Association the authority and power to sell the Lot of such defaulting Owner to satisfy such lien. The Association shall have the further power to designate agents to conduct the foreclosure sale under the power of sale arising under the Assessment lien and such agents shall be entitled to such fees and costs as are permitted by law. The Association, on behalf of the Owners, through its duly authorized agents, shall have the power to bid on the delinquent Lot, pursuant to any foreclosure sale thereof and to acquire and hold, pay Mortgage indebtedness secured by, lease, encumber and convey the same. If the foreclosure sale arises because of the failure to pay any installment of an Assessment, then, whether it is pursuant to the exercise of the power of sale contained in this Declaration or by judicial process, all of the installments of such Assessment shall be deemed accelerated and the entire amount thereof shall become due and payable unless, as provided by law, the defaulting owner, upon timely payment before the end of any reinstatement period, is entitled to pay only the delinquent installments.

4.4 **Curing of Default.** Upon the timely payment or other satisfaction of: (a) all delinquent Assessments specified in the notice of delinquency, (b) all other Assessments which have become due and payable with respect to the Lot as to which such notice of delinquency was recorded and which may be accelerated notwithstanding that the default is cured, and (c) interest, late charges, attorneys' fees and other costs of collection pursuant to this Declaration and the notice of delinquency which have accrued, the officers of the Association or any other persons designated by the Board are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or recording such release.

ARTICLE 5 DESIGN REVIEW

5.1 **Appointment of Design Review Committee.** The Design Review Committee shall consist of not less than three (3) nor more than five (5) persons, as fixed from time to time by resolution of the Board, who shall serve until their successors are appointed. The Declarant shall initially appoint the members of the Design Review Committee. The Declarant shall retain the right to replace the members of the Design Review Committee which it appoints until its Class B Voting Power terminates. Notwithstanding the foregoing, the Declarant, at any time, may give notice to the Board that it elects to no longer retain the right to appoint the members of the Design Review Committee in which event the Board shall appoint members to those positions on the Design Review Committee theretofore filled by the Declarant. Upon expiration of Declarant's Class B Voting Power, the right to appoint, augment or replace its members of the Design Review Committee shall automatically be transferred to the Board. Persons appointed by the Board to the Design Review

Committee must be Members; however, persons appointed by Declarant to the Design Review Committee need not be Members.

5.2 General Provisions.

(a) Procedural Rules and Fees. The Design Review Committee may establish reasonable procedural rules and may assess a fee in connection with its review of Plans and Specifications. Unless any such rules are complied with and the applicable fee is paid, such Plans and Specifications shall be deemed as not having been submitted. The Design Review Committee may delegate its review responsibilities to one or more members of such Design Review Committee. Upon such delegation, the approval or disapproval of Plans and Specifications by such persons shall be equivalent to approval or disapproval by the entire Design Review Committee.

(b) Hire Professionals. The Design Review Committee may engage the services of architects, licensed professional engineers or other consultants to review all Plans and Specifications for the construction of Buildings and associated Improvements to ensure that such Plans and Specifications provide for conformance with the requirements of the Design Guidelines. The costs of such review shall be borne by the Owner seeking approval of its Plans and Specifications and shall be in addition to the fee payable pursuant to Section 5.2(a) hereof. In lieu of the foregoing, the Design Review Committee, at its discretion, may require that the Owner's engineer certify, in writing, that the Plans and Specifications, if followed, will meet the criteria set forth in the Design Guidelines. The Design Review Committee may not waive the requirements of review and certification set forth in this Section.

(c) Address of Design Review Committee. The address of the Design Review Committee shall be the address established for giving notice to the Association. Such address shall be the place for the submittal of Plans and Specifications and the place where the current Supplemental Design Standards shall be kept.

(d) No Change to Rights or Restrictions. The establishment of the Design Review Committee and the procedures herein for design approval shall not be construed as changing any rights or restrictions upon Owners to maintain, repair, alter or modify or otherwise have control over their Lots and Buildings as may otherwise be specified in this Declaration, in the Bylaws or in any Association Rules.

(e) Time for Approval. In the event the Design Review Committee fails to approve or disapprove any Plans and Specifications within thirty (30) days after the same have been duly submitted in accordance with any rules regarding such submission adopted by the Design Review Committee, such Plans and Specifications will be deemed approved, provided that they are in conformance with all specific provisions of this Declaration.

(f) Government Regulations. In the event there is any conflict between the requirements or actions of the Design Review Committee or the Board and the mandatory regulations or ordinances of any governmental entity relating to the Property, including, but not limited to the Project Approval Documents, the government regulation or ordinance, to the extent that such regulations and ordinances are more restrictive, shall control and the Design Review Committee or the Board (as applicable) shall modify its requirements or actions to conform to the government regulation or ordinance; provided, however, that if the governmental rules or regulations are less restrictive, the provisions of this Declaration or the Design Guidelines or Supplemental Design Standards shall nonetheless apply. In addition, the application by an Owner for review and approval by the Design Review Committee or the Board of any Plans and Specifications or other submittals by such Owner shall in no way be deemed to be satisfaction of compliance with any building permit process or other applicable statute or law, or governmental rule or regulation or public utility requirement (hereinafter collectively referred to as "Additional Requirements") the responsibility for which shall lie solely with the Owner; provided, however, if the Additional Requirements are less restrictive than the provisions of this Declaration, the provisions of this Declaration shall nonetheless apply.

5.3 Approval and Conformity of Plans. No Building or other Improvement shall be commenced, constructed, erected, placed, planted, removed, altered, maintained or permitted to remain on the Property, or any portion thereof, until Site Plan Submissions, and, in the event of material modifications to the exterior design features initially approved by Declarant or by the Design Review Committee in conjunction with the Site Plan Submissions, the Building Plans shall have been submitted to and approved in writing by the Design Review Committee. The reference to "exterior design features" in the previous sentence shall include the construction, alteration, modification or improvement to areas of any Building that are not completely enclosed or are visible from the exterior street level of the Project. Site Plan Submissions (or Building Plans, as applicable) shall be prepared by a duly licensed architect or other person approved by the Design Review Committee. The Board may, from time to time, adopt and promulgate Supplemental Design Standards to be administered through the Design Review Committee that are consistent with the Project Approvals and the Design Guidelines. The Supplemental Design Standards may include among other things those restrictions and limitations upon the Owners set forth below:

(a) Time Limits. Time limitations for the completion of the Improvements for which approval is required pursuant to the Supplemental Design Standards;

(b) Conformity to Plans. Conformity of completed Improvements to Plans and Specifications approved by the Design Review Committee; provided, however, as to purchasers and encumbrancers in good faith and for value, unless notice of noncompletion or nonconformance identifying the violating Building or Lot and its Owner and specifying the reason for the notice, executed by the Design Review Committee, shall have been filed of record in the Office of the County Recorder of the County, and given to such Owner within one (1) year of the expiration of the time limitation described in Section 5.3(a) above, or unless legal proceedings shall have been

instituted to enforce compliance or completion within said one (1) year period, the completed Improvements and landscaping shall be deemed to be in compliance with Plans and Specifications approved by the Design Review Committee and in compliance with the Supplemental Design Standards of the Association, but only with respect to purchasers and encumbrancers in good faith and for value; and

(c) **Other Limitations and Restrictions.** Such other limitations and restrictions as the Board in its reasonable discretion shall adopt, including, without limitation, the regulation of the following: signage, landscaping, construction, reconstruction, exterior addition, change or alteration to or maintenance of any Building, structure, wall or fence, including, without limitation, the nature, kind, shape, height, materials, exterior color and surface and location of such dwelling or structure. All procedures and determinations of the Design Review Committee shall conform to and be consistent with the Design Guidelines.

5.4 **Signs.** No sign or billboard of any kind shall be displayed to the public view on any portion of the Project, except such signs as may be used by Declarant or its sales agents in connection with the sale or leasing of the Property and signs, the design and location of which have been previously approved by the Design Review Committee; provided, however, that an Owner may display on its Building, a sign advertising the Building for sale or lease, or a sign and/or logo identifying the name of the business being conducted within the Building, so long as such sign shall conform to the Design Guidelines and any signage standards established thereunder or under the Supplemental Design Standards established from time to time by the Design Review Committee, and other applicable City Requirements.

5.5 **Nonliability for Approval of Plans.** Plans and Specifications shall be approved by the Design Review Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, and by approving such Plans and Specifications neither the Design Review Committee, the members thereof, the Association, the Members, the Board nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed from such Plans And Specifications. Nothing contained in this Article 5 shall be deemed to create any obligation or impose any liability upon the Design Review Committee, the Association, the Board, the Declarant or any of their respective members, employees, or agents (collectively, the "Association Parties") concerning an Owner's compliance with the Project Approval Documents (including the Site Plan Submission requirements), City Requirements, or any other laws, policies, protocols, or standards, or the timeliness of an Owner's submission of Plans and Specifications to City for final approval. The Association Parties shall not be responsible for, and each Owner expressly indemnifies, defends, and holds harmless the Association Parties with respect to, any delays in processing permits and approvals with City as a result of such Owner's failure to comply with the requirements set forth in this Declaration.

5.6 Appeal. In the event Plans and Specifications submitted to the Design Review Committee are disapproved or conditionally approved thereby, the party or parties making such submission may appeal in writing to the Board. The written request shall be received by the Board not more than fifteen (15) days following the final decision of the Design Review Committee. The Board shall submit such request to the Design Review Committee for review, whose written recommendations will be submitted to the Board. Within thirty (30) days following receipt of the request for appeal, the Board shall render a written decision sustaining, reversing or modifying the decision of the Design Review Committee. The failure of the Board to render a decision within said thirty (30) day period shall be deemed as sustaining a decision of the Design Review Committee.

5.7 Inspection and Recording of Approval. Any member of the Design Review Committee or any officer, director, employee or agent of the Association may at any reasonable time enter, without being deemed guilty of trespass, any Building or Lot after notice to the Owner in order to inspect Improvements constructed or being constructed to ascertain that such Improvements have been or are being built in compliance with Plans and Specifications approved by the Design Review Committee and in accordance with the Design Guidelines and Supplemental Design Standards (or approved by the Declarant as provided in Section 5.10 below). The Design Review Committee shall cause such an inspection to be undertaken within thirty (30) days of a request therefor from any Owner as to its Building or Lot, and if such inspection reveals that such Improvements have been completed in compliance with this Article, the President and the Secretary of the Association shall provide to such Owner a notice of such approval in recordable form which, when recorded, shall be conclusive evidence of compliance with the provisions of this Article as to the Improvements described in such recorded notice.

5.8 Reconstruction After Destruction. The reconstruction after destruction by casualty or otherwise of any Building or Lot which is accomplished in substantial compliance with the Project Approval Documents, Design Guidelines and Supplemental Design Standards and which does not affect or alter any portion of the Project which is not part of the affected Lot shall not require compliance with the provisions of this Article and so long as the restoration conforms in style, exterior design and appearance to that preexisting the casualty. Such reconstruction shall be conclusively deemed to be in substantial compliance with the Design Guidelines and Supplemental Design Standards if it has submitted its Plans and Specifications with respect thereto to the Design Committee for written confirmation of the foregoing.

5.9 Hookup to Utilities. No Owner shall hook up any outlets or fixtures in a Building to any Utility lines, including, without limitation, all plumbing, water, and electrical distribution panels, beyond the boundaries of the Lot on which the Building is located, without the prior written consent of the Design Review Committee.

5.10 Exemptions and Amendments. All Buildings or other Improvements either constructed by Declarant or constructed by an Owner but for which the Plans and Specifications have been approved by Declarant pursuant to the terms of such Owner's Purchase Agreement prior

to the Owner's acquisition of its Lot or Lots (as evidenced by written notice by Declarant to the Design Review Committee delivered with copies of the approved Plans and Specifications) shall be exempt from the provisions of Sections 5.1 through 5.7 above. Any subsequent modifications to such Plans and Specifications shall require the review and approval of the Design Review Committee as provided herein. So long as Declarant owns any Lot in the Property, the provisions of this Article 5 may not be amended or terminated without the prior written consent of Declarant.

5.11 Re-Subdivision and Modifications to Project Approval Documents, Design Guidelines or Maximum Lot Buildout. No Owner (other than Declarant) may seek approval from the City for any modification or addition to the Project Approval Documents, Design Guidelines or maximum buildable square footage per Lot specified in Exhibit G attached hereto and incorporated herein or in a Declaration of Annexation specifying or modifying such matters for any portion of the Annexable Property, without the prior written consent of the Design Review Committee and, for so long as Declarant's Class B Voting Power exists, Declarant, which consent may be withheld in the sole discretion of either of the Design Review Committee or Declarant. The maximum buildable square footage set forth in Exhibit G is intended to be a maximum buildout per Lot, and does not automatically entitle an Owner to build Improvements that conform to such square footages, which shall be subject to the satisfaction of all other development standards established for the Project in the Project Approval Documents, including traffic generation requirements, and approval by the City and the Design Review Committee as provided herein. The maximum buildable square footage of a Lot as set forth in Exhibit G shall not be amended without the consent of the affected Owner; provided, however, that Declarant may adjust such square footages or allocate to any Lot additional buildable square footage from the "Reserved Buildable Capacity" set forth in Exhibit G, in a Supplementary Declaration (with the consent of the affected Owner) or a Declaration of Annexation. The limitations of this Section shall not apply to Declarant with respect to Lots owned by Declarant.

5.12 Estoppel Certificate. The Design Committee shall provide to any Owner an estoppel certificate within thirty (30) days of receipt of a written request for the same, which is accompanied by a certified as-built survey of the Lot if the Design Committee does not have an as-built survey in its files. Such estoppel certificate shall certify that, as of the date hereof: (a) all Improvements made or work done on or within a Lot comply with this Declaration or (b) such Improvements or work does not so comply, in which event the certificate shall identify the non-complying Improvements and shall set forth the cause or causes for such non-compliance. Any lessee, purchaser or encumbrancer in good faith for value shall be entitled to rely on such certificate with respect to the matters set forth therein, such matters being conclusive as between the Architectural Committee and all subsequent parties-in-interest.

ARTICLE 6
DUTIES AND POWERS OF THE ASSOCIATION

6.1 **General Duties and Powers.** In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein or by law, and without limiting the generality thereof, the Association shall have the specific duties and powers specified in this Article.

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

(a) **Enforcement of Governing Documents.** Enforce the provisions of this Declaration, the Articles, Bylaws, and Association Rules, by appropriate means and carry out the obligations of the Association hereunder;

(b) **Maintenance.** Maintain, operate and otherwise manage the following:

(i) Upon the later to occur of the conveyance by Declarant thereof to the Association or the completion of any Common Improvements to be constructed thereon pursuant to the Project Approvals, all Common Area (except for any portion thereof to be maintained by a Financing District), subject to the terms of any instrument transferring such interest to the Association;

(ii) All personal property which the Association controls or in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association; and

(iii) All property, real or personal, which the Association is obligated to repair or Maintain pursuant to this Declaration including, without limitation, the Article of this Declaration entitled "Repair and Maintenance."

(c) **Property Taxes.** Pay any real and personal property taxes and other charges assessed to or payable by the Association and discharge any lien or encumbrance against the entirety of the Common Lots;

(d) **Insurance.** Contract for casualty, liability and other insurance on behalf of the Association, its officers and the Board; and

(e) **Shuttle System.** To the extent the City requires implementation of the TDR Requirements, including, without limitation, the Shuttle System, enter into such contracts and agreements with parking, transit, or shuttle system operators, provide for the maintenance and operation of the Shuttle System, and take such other actions as may be necessary or appropriate to comply with the TDR Requirements.

6.3 General Powers of the Association. The Association, through the Board, shall have the power, but not the obligation to:

(a) Management of Association. Employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association; provided that all such contracts shall be made on commercially reasonable "arms-length" terms and conditions and the Board shall have the right to terminate or renegotiate the contract of any person or organization engaged by Declarant to perform management or maintenance duties within three (3) months after Declarant's Class B Membership has been converted to Class A Membership as provided in this Declaration. The Board shall also have the power to enter into maintenance or subsidy agreements with Declarant concerning the maintenance of the Common Areas or the reduction of the Assessments.

(b) Borrow Funds. Borrow money as may be needed in connection with the discharge by the Association of its powers and duties upon obtaining the approval of a majority of the Voting Power of the Association;

(c) Working Capital Account. Establish and maintain a working capital and contingency fund in an amount to be determined by the Board to pay unforeseen costs and expenses. Such contribution shall be a Common Expense and shall be collected as part of the Regular Assessments. Said fund shall be used by the Board as it deems fit to carry out the objectives and purposes of the Association. In no fiscal year shall that portion of the Regular Assessment allocable to the creation or replenishment of such fund exceed ten percent (10%) of the total Regular Assessment;

(d) Cure Defaults. Reinstate and cure defaults in obligations secured by an Lot if failure to cure such default might cause any lien for Assessments to be extinguished.

(e) Incur Expenses. Incur capital and non-capital costs and expenses as otherwise contemplated in this Declaration, including, without limitation, with respect to the maintenance of all Common Improvements and otherwise incur Common Expenses in accordance with the terms of this Declaration;

(f) Concession Agreements. Enter into concession agreements for Missile Park, Market Square or other areas of the Project; and

(g) Maintenance and Subsidy Agreements. Enter into maintenance and subsidy agreements with Declarant to provide for the subsidy by Declarant of Regular Assessments or the performance of maintenance of any portion of the Common Area by Declarant in lieu of the Association.

6.4 **General Limitations on the Power of the Board.** The powers of the Board shall be subject to the limitations and restrictions expressly enumerated herein, in the Articles and Bylaws. However, unless expressly so limited or restricted, the Board shall have and may exercise all of the powers not prohibited the directors of a California nonprofit mutual benefit corporation as provided by law.

6.5 **Association Rules.** The Board shall also have the power to adopt, amend, and repeal such rules and regulations as it deems reasonable (the "Association Rules") which may include the establishment of a system of fines and penalties enforceable as Enforcement Assessments, all as provided in the Bylaws. No decision resulting in a fine or penalty shall be reached before providing the recipient with notice and hearing satisfying the minimum requirements of Section 7341 of the Corporations Code of California. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Area; provided, however, that the Association Rules may not discriminate among Owners, and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be delivered to each Owner in the same manner established in this Declaration for the delivery of notices. Upon completion of the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and their successors in interest whether or not actually received thereby. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner and Mortgagee upon request. In the event of any conflict between any such Association Rules and any other provisions of this Declaration, or the Articles or Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such conflict.

6.6 **Delegation of Powers.** The Association shall have the right, according to law, to delegate to committees, officers, employees or agents any of its duties and powers under this Declaration, the Articles and Bylaws; provided, however, no such delegation to a professional management company, the Design Review Committee or otherwise shall relieve the Association of its obligation to perform such delegated duty.

6.7 **Right of Entry.** The Association or any person authorized by the Association may enter any Lot or Building as necessary to repair or Maintain the Common Area so as not to deprive other Owners of the proper use thereof. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association unless covered by insurance carried by the Owner.

6.8 **Personal Liability; Indemnification.** No member of the Board, or any committee of the Association, or any officer of the Association, or any manager or Declarant, or any agent of Declarant, shall be personally liable to any Owner, or any other party, including the Association, for

damage, loss or prejudice suffered or claimed on account of any act, omission, error, negligence of any such Person if such Person has, on the basis of such information as may be possessed by such Person or it, acted in good faith without willful or intentional misconduct. Notwithstanding the foregoing, nothing contained in this Section is intended to exculpate any of the foregoing persons from liability that may arise by contract, such as any liability incurred by any professional retained by the Association or a committee of the Association to provide services to the Association or such committee. In addition to the foregoing, as more particularly specified in California Civil Code Section 1365.7 or any successor statute or law, any person who suffers bodily injury, including, but not limited to, emotional distress or wrongful death as a result of the tortious act or omission of a member of the Board who, at the time of the act or omission, was a "volunteer" as defined in California Civil Code Section 1365.7 or any successor statute or law, shall not recover damages from such Board member, if such Board member committed the act or omission within the scope of his or her Association duties, while acting in good faith and without acting in a willful, wanton or grossly negligent manner, provided that all of the requirements of California Civil Code Section 1365.7 or any successor statute or law, have been satisfied. The members of the Board shall be indemnified against certain claims as set forth in Article 12 of the Bylaws.

6.9 **Estoppel Certificate.** The Board, on not less than twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of the Association, a particular Owner is in default as to such Owner's Lot under the provision of this Declaration and further stating the dates which installments of Regular Assessments have been paid as to such Lot or if any Assessments are then due and outstanding with respect to such Lot. Any such certificate may be relied on by any prospective purchaser of the Lot, but reliance on such certificate may not extend to any default not involving a payment of Assessments of which the signor had no actual knowledge. A reasonable charge may be made by Board for the issuance of these certificates.

ARTICLE 7 DEVELOPMENT OF PROPERTY

7.1 **Initial Development and Conveyance of Common Area.** Declarant shall be responsible for initially developing and improving the Common Improvements in accordance with the Project Approval Documents. Declarant shall either transfer the Common Lots and Common Easements to the Association upon the completion of the Common Improvements thereon or may complete such Common Improvements after such conveyance. Any conveyances of Common Area to the Association may contain such additional requirements and conditions as are consistent with the Project Approval Documents or other requirements imposed on the Project by the City. In particular, the Conservation Area may be conveyed to the Association, but may thereafter be required to be conveyed by the Association to the City or other public or private entity which has agreed to accept such property and Missile Park and/or Market Square may be owned by the Association but maintained and/or operated by a Financing District or other public or private entity.

7.2 Subsequent Development and Operation in Accordance with Project Approval Documents. Pursuant to the Project Approval Documents and the City Requirements, the Project may become responsible for the implementation of the Shuttle System required pursuant to the TDR Requirements and the assumption of additional operational obligations with respect to the Common Area. All such obligations shall be the responsibility of the Association and the Association may fund costs and expenses incurred with respect thereto as Common Expenses through Regular Assessments and Capital Improvement Assessments, as applicable. Each Owner, by accepting a deed for a Lot, agrees that additional Common Areas may be completed and transferred to the Association after the date of this Declaration, including, but not limited to, the Common Areas described on **Exhibit E**. The Declaration of Annexation annexing such additional Common Areas to the Project may specify the conditions of use of such areas by the Owners as are consistent with the Project Approval Documents.

7.3 Conformance By Owners to Requirements. Each Owner who undertakes the construction of a Building shall comply with the requirements of the Project Approval Documents, the Design Guidelines, and the Supplemental Design Standards to the extent applicable to a Building or the Lot on which it is located. All Improvements undertaken to be constructed by an Owner shall be diligently completed by such Owner.

7.4 Coordination with Declarant Concerning Improvement Credits. Pursuant to the Project Approval Documents or City policies or ordinances, the Declarant is entitled to receive the Potential Fee Credits from the City or school district for certain fees and charges which would otherwise be payable by Owners proposing to develop their Lots and any Buildings thereon. The Owners (who are not otherwise exempt from the payment of such fees) are required to purchase the Potential Fee Credits from Declarant prior to otherwise paying any such fees or charges to the City. Pursuant to separate agreements and assignments to be entered into between Declarant and the Owners (who are not otherwise exempt from the payment of such fees), in a form acceptable to the City, Declarant shall transfer Fee Credits to Owners. In order to facilitate such transfers, the Owners shall comply with any procedures agreed to with Declarant in its Purchase Agreement for such Owner's acquisition of its Lot.

7.5 Cooperation in the Formation and Implementation of the Financing Districts. By accepting a deed for the conveyance of a Lot, each Owner agrees to reasonably cooperate with Declarant in conjunction with the formation and implementation of one or more Financing Districts for the purpose of maintaining those facilities described further in **Exhibit F** attached hereto or such other facilities within the Project determined by Declarant in its sole discretion based on the requirements of the Project Approval Documents to be included in a Financing District. If any Financing District is formed subsequent to the recordation of this Declaration, each Owner agrees to have the Financing District imposed upon the Property and shall cooperate with Declarant as necessary in its efforts to impose the Financing District, including, without limitation, voting in favor of the formation thereof in the manner, at the times, and encompassing such areas of the Property as determined by Declarant in its sole discretion. Without limiting the generality of the foregoing,

no Owner shall file any written or oral protest or opposition of any kind to the formation of any Financing District or the levying of liens, assessments, taxes, special taxes, exactions, fees and/or charges (collectively "Impositions") through any Financing District, and each Owner shall consent to, or, if an election is called, cast its vote in favor of any Financing District and the levying of Impositions by the Financing District. If any Financing District (or any other new assessment district imposing Impositions against the Property) is formed, each Owner shall pay any Impositions made in connection therewith in accordance with the terms of this Section and as provided by law. No Owner shall take any action that would in any way interfere with the operation of any Financing District or decisions made or actions taken by Declarant with respect to any Financing District or the bond financing relating thereto, including, without limitation, the timing of commencement of Impositions, the amount of Impositions, the spreading of Impositions and the use of the Impositions collected by any Financing District. To the extent any Owner of record of the Property has the right to protest the formation of any Financing District, those rights shall be held solely by Declarant. Upon the request of the Declarant, so long as Declarant owns any portion of the Project, each Owner shall grant Declarant its proxy to vote its interest as a landowner in any election involving any Financing District; provided, however, that Declarant may not transfer such proxy rights to any party that is not the Declarant hereunder through an assignment of Declarant's rights. Each Owner agrees to grant such easements as may be required by the City in order to facilitate access to Improvements to be maintained by any Financing District. The Association shall also have the right to convey (through fee, easement, license or other transfers) any portion of the Common Area to a Financing District in the City to facilitate the maintenance of such areas. Notwithstanding any other provision of this Declaration, by accepting a deed for the conveyance of a Lot, each Owner agrees that in the event that a Financing District is not approved by the City for the maintenance of the Financing District Improvements, such improvements shall be maintained by the Association as Common Area Improvements.

ARTICLE 8 REPAIR AND MAINTENANCE

8.1 Repair and Maintenance by Association. The Association shall have the duty in such manner and at such times as the Board may prescribe to Maintain all portions of the Common Area owned by the Association not maintained by a Financing District. The Association shall pay the costs of any such Maintenance pursuant to this Section out of the funds collected from Assessments, except as otherwise herein specified as payable by the Owners other than by Assessments.

8.2 Maintenance by Financing District. The City, through one or more Financing Districts, may maintain portions of the Common Area which is owned in fee by the Association. Neither Declarant nor the Association shall have control over the maintenance to be completed by a Financing District. The Association may be required to hold title to such Common Areas because the City is unwilling to do so.

8.3 **Repair and Maintenance by Owner.** Each Owner shall Maintain its Lot and all of the Improvements thereon (including exterior surfaces) except for any Common Improvements or Financing District Improvements on such Lot and perform all repairs, replacements and restorations to such Improvements as may be reasonably necessary from time to time. Such activities shall be consistent with the Project Approval Documents, Design Guidelines, Supplemental Design Standards, and any conditions imposed by the Design Review Committee in connection with its approval of the subject Plans and Specifications.

8.4 **Right of Association to Maintain and Install.** In the event that an Owner fails to accomplish any maintenance, repair, replacement or reconstruction required by this Section, the Association may, but shall not be obligated to, cause the necessary work to be accomplished as hereinafter set forth.

(a) **Notice of Deficiency.** Upon finding by the Board of a deficiency in a Lot or Building, the Board shall give notice of deficiency to the Owner, which shall briefly describe the deficiency and set a date for the cure thereof. If the violating Owner submits a written request to the Board for a hearing within fifteen (15) days after the mailing of such deficiency notice, the Board shall set a date for such hearing before the Board or a committee selected by the Board for such purpose. The Board may delegate its powers under this subsection to a duly appointed committee of the Associations;

(b) **Hearing.** Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of said request for hearing. Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt which shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine any person offering at such hearing evidence adverse to such Owner. If the Board or any such committee renders a decision against the Owner, it shall set another date by which the deficiency is to be corrected by the Owner. A decision of any such committee may be appealed to the Board, but a decision of the Board shall be final.

(c) **Continued Deficiency.** If the deficiency continues to exist after the time limitation set forth in the deficiency notice or, in the event a hearing is held, the date imposed by a final decision of the Board or any such committee, the Board or such committee may cause the curative work to be accomplished. In the event the Board or such committee elects to cause the curative work to be accomplished, it shall give written notice of such election to the violating Owner and the following shall apply:

(i) Owner shall have no more than ten (10) days following the receipt thereby of said written notice of election in which to select a day or days upon which such curative work shall be accomplished; and

(ii) The date which said Owner selects shall be not less than ten (10) days nor more than thirty (30) days following the last day of the ten (10) day period specified in such notice of election. If such Owner does not select such day or days within the ten (10) day period specified in such notice of election, the Board or such committee may select a day or days upon which such work may be accomplished which shall be not less than twenty-five (25) nor more than fifty-five (55) days from the last day of the ten (10) day period specified in such notice of election; and unless the Owner and the Board otherwise agree, such curative work shall take place only during daylight hours on any day, Monday through Friday, excluding holidays.

(d) **Payment or Cure by Association.** If the Association pays for all or any portion of such curative work which has been determined to be the responsibility of an Owner, such amount shall be a Enforcement Assessment to the affected Owner and may be made a lien against its Lot. If the Association determines that any curative work which may be the responsibility of an Owner must be accomplished prior to the time when a determination as to such responsibility and the curative work itself may be made pursuant to this Section, the Association may have the work performed prior to the commencement or completion of the procedures of this Section. In that event, the sole determination remaining to be made pursuant to the procedures of this Section shall be the responsibility for the cost of effecting such curative work.

8.5 **Right of Entry.** The Association shall have the right to enter upon any Lot and into any Building in connection with any exterior maintenance, repair or construction in the exercise of the powers and duties of the Association. Where such entry is not because of an emergency, the Association shall give reasonable prior written notice to the Owner.

8.6 **Maintenance of Public Utilities.** Nothing contained herein shall require or obligate the Association to maintain, replace or restore the underground facilities of public utilities which are located within easements in the Common Area owned by such public utilities. However, the Association may take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

ARTICLE 9 INSURANCE

9.1 **Types.** The Association, through the Board, shall obtain and maintain in effect the following types of insurance:

(a) **Fire and Extended Coverage.** Fire and extended coverage insurance on all Improvements in the Common Area owned by or leased to the Association, the amount of such insurance to be not less than ninety percent (90%) of the aggregate full insurable value, meaning actual replacement value, exclusive of the cost of excavations, foundations and footings. Such insurance shall insure the Association.

(b) **Liability**. Comprehensive general liability insurance including coverage for contractual liability, completed operations liability, contingent independent contractor's liability, personal injury liability, and owned or hired or nonowned vehicles, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or its agents, representatives or employees, or with respect to any real or personal property owned, used or controlled by the Association and the performance of the Association's obligations as provided in this Declaration. The coverage limits and deductibles of all such policies shall be subject to the discretion of the Board, and the Board shall not be obligated to obtain particular coverage if, in the opinion of the Board, the coverage is prohibitively expensive or the premiums do not bear a reasonable relationship to the risks insured against. The liability insurance shall, if economically feasible, name as separately protected insureds the Declarant, the Association, the Board, and the Design Review Committee, and their representatives, members and employees, with respect to any liability arising out of the construction, maintenance, use and the construction of any Improvements on any part of the Common Lots.

(c) **Workers Compensation Insurance**. Workers compensation insurance to the extent necessary to comply with any applicable laws.

(d) **Fidelity Insurance**. A fidelity bond in the penal amount of not less than the total amount of Regular and Capital Improvement Assessments collected during the previous calendar year (or, in the first and second years, the amount budgeted therefor), naming the members of the Board and such other persons as may be designated by the Board as principals, and the Association as obligee.

(e) **Other Insurance**. Such other insurance, including business interruption insurance, directors, and officers' liability insurance, indemnity and other bonds as the Board shall deem necessary or expedient to carry out the Association's functions as set forth in this Declaration, the Articles and Bylaws. The Board's discretion with respect to types of insurance and coverage limits and deductibles shall be liberally construed, it being the intent of this Declaration that the Board from time to time seek the advice of a reputable risk manager.

9.2 **Waiver of Subrogation**. Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against Declarant, Declarant's agents and representatives, any person, firm or corporation affiliated with Declarant in the development of the Project, the Board, the Design Review Committee, and their representatives, members and employees.

9.3 **Payment of Proceeds**. With respect to insurance proceeds paid in connection with a loss of part or all of the Common Area, the Association shall be deemed trustee of the interests of all Owners in any insurance proceeds paid to it under any such policies, and shall have full power to receive and to receipt for their interest in such proceeds and to deal therewith.

ARTICLE 10
DESTRUCTION OF IMPROVEMENTS

10.1 Reconstruction of Common Facilities. In the event of a partial or total destruction of any Common Improvements, or of any other real property or Improvements owned, maintained, or used by the Association for the common benefit of Owners, it shall be the duty of the Association to restore and repair the same to their former condition as promptly as is practicable and in a lawful and workmanlike manner. The proceeds of any insurance maintained pursuant hereto shall be used for such purpose, subject to the prior rights of Mortgagees whose interests may be protected by said policies. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be at least eighty-five percent (85%) of the estimated cost of restoration and repair, a Reconstruction Assessment shall be levied by the Association to provide the necessary funds for such reconstruction and repair, over and above the amount of any insurance proceeds available for such purpose, and such Assessment may be enforced under the lien provisions contained in this Declaration. The amount and due date of the Assessment shall be determined by the Board. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be less than eighty-five percent (85%) of the estimated cost of restoration and repair, the Improvements shall not be replaced or restored unless approved by the vote or written consent of Members entitled to exercise sixty-seven percent (67%) of the Voting Power of the membership of the Association, including Declarant as a Class B Member. In the event any excess insurance proceeds remain, the Board shall retain such sums in the general funds of the Association. Notwithstanding anything to the contrary contained in this Article 10, the distribution of any insurance proceeds for any damage or destruction to the Common Area shall be subject to the prior rights of First Mortgagees.

10.2 Reconstruction of Improvements on Lots. If all or any portion of a Lot or any Improvement on such Lot is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Lot to (a) rebuild, repair or reconstruct the Lot and the Improvements thereon in such a manner which will restore them to a condition and appearance approved by the Design Committee and in accordance with any applicable government requirements, including, but not limited to, the Project Approval Documents, (b) raze and remove the damaged Improvements, restoring the Lot to substantially its original unimproved condition, or (c) any combination of the above, in a manner satisfactory to the Design Committee. The Owner of any Lot on which damaged Improvements are located shall be obligated to proceed with all due diligence hereunder.

ARTICLE 11
EMINENT DOMAIN

11.1 Rights of Board. The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Common Area, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Owners in connection with the taking. The Board shall

act in its sole discretion with respect to any awards made in connection with the taking and shall be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a taking of less than all of the Common Area, the rules as to restoration and replacement of the Common Area shall apply as in the case of destruction of Common Improvements upon the Common Lot. In the event of a total taking, the Board shall retain any award in the general funds of the Association. Notwithstanding anything to the contrary in this Article 11, the distribution of any award or awards for a taking of all or any portion of the Common Area shall be subject to the prior rights of the First Mortgagees.

ARTICLE 12 USE RESTRICTIONS

12.1 Use. The Lots and any Buildings thereon may be used for the purposes permitted within the applicable planning area or Lot set forth in the Project Approval Documents and Site Plan Submissions, as approved by the Design Review Committee. Owners shall implement the waste management plan approved in conjunction with the Site Plan Submissions to the extent required by City Requirements. Oversight of the operation of the waste management plan shall be the obligation of the City and not the Association.

12.2 Construction Activity. Every Owner (including Declarant) constructing Improvements on the Property shall make its best efforts to control the dust arising from such activities.

12.3 Nuisance. No noxious or offensive trade or activity shall be carried on in any Lot or Building, or any part of the Project, nor shall anything be done which may materially interfere with the quiet enjoyment of any of the Owners or their tenants in a Building or Building Unit, or which shall in any way increase the rate of insurance or overburden the Utilities from time to time existing for the Project. No commercial activity which is permitted in the Project pursuant to applicable zoning ordinances or any governmentally approved development plan or conditional use permit which first commenced pursuant to the sale of a Building, Lot or the lease of a Lot or Building under which Declarant was Seller or lessor shall be deemed a nuisance under this Declaration.

12.4 Temporary Structures. No structure of a temporary character, trailer, tent, shack, barn or other outbuilding shall be used on any portion of the Property after completion of construction on the Lots at any time, either temporarily or permanently unless approved by the Design Review Committee.

12.5 Oil and Mineral Rights. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in the Property nor, subsequent to the recording of this Declaration, shall oil wells, tanks, tunnels, or mineral excavations

or shafts be installed upon the surface of the Property or within five hundred (500) feet below the surface of such properties. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon the Property.

12.6 Unightly Items. All weeds, rubbish, debris, or unsightly material or objects of any kind shall be regularly removed from the Buildings or Lots and shall not be allowed to accumulate thereon. All refuse containers, trash cans, woodpiles, storage areas, machinery and equipment shall be prohibited upon the Property except in accordance with rules adopted by the Board.

12.7 Antennas and Other Roof Structures. No television, radio, or other electronic towers, aerial antennas or device of any type for the reception or transmission of radio or television broadcasts or other means of communication unless the same be contained within a Building or underground conduit or appliances or installations on exterior roofs of structures including, without limitation, air conditioning equipment, rooftop turbine ventilators, attic ventilators or solar panels (except to the extent that limitations on the construction or use thereof is prohibited by law) shall hereafter be erected, constructed, placed or permitted to remain on the Property unless and until the same shall have been approved in writing by the Design Review Committee (unless the same were approved by Declarant as provided in Section 5.10 hereof).

12.8 Storage and Loading Areas. No materials, supplies, equipment, parts, products, packaging, or waste of any kind shall be stored in any area on a Lot except inside a closed building or behind a visual barrier screening such areas to minimize visibility from neighboring property. Location, size, and screening of storage areas outside an enclosed building must be approved by the Design Review Committee (unless the same was approved by Declarant as provided in Section 5.10 hereof). Loading areas and docks shall be located and screened to minimize visibility from the street and from neighboring property in accordance with the Design Guidelines. Location, size, and screening of loading areas and docks must be approved by the Design Review Committee (unless the same was approved by Declarant as provided in Section 5.10 hereof).

12.9 Drainage. There shall be no interference with drainage over any portion of the Property unless adequate provision is made for proper drainage and is approved by the Design Review Committee.

12.10 Uses Resulting in Increased Insurance Premiums. In the event that any use shall cause an increase in fire or other insurance premiums otherwise payable on insurance procured by the Association or by any other Owner (including lessees, licensees and other occupants), the party causing such increase shall be liable for payment of the same, to the Association or to the other Owner, as the case may be. The parties so charged with additional premium costs shall have the right to contest the validity of such increase before the Board in a manner prescribed by the Board.

12.11 Maintenance. The grounds and the exterior of all Improvements on each Lot shall be regularly Maintained in good, sightly and well-kept order, repair and condition. Any Owner,

before undertaking any alteration or maintenance of the exterior area of an improvement or Lot shall submit the Building Plans for such work to the Design Review Committee and obtain its written approval prior to the commencement of any such work. In the case of exterior painting, no such approval is required if the color and quality of the paint remains the same as the original.

12.12 Water Wells. All Owners other than Declarant and its predecessor owner are prohibited from drilling any water well, and the drilling of a water well shall be a prohibited use, except by Declarant and its predecessor owner pursuant to the terms of any easement agreements applicable within the Project.

12.13 Open Space Areas. To the extent required by the Project Approval Documents and other City Requirements, certain portions of the Common Area shall be conveyed to the Association subject to the reservation of an open space easement or other covenants restricting the use of such Lots.

12.14 Exemptions of Declarant. Nothing in this Article 12, or elsewhere in this Declaration shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to complete its construction activities within the Project or the Annexable Property and to market and sell Lots within the Project. Declarant may use any Buildings owned by Declarant in the Property as real estate sales or leasing offices. So long as Declarant owns any Lot in the Property, the provisions of this Article 12 may not be amended or terminated without the prior written consent of Declarant.

ARTICLE 13 RIGHTS OF ENJOYMENT

13.1 Right of Enjoyment. Subject to the limitations and restrictions set forth in this Declaration, every Owner shall have a nonexclusive easement for the use and enjoyment of the Common Area. Each Owner may permit its licensees, lessees and tenants and their respective guests, customers, agents, employees and independent contractor to use such easements, subject to this Declaration. The foregoing easements shall be appurtenant to and shall pass with the Owner's interest in its Lot, subject to the terms and provision of this Declaration including, without limitation:

(a) **Restrict Access.** The right of the Association to exclude Owners from those portions of the Common Area necessary or appropriate to reserve for limited access due to health, safety, liability, or management issues, including, without limitation, excluding from access to the Drainage and Retention Facilities.

(b) **Applicable Law.** Any use and enjoyment of the Common Area shall be subject to such limitations as may be imposed pursuant to the Project Approval Documents, the City Requirements, or any other applicable federal, state, or local laws.

(c) Owner's Restrictions. The use and enjoyment of the Common Easements shall be subject to such reasonable restrictions as may be imposed by the Owner upon whose property such easements are located so long as such restrictions do not impair the use of such easements for their intended purpose as established in Article 14.

(d) Reservations by Declarant. The right of Declarant to reserve for itself, its successors and assigns, or the Association, the right to grant, reserve and transfer such exclusive or non-exclusive easements as may be necessary or appropriate to: (1) perform the obligations of the Declarant under the Project Approval Documents and comply with subsequent City Requirements with respect to the development of the Project; (2) perform the obligations of the Declarant or the Association under this Declaration; (3) provide for the installation, maintenance, and repair of, and access to and from any Utilities serving the Project or any Improvements to be maintained or operated by any Financing Districts.

(e) Additional Rules. The right of the Association to establish reasonable rules and regulations pertaining to the use of the Common Area.

(f) Grant Concessions. The right of the Association to grant concessions for commercial activities relating to the use and enjoyment of the Common Area by Members, provided that any such contract or concession with an affiliate of Declarant shall be on commercially reasonable terms and such contracts having a term of more than one (1) year shall have the approval of a majority of the Voting Power of the Class A Members.

13.2 Transfer of Use of Common Area. Any Owner may extend its rights of enjoyment of the Common Area to its employees, customers, tenants, or invitees subject to the terms of this Declaration and the rules and regulations adopted by the Board.

13.3 Waiver of Use. No Member may exempt itself from personal liability for Assessments duly levied by the Association, nor release the Lot or Building owned by it from the liens, charges and other provisions of this Declaration, the Articles, Bylaws and Association Rules, by waiver of the use and enjoyment of the Common Area, or the abandonment of its Lot or Building.

13.4 Access by Public Employees. Officers, agents or employees of any governmental department or bureau shall have the right of immediate access to all portions of the Common Area for reasons of public health, safety and welfare, except where such portion of the Common Area is accessible only through a Building, in which case, permission of the applicable Owner shall be required.

ARTICLE 14 EASEMENTS

14.1 Amendment to Eliminate Easements. This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant

and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Section shall likewise require the prior written approval of Declarant.

14.2 Nature of Easements. Unless otherwise set forth herein, any easement reserved herein shall be nonexclusive.

14.3 Certain Rights and Easements Reserved to the Association.

(a) Common Easements. The Declarant hereby reserves, for the benefit of the Association, an easement over, along, through and across any Common Easements in the Project, together with such reasonable rights of ingress and egress for access to any such Common Easement on a Lot in the Project.

(b) Perform Association Functions. Upon prior notice (except in the case of an emergency in which case no prior notice shall be necessary), the Association shall have and there is hereby reserved by Declarant for the benefit of the Association and its duly authorized agents and representatives and granted to the Association, a non-exclusive easement for ingress and egress to the Lots, to the extent necessary for the Association to perform its obligations under this Declaration or the other Governing Documents and to perform repairs or maintenance not performed by the Owner pursuant to the terms of this Declaration and to reach those areas and places of the Project which are necessary to perform such obligations.

14.4 Certain Rights and Easements Reserved to Declarant.

(a) Utilities. Easements over the Property for the installation and maintenance of Utilities are hereby reserved by Declarant, together with the right to grant and transfer the same to the Association, Owners or otherwise; provided, however, such easements shall not unreasonably interfere with the use and enjoyment by Owners of their Lots or Buildings or the Common Area. Wherever Utilities are installed within the Project, the Owners of any Lots or Buildings served by said Utilities shall have the right, and there is hereby reserved to Declarant, together with the right to grant and transfer the same to the Association and/or the Owners, an easement to the full extent necessary for the full use and enjoyment of such portion of such Utilities which service its Lot or Building, and, subject to the limitation as to unreasonable interference described above, to enter the Lots (but not, without said Owner's consent, the Buildings thereon) owned by others, or to have utility companies enter such portions of the Project owned by others, in or upon which said Utilities, or any portion thereof lie, to repair, replace and generally maintain said Utilities as and when the same may be necessary, provided that such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

(b) Grading and Site Work. Easements over the Property for the completion by Declarant of grading and other site work required to be completed by Declarant under the Project Approvals and any Purchase Agreement are hereby reserved in favor of Declarant; provided,

however, that such easements shall not unreasonably interfere with the use and enjoyment by Owners of their Lots or Building or the Common Area.

(c) **Support; Settlement and Encroachment.** There is hereby reserved to Declarant, together with the right to grant and transfer the same to the Association and/or the Owners, the following reciprocal easements for the purposes set forth below:

(i) An easement appurtenant to each Building which is contiguous to another Building or Common Lot which Building shall be the dominant tenement and the contiguous Building or Common Lot shall be the servient tenement.

(ii) An easement appurtenant to the Common Lots contiguous to a Building, which Lots shall be the dominant tenement and which contiguous Building shall be the servient tenement.

(iii) Said easements shall be for encroachments resulting from engineering errors, errors in original construction and support and accommodation of the natural settlement or shifting of structures; encroachment by reason of a roof or eave overhang from a Building and for the maintenance of such roof or eave overhang by the Owner of the dominant tenement; and encroachment of doorsteps, foundation footings, utilities and other appurtenances of fixtures and the maintenance thereof by the owner of the dominant tenement, which, in the construction of the structures upon the dominant tenement or from any reconstruction or modifications of such structures, project beyond the external surface of the outer walls of such structures.

(d) **Drainage Easements.** Every Lot in the Project, whether separately or commonly owned, shall be reciprocally burdened and benefitted by an easement for the flow of surface and subsurface waters through pipes, conduits and channels and the Drainage and Retention Basins, the construction of which was by Declarant or approved by the Design Review Committee and all governmental agencies having jurisdiction thereof, and for surface flows not confined to channels, pipes or conduits if such flow results from grading in accordance with a grading plan prepared by Declarant or approved by the Design Review Committee and all governmental agencies having jurisdiction thereof.

(e) **Prospective Easements.** If in connection with the conveyance or lease of any Lot, Declarant shall reserve an easement in gross conditioned upon the transfer of such easement to the Association for the use and benefit of all Owners or designated Owners and their tenants and invitees (including, for example, easements for the Drainage and Retention Facilities), then:

(i) Upon transfer of such easement to the Association, the instrument of transfer shall provide that the easement is to be made appurtenant to a designated Common Lot; and

(ii) The Association shall be obligated to accept the conveyance of such easement and, thereafter, to Maintain the easement area, to the same extent as provided for the Common Lots in Section 8.1 hereof, and to levy Regular Assessments for purposes of defraying the costs of such maintenance.

ARTICLE 15 RIGHTS OF LENDERS

15.1 Filing Notice; Notices and Approvals. A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Lot or Building within the Project. Such notice shall describe the interests encumbered by such Mortgage, and shall state whether such Mortgagee is a First Mortgagee. Wherever the approval of all or a specified percentage of First Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage only of those First Mortgagees, as applicable, which have delivered such notice to the Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

15.2 Priority of Mortgage Lien. No breach of the covenants, conditions or restrictions herein contained, or the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any Mortgage made in good faith and for value encumbering any interest in the project; provided, however, that upon occurrence of a Foreclosure Event, the subsequent Owner shall be subject to future compliance with all of said covenants, conditions and restrictions, except as otherwise provided in this Article.

15.3 During Defaults. A Mortgagee or the immediate transferee of such Mortgagee, who acquires title through a Foreclosure Event, shall not be obligated to cure any breach of the provisions of this Declaration which is incurable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is incurable or not feasible to cure shall be final and binding on all Mortgagees.

15.4 Resale. It is intended that any loan to facilitate the resale of any Lot or Building after a Foreclosure Event is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

15.5 Relationship with Assessment Liens.

(a) Subordination. The lien provided for in the Article hereof entitled "Covenant for Maintenance Assessments" for the payment of Assessments shall be subordinate to the lien of any Mortgage which was recorded prior to the date any such Assessment becomes due, but such subordination shall not apply to the lien of Assessments which arise subsequent to any a Foreclosure Event pursuant to which fee title to or the leasehold estate in any portion of the Project is transferred to the Mortgagee or any other person, whether or not the Mortgage is deemed extinguished or merged upon transfer of such estate or interest.

(b) Non-Impairment of Mortgage Liens. If any portion of the Project subject to a monetary lien created by any provision of this Declaration shall be subject to the lien of a Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage with respect to Assessments becoming a lien after the date of recordation of the Mortgage; and (2) a Foreclosure Event shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest, through any Foreclosure Event, and their successors in interest, shall take title free of the lien hereof or any personal obligation for such charges as shall have accrued up to the time of any Foreclosure Event, but subject to the lien hereof for all said charges that shall accrue subsequent to the Foreclosure Event or which first became a lien prior to the date of recordation of the Mortgage.

(c) Foreclosure Purchasers. Any Mortgagee who obtains title to an interest in the Project by reason of any of the Foreclosure Event, or any purchaser at a private or judicial foreclosure sale, shall take title to such interest free of any liens or claims for unpaid Assessments against such interest which accrue prior to the time such Mortgagee or purchaser takes title to such interest, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all interests within the Project subject to such Assessments or which first became a lien prior to the date of recordation of the Mortgage; provided, however, that nothing in this Section shall be construed to release any Owner from its personal obligations to pay for any Assessment levied pursuant to this Declaration.

(d) Assessment Liens. Wherever this Declaration provides that a Mortgage shall be subordinate to Assessments which "first became a lien prior to the date of recordation of the Mortgage" or words of like meaning, an Assessment shall be deemed to have become a lien on the date on which a notice of delinquency was first recorded. The amount secured by such lien shall be the entire Regular Assessment for the then current fiscal year, to the extent not discharged as of the date of recordation of such notice (or the full amount of any Special or Capital Improvement Assessment, if the delinquency has arisen in connection therewith) together with any costs and interest to which the Association may be entitled as set forth in the Declaration. Notwithstanding the foregoing, if the Mortgagee or purchaser pursuant to the Foreclosure Event pays the delinquent installments of any such Assessments immediately upon succeeding to title, together with any interest and costs secured by the lien, it shall be entitled to pay the installments of such Assessments

first falling due after it succeeds to title, on the dates the same would have become payable but for the filing of the notice creating the lien.

15.6 Approved by Institutional Mortgagees. Except upon the prior written approval of at least sixty-seven percent (67%) of First Mortgagees, based on one (1) vote for each First Mortgage, neither the Association nor the Members shall be entitled to dissolve the Association or terminate the maintenance of the Common Area by the Association.

15.7 Other Rights of First Mortgagees. Any First Mortgagee or other Mortgagee, if expressly provided in this Section, or its mortgage servicing contractor, shall, upon written request to the Association, be entitled to:

(a) Books and Records. Inspect the books and records of the Association during normal business hours;

(b) Financial Information. Receive the annual financial statement of the Association one hundred twenty (120) days following the end of the Association's fiscal year;

(c) Notice of Meetings. Receive written notice of all annual and special meetings of the Members or of the Board, and First Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Association; provided, however, nothing contained in this Section shall give a First Mortgagee the right to call a meeting of the Board or of the Members for any purpose or to vote at any meeting except as expressly provided herein;

(d) Notice of Defaults. Receive written notification from the Association of any default in the performance of the obligations imposed by this Declaration by the Owner whose interest in the Project is encumbered by such Mortgagee's Mortgage, which default has not been cured within sixty (60) days after a request therefor by the Association; provided, however, the Association shall only be obligated to provide such notice to Mortgagees who have delivered a written request therefor to the Association specifying the interest in the Project to which such request relates. The right to receive notice shall apply to all Mortgagees who comply with the requirements for receiving notice.

(e) Amendments to Articles or Bylaws. Receive written notice thirty (30) days prior to the effective date of any change in the Bylaws or Articles.

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

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

15.10 Voting Power of First Mortgagees. In the event of a default by an Owner in any payment due under the terms of any First Mortgage held by a First Mortgagee or the promissory note secured thereby, the First Mortgagee or its representative shall have the right, if provided for in its Mortgage with the defaulting owner, upon giving written notice to such defaulting Owner and the Association and recording in County Recorder's Office a notice of default, to exercise the voting rights of such defaulting Owner attributable to such Lot at any regular or special meeting of the Members held during such time as such default may continue. Any such Owner's voting rights shall be restored to it at such time as such default is cured.

ARTICLE 16 ANNEXATION

16.1 Right of Annexation by Declarant. For a period of fifteen (15) years following the date of the recording of this Declaration, Declarant shall be entitled to annex to this Declaration, from time to time, all or portions of the real property described in Exhibit B. Declarant may also permit Owners of real property shown in Exhibit B that are not owned by Declarant, upon its written consent, to annex such real property into this Declaration. After the expiration of fifteen (15) years following the date of the recording of this Declaration, the Declarant (or such permitted parties) shall be entitled to annex all or any portions of the real property described in Exhibit B after obtaining the vote or written consent of a majority of the Voting Power of the Association. The real property described in Exhibit B is hereinafter called the Annexation Property. Annexation shall be effected by the recordation of a Declaration of Annexation executed and acknowledged by Declarant declaring that the portion of the Annexation Property described therein (the "Annexed Phase"), subject to the deferral of the commencement of Assessments and voting rights as hereinafter provided, shall thereafter be subject to the provisions of this Declaration. Any such Declaration of Annexation contemplated herein may contain such complimentary additions or modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexed Phase which are not inconsistent with the plan of this Declaration. Any such Declaration of Annexation may also designate additional Common Areas and any additional maintenance responsibilities of the Association applicable thereto included within the Annexed Phase. Upon annexation, the Annexed Phase shall be deemed part of the Property and the rights of all Owners, including Declarant, with respect to both the Annexed Phase and the portions of the Property previously made subject to this Declaration, shall be as if the Annexed Phase had been made subject to this Declaration at the time it was first recorded. Notwithstanding the provisions of this Declaration expressly or impliedly to the contrary, Declarant shall have no obligations whatsoever to annex any real property hereto, including, but not limited to, the real property described in Exhibit B. In addition to the foregoing, Declarant shall also have the right to record Supplementary Declarations upon the Declarant's initial conveyance of Lots then subject to

this Declaration, which contain such complimentary additions or modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of that Lot or which are not inconsistent with the plan of this Declaration.

16.2 Commencement of Assessments; Voting Power. Notwithstanding anything contained herein to the contrary, Assessments against the Owners' Lots or voting rights of such Owners in the Annexed Phase shall not commence until the first day of the month following the month in which the Lot in the Annexed Phase is annexed.

16.3 Adjustment of Assessments. Not less than thirty (30) days prior to the date on which the sale of a Lot in the Annexed Phase occurs, the Board shall distribute to the Owners a revised operating statement or budget for the remainder of the then current fiscal year which sets forth the anticipated expenses and cash requirements for the Project based upon the inclusion of the Annexed Phase. On the date on which the Annexed Phase becomes liable for Assessments, such Assessments shall be apportioned to all of the Lots in the Project, based upon the cash requirements determined for the Project inclusive of the Annexed Phase and, if any increase in Assessments is within the limitation permitted to be imposed by the Board without the consent of the Owners, shall constitute the Assessment for the balance of the fiscal year unless further adjusted as permitted herein.

16.4 Conveyances to Association on Annexation. On or before the date of first conveyance of an Lot in a Lot in an Annexed Phase, Declarant shall convey to the Association and the Association shall be obligated to accept the conveyance of any Common Area which is a part of the Annexed Phase.

16.5 Deannexation. Declarant may delete all or a portion of the Property either initially or subsequently made subject to this Declaration from the coverage of this Declaration and the jurisdiction of the Association, so long as Declarant is the owner of all of such deannexed property, has paid all outstanding assessments and provided that a Notice of Deletion of Property is recorded in the Office of the County Recorder of San Diego County.

ARTICLE 17 GENERAL PROVISIONS

17.1 Enforcement. Except as otherwise expressly limited in the Declaration, the Association and Declarant shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation. After written request to the Association to prevent any violation of this Declaration, and failure to act by Declarant or the Association within thirty (30) days after receipt of such request, except as otherwise expressly limited in the Declaration, any Owner shall be entitled

to seek enforcement of the terms of this Declaration; provided, however, such Owner shall not be entitled to recover damages against the Association or the Declarant in connection with such action. The Association, any Owner, or Declarant shall have the right to enforce by proceedings at law or equity provisions of the Articles or Bylaws and any amendments thereto. With respect to design and architectural control, the Association Rules, and the collection of Assessments, the Association shall have the exclusive right to the enforcement thereof. Declarant shall in no way be liable to the Owners or any other person or entity for its refusal or failure to enforce any of the provisions of this Declaration or for its waiver of such provisions or any violations thereof.

17.2 No Waiver. Failure by the Association by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles, Bylaws or Association Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition or restriction.

17.3 Cumulative Remedies. All rights, options and remedies of Declarant, the Association, the Owners or Mortgagees under this Declaration are cumulative, and no one of them shall be exclusive of any other, and, subject to the limits on enforcement set forth in Section 1 above, Declarant, the Association, the Owners and the Mortgagees shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

17.4 Severability. Invalidation of any one or a portion of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

17.5 Covenants to Run with the Land; Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and, subject to the limitations on enforcement set forth in Section 17.1 above, shall inure to the benefit of and unless expressly provided to the contrary, be enforceable by the Association or any Owner or Declarant, their respective legal representatives, heirs, successors and assigns for a period of fifty (50) years and shall be extended thereafter for ten (10) year periods, unless and until a majority of the total Voting Power of all Owners shall determine during any extension year to terminate this Declaration.

17.6 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a nonresidential community or tract and for the maintenance of the Property. The Article and Section headings have been inserted for convenience and cross-reference only, and shall not be considered or referred to in resolving questions of interpretation or construction.

17.7 Singular Includes Plural. Wherever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine and the neuter.

17.8 Attorneys' Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto reasonable attorneys' fees and costs of such suit as part of the judgment.

17.9 Notices. Any notice to be given to an owner, the Association or a Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and may be delivered as follows:

(a) Notice to Owners. Notice to an Owner shall be deemed to have been properly delivered when deposited in the United States mail, first class, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Building. Any notice so deposited in the mail within the County shall be deemed delivered forty-eight (48) hours after such deposit. In the case of Co-Owners, any such notice may be delivered or sent to any one of the Co-Owners on behalf of all Co-Owners and shall be deemed delivered on all such Co-Owners. Notwithstanding the foregoing, if the Owner does not occupy his Building or Building Unit, he or she from time to time shall provide the Board with a current mailing address for the sending of notices. In such case, notice will be deemed to have been delivered when delivered by mail, as provided in the preceding sentence, to such address.

(b) Notice to Association. Notice to the Association shall be deemed to have been properly delivered when deposited in the United States mail, first class, postage prepaid, to the address furnished by the Association or to the address of its principal place of business.

(c) Notice to Mortgagee. Notice to a Mortgagee or its mortgage servicing contractor shall be deemed to have been properly delivered when deposited in the United States mail, first class, postage prepaid, to the address furnished to the Association by such mortgagee or such contractor for the purposes of notice, or if no such address is furnished, to any office of the Mortgagee in the county, or if no such office is located in the County, to any office of such Mortgagee.

(d) Affidavits of Association. The affidavit of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, to any Mortgagee or Mortgagees, or to all Members or all Mortgagees, to the address or addresses shown on the records of the Association, shall be deemed conclusive proof of such mailing, whether or not such notices are actually received.

17.10 Effect of Declaration. This Declaration is made for the purposes set forth in the Recitals to this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

17.11 Personal Covenant. To the extent the acceptance of a conveyance of an Lot creates a personal covenant between the Owner thereof and Declarant or other owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner, except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association or the parties otherwise expressly agree.

17.12 Leases. Any agreement for leasing or rental of a Lot or Building or portion thereof (hereinafter in this Section referred to as a "Lease") executed on or after the date of recordation of this Declaration shall provide that the terms of such Lease shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws and the Association Rules. Said Lease shall further provide that any failure by the lessee thereunder to comply with the terms of the foregoing documents shall be a default under the Lease. All Leases shall be in writing. Any Owner who shall lease its Building shall be responsible for assuring compliance by such Owner's lessee with this Declaration, the Articles, the Bylaws and the Association Rules.

17.13 Amendments.

(a) **Approval Required.** Before the close of the first sale of a Lot to a purchaser other than Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant of an instrument amending or revoking the Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the Office of the County Recorder. Subject to the provisions of this Section 17.13 or other provisions of this Declaration expressly requiring the consent of an Owner or the Declarant to modifications to this Declaration, at any time(s), and from time to time hereafter, this Declaration may be amended upon the vote or written assent of the Members representing a majority of the total Voting Power of the Association. No material amendment to this Declaration shall be made without the written assent or vote of at least fifty percent (50%) of the First Mortgagees and, prior to the expiration of Declarant's Class B Voting Power, the written assent or vote of at least fifty percent (50%) of the Class A Voting Power. As used in this paragraph, the term "material amendment to this Declaration" shall mean amendments to provisions of this Declaration governing the following subjects (except as is otherwise expressly permitted in this Declaration upon the recordation of a Declaration of Annexation or Supplementary Declaration):

- (1) Voting;
- (2) Assessments, assessment liens and subordination thereof;
- (3) The reserve for repair and replacement of the Common Area;
- (4) Property maintenance obligations or casualty and liability insurance;

(5) Reconstruction in the event of damage or destruction;

(6) Rights to use the Common Area; and

(7). Any provision, which by its terms, is specifically for the benefit of First Mortgagees, or specifically confers rights on First Mortgagees.

In addition to the foregoing, so long as Declarant owns any Lot or any portion of the Annexable Property, no termination, extension, modification or amendment shall be effective without the prior written approval of Declarant thereto.

(b) **Limitations on Amendments.** Unless the affected Owner shall expressly consent thereto, no amendment to this Declaration shall operate to (i) terminate or otherwise cause to be in violation of this Declaration any use of a Building or Lot which use was not prohibited under this Declaration at the time the use first commenced; (ii) terminate or affect the right of any Owner to transfer its Building or Lot or any right or interest therein predicated on the continued use thereof in a manner not prohibited by this Declaration at the time such use of the Building or Lot first commenced; or (iii) reduce the Voting Power of an Owner or increase an Owner's Allocable Share of Assessments, except as expressly permitted hereunder. For purposes of this paragraph the word "use" in connection with a Building or Lot means the nature of the occupancy of the Property, the kinds of goods and services kept, offered or performed thereon. Nothing in this paragraph shall be deemed as permitting or condoning any unlawful activity on or in any portion of the Project or any activity which constitutes a nuisance within the meaning of Section 12.3 hereof.

(c) **Owner's Certifications.** Each Owner approving the amendment shall certify under penalty of perjury as to the names of all holders of every mortgage or deed of trust encumbering its interests in the Project, and if no such holder is identified, such Owner's vote or written consent shall conclusively be counted without consent from any other party. If any provision in this Declaration requires a higher percentage vote to amend such provision, such higher percentage shall be required to amend that provision. Upon obtaining the requisite vote or written consent for an amendment to this Declaration, the authorized officers of the Association shall execute on behalf of the Association such an amendment to this Declaration, and shall record such amendment in the office of the County Recorder of San Diego County. Each such amendment shall become effective upon recording.

(d) **Residential Project.** It is possible that portions of the Property may be proposed for residential uses, including residential common interest development projects (a "Residential Project"). In conjunction with a Residential Project, it may be necessary or appropriate to modify certain provisions set forth in this Declaration. Any such modifications shall be approved by Declarant and a majority of the total Voting Power of the Association.

17.14 **Conflicts.** If any provision of this Declaration shall conflict with the Articles or the Bylaws, the provisions of this Declaration shall govern and control.

17.15 **Table of Contents and Captions.** The table of contents and captions of this Declaration are inserted only as a matter of convenience and for reference. They do not define, limit or describe the scope or intent of this Declaration, and they shall not affect the interpretation thereof.

17.16 **Declaration for Exclusive Benefit of Owners.** Except where expressly provided otherwise in this Declaration, the provisions of this Declaration are for the exclusive benefit of the Association and the Owners hereto and not for the benefit of any other person nor shall this Declaration be deemed to have conferred any rights, express or implied, upon any other person.

17.17 **No Partnership, Joint Venture, Principal-Agent or Third Party Beneficiary Relationship.** Nothing contained in this Declaration shall be deemed or construed by the Owners hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of joint venture, or of partnership between or among any of the Owners under this Declaration. There shall be no third party beneficiaries to this Declaration.

17.18 **Governing Laws.** This Declaration shall be construed, interpreted, governed and enforced in accordance with the laws of the State of California.

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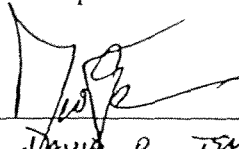
17.19 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Declaration.

17.20 Exhibits. All exhibits referred to in this Declaration are incorporated herein by reference. In addition, by acceptance of a deed for a Lot or by otherwise consenting to the recordation of this Declaration against an Owner's Lot, all Owners acknowledge and agree that all exhibits attached hereto that are diagrammatic in format are intended to depict the general location of the items set forth therein and not the exact location of such items.

17.21 Davis Stirling Act. To the extent that the Project constitutes a "planned development" as such term is defined in California Civil Code Section 1351(k), and thus falls within the purview of the provisions of California Civil Code Sections 1350, et. seq. (commonly known as the Davis-Stirling Common Interest Development Act and hereinafter referred to as the "Act"), each Owner hereby waives, to the maximum extent permitted by law, the following provisions of the Act: (i) Section 1354(b) through (j) relating to alternative dispute resolution and the filing of civil actions; (ii) Section 1355.5 relating to amendments concerning a developer's marketing rights; (iii) Section 1363(e), (f), (g) and (h) pertaining to the conduct of meetings and other matters by the Association; (iv) Section 1363.05 relating to meetings; (v) Section 1363.2 concerning certain accounting requirements by the managing agent of an association; (vi) Section 1366(c) concerning notice of increase in Regular or Special Assessments; (vii) Section 1366.3 concerning alternative dispute resolution; (viii) Section 1368.4 pertaining to notices prior to filing of civil actions; (ix) Section 1375 concerning construction defect actions; and (x) any other provision of the Act which by its terms is inconsistent with this Declaration. To the extent a court of competent jurisdiction determines that any or all of the foregoing waivers are invalid, the invalidity of such waiver(s) shall not render this Declaration invalid, and the Owners shall amend this Declaration to the extent necessary in order to cure the effect of said invalid waiver(s) and to comply with the Act. Notwithstanding the foregoing, in the event that the Project ever includes a residential common interest development, the Association shall comply with any applicable legal requirements. The Declaration of Annexation for such development shall provide such additional requirements relating to such development as may be appropriate.

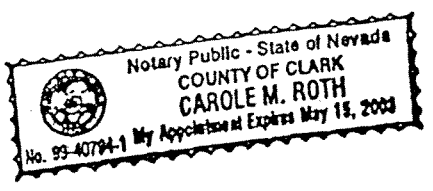
IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first hereinabove written.

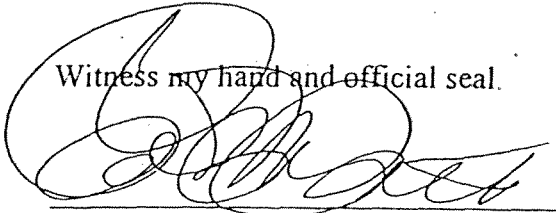
LNR KEARNY MESA, INC.,
a California corporation

By:  _____ 657
Name: DAVID O. TERRY
Title: VICE PRESIDENT

STATE OF Nevada,
COUNTY OF Clark)SS.

On September 10, 1999 before me, the undersigned, a Notary Public in and for said County and State, personally appeared, DAVID O'BRIEN TEAG known to me to be the Vice President of LNR Drilling Services a limited partnership known to me to be the principal of the entity which executed the within instrument on behalf of said limited partnership and acknowledged to me that said partnership executed the within instrument.



Witness my hand and official seal.


Notary Public in and for said County

LIST OF EXHIBITS

- Exhibit A Legal Description and Plat of Property
Initially Subject to Declaration
- Exhibit B Plat of Annexable Property
- Exhibit C Plat of Common Area
- Exhibit D Allocable Share of Assessments and Voting Power
- Exhibit E Plat of Potential Common Area
- Exhibit F Plat and Description of Financing District Improvements
- Exhibit G Maximum Buildable Square Footage Per Lot

EXHIBIT A

Legal Description and Plat of Property
Initially Subject to Declaration

LOTS:

LOTS 1 THROUGH 5 INCLUSIVE AND LOT A OF SAN DIEGO SPECTRUM PHASE 1 IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF 13826, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON JULY 26, 1999.

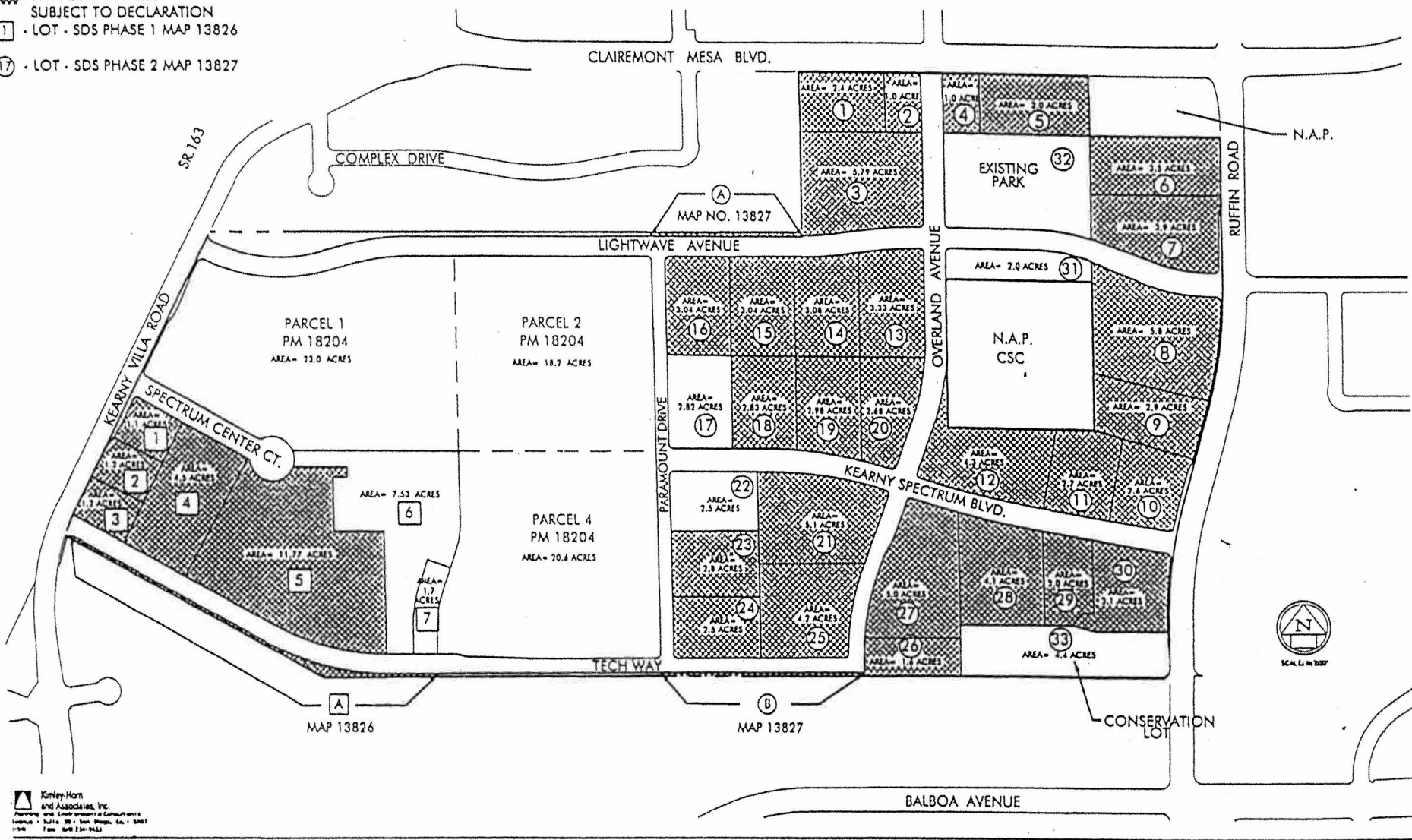
LOTS 1 THROUGH 16, INCLUSIVE, LOTS 18 THROUGH 21, INCLUSIVE, LOTS 23 THROUGH 30 INCLUSIVE AND LOTS A AND B OF SAN DIEGO SPECTRUM PHASE 2 IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF 13827, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON JULY 26, 1999.

COMMON LOTS:

LOT A OF SAN DIEGO SPECTRUM PHASE 1 IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF 13826, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON JULY 26, 1999 AND LOTS A AND B OF SAN DIEGO SPECTRUM PHASE 2 IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF 13827, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON JULY 26, 1999.

EXHIBIT A - PROPERTY INITIALLY SUBJECT TO DECLARATION SAN DIEGO SPECTRUM

- LEGEND:**
- PROPERTY INITIALLY SUBJECT TO DECLARATION
 - 1 LOT - SDS PHASE 1 MAP 13826
 - 17 LOT - SDS PHASE 2 MAP 13827



Kinley-Horn
and Associates, Inc.
Planning and Civil Engineers & Consultants
10000 - Suite 300 - San Diego, Ca. 92121
Phone: 619 594-9433




* LOT AREAS & LAND USE SUBJECT TO CHANGE

EXHIBIT B

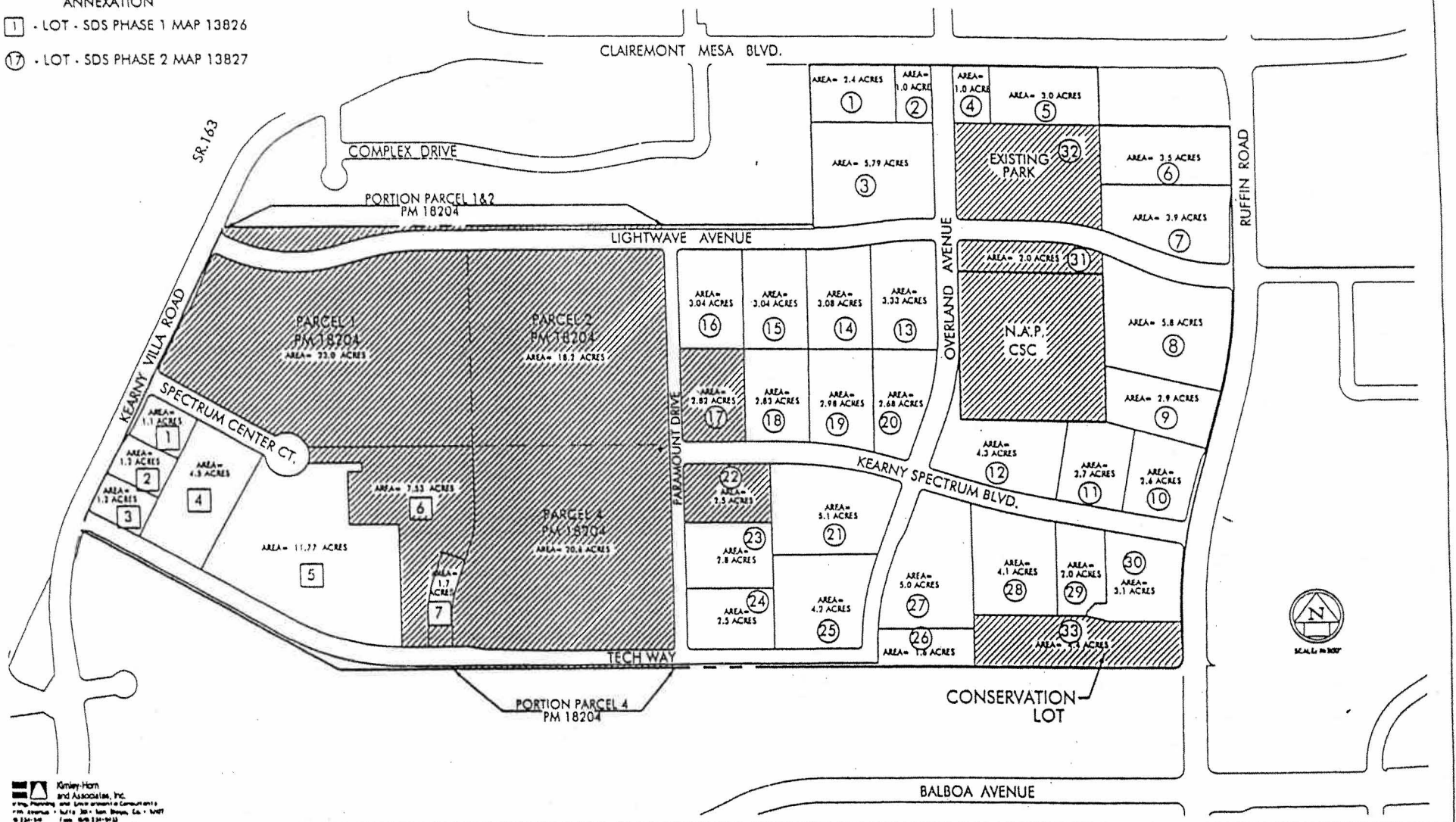
Plat of Annexable Property

Attached Hereto

LEGEND:

-  PROPERTY SUBJECT TO ANNEXATION
-  1 - LOT - SDS PHASE 1 MAP 13826
-  17 - LOT - SDS PHASE 2 MAP 13827

**EXHIBIT B - REAL PROPERTY SUBJECT TO ANNEXATION
SAN DIEGO SPECTRUM**



Kirby-Horn
 AND ASSOCIATES, INC.
 Planning and Environmental Consultants
 1100 La Jolla Village Drive, Suite 200, San Diego, CA 92161
 (619) 594-1000 Fax: (619) 594-1001

*LOT AREAS & LAND USES SUBJECT TO CHANGE

EXHIBIT C

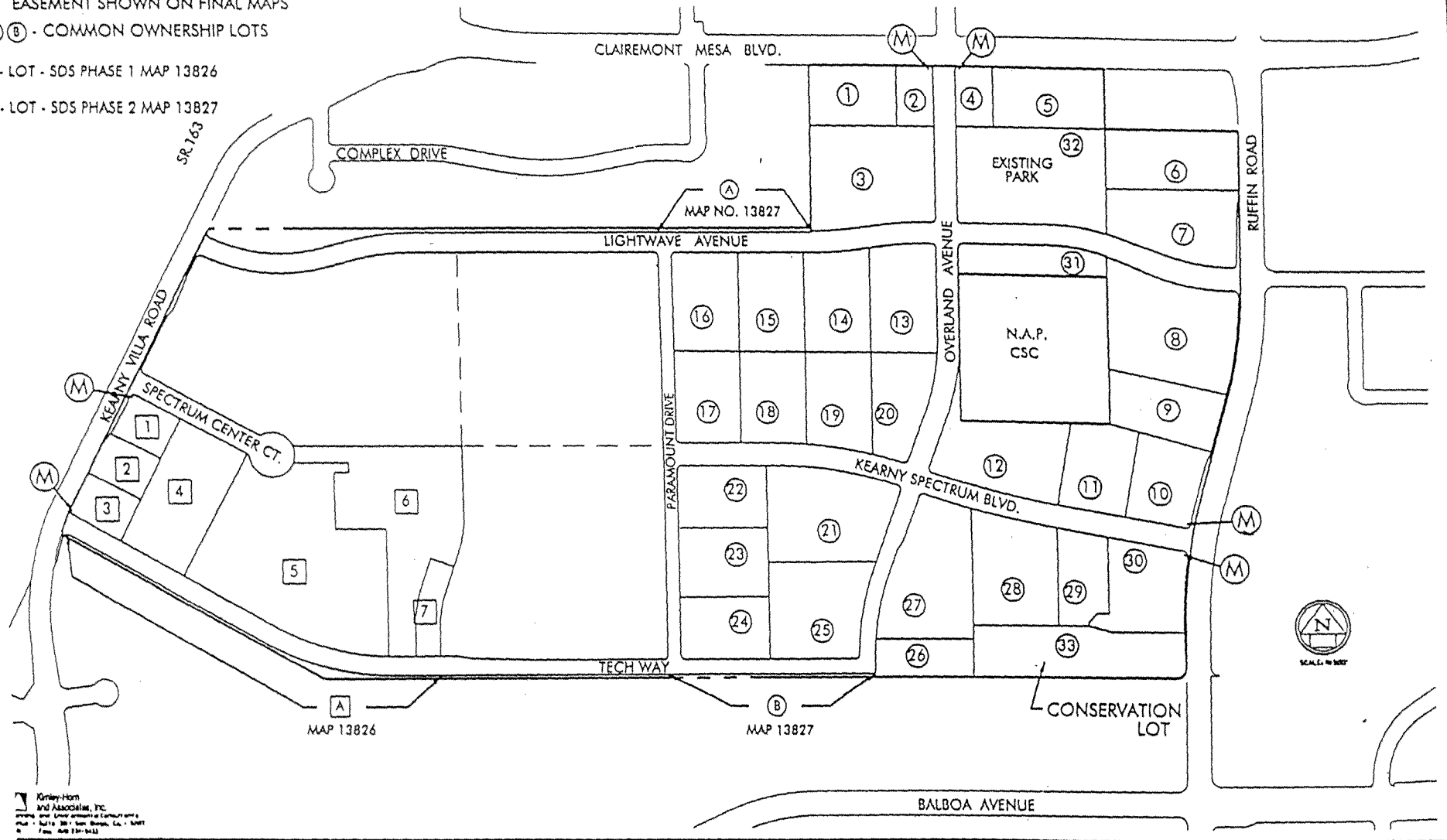
Plat of Common Area

Attached Hereto

LEGEND:

- (M) = VERTICAL PROJECT MONUMENTS
LOCATED IN CITY LANDSCAPE
EASEMENT SHOWN ON FINAL MAPS
- (A)(B) - COMMON OWNERSHIP LOTS
- (1) - LOT - SDS PHASE 1 MAP 13826
- (2) - LOT - SDS PHASE 2 MAP 13827

EXHIBIT C - COMMON AREAS (EASEMENTS, IMPROVEMENTS, LOTS) SAN DIEGO SPECTRUM



Kinley-Horn
and Associates, Inc.
Planning and Engineering Consultants
1414 - 1416 - 1418 - 1420 - 1422 - 1424 - 1426 - 1428 - 1430 - 1432 - 1434 - 1436 - 1438 - 1440 - 1442 - 1444 - 1446 - 1448 - 1450 - 1452 - 1454 - 1456 - 1458 - 1460 - 1462 - 1464 - 1466 - 1468 - 1470 - 1472 - 1474 - 1476 - 1478 - 1480 - 1482 - 1484 - 1486 - 1488 - 1490 - 1492 - 1494 - 1496 - 1498 - 1500 - 1502 - 1504 - 1506 - 1508 - 1510 - 1512 - 1514 - 1516 - 1518 - 1520 - 1522 - 1524 - 1526 - 1528 - 1530 - 1532 - 1534 - 1536 - 1538 - 1540 - 1542 - 1544 - 1546 - 1548 - 1550 - 1552 - 1554 - 1556 - 1558 - 1560 - 1562 - 1564 - 1566 - 1568 - 1570 - 1572 - 1574 - 1576 - 1578 - 1580 - 1582 - 1584 - 1586 - 1588 - 1590 - 1592 - 1594 - 1596 - 1598 - 1600 - 1602 - 1604 - 1606 - 1608 - 1610 - 1612 - 1614 - 1616 - 1618 - 1620 - 1622 - 1624 - 1626 - 1628 - 1630 - 1632 - 1634 - 1636 - 1638 - 1640 - 1642 - 1644 - 1646 - 1648 - 1650 - 1652 - 1654 - 1656 - 1658 - 1660 - 1662 - 1664 - 1666 - 1668 - 1670 - 1672 - 1674 - 1676 - 1678 - 1680 - 1682 - 1684 - 1686 - 1688 - 1690 - 1692 - 1694 - 1696 - 1698 - 1700 - 1702 - 1704 - 1706 - 1708 - 1710 - 1712 - 1714 - 1716 - 1718 - 1720 - 1722 - 1724 - 1726 - 1728 - 1730 - 1732 - 1734 - 1736 - 1738 - 1740 - 1742 - 1744 - 1746 - 1748 - 1750 - 1752 - 1754 - 1756 - 1758 - 1760 - 1762 - 1764 - 1766 - 1768 - 1770 - 1772 - 1774 - 1776 - 1778 - 1780 - 1782 - 1784 - 1786 - 1788 - 1790 - 1792 - 1794 - 1796 - 1798 - 1800 - 1802 - 1804 - 1806 - 1808 - 1810 - 1812 - 1814 - 1816 - 1818 - 1820 - 1822 - 1824 - 1826 - 1828 - 1830 - 1832 - 1834 - 1836 - 1838 - 1840 - 1842 - 1844 - 1846 - 1848 - 1850 - 1852 - 1854 - 1856 - 1858 - 1860 - 1862 - 1864 - 1866 - 1868 - 1870 - 1872 - 1874 - 1876 - 1878 - 1880 - 1882 - 1884 - 1886 - 1888 - 1890 - 1892 - 1894 - 1896 - 1898 - 1900 - 1902 - 1904 - 1906 - 1908 - 1910 - 1912 - 1914 - 1916 - 1918 - 1920 - 1922 - 1924 - 1926 - 1928 - 1930 - 1932 - 1934 - 1936 - 1938 - 1940 - 1942 - 1944 - 1946 - 1948 - 1950 - 1952 - 1954 - 1956 - 1958 - 1960 - 1962 - 1964 - 1966 - 1968 - 1970 - 1972 - 1974 - 1976 - 1978 - 1980 - 1982 - 1984 - 1986 - 1988 - 1990 - 1992 - 1994 - 1996 - 1998 - 1999 - 2000

*LOT AREAS & LAND USE SUBJECT TO CHANGE

EXHIBIT D

Allocable Share of Assessments and Voting Power

Lot/Parcel # ^{1/} :	Lot Size (Acres) ^{2/}	Voting Power ^{2/}	Allocable Share of Assessments for Lots Initially Subject to Declaration (%) ^{2/}
Parcel 1	23.0	23	
Parcel 2	18.2	18	
Parcel 4	20.6	21	
Lots:			
Final Map Phase 1			
1	1.1	1	.9
2	1.2	1	.9
3	1.2	1	.9
4	4.5	5	4.5
5	11.8	12	10.9
6	7.2	7	
7	1.7	2	

^{1/} Refers to Lots/Parcels described and/or depicted on Exhibits A and B.

^{2/} Approximate net acreage of Lots/Parcels. Total votes for Lots initially subject to Declaration = 112. Votes allocated based on 1 vote per each net acre of each Lot as set forth herein rounded to the nearest net acre, subject to re-calculation in the future upon a reduction of net acreage due to any re-configuration of dedicated streets on Lots or Parcels. In addition, both Voting Power and Allocable Share of Assessments are subject to re-calculation as provided in the Declaration and any Declaration of Annexation.

Lot/Parcel # ¹ :	Lot Size (Acres) ¹²	Voting Power ¹²	Allocable Share of Assessments for Lots Initially Subject to Declaration (%) ¹²
Final Map Phase 2			
1	2.4	2	1.8
2	1.0	1	.9
3	5.8	6	5.4
4	1.0	1	.9
5	3.0	3	2.7
6	3.5	4	3.6
7	3.9	4	3.6
8	5.8	6	4.5
9	2.9	3	2.7
10	2.6	3	2.7
11	2.7	3	2.7
12	4.3	4	3.6
13	3.3	3	2.7
14	3.1	3	2.7
15	3.0	3	2.7
16	3.0	3	2.7
17	2.5	3	
18	2.8	3	2.7
19	3.0	3	2.7
20	2.7	3	2.7
21	5.1	5	4.5
22	2.2	2	

Lot/Parcel # ¹ :	Lot Size (Acres) ²	Voting Power ²	Allocable Share of Assessments for Lots Initially Subject to Declaration.(%) ²
23	2.8	3	2.7
24	2.5	3	2.7
25	4.2	4	3.6
26	1.6	2	1.8
27	5.0	5	4.5
28	4.1	4	3.6
29	2.0	2	1.8
30	3.1	3	2.7
31	2.0	2	
CSC ³	10.0	10	

³ As shown on Exhibit B.

EXHIBIT E

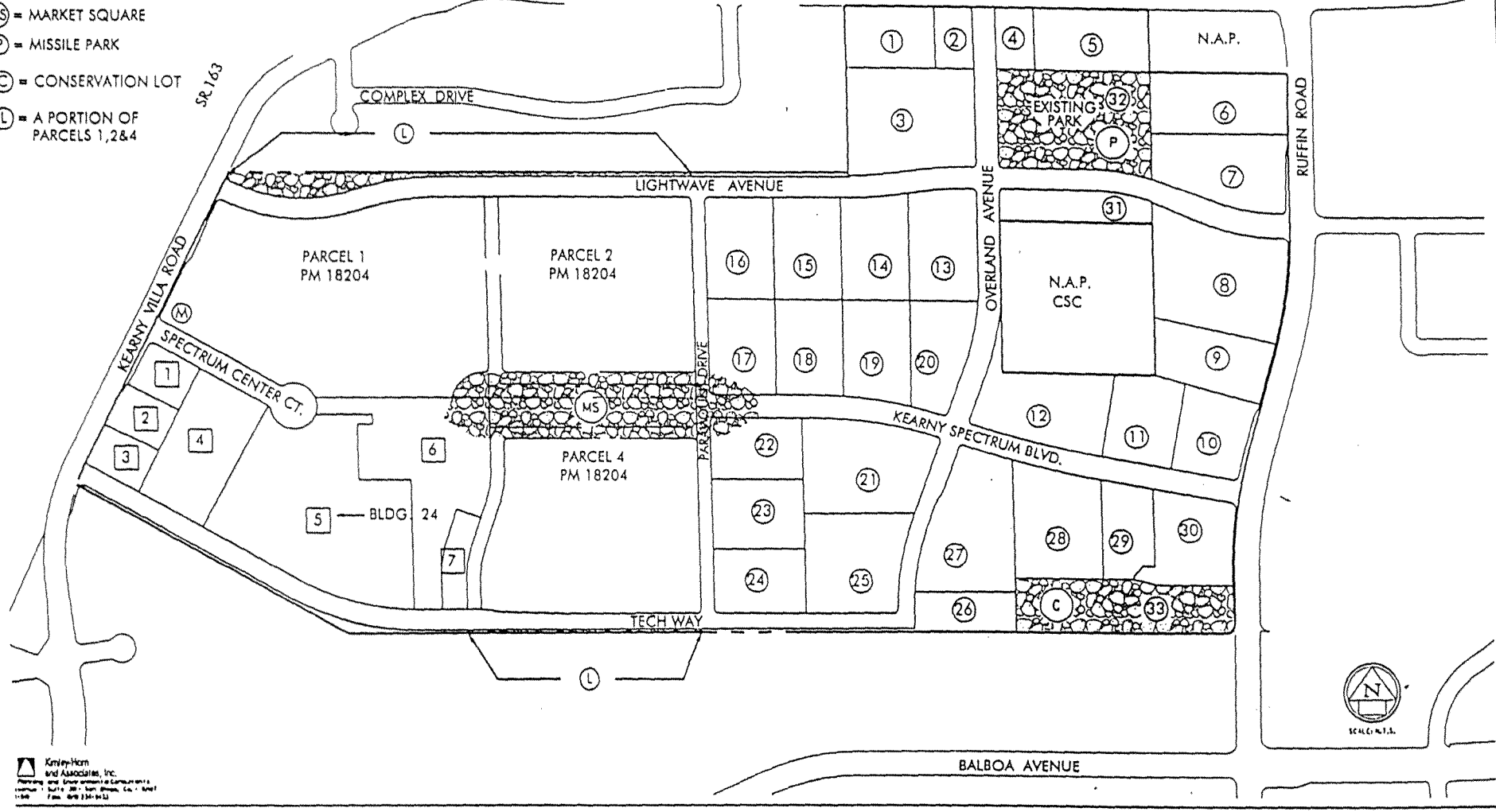
Potential Common Area

Attached Hereto

EXHIBIT E POTENTIAL COMMON AREA SAN DIEGO SPECTRUM

CLAIREMONT MESA BLVD.

- LEGEND**
- ① - LOT - SDS PHASE 1 MAP 13826
 - ⑦ - LOT - SDS PHASE 2 MAP 13827
 - Ⓧ = VERTICAL PROJECT MONUMENT
 - MS = MARKET SQUARE
 - P = MISSILE PARK
 - C = CONSERVATION LOT
 - L = A PORTION OF PARCELS 1,2&4



Kimley-Horn and Associates, Inc.
 Planning and Environmental Consultants
 14000 San Diego Ave., Suite 200, San Diego, CA 92128
 Phone: (619) 594-9133

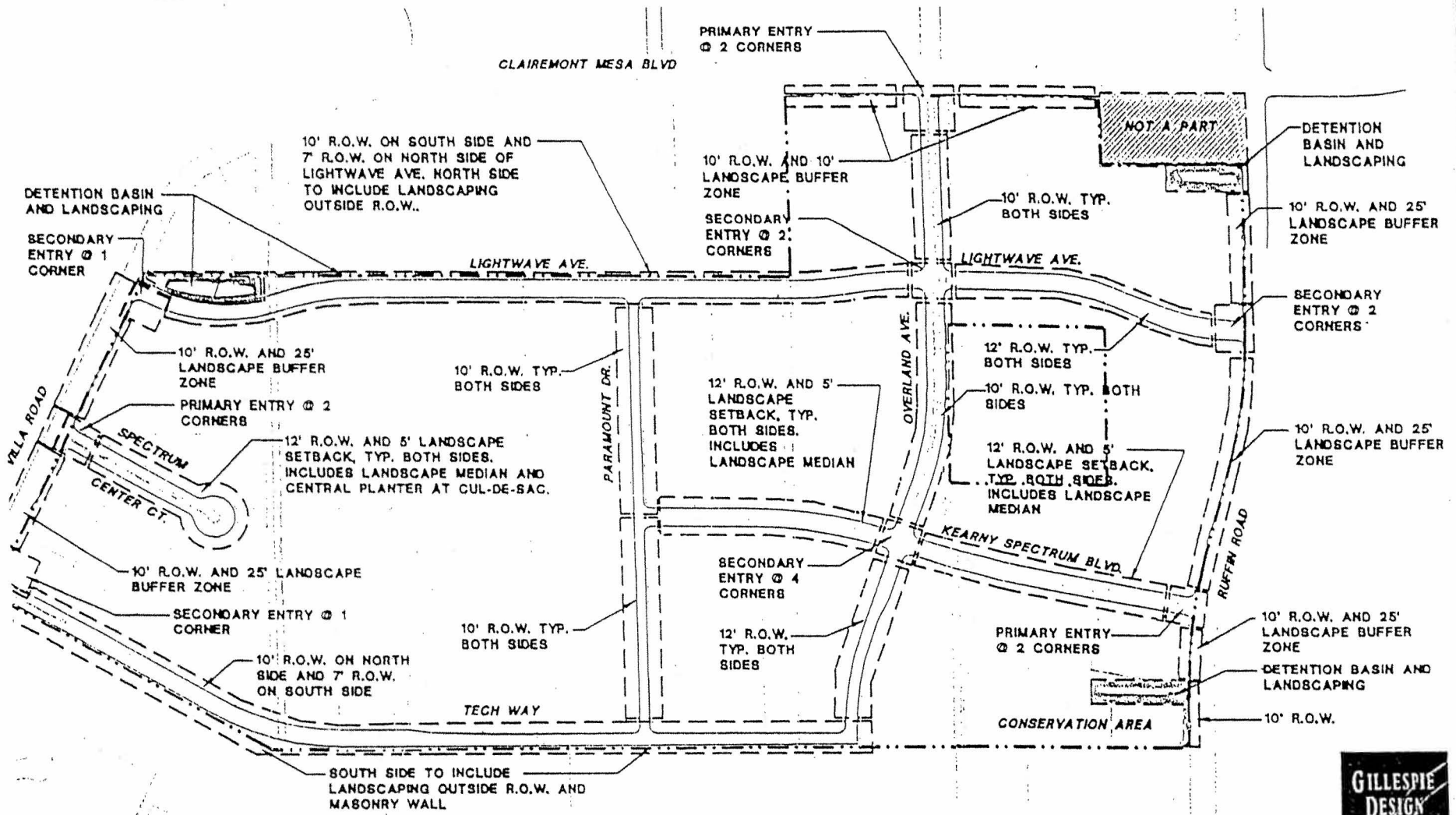
* LOT AREAS & LAND USE SUBJECT TO CHANGE

EXHIBIT F

Financing District Improvements

1. Three Drainage and Retention Facilities and related improvements and pipes to City system.
2. All Drainage and Retention Facilities landscape and irrigation.
3. Landscaping and irrigation within all street right-of-way, medians and Lot A of Phase 1 and Lots A and B of Phase 2 of final subdivision maps referenced in Exhibit A and on a portion of Parcels 1, 2 and 4 shown on Exhibit E, pursuant to City approved Landscape Plan.
4. Retaining wall on Lot A of Phase 1 final subdivision map, Lot B of Phase 2 final subdivision map referenced in Exhibit A and on a portion of Parcel 4 shown on Exhibit E located outside of City right-of-way.
5. Any enhanced cross-walk improvements in public street right-of-way pursuant to City approved Landscape Plan.
6. Expanded landscape areas at Ruffin Road, Kearny Villa Road, and Clairemont Mesa Boulevard frontage and all enhanced intersection corners pursuant to City approved Landscape Plans.
7. Planted circle and amenity at Spectrum Court.
8. Two bus stop facilities if not maintained by M.T.D.B.
9. Landscape areas at primary and secondary monument locations (not Vertical Monuments to be maintained by Association) at intersections.

1/ The Financing District Improvements are as currently contemplated by the Project Approval Documents and are subject to change.



- NOTES:**
1. PRIMARY ENTRY AREAS SHALL HAVE A 45' SETBACK, TYP.
 2. SECONDARY ENTRY AREAS SHALL HAVE A 35' SETBACK, TYP.
 3. AREAS SHOWN ARE NOT TO SCALE AND ARE FOR GRAPHIC REPRESENTATION ONLY.
 4. AREAS TO BE MAINTAINED ARE SUBJECT TO MODIFICATION UPON DISTRICT FORMATION.
- M.A.D. AREAS TO INCLUDE:**
1. LANDSCAPING WITHIN THE R.O.W.
 2. LANDSCAPE SETBACKS ALONG RUFFIN ROAD, KEARY VILLA ROAD, AND CLAIREMONT MESA BLVD.
 3. LANDSCAPING, IRRIGATION AND LIGHTING AT THE PRIMARY AND SECONDARY ENTRY AREAS.
 4. (3) THREE DETENTION BASINS INCLUDING LANDSCAPING AND IRRIGATION.

EXHIBIT F
MAINTENANCE ASSESSMENT DISTRICT
SAN DIEGO SPECTRUM



DATE	
SCALE	
PROJECT NO.	
DATE	
SCALE	

SCALE: 1"=620'-0"

EXHIBIT G

Maximum Buildable Square Footage Per Lot

TRACT 13826 (PCD Area)

LOT #	LOT AREA (acres) ^{2/}	MAXIMUM BUILDABLE SQUARE FOOTAGE ^{3/}
1	1.1 acres	11,979 sq. ft.
2	1.2 acres	13,068 sq. ft.
3	1.2 acres	13,068 sq. ft.
4	4.5 acres	129,373 sq. ft.
5	11.8 acres	200,000 sq. ft.
6	7.53 acres	200,000 sq. ft.

Reserved Buildable Capacity (PCD Area)^{1/}	862,512 sq. ft.
--	------------------------

^{1/} Allocable by Declarant pursuant to Section 5.11 of Declaration. The maximum buildable square footages of Lot 31 of Tract 13827, Parcels 1, 3 and 4 of PM 18204 and the CSC parcel (shown on Exhibit A) are not shown and will be allocated maximum buildable square footages in Declarations of Annexation or Supplementary Declarations. Declarant shall also be entitled to reallocate up to 143,000 square feet from the PCD Area to the PID Area pursuant to the Project Approval Documents, in a manner that is consistent with the Project Approval Documents. Certain Lots may be transferred between the PCD Area and PID Area upon the approval by the City. All buildable square footages are subject to amendment and adjustment by the City pursuant to the Project Approval Documents, at the request of Declarant and upon the consent of the Owner of the affected Lot(s).

^{2/} Lot Areas are subject to adjustment upon dedication of public right-of-ways to the City and maximum buildable square footage may be reduced accordingly.

^{3/} The maximum buildable square footages set forth herein are based in the uses and zoning permitted under the Project Approval Documents. Other uses approved by the Declarant, Design Review Committee and/or City requiring a conditional use permit or other amendment to the Project Approval Documents may not be limited by these square footages.

TRACT 13827 (PID Area)

LOT #	LOT AREA (acres) ^{1/2}	MAXIMUM BUILDABLE SQUARE FOOTAGE BUILDOUT ^{1/2}
1	2.4 acres	20,681 sq. ft.
2	1.0 acres	8,617 sq. ft.
3	5.8 acres	49,892 sq. ft.
4	1.0 acres	8,617 sq. ft.
5	3.0 acres	25,851 sq. ft.
6	3.5 acres	61,622 sq. ft.
7	3.9 acres	72,838 sq. ft.
8	5.8 acres	106,290 sq. ft.
9	2.9 acres	51,058 sq. ft.
10	2.6 acres	49,950 sq. ft.
11	2.7 acres	47,537 sq. ft.
12	4.3 acres	75,707 sq. ft.
13	3.3 acres	77,219 sq. ft.
14	3.1 acres	72,071 sq. ft.
15	3.0 acres	71,135 sq. ft.
16	3.0 acres	71,135 sq. ft.
17	2.82 acres	65,987 sq. ft.
18	2.8 acres	66,221 sq. ft.
19	3.0 acres	69,731 sq. ft.
20	2.7 acres	62,711 sq. ft.
21	5.1 acres	119,338 sq. ft.
22	2.5 acres	58,499 sq. ft.

LOT #	LOT AREA (acres) ¹²	MAXIMUM BUILDABLE SQUARE FOOTAGE BUILDOUT ¹³
23	2.8 acres	65,519 sq. ft.
24	2.5 acres	58,499 sq. ft.
25	4.2 acres	98,278 sq. ft.
26	1.6 acres	35,443 sq. ft.
27	5.0 acres	110,759 sq. ft.
28	4.1 acres	90,823 sq. ft.
29	2.0 acres	44,304 sq. ft.
30	3.1 acres	68,671 sq. ft.

Reserved Buildable Capacity (PID Area) ¹¹	1,149,997 sq. ft.
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