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BY _____

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND RECIPROCAL EASEMENT AGREEMENTS
FOR EMERYBAY, PARCELS 1, 2 AND A

EmeryBay
Emeryville, California

AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS AND RECIPROCAL
EASEMENT AGREEMENTS FOR EMERYBAY, PARCELS 1, 2 AND A

This Amended and Restated Declaration of Covenants, Conditions, Restrictions and Reciprocal Easement Agreements for EmeryBay, Parcels 1, 2 and A ("Declaration") is made as of this 30th day of July, 1992, by JS BAY CENTER ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP ("Declarant"), and THE EMERYVILLE REDEVELOPMENT AGENCY, a public body, corporate and politic ("RDA"). This Declaration amends and restates that certain document entitled "Declaration of Covenants, Conditions, and Restrictions and Reciprocal Easement Agreements for Bay Center, Parcels 1, 2 and A" which was filed for record on October 1, 1987 in the Official Records of Alameda County, State of California as Document Number 87-270771 (the "Original Declaration"). From and after the date hereof, the Original Declaration shall read in its entirety as follows:

RECITALS

A. Declarant is the owner of certain improved real property ("Property") located within the City of Emeryville, County of Alameda, State of California, comprised of Parcel 1 ("Parcel 1") and Parcel 2 ("Parcel 2") on that certain parcel map entitled "Parcel Map No. 4664" ("Parcel Map 4664"), filed December 30, 1985, in Book 159 of Parcel Maps at Pages 16 and 17, Alameda County Records, and Parcel A ("Parcel A") on that certain parcel map entitled "Parcel Map No. 4947" ("Parcel Map 4947"), filed February 26, 1987, in Book 165 of Parcel Maps at Pages 96 and 97, Alameda County Records.

B. The Property is subject to an owner participation agreement dated as of September 17, 1985, and amended on March 6, 1987, and July 12, 1987 (collectively "Participation Agreement"), by and between RDA and The Martin Group of Companies, Inc., a California corporation, the terms and conditions of which are incorporated herein by this reference.

C. Declarant desires to develop, improve and maintain the Property as a first-class office and research services center with three (3) office buildings (collectively the "Buildings"). The Buildings are Buildings A, B, and C on Parcels 1, 2, and A, respectively.

D. Adjacent to the Property is a condominium development ("Condominium Development") created by that certain Condominium Plan for Tract 5781 (the "Plan") filed in the Office of the Recorder of the County of Alameda, State of California on

September 18, 1987, in Book 171 of Maps at Pages 65 through 79, inclusive, and attached to the Condo CC&Rs (as hereinafter defined) as Exhibit A thereto. Commercial Unit 1 of the Condominium Development, as shown on the Plan, contains ground level parking for the Buildings and Residential Units (as such term defined in the Condo CC&Rs) (such ground level parking, as currently existing and as later so developed, the "Office Parking Area"). The portion of the Office Parking Area located below Lot 4 (as hereinafter defined) (such portion, the "Joint Parking Area") will be further developed by the Lot 4 Owner (as hereinafter defined) to be the lower level of a two level parking structure, the upper level (the "Upper Level") of which will be within the lot depicted on the Plan as Lot 4 ("Lot 4"). The Joint Parking Area is part of the Office Parking Area (and included within the definition thereof) for all purposes of this Declaration. The Upper Level is not part of the Office Parking Area or the Joint Parking Area.

E. RDA is the owner of Lot 4 and of the real property described on Exhibit A attached hereto (the "Lot 4 Adjacent Property"). RDA desires to develop, improve and maintain Lot 4 and the Lot 4 Adjacent Property as a first-class residential apartment building with a total of approximately two hundred sixty (260) residential apartment units and a two level parking garage, (such development, the "Lot 4 Improvements", and the portion of the Lot 4 Improvements located within the Joint Parking Area, the "Joint Parking Area Improvements").

F. As an incident of the creation of the Condominium Development, a Declaration of Covenants, Conditions and Restrictions Establishing a Plan of Condominium Ownership for Bay Center, recorded on October 1, 1987 as Instrument No. 87-270768 among the Official Records of Alameda County, California, as amended and restated by Amended and Restated Declaration of Covenants, Conditions and Restrictions Establishing a Plan of Condominium Ownership for Emerybay, to be recorded concurrently herewith among said Official Records (as the same may be further amended or restated from time to time, the "Condo CC&Rs"), established a common area and a commercial association ("Commercial Condo Association") and a residential association to govern the relationship between the owners of the condominiums in the Condominium Development.

G. Declarant may sell or otherwise dispose of Parcel 1, and/or Parcel 2, and/or Parcel A to future owners who as of the date first above written are unknown to Declarant and the Lot 4 Owner may sell or otherwise dispose of Lot 4 and/or the Lot 4 Adjacent Property to future owners who as of the date first above written are unknown to the Lot 4 Owner. The present and future owner of Parcel 1, if any, shall hereinafter be referred to as Owner 1, the present and future owner of Parcel 2, if any,

shall hereinafter be referred to as Owner 2, the present and future owner of Parcel A, if any, shall hereinafter be referred to as Owner A, the present and future owner of Lot 4, if any, shall hereinafter be referred to as the Lot 4 Owner and the present and future owner of the Lot 4 Adjacent Property, if any, shall hereinafter be referred to as the Lot 4 Adjacent Property Owner.

H. Owner 1 shall have the right, as hereinafter set forth, to park motor vehicles on Parcels 2 and A; Owner 2 shall have the right, as hereinafter set forth, to park motor vehicles on Parcels 1 and A; and Owner A shall have the right, as hereinafter set forth, to park motor vehicles on Parcels 1 and 2.

I. Owners 1, 2 and A, the Lot 4 Owner and the Lot 4 Adjacent Property Owner shall also have the right to use the Joint Parking Area in accordance with the terms and conditions hereinafter set forth and the terms and conditions set forth in the Condo CC&Rs.

J. In order to provide for efficient development of the Property, the Office Parking Area, Lot 4 and the Lot 4 Adjacent Property and to provide for orderly ingress, egress and parking therein, and to provide for common utilities, storm drains and sanitary sewers across the Property and outside the Buildings, Declarant and the Lot 4 Owner desire to declare the Property, the Office Parking Area, Lot 4 and the Lot 4 Adjacent Property to be subject to the following covenants, conditions, and restrictions.

NOW THEREFORE, Declarant, as Owner of the Property and Office Parking Area, and the Lot 4 Owner, as Owner of Lot 4 and the Lot 4 Adjacent Property, hereby declare that all of the Office Complex, as hereinafter defined, Lot 4 and the Lot 4 Adjacent Property, are and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, conditions, restrictions and limitations hereinafter set forth ("CC&Rs") and that when sold or otherwise disposed of, such property shall be subject to the reciprocal and other easements hereinafter described, all of which are declared to be in furtherance of a plan for the development of the Property as a first-class professional office and research services center, and Lot 4 and the Lot 4 Adjacent Property as a first-class residential apartment building and the subsequent subdivision, improvement, lease or sale of the Property, Lot 4 and the Lot 4 Adjacent Property, or any part thereof, and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property, Lot 4 and the Lot 4 Adjacent Property. All CC&Rs and reciprocal and other easements shall run with the land and every part thereof and interest therein, shall be for the benefit of and bind all parties having

or acquiring any right, title, interest or estate in the Property, Lot 4 or the Lot 4 Adjacent Property, or any part thereof, and shall inure to the benefit of and bind each and every successor in interest of the owners thereof.

ARTICLE 1
DEFINITIONS

Section 1.1 **Buildings**. "Buildings" means those existing buildings designated herein as Buildings A, B, and C on Parcels 1, 2, and A, respectively, as such parcels are set forth on Parcel Map 4664 and Parcel Map 4947.

Section 1.2 **City**. "City" means the City of Emeryville, California.

Section 1.3 **Declarant**. "Declarant" means JS Bay Center Associates, A California Limited Partnership, and the successors and assigns of Declarant. Declarant's assigns shall include any Person or Persons whom Declarant designates by a notice recorded in the Official Records of Alameda County, California, as the Person or Persons who, from and after the date of such recordation, shall perform all or any part of Declarant's functions under this Declaration.

Section 1.4 **Ground Tenant**. "Ground Tenant" means a tenant of all of a Parcel, Lot 4 or the Lot 4 Adjacent Property which has leased such property directly from the Owner thereof. Neither any Parcel, Lot 4 nor the Lot 4 Adjacent Property shall have more than one (1) Ground Tenant at any given time. No Ground Tenant shall enjoy any rights or privileges granted to a Ground Tenant hereunder unless and until notice of its status as such is given to each Owner and each other Ground Tenant, and each Mortgagee, and a memorandum of such Ground Tenant's lease is recorded in the Office of the Alameda County Recorder. So long as Teachers Insurance and Annuity Association of America, a New York corporation ("Teachers"), holds a Mortgage on any property subject to this Declaration, there can be no Ground Tenant of any property encumbered by Teachers' Mortgage unless Teachers shall give its prior written consent to such proposed Ground Tenant's lease, and any such proposed Ground Tenant's lease shall be of no force and effect until Teachers has given such consent.

Section 1.5 **Housing Area**. "Housing Area" means the Residential Area (as such term is defined in the Condo CC&Rs).

Section 1.6 **Joint Parking Area**. "Joint Parking Area" shall have the meaning set forth in Recital D.

Section 1.7 Joint Parking Area Improvements. "Joint Parking Area Improvements" shall have the meaning set forth in Recital E.

Section 1.8 Lot 4. "Lot 4" shall have the meaning set forth in Recital D.

Section 1.9 Lot 4 Adjacent Property. "Lot 4 Adjacent Property" shall have the meaning set forth in Recital E.

Section 1.10 Lot 4 Improvements. "Lot 4 Improvements" shall have the meaning set forth in Recital E.

Section 1.11 Manager. "Manager" means any Person or Persons assuming the rights, duties, and obligations of the Manager as set forth in Article 8 of this Declaration.

Section 1.12 Martin Group of Companies, Inc. "Martin Group of Companies, Inc." means that certain California corporation, associated with Declarant, which shall be the initial Manager.

Section 1.13 Mortgage and Mortgagee. "Mortgage" means any recorded mortgage, deed of trust or other security instrument given in good faith and for value which constitutes a lien on all or any portion of, or any ground leasehold interest in, the Property, the Office Parking Area, Lot 4, the Lot 4 Adjacent Property or any improvements thereon. "Mortgagee" means the holder, from time to time, of a Mortgage. In the event that any Mortgagee shall acquire the property encumbered by its Mortgage through foreclosure, deed in lieu of foreclosure or other proceeding in the nature thereof, until such Mortgagee shall transfer such property it shall be entitled to all rights and remedies afforded an Owner and/or Ground Tenant hereunder, as the case may be, and, in addition, to such other notice, cure and consent rights hereunder as if it had remained a Mortgagee.

Section 1.14 Occupant. "Occupant" means any individual, partnership, corporation or other legal entity (including Declarant) which is in possession of or otherwise occupying all or part of the Property, the Office Complex, Lot 4, the Lot 4 Adjacent Property or the Lot 4 Improvements, whether as an Owner, Ground Tenant, lessee, sublessee, licensee or otherwise pursuant to any lease, sublease, license or other occupancy agreement.

Section 1.15 Office Common Area. "Office Common Area" means all of Parcels 1, 2, and A (excluding the Buildings) and the Office Parking Area, and all rights of possession, occupancy and use thereof. Office Common Area includes all motor vehicle parking areas, roadways, walkways, courtyards, landscaped areas

and other facilities lying outside of the Buildings provided for the use of all Occupants and Permittees.

Section 1.16 Office Common Area Improvements. "Office Common Area Improvements" means without limitation, all outbuildings, fixtures, landscaping, paving, lighting, and anything else erected, built, placed, installed or constructed on or under the Office Common Area. Office Common Area Improvements include all improvements constructed as a part of the Office Common Area, including the Office Parking Area and the Joint Parking Area Improvements (whether constructed by Declarant, the Lot 4 Owner or any other party), and such other improvements as may from time be constructed or installed on the Office Common Area.

Section 1.17 Office Complex. "Office Complex" means the Buildings, the Office Common Area and the Office Common Area Improvements.

Section 1.18 Office Parking Area. "Office Parking Area" shall have the meaning set forth in Recital D.

Section 1.19 Office Owner. "Office Owner" means any individual, partnership, corporation or other legal entity (including Declarant) which is the record owner of fee simple title to all or part of Parcel 1, 2, or A.

Section 1.20 Owner. "Owner" means any individual, partnership, corporation or other legal entity (including Declarant) which is the record owner of fee simple title to all or part of Parcel 1, 2, A, or Lot 4 or the Lot 4 Adjacent Property.

Section 1.21 Parcel. "Parcel" means Parcel 1, 2, or A.

Section 1.22 Participation Agreement. "Participation Agreement" shall have the meaning set forth in Recital B.

Section 1.23 Permittees. "Permittees" means the officers, directors, employees, agents, partners, contractors, customers, visitors, invitees, licensees, and concessionaires of an Owner or Occupant.

Section 1.24 Person. "Person" or "Persons" means any individual, partnership, association, corporation or other entity, or one or more of them, as the context may require.

Section 1.25 Property. "Property" means that certain real property consisting of Parcels 1, 2, and A.

Section 1.26 Residences. "Residences" means those residential housing units which may be constructed on the Housing Area.

Section 1.27 Square Footage. "Square Footage" means the total number of rentable square feet of floor space on all levels of a Building, including basement, mezzanines, and all areas occupied for storage, measured in accordance with the Building Owners and Managers Association (BOMA) American National Standard (Reprinted May, 1981). The rentable square feet shall be approximately one hundred nineteen thousand seven hundred seventy (119,770) with respect to Building A, seventy-six thousand and twenty-five (76,025) with respect to Building B, and one hundred nineteen thousand seven hundred seventy (119,770) with respect to Building C. The Residences shall consist of not more than four hundred fifty thousand (450,000) square feet, excluding the Residential Common Area (as defined in the Condo CC&Rs).

Section 1.28 Utility Lines. "Utility Lines" means all electric light and power, telephone, telegraph, and telecommunication, water, storm drain, gas and sewer pipes, conduits, lines, trails or systems now located or subsequently constructed on the Property.

ARTICLE 2 USE AND OPERATING RESTRICTIONS

Section 2.1 Prohibited Uses. No use or operation shall be made, conducted, or permitted on any part of the Office Complex which use or operation is not consistent with the development and operation of first-class office and research service centers of a similar nature in the San Francisco Bay Area, or which is prohibited by the terms and conditions of the Participation Agreement, except that the use of the Office Parking Area may also be consistent with the development and operation of the Lot 4 Improvements as a first-class residential apartment building. Such prohibited uses and operations shall also include, without limitation (unless required by law), those which constitute, result in or require:

(a) Any public or private nuisance;

(b) Any noise or sound that is objectionable due to intermittence, beep, frequency, shrillness or loudness, except for security devices which have been approved by the owner or owners of the Parcel within which such security devices will be located, or soundmaking devices which are required by governmental authorities having jurisdiction over the affected portion of the Property;

(c) Any obnoxious odor;

(d) Storage or use of any obnoxious, toxic, caustic, corrosive or highly flammable fuel, gas or other substance (unless such storage or use is with the Manager's written consent and is in compliance with all local, State and Federal rules, statutes and ordinances).

(e) Any dust or dirt in excessive quantities;

(f) Any fire, explosion or other damaging or dangerous hazards (except that normal cooking operations may be conducted in any food preparation facility located in the Office Complex);

(g) Any drilling for removal of subsurface substances;

(h) Any distillation, refining, smelting, industrial, agricultural, drilling or mining operation; and

(i) Any dumping, disposal, incineration or reduction of garbage or refuse, other than handling or reducing such waste if produced on the Office Complex in connection with authorized uses and if handled in a reasonably clean and sanitary manner.

Any dispute arising out of this Section 2.1 shall be submitted to arbitration pursuant to Article 10.

Section 2.2 Name of Center. The Property and the improvements thereon shall be known as "EmeryBay" and such name shall not be changed without the unanimous consent of the Office Owners.

Section 2.3 Signs and Banners. All signs, symbols, advertisements or billboards installed or used on any portion of the Office Complex shall conform to the criteria from time to time set forth by the Manager, unless a proposed deviation is approved in writing by the Manager, and be in compliance with all laws and ordinances regulating signage. In no event shall any banners, balloons, inflated figures or other lighter-than-air devices be tethered, tied to, or otherwise affixed or flown from or in any portion of the Office Complex so as to be visible on the exterior of any Building without the prior written approval of the Manager.

Section 2.4 Exterior Sound Systems. No loudspeakers or other devices for the production or projection of sound or noise on the outside of any Building shall be permitted.

Section 2.5 Waste and Refuse. All waste and refuse shall be regularly removed from the premises of all Occupants of the Office Complex. No Owner or Occupant shall permit or cause any waste or refuse to be kept on any portion of the Office Common Area except in disposal areas or containers designated for such purpose.

Section 2.6 Outside Storage and Equipment. No materials, supplies, equipment or products shall be stored or permitted to remain on any portion of the Office Complex outside a Building without the prior written approval of the Manager. Such storage shall be permitted only where screened from view by a permanent wall or other appropriate screen compatible with such Building's design.

Section 2.7 Temporary Structures. No temporary buildings or other temporary structures shall be permitted on the Office Complex, except as preapproved in writing by Manager (such approval not to be unreasonably withheld) for construction purposes during the course of construction approved hereunder.

Section 2.8 Barriers. No fence, wall, structure or other barrier of any kind (except as specifically permitted herein) shall be placed, kept, permitted or maintained upon the Office Common Area without the prior written consent of the Manager.

Section 2.9 Drainage. There shall be no interference with the established drainage pattern over any portion of the Property. For purposes of this section, "established drainage" is defined as the drainage which exists at the time the overall grading on that portion of the Property is completed.

Section 2.10 Selling Activities. There shall be no goods or services sold or offered for sale or displayed in the Office Complex outside the physical limits of any Building without Manager's written consent, other than banking services offered through automated teller machines approved by the Manager, the use of the outdoor dining facility used in conjunction with any restaurant facility in the Property, and/or other outdoor selling or promotion in connection with irregular or special events, which shall require the prior written consent of the Manager and shall not unreasonably interfere with the flow of traffic or parking.

Section 2.11 Compliance with Law. Notwithstanding any other provision of this Declaration, no Owner shall make any use of its portion of the Office Complex which is not in compliance with all applicable laws, statutes, ordinances, rules and regulations of all federal, state and municipal governments and

agencies with jurisdiction thereover, and any redevelopment agency.

Section 2.12 Subdivision of Parcels. None of the Parcels shall be subdivided by parcel map or subdivision map, or otherwise, without the prior written approval of the Mortgagee of such Parcel, the Manager, any Mortgagee who released its lien on the Parcel to be subdivided but retained its lien on another Parcel, and the unanimous consent of the other Office Owners; the Office Owners acknowledge that such consent may be withheld in the absolute discretion of the Manager or other Office Owners, or such Mortgagees.

Section 2.13 Soil Contamination. Each Office Owner shall maintain on its respective Parcel in those portions of the Parcel now existing as "fill areas" clean fill at a minimum depth of eighteen (18) inches and shall not disturb such fill, nor disturb, inspect or alter any items, including without limitation, utility vaults presently existing beneath such fill without the prior written consent of Manager. Furthermore, each Office Owner shall insure that those portions of its respective Parcel not presently filled remain covered with concrete or asphalt and any deviation therefrom shall require the prior written consent of Manager and any other governmental entity with jurisdiction thereover.

Section 2.14 Hazardous Materials. No Owner (including, without limitation, any Person claiming any right to use any portion of the Office Complex, Lot 4 or the Lot 4 Adjacent Property through any such Owner) shall do or permit to be done any act or thing upon any portion of the Office Complex, Lot 4 or the Lot 4 Adjacent Property which shall subject itself or any other Owner (including, without limitation, Declarant) or any such Person, to any liability, responsibility, cost or expense including, without limitation, attorneys' and paralegals' fees and costs and court costs and expenses of investigation and remediation due to the use, storage, migration or disposal of any Hazardous Materials (as defined below), and each Owner and each such Person shall indemnify, defend, protect and hold every other Owner, Person, Declarant, all Mortgagees and the Manager, and their respective agents, employees, officers, directors, shareholders, lessees, invitees and licensees harmless from and against any such liability, responsibility, cost or expense. "Hazardous Materials" shall mean any hazardous or toxic substances, materials and wastes listed in the United States Department of Transportation Table (49 CFR 172.101) or classified by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) or defined as hazardous substances in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9600 et seq.), and amendments thereto, or such substances, materials and wastes which are or become

regulated under any applicable local, state or federal law. The foregoing indemnification shall survive the expiration or any other termination of this Declaration.

ARTICLE 3 IMPROVEMENTS

Section 3.1 General. Each Building and all Office Common Area Improvements shall be of first-class construction and architecturally designed so that the exterior design, color and elevations thereof shall be architecturally and aesthetically compatible and harmonious with the other then existing Buildings and Common Area Improvements. The Lot 4 Improvements shall be of first-class construction and architecturally designed so that the exterior design, color and elevations thereof shall be architecturally and aesthetically compatible and harmonious with the then existing Housing Area. Any work done pursuant to this Article 3 shall be performed in a first-class manner in compliance with all applicable governmental rules and regulations and all provisions of this Declaration. No modifications to any existing Building or Lot 4 Improvements shall be approved under Section 3.2 which will adversely affect the fire resistivity of such Building, Office Common Area Improvements or Lot 4 Improvements.

Section 3.2 Approval Process. Prior to the addition to or construction (including reconstruction after damage) of any new building or improvement or existing Building upon any portion of the Property, Office Parking Area, Lot 4 or the Lot 4 Adjacent Property, and prior to any exterior changes, alterations or modifications of any existing Building, Office Common Area Improvements or Lot 4 Improvements, the party who desires to construct such new building or make such exterior changes, alterations or modifications shall submit to the Manager whatever portion of its plans, specifications, drawings and other pertinent information is necessary for the Manager to review adequately the exterior design, color and elevations that are proposed, and to either approve or disapprove of the same; provided, however, that nothing herein shall preclude the Owner or other interested Person from reconstructing a damaged or destroyed improvement to its condition immediately prior to such damage or destruction or require the approval of the Manager as a condition to such reconstruction so long as reasonable rules and regulations imposed by the Manager for the benefit of the Office Complex during the reconstruction process are followed. The Manager may not arbitrarily or unreasonably withhold or delay its approval of such plans and specifications and shall approve the same if they are in conformity with the criteria set forth in Section 3.1 and with the operation of a first-class office and research center or, in the case of the Lot 4 Improvements, a first-class residential apartment building. If the Manager disapproves such plans and

specifications, then within twenty (20) days the Manager shall provide a written explanation in reasonable detail of its reasons for disapproving; failing the Manager's explanation, the plans and specifications shall be deemed to be approved. If the plans and specifications of any party are disapproved as provided herein, the proposing party may then submit alternative plans and specifications, which alternate proposal shall be handled in the same manner as the initial proposal. Any dispute arising out of this subsection shall be submitted to arbitration pursuant to Article 10.

Section 3.3 Maintenance of Improvements. Subject to Section 5.6, each Owner shall maintain or cause to be maintained in good order, condition and repair, commensurate with the operation of a first-class office and research center or, in the case of Lot 4 Improvements, a first-class apartment building, the improvements located on such Owner's property, at each such Owner's expense. In the event such Owner fails to perform any obligation of such Owner under this Section 3.3 and said failure continues for ten (10) days after written notice from Manager, Manager shall have the right to perform such obligation on such Owner's behalf and/or to make payment on such Owner's behalf. Owner shall reimburse the Manager the reasonable cost of performing such obligation, including reimbursement of any amounts that may be expended by the Manager together with interest thereon at the rate of one percent (1%) per annum over the then-existing prime rate of interest as announced from time to time by Wells Fargo Bank, N.A. (but in no event exceeding the maximum lawful annual rate). Such Owner shall reimburse the Manager within ten (10) days of the Manager's delivery of a written, itemized demand for the cost of all maintenance and repair together with an amount equal to ten percent (10%) of the cost thereof to compensate the Manager for the administrative burden incurred. In the event that such demand is not paid within the ten (10) day period, the Manager may enforce collection in accordance with Section 8.4 below.

Section 3.4 Restoration. If any portion of the Office Complex or Lot 4 Improvements is damaged or destroyed by fire or any other cause whatsoever, whether insured or uninsured, during the term of this Declaration, each Owner's obligation to restore its portion of the Office Complex or Lot 4 Improvements shall be as follows, it being understood for purposes of this Section 3.4 and all other provisions of this Declaration, that the Joint Parking Area Improvements shall be deemed owned by the Lot 4 Owner:

(a) In the event that an Owner's property is damaged or destroyed, such Owner, subject to Section 3.4(b) and to any obligations imposed upon such Owner pursuant to the Condo CC&Rs and to the rights of any Mortgagee, including, without

limitation, the rights of the Mortgagee of the Office Complex pursuant to the terms of those certain deeds of trust, (i) dated September 30, 1987 by and among Teachers, as beneficiary, Bay Center Associates, A California Limited Partnership, as trustor, and Chicago Title Insurance Company, as trustee, recorded with the Office of the Recorder for Alameda County, California, on October 1, 1987, as Instrument No. 87-270772, as modified by First Supplement thereto dated October 12, 1988, by and between Teachers, as beneficiary, Bay Center Associates, A California Limited Partnership, as trustor, and Chicago Title Insurance Company, as trustee, recorded with the Office of the Recorder for Alameda County, California, on October 17, 1988, as Instrument No. 88-260823, and (ii) dated December 21, 1988, by and between Teachers, as beneficiary, and Bay Center Apartment Associates, A California Limited Partnership, as trustor, recorded with the Office of Recorder for Alameda County, California, on December 23, 1988, as Instrument No. 88-326381 (collectively, the "Deeds of Trust), shall determine in its sole discretion whether or not to restore the affected property. Should such Owner elect to restore its affected property, then it shall be obligated to promptly and diligently rebuild, replace and repair any such damaged or destroyed property, substantially to the same condition and general appearance as existed immediately prior to such damage or destruction or such other condition and appearance approved pursuant to Section 3.2. Should such Owner elect not to restore its affected property, then it shall be obligated to promptly and diligently raze and remove that portion of the property damaged or destroyed and undertake whatever action is necessary to return that portion of the Parcel or Lot 4 or the Lot 4 Adjacent Property, as the case may be, to a safe and sightly condition.

(b) In the event any Office Common Area Improvements are damaged or destroyed, then the Manager, using such insurance proceeds, if any, as are available to the Manager or Owners pursuant to the insurance obtained by Manager pursuant to Section 6.1, shall promptly and diligently rebuild, replace and repair ("Restore") any damaged or destroyed Office Common Area Improvements, substantially to the same condition and general appearance as existed immediately prior to such damage or destruction, or such other condition and appearance approved pursuant to Section 3.2. To the extent all such costs are not covered by any applicable insurance (or in the event of uninsured damage or destruction), the Manager shall Restore the Office Common Area Improvements to such condition using such insurance proceeds as are available, if any, together with shortfall funds provided by the Owners as described below. The Office Owners shall be obligated to pay any shortfall, except any shortfall attributable to restoration of the Joint Parking Area Improvements, according to the relation that the Square Footage of an Office Owner's Building bears to the total Square Footage of all

substantially completed Buildings on the Property (calculated based on the Square Footage amounts as in existence immediately prior to the damage or destruction). Any shortfall attributable to restoration of the Joint Parking Area Improvements shall be paid forty-two percent (42%) by the Office Owners (to be allocated among them as described above), and twenty-nine percent (29%) by each of the Lot 4 Owner and the Lot 4 Adjacent Property Owner. Notwithstanding the foregoing, in the event of damage or destruction to any Office Common Area Improvements, subject to the rights of any Mortgagee including, without limitation, the rights of the Mortgagee pursuant to the terms of the Deeds of Trust, any Owner may elect not to pay any restoration costs shortfall otherwise due from it, if, with the written consent of such Owner's Mortgagee, such Owner shall surrender all of its rights and interests with respect to the Office Common Area and all Office Common Area Improvements. Such surrender shall be in writing (in recordable form), executed by both such Owner and its Mortgagee, and contain such terms and provisions as the other Owners shall reasonably require. In the event of any such election, the uncovered shortfall left by such electing Owner shall be covered by the other Owners as described above. In the event that any insurance proceeds shall remain available after the Office Common Area Improvements shall have been Restored as described above, such proceeds shall be distributed to the Owners according to the same allocation as would be applicable in the event of an insurance shortfall with respect to the event giving rise to the proceeds. No Owner which has elected not to pay any shortfall pursuant to the foregoing provisions with respect to the event giving rise to the proceeds shall be entitled to any excess insurance proceeds with respect to such event.

ARTICLE 4 **EASEMENTS**

Section 4.1 In General. The following easements are hereby granted by each Office Owner to each other Office Owner, for the benefit of each Parcel and the Office Parking Area, and any conveyance of all or any portion of any Parcel or the Office Parking Area (the "Conveyed Parcel") shall include the following appurtenant easements over and across the Conveyed Parcel in favor of the non-conveying Office Owners:

(a) Access Roads Easements. Nonexclusive easements on, over and across all then existing vehicular ingress, egress and access roads constructed on the Office Common Area of the Conveyed Parcel. Such easements are for the purpose of vehicular ingress and egress by the non-conveying Owners.

(b) Parking Easements. A nonexclusive easement for vehicular circulation and parking on, over and across the

portion of the Office Common Area of the Conveyed Parcel which is improved for parking. Notwithstanding the foregoing grant of easement, (i) each Office Owner shall have the right to designate and reserve therefrom certain parking spaces within its respective Parcel for the benefit of certain Occupants and Permittees of such Parcel or such other party or parties as it shall designate, and (ii) the Office Owners shall together have the right to designate and reserve certain parking spaces within the Office Parking Area (including the Joint Parking Area) for use by certain Occupants and Permittees of the Office Complex or such other party or parties as they shall designate, except to the extent inconsistent with the rights of the Lot 4 Owner or the Lot 4 Adjacent Property Owner as set forth in the Condo CC&Rs. To the extent not precluded under any applicable tenant lease and provided the same would not result in an offset in rent on the part of any such tenant, nothing contained in this Declaration shall be construed to prohibit the Manager, with the unanimous consent of the Office Owners, from (i) imposing parking fees on Persons using such easements within the Office Complex (provided that no such fees shall be imposed with respect to the parking easements on the Joint Parking Area granted in favor of Lot 4 and the Lot 4 Adjacent Property pursuant to the Condo CC&Rs), or (ii) installing a card-operated gate or other similar device to regulate vehicular access to Parcels 1, 2, A and the Office Parking Area in accordance with the parking rights set forth in the preceding sentence and in the Condo CC&Rs.

(c) Pedestrian Easements. Nonexclusive easements on, over and across that portion of the Office Common Area on the Conveyed Parcel for the purpose of pedestrian passage of the non-conveying Owners and the Occupants and Permittees of such Owners' Parcels.

(d) Utilities Easements. Nonexclusive easements in, on and under the Conveyed Parcel as set forth in any applicable as-built drawings for the Conveyed Parcel for the purpose of installation, replacement, maintenance, inspection, use, removal and repair from time to time of the Utility Lines, including without limitation, all necessary and proper valves, fittings, pumps, measuring and protective devices, and other apparatus and equipment.

(e) Self-Help Easements. Nonexclusive easements on, over and across the Conveyed Parcel for the purpose of installing, constructing, repairing, maintaining, relocating or removing any Office Common Area Improvements, if such installation, construction, repair, maintenance, relocation or removal is required or permitted under the other provisions of this Declaration.

Each Office Owner shall use due care in the exercise of the rights granted in subsections (d) and (e) above so as to cause the least practicable interference with the operation of the remainder of the Office Complex. Each Office Owner, at its expense, shall promptly repair, replace or restore any and all Office Common Area Improvements or other property which have been damaged or destroyed in the exercise of the easements granted under subsections (d) and (e) above, and shall indemnify, defend and hold harmless all other Office Owners against all claims, costs, expenses (including attorneys' fees), and liabilities arising from such use of the easements unless occasioned by the other Office Owner's sole negligence or willful misconduct.

Section 4.2 Office Owners' Rights in Office Parking Area. The Office Parking Area shall be appurtenant to the Property and the Office Owners shall each own a one-third (1/3) undivided interest in the Office Parking Area. The Office Parking Area shall remain undivided as set forth in the preceding sentence. Except as set forth in California Civil Code Section 1359(b) (the exercise of any rights thereunder being expressly subject to the rights of all Mortgagees), no Office Owner shall bring any action for partition thereof. Notwithstanding the foregoing, the Joint Parking Area Improvements shall be deemed owned by the Lot 4 Owner. Each Office Owner shall have a non-exclusive right to use the Office Parking Area in common with the other Office Owners, subject to Section 4.1(b) and any rights granted to the Lot 4 Owner, the Lot 4 Adjacent Property Owner or any other parties pursuant to the Condo CC&Rs. No Office Owner may transfer, convey or encumber all or any part of the Office Parking Area separately from its respective Parcel, except that the foregoing shall not preclude all Office Owners from together executing such other documents or instruments as they may deem necessary to further effectuate the grant of any easements with respect to the Office Parking Area as set forth herein or in the Condo CC&Rs. Each Owner shall adhere to the rules and regulations promulgated by the Commercial Condominium Association pursuant to the Condo CC&Rs (insofar as the same affect the Office Parking Area).

Section 4.3 Rights of Visitors to Housing Area to Park in Office Complex. Manager shall, from time to time, subject to the Condo CC&Rs, establish and designate reasonable parking areas in the Office Complex for the benefit of visitors to the Buildings and the Housing Area.

ARTICLE 5

OPERATION AND MAINTENANCE OF OFFICE COMMON AREA

Section 5.1 Possession. Each Office Owner may at any time, remove, exclude, and restrain any Person from the use or

occupancy of the Office Common Area of which such Office Owner has an ownership interest, except for persons who use such area in accordance with, and pursuant to, the provisions of this Declaration, the Condo CC&Rs or other recorded easement or other agreement enforceable against any such Office Owner from time to time.

Section 5.2 Changes in Office Common Area. Unless required by the City or other governmental entity having authority over the matter, the location and size of the Office Common Area and Office Common Area Improvements, including without limitation all sidewalks, parking areas, walkways, streets, and landscaping, shall not be materially altered unless the Office Owners unanimously consent in writing to such alteration, except that any such alteration to the Joint Parking Area shall also require the written consent of the Lot 4 Owner and the Lot 4 Adjacent Property Owner.

Section 5.3 Power to Grant Easements. Declarant, so long as Declarant owns a Parcel, and the Manager shall have the power to grant and convey in the name of all the Office Owners as their attorney-in-fact (without the consent of the Lot 4 Owner or the Lot 4 Adjacent Property Owner) to any other Owner or third party easements and rights-of-way in, over, on, across, and under the Office Common Area for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires conduits or other devices for electricity, telecommunication, gas, water and other purposes, public sewers, storm drains and pipes, water systems, sprinkling systems, and any similar public or quasi-public improvements or facilities; and each purchaser, in accepting a deed to a Parcel or Lot 4 or the Lot 4 Adjacent Property, expressly consents to such easements and rights-of-way and such power of Declarant or Manager to grant further such easements and rights of way. Notwithstanding the foregoing, (i) no such easement or right-of-way may be granted if it would permanently materially interfere with the use, occupancy or enjoyment of any Owner with its Parcel (or Lot 4 in the case of the Lot 4 Owner or the Lot 4 Adjacent Property Owner with the Joint Parking Area) or right to use the Office Parking Area as set forth herein or in the Condo CC&Rs unless all such Owners (and their Mortgagees) who would suffer such interference give their prior written consent thereto.

Section 5.4 Management of Office Common Area. The Office Common Area shall be managed, controlled and operated by the Manager until such time as the Office Owners agree to an alternate form of management pursuant to Section 8.1.

Section 5.5 Rules and Regulations. In the management and operation of the Office Common Area, the Manager may, from time to time, adopt reasonable rules and regulations pertaining

to the use of the Office Common Area by Occupants and Permittees. Such rules and regulations, and all amendments or supplements thereto shall be subject to the prior written approval of all Mortgagees, such approval not to be unreasonably withheld. All such rules and regulations and other matters affecting the users of the Office Common Area shall apply equally and without discrimination to all Occupants and Permittees.

Section 5.6 Maintenance of Office Common Area and Office Common Area Improvements. The Office Owners (through the Manager) shall operate, maintain and repair in a first-class manner consistent with their intended use all of the Office Common Area and Office Common Area Improvements. The Manager shall have the right from time to time to enter into an agreement or contract to operate, maintain or repair all or part of the Office Common Area or Office Common Area Improvements with any party, provided that all such agreements or contracts shall be terminable on no more than thirty (30) days' prior notice and no such agreement or contract shall be binding on a Mortgagee or any purchaser at any foreclosure. Without limiting the generality of anything set forth above, the Office Owners (through the Manager) shall perform the following services in connection with the operation, maintenance and repair of the Office Common Area and Office Common Area Improvements:

(a) Inspect, maintain, repair and replace the surface of the walkways, curbs, sidewalks, parking areas, driveways, and roads, keeping them level, smooth and evenly covered with the type of surface material originally installed thereon or such substitute therefor as shall be in all respects equal in quality, appearance and durability;

(b) Remove all papers, debris, filth, graffiti, refuse, and surface waters from the Office Common Area and Office Common Area Improvements, and wash or thoroughly sweep paved areas as required;

(c) Maintain, replace and repair all entrance, exit and directional signs, markers, striping, and lights on all roads and parking areas, including the Office Parking Area, as shall be reasonably required and in accordance with the practices prevailing in the operation of similar first-class office and research centers and residential complexes;

(d) Clean all lighting fixtures on the Office Common Areas and relamp and reballast as needed;

(e) Maintain, repair and replace pools, fountains, gardens and other landscaping as necessary to keep the same in a clean, non-stagnant, first-class condition;

(f) Clean Owners' signs (as contrasted with those of Occupants other than Owners), including relamping and repairs being made as required;

(g) Maintain and keep in a sanitary condition public restrooms, if any, and other common use facilities and furnish necessary pest abatement controls;

(h) Clean, repair, maintain and replace all utility systems that are a part of the Office Common Area Improvements, including but not limited to electrical systems, domestic and fire protection water systems, storm drainage systems and sanitary sewer systems, to the extent that the same are not cleaned, repaired, maintained or replaced by public utilities; and

(i) Provide traffic control and security and security patrol consistent with the practice prevailing in the operation of similar first-class office and research service centers and residential complexes.

Section 5.7 Cost of Maintenance and Operation. The "Cost of Maintenance and Operation" of the Office Common Area and Office Common Area Improvements shall mean the total of all costs and expenses incurred by the Manager in performance of its duties pursuant to Section 5.6, including without limitation, the cost of work required to maintain the Office Common Area Improvements in the same condition as originally constructed, rental charges for equipment, the cost of small tools and supplies, all costs for security protection, traffic direction and control and parking regulations, the cost of cleaning and removing of rubbish, dirt and debris from the Office Common Area, the costs of landscaping and supplies incidental to such, all costs of maintaining lighting fixtures in the Office Common Area, and the cost of utilities for the Office Common Area. In addition, there may be expended for replacement of Office Common Area capital improvements a sum not to exceed Fifty Thousand Dollars (\$50,000) in any one (1) calendar year. No capital expenditure in excess of such amount in any one (1) year shall be made without the prior written approval of the Office Owners, except that if the Lot 4 Owner and the Lot 4 Adjacent Property Owner shall be responsible for any portion of such capital expenditure pursuant to Section 8.3, then their prior written approval thereof shall also be required. Each Owner shall be obligated to pay its share of the Cost of Maintenance and Operation of the Office Common Area and Office Common Area Improvements as allocated under Section 8.3.

ARTICLE 6
INSURANCE FOR OFFICE BUILDINGS

Section 6.1 Duty to Carry All-Risk or Fire Insurance. Each Office Owner shall carry (or cause to be carried) during the term of this Declaration, at its sole cost and expense, a policy of all-risk insurance on its Building. The Lot 4 Owner and the Lot 4 Adjacent Property Owner shall carry (or caused to be carried) during the term of this Declaration, at their sole cost and expense, a policy of all-risk insurance on the Lot 4 Improvements (except the portion thereof constituting the Joint Parking Area Improvements). The Office Owners (through the Manager) shall carry (or cause to be carried) during the term of this Declaration, a policy of all-risk insurance on all Office Common Area Improvements. Should all-risk coverage not be available, each Owner and Manager shall carry or cause to be carried a policy of fire and extended coverage insurance. All policies shall be in the amount as agreed to by the Owners or if the Owners cannot agree, then in an amount not less than ninety percent (90%) of the then-current replacement cost (exclusive of foundations, footing and excavations) for the Building, Lot 4 Improvements or Office Common Area Improvements being insured or such greater amount as may be required by any Mortgagee.

Section 6.2 Duty to Carry Liability Insurance. Each Owner shall carry (or cause to be carried) during the term of this Declaration, at its sole cost and expense, a policy of comprehensive public liability and property damage insurance covering its Building in the case of each Office Owner, and the Lot 4 Improvements, in the case of the Lot 4 Owner and the Lot 4 Adjacent Property Owner. The Office Owners (through the Manager) shall carry (or cause to be carried) during the term of this Declaration, a policy of comprehensive public liability and property damage insurance covering the Office Common Area and Office Common Area Improvements. Such policies (a) shall insure against claims for personal injury or death or property damages occurring upon, in or about each Owner's Building, the Lot 4 Improvements, the Office Common Area or Office Common Area Improvements, as the case may be, or upon, in or about the adjoining land, streets and passageways thereof, such insurance to afford protection in an amount not less than Three Million Dollars (\$3,000,000) or otherwise in the amount set forth in the insurance program adopted by unanimous agreement of the Owners, subject to the requirements of all Mortgagees, and (b) shall be subject to such reasonable deduction as set forth in such insurance program. Such insurance program shall be reviewed annually.

Section 6.3 Duty to Carry Worker's Compensation Insurance. The Manager and each Owner, in performing any construction, alteration or repair on any portion of the Office Complex or Lot 4 Improvements shall, at its sole cost and

expense, keep and maintain or cause to be kept and maintained during such construction, alteration or repair, worker's compensation insurance in an amount and form required by law.

Section 6.4 General Requirements for Fire and Liability Policies. All insurance provided for pursuant to Sections 6.1 and 6.2 hereof:

(a) Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility having a rating no less than "A-VIII" in the then most recent edition of Best's Insurance Reports (or a substantially similar rating by any other recognized rating agency);

(b) So far as such policy or policies provide for payment of losses, they shall provide or be to the legal effect that such losses payable to a Mortgagee shall be payable notwithstanding any act or negligence of any Owner;

(c) Shall provide that no cancellation or termination thereof on account of nonpayment of premiums or any other reason shall be effective until at least thirty (30) days after mailing or otherwise sending written notice thereof to the Owners and all Mortgagees; and

(d) Each Owner, Ground Tenant and Mortgagee shall be named an additional insured (in the case of a Mortgagee, under a standard mortgagee endorsement), as their interests may appear, for each policy carried by the Manager hereunder and the Manager shall be named as an additional insured for each policy carried by each Owner. In no event shall the Manager be a loss payee under any insurance policy maintained by any Owner pursuant to the first or second sentence of Section 6.1.

(e) Compliance with the foregoing insurance requirements shall not relieve any Person from its obligation to comply with any more stringent insurance requirements specified in any Mortgage applicable to such Person's property.

Section 6.5 Use of Policy Proceeds. Fire and extended coverage insurance proceeds paid to an Owner or the Manager by reason of damage to or destruction of any Office Common Area Improvements shall be used by each Owner or the Manager, as the case may be, for the repair and rebuilding of the damaged Office Common Area Improvements unless all Office Owners unanimously agree otherwise (except that the agreement of the Lot 4 Owner and the Lot 4 Adjacent Property Owner shall also be required if proceeds attributable to the Joint Parking Area Improvements are to be used other than for repair and rebuilding of the damaged Joint Parking Area Improvements). Subject to the prior rights of any Mortgagee to such proceeds, fire and extended coverage insurance

proceeds paid to an Owner by reason of damage to or destruction of any improvements on its property (other than the Office Common Area Improvements) which are not repaired or rebuilt by such Owner pursuant to Section 3.4 may be retained by such Owner.

Section 6.6 Indemnification by Parties. Each Owner and Ground Tenant ("Indemnitor") shall indemnify, defend and hold harmless all other Owners and Ground Tenants and their respective tenants, lessees, sublessees, officers, directors, employees, agents and partners (collectively the "Indemnitees") against all claims, costs, expenses (including without limitation reasonable attorneys' fees) and liabilities (collectively "Claims") (except to the extent the same is the obligation of another party under Article 4) arising from the death of or any accident, occurrence, injury, loss or damage whatsoever caused to any natural person or to the property of any persons as shall occur in or on the Property, Office Complex Lot 4, Lot 4 Adjacent Property or Lot 4 Improvements during the period from the date hereof to and including the termination date of this Declaration to the extent such Claims arise from the negligence or willful act or omission of the Indemnitor or the agents or employees of the Indemnitor, unless caused in whole or in part by Indemnitees. Indemnitees and each of them agree to look first to the proceeds from any available insurance policies prior to looking to Indemnitor for indemnification.

Indemnitees and each of them shall give Indemnitor notice of any suit or proceedings entitling Indemnitee to indemnification pursuant to this Section 6.6 and Article 4, and Indemnitor shall have the right to defend Indemnitees in said suit or proceeding with counsel reasonably satisfactory to Indemnitees or any of them.

Section 6.7 Joint Policies. Each Owner may satisfy its obligations under Section 6.2, in whole or in part, by means of policies obtained in conjunction with other Owners or Manager or the Owners' respective lessees and sublessees, which policies shall be in conformity with the requirements of this Article 6. The premiums for such policies shall be allocated as such Owners and Manager shall agree to reflect their respective insured interests.

Section 6.8 Certificate of Insurance. Each Owner and Manager shall, on the request of any other Owner or Manager (or its respective Ground Tenant or Mortgagee), promptly furnish the requesting party a certificate evidencing its compliance with the insurance coverage requirements of this Article. If any Owner's obligations are satisfied by policies obtained in conjunction with Manager pursuant to Section 6.7, Manager shall furnish such certificate. Each Owner shall reimburse Manager for that Owner's

share (as computed under Section 8.3) of any insurance premiums paid by Manager pursuant to Section 6.1, 6.2, or 6.3 hereof.

Section 6.9 Release and Waiver of Subrogation--
Parties. Each Owner and Manager hereby waives all rights of recovery and causes of action and releases every other Owner and Manager from any liability, from all losses and damages occasioned to the property of each located within or upon or constituting a portion of the Office Complex or Lot 4 Improvements, which losses and damages are of the type covered under the policies required by this Article to the extent that such waivers do not invalidate such policies and said loss is reimbursed by insurance (or would have been reimbursed but for the failure of the applicable party to carry the required insurance). To the extent such waivers are obtainable, the policies required by this Article shall provide for waivers of any right of subrogation that the insurer of one Owner or Manager may acquire against all or any other Owners and Manager hereto with respect to any such releases.

Section 6.10 Release and Waiver of Subrogation--
Tenants. Each Person who becomes an Occupant shall be deemed to have waived and released all of its rights to recover from each Owner and the Manager for losses and damages that such Occupant sustains by reason of risks covered under the types of policies required by this Article to the extent of any reimbursement to such Occupant by an independent insurer. Each Owner and the Manager hereby releases all of its rights to recover from each Occupant (who is deemed to have made the above-described waiver and release) all losses and damages that the Owner or Manager sustains by reason of risks covered under the types of policies required by this Article to the extent of any reimbursement to Owner by an independent insurer (and to the extent that the applicable Owner or Manager would have been reimbursed but for its failure to carry the required insurance).

Section 6.11 Approval of Insurance. All insurance maintained by the Declarant, Manager or any Office Owner pursuant to this Article 6 shall be subject to approval by the Mortgagee under the Deeds of Trust, which approval shall not be unreasonably withheld or delayed.

ARTICLE 7 REAL ESTATE TAXES

Section 7.1 "Real Estate Taxes" Defined. For purposes of this Article 7, "Real Estate Taxes" shall mean all taxes, assessments and charges levied upon or with respect to real property, the improvements thereon or any personal property used in the operation thereof, including applicable increases

thereto. Real Estate Taxes shall include, without limitation, all general real property taxes and general and special assessments, charges, fees or assessments for transit, housing, child care, police, fire or other governmental services or purported benefits, service payments in lieu of taxes, and any tax, fee or excise on the act of entering into any lease, or on the use or occupancy of such property or improvements, or any part thereof, or on the rent or fees payable under any lease or in connection with the business of renting space or parking in such property or improvements, that are now or hereafter levied or assessed in connection with such property or improvements, by the United States of America, the State of California, or any political subdivision, public corporation, district or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes, whether or not now customary or in the contemplation of the parties on the date of recordation hereof. Real Estate Taxes shall not include franchise, transfer, inheritance or capital stock taxes or income tax measured by the net income of an Owner from all sources unless, due to a change in the method of taxation, any of such taxes are levied or assessed against an Owner as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Real Estate Tax. Real Estate Taxes shall also include reasonable legal fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce Real Estate Taxes.

Section 7.2 Payment of Real Estate Taxes. Each Office Owner shall pay or cause to be paid, not less than ten (10) days prior to delinquency, all Real Estate Taxes affecting such Office Owner's Parcel and any improvements thereon. The Lot 4 Owner shall pay or cause to be paid, not less than ten (10) days prior to delinquency, all Real Estate Taxes affecting Lot 4 and any improvements thereon. The Lot 4 Adjacent Property Owner shall pay or cause to be paid, not less than ten (10) days prior to delinquency, all Real Estate Taxes affecting the Lot 4 Adjacent Property and all improvements thereon. All Real Estate Taxes assessed against the Office Parking Area shall be paid by the Manager not less than ten (10) days prior to delinquency, provided each Owner has delivered to Manager its share thereof as allocated under Section 8.3. The provisions of Section 8.4 shall apply in the event of non-payment of any Real Estate Taxes by any Owner.

Section 7.3 Owner's Right to Contest. Each Owner, subject to the rights of any Mortgagee including, without limitation, the rights of any Mortgagee under the provisions of the Deeds of Trust, shall have the right to contest the legal validity or amount of any Real Estate Taxes for which such Owner is responsible, and may institute such proceedings as Owner deems

necessary. If any Owner contests any such Real Estate Tax, such Owner may withhold or defer payment or pay under protest but shall protect the applicable property from any lien by adequate surety bond or other appropriate security.

ARTICLE 8
MANAGEMENT

Section 8.1 **Manager**. Martin Group of Companies, Inc. shall be the initial Manager of the Office Complex and shall have all rights and obligations given to the Manager under this Declaration. For so long as Declarant or Martin Group of Companies, Inc. or any partnership, corporation, association, or trust controlled by, or affiliated with, Declarant or Martin Group of Companies, Inc. retains an ownership interest in the Property, Declarant or Martin Group of Companies, Inc. shall have the sole right to appoint the Manager, subject to the approval of any Mortgagee holding a mortgage on Parcel 1, 2, or A. Subject to the foregoing, the Office Owners at any time may terminate the Manager (including Declarant) and (a) appoint an alternative Manager as provided below, or (b) approve and implement an alternative form of management, including but not limited to, a non-profit entity composed of all Office Owners as provided herein, provided, however, that all such actions shall require the consent of two of the three Office Owners as provided in Section 8.7 and all Mortgagees, the consent of such Mortgagees not to be unreasonably withheld. The Mortgagees of all Parcels, acting collectively if their Mortgagees so provide, shall have the right to act for any such Office Owner during all periods in which a material default exists under any such Mortgage. All Mortgagees shall be notified if and when an alternative form of management is approved and implemented as provided above. Each Owner shall have the right to pursue against the Manager any and all remedies available at law and not inconsistent with the provisions of this Declaration in the event that the Manager shall fail to perform its duties hereunder, and such failure shall continue for thirty (30) days after notice thereof from such Owner to Manager.

Section 8.2 **Duties of Manager**. The Manager shall take such actions as it deems reasonably necessary to ensure the operation and maintenance of the Office Complex in a first-class manner consistent with its intended use for the benefit of the Owners and their respective Occupants and Permittees (and the Lot 4 Owner, the Lot 4 Adjacent Property Owner and their respective Occupants and Permittees in respect of the Joint Parking Area) including the following:

(a) Operate and maintain the Office Common Area as provided in Section 5.6;

(b) Establish, publish and enforce reasonable rules and regulations governing the Buildings or Office Common Area and any facilities or activities thereon as provided for in Section 5.5 above;

(c) Pay any Real Estate Taxes which are or could become a lien on the Office Parking Area or any part thereof;

(d) Contract for insurance policies;

(e) Estimate and notify each Owner at least ten (10) days before due of the amounts assessed against such Owner pursuant to Section 8.3 and enforce collection of assessments pursuant to Section 8.4;

(f) Issue on request of any Person having a legitimate interest, a certificate setting forth whether payment of assessments by an Owner is current;

(g) Employ such Persons and incur such expenses for legal, accounting, engineering, management and other professional services as are reasonably necessary to carry out the duties under this Section 8.2;

(h) Maintain or repair any Buildings in accordance with Section 3.3;

(i) Participate and vote on decisions of the Commercial Condo Association on behalf of the Owners;

(j) Fulfill all other obligations of the Manager set forth in this Declaration; and

(k) Take any other actions which are reasonably required for the operation and maintenance of the Office Complex or which will, provided the same is approved by all of the Office Owners or is provided for in the Manager's budget, enhance the value and attractiveness of the Office Complex for the benefit of the Owners.

Section 8.3 **Assessments.** Prior to the commencement of each of the Manager's accounting years during the term of this Declaration, the Manager shall estimate each Owner's share of (a) the Cost of Maintenance and Operation as defined in Section 5.7 above, (b) the cost of performance of the Manager's obligations under Section 8.2, including the cost of personnel of the Manager providing the services described therein at the market rate for such services, to the extent not already included in subsection (a) above, (c) the cost of insurance policies covering the Office Common Area obtained pursuant to Sections 6.1, 6.2 or 6.7, (d) the cost of Real Estate Taxes on the Office Parking Area

as described in Section 7.1 and assessments regarding the Office Parking Area levied against the Office Owners by the Commercial Condo Association pursuant to the Condo CC&Rs, (e) the cost of Office Common Area Improvement restoration costs incurred pursuant Section 3.4(b), and (f) an administrative charge equal to three percent (3%) of the total amount expended by the Manager under subsections (a) through (e) above. Sixty (60) days prior to the end of each calendar year, Manager shall prepare a budget of such estimated expenses for the forthcoming calendar year net of any reimbursements to be made to the Manager by the Residential Association pursuant to the Condo CC&Rs. Each Owner shall pay to the Manager on the first of each month in advance, one-twelfth (1/12) of the estimated annual amount due from such Owner as provided for in such budget, provided the amounts set forth above may be accelerated so that such amounts are fully paid to Manager prior to Manager's obligation to make such payments. In the event actual expenses during any calendar year exceed such estimated amount provided for in such budget by five percent (5%) or more, the Manager may, at any time during such calendar year, prepare and distribute a revised budget, and the Owners shall then pay on the first of each month, in advance, a prorated portion of such newly estimated amount, such proration being based on the portion of the year remaining. At the end of each year there shall be an adjustment made to account for any difference between the actual and the estimated cost for the previous year. If an Owner has overpaid the cost owing pursuant to this provision, and if the Owner is not in default under this Declaration, the Manager shall credit such Owner the amount of such overpayment in determining the Owner's estimated payments for the following year. If an Owner has underpaid such cost owing pursuant to this provision, such Owner shall pay the amount of such underpayment to the Manager within thirty (30) days after Owner's written demand. The Office Owners shall pay all of the foregoing costs described in this Section 8.3 except to the extent that they relate, in the Manager's reasonable judgement, to the Joint Parking Area (which Joint Parking Area expenses shall be allocated as provided below). Each Office Owner's share of the Office Owners' obligations shall be calculated according to the relation that the Square Footage of an Owner's Building bears to the total Square Footage of all substantially completed Buildings on Parcels 1, 2, and A. In the event that either the Square Footage of any such Office Owner's Building or the Square Footage of all substantially completed Buildings on Parcels 1, 2 or A change during any such calendar year, the Office Owners' shares shall be calculated based upon the proportionate number of days during such calendar year that the various Square Footages were applicable. Responsibility for such of the foregoing costs described in this Section 8.3 which relate, in the Manager's reasonable judgement, to the Joint Parking Area, shall be allocated forty-two percent (42%) to the Office Owners (to be allocated

among them as described above) and twenty-nine percent (29%) to each of the Lot 4 Owner and the Lot 4 Adjacent Property Owner.

Section 8.4 Collection of Assessment or Other Charges; Liens.

(a) The right to collect and enforce assessments or other charges on behalf of the Owners is vested in the Manager. The Manager or its authorized representative, on behalf of the Owners, can enforce the obligations of any Owner to pay assessments or other charges provided for in this Declaration or the Condo CC&Rs by commencement and maintenance of a suit at law or in equity, or may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to this Section 8.4 to enforce the lien rights created. Suit to recover a money judgment for unpaid assessments or other charges shall be maintainable without foreclosing or waiving the lien rights. In the event that an Owner shall fail to pay its assessments or other charges and the Manager shall fail to act hereunder to enforce the obligations of any Owner to pay such amounts, and such failure shall continue for thirty (30) days after notice from any Owner requesting Manager to so act, such notifying Owner shall have the rights of Manager under this Section 8.4 to enforce such obligations. Without limitation of the foregoing, such notifying Owner shall have the lien and sale rights granted to Manager under this Section 8.4 in enforcing such obligations.

(b) If there is a delinquency in the payment of any assessment or other charge, any amounts that are delinquent together with interest thereon at the rate of five percent (5%) per annum over the then-existing prime rate of interest announced from time to time by Wells Fargo Bank, N.A. (but in no event exceeding the maximum lawful annual rate), and all costs that are incurred by the Manager or its authorized representative in the collection of the amounts, including reasonable attorneys' fees, shall be a lien against the property owned by such defaulting Owner upon the recordation in the office of the County Recorder of Alameda County of a notice of assessment. The notice of assessment shall not be recorded unless and until the Manager or its authorized representative has delivered to the delinquent Owner and the delinquent Owner's Mortgagee, if applicable, not less than thirty (30) days before the recordation of the notice of assessment, a written notice of default and a demand for payment, and unless such delinquency has not been cured within thirty (30) days after delivery of such notice. The lien shall expire and be void unless, within one (1) year after recordation of the notice of assessment, the Manager or its authorized representative records a notice of default as provided in this Declaration or institutes judicial foreclosure proceedings.

(c) Not more than one (1) year nor less than ten (10) days after the recording of the notice of assessment, the Manager or its authorized representative, on behalf of the Owners, can record a notice of default and cause such property to be sold in the same manner as a sale is conducted under California Civil Code §§ 2924, 2924b-2924c, or through judicial foreclosure. Appropriate publication shall be made as a condition precedent to the holding of any such sale under Section 2924c. In connection with any sale under Section 2924c, the Manager is authorized to appoint its attorney, any officer or director, or any title insurance company authorized to do business in California as trustee for purposes of conducting the sale. If a delinquency is cured before sale, or before completing a judicial foreclosure, the Manager or its authorized representative shall cause to be recorded in the office of the County Recorder of Alameda County a certificate setting forth the satisfaction of such claim and release of such lien on payment of actual expenses incurred, including reasonable attorneys' fees, by any delinquent Owner. On becoming delinquent in the payment of any assessments, each delinquent Owner shall be deemed to have absolutely assigned all rents, issues and profits of such property to the Manager (on behalf of the other Owners) and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Manager, be enforced by the Manager through specific performance). The foregoing assignment of rents, issues and profits shall be at all times subordinate to any such assignment made to or in favor of an Owner's Mortgagee and shall be effective only with the consent of any Mortgagee holding such an assignment. The Manager, acting on behalf of the Owners, shall have the power to bid on such property at foreclosure sale and to acquire, hold, lease, mortgage and convey such property.

(d) The lien of and the right to collect all such assessments provided for in this Section 8.4 shall be subordinate to the lien of all the Mortgages.

Section 8.5 Indemnification of Manager. The Owners and Ground Tenants shall jointly and severally indemnify the Manager and its officers, directors, employees, agents and partners ("Indemnified") against, and hold them harmless from, all claims, costs, expenses (including attorneys' fees) and liabilities ("Costs") arising from the conduct or management of any work or thing done by Indemnified in connection with the good-faith performance of its duties under this Declaration, except to the extent that such Costs arise solely from the gross negligence or willful act or omission of the Indemnified. Notwithstanding the forgoing, the Lot 4 Owner and the Lot 4 Adjacent Property Owner shall be obligated pursuant to the preceding sentence only with respect to Costs arising from the conduct or management of any work or thing done by Indemnified in connection with the

such Parcel or Lot 4 or Lot 4 Adjacent Property shall be jointly considered a single Owner and such Persons shall designate one of their number to act on behalf of all such Persons in the performance of the provisions of this Declaration, including the amendment hereof pursuant to Section 13.2. Any such designation shall be in writing, duly executed and acknowledged by each such Person, shall be served upon the Owners and the Manager in accordance with the notice provisions of this Declaration, shall contain a certificate that a copy thereof has been so served, and shall be recorded in the Office of the Recorder of Alameda County. In the absence of such written designation, the acts of the Owner whose interest is so divided with respect to the performance of the provision of this Declaration shall be binding upon all of the Persons owning any interest in such Parcel or Lot 4 or Lot 4 Adjacent Property, until such time as the written designation is properly served and recorded as provided by this Section 8.8, and whether or not such Owner retains any interest in the Parcel or Parcels or Lot 4 or Lot 4 Adjacent Property in question. In the event of any conflict between the provisions of this Section 8.8 and the provisions of Section 13.5, the provisions of Section 13.5 shall control.

ARTICLE 9 CONDEMNATION

Section 9.1 "Condemnation" and "Condemnation Date"
Defined. "Condemnation" means: (a) the taking or possession of all or any part of the Property, Office Complex, Lot 4 or Lot 4 Adjacent Property, or any improvements thereon, under the power of eminent domain, or (b) the voluntary sale (with the consent of any Owner and any other Persons having an interest therein) of all or any part of the Property, Office Complex, Lot 4 or Lot 4 Adjacent Property, or any improvements thereon, to any Person having the power of eminent domain, provided that the Property, Office Complex, Lot 4 or Lot 4 Adjacent Property, or any improvements thereon, or such part thereof, is then under the threat of condemnation evidenced by notice of the same from a governmental agency having the power to do so.

"Condemnation Date" means the earlier of: (a) the date when possession of the condemned property (or any part thereof) is taken by the condemning authority, or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

Section 9.2 Restoration upon Condemnation. If any part of a Building or the Lot 4 Improvements is the subject of Condemnation, subject to the rights of any Mortgagee, including, without limitation, any rights of the Mortgagee pursuant to the terms and conditions of the Deeds of Trust, the rights and

good-faith performance of its duties under this Declaration, with respect to the Joint Parking Area.

Section 8.6 Manager's Books and Records. At any time during the term of this Declaration, any Owner, upon reasonable notice and during normal business hours, may inspect those books and records of the Manager which pertain to assessments or the performance of any of its duties under this Declaration. In addition, any Owner may request an audit of such books and records, so long as the total of all Owner-requested audits does not exceed one per year. Such audits shall be performed at the requesting Owner's sole expense, except that in the event that the audit shows the Manager's expenses have been overstated by more than ten percent (10%), the Manager shall bear the cost of the audit. Upon completion of any audit, the results shall be sent to each Owner and any payments or reimbursements due as a result of such audit shall be made within thirty (30) days of the completion date. Notwithstanding the foregoing, the Lot 4 Owner and the Lot 4 Adjacent Owner may exercise such rights only with respect to books and records in connection with the Joint Parking Area.

Section 8.7 Selection of New Managers. In the event the Office Owners desire or need to select a successor to serve as Manager, subject to Section 8.1 the Office Owners shall do so in the manner provided in this Section 8.7. Any successor who shall serve as Manager shall meet the following requirements: (i) such Person shall have not less than five (5) years of experience in managing first-class office buildings or centers; and (ii) such Person shall be retained under a management agreement the term of which shall not exceed one year. The Office Owners shall each have the right for a period of one (1) month following the decision by two (2) of the three (3) Office Owners to replace the Manager to nominate a successor Manager. Within two (2) weeks following the expiration of the one (1) month nominating period the Office Owners shall meet and select a successor manager. Each of Parcels 1, 2, and A shall be allocated one (1) vote, and a nominated manager who receives two (2) votes shall be named the succeeding Manager. The process of nominating candidates shall be repeated until a new Manager is selected.

Section 8.8 Voting. Subject to restrictions on transfers or conveyances set forth in the Mortgages, in the event that any Office Owner shall transfer or convey its interest in its Parcel, the Lot 4 Owner shall transfer or convey its interest in Lot 4 or the Lot 4 Adjacent Property Owner shall transfer or convey its interest in the Lot 4 Adjacent Property, or any portion of or interest in its Parcel or Lot 4 or Lot 4 Adjacent Property, in such manner as to vest ownership of the Parcel or Lot 4 or Lot 4 Adjacent Property or any interest therein in more than one Person, then the Persons owning all of such interest in

obligations of the Owner of such property with respect to the reconstruction thereof shall be as set forth in Section 3.4(a) and with respect to the proceeds thereof shall be as set forth in Section 6.5.

Section 9.3 Restoration of Office Common Area. If any part of the Office Common Area Improvements is the subject of Condemnation, and the Owners are separately awarded Condemnation proceeds as a result thereof, subject to the prior rights of the Mortgagees, the Owners shall assign such proceeds to the Manager. In the event that an Owner shall not assign such proceeds to the Manager by reason of the prior rights of such Owner's Mortgagee to such proceeds, such Owner shall be deemed to have surrendered all of its rights and interests with respect to the Office Common Area and all Office Common Area Improvements. Such surrender shall be confirmed pursuant to a written instrument in recordable form executed by such Owner and its Mortgagee containing such terms and provisions as the other Owners shall reasonably require. The Manager shall then reconstruct such improvements as nearly as possible to the condition as existed immediately prior to such taking to the extent that proceeds available from the Condemnation award are adequate and the reconstruction is economically feasible in the Manager's reasonable judgment. In the event the Condemnation award is less than the sum required to restore the Office Common Area Improvements, subject to the rights of any Mortgagee, the rights and obligations of the Owners with respect to such shortfall shall be as set forth in Section 3.4(b). In the event the Condemnation award is greater than the sum required to restore the Office Common Area Improvements, subject to the rights of any Mortgagee, the excess amount shall be divided among the Office Owners (or all Owners to the extent of any award attributable to the Joint Parking Area Improvements) in the same proportions that they would have been responsible for paying any shortfall pursuant to Section 3.4(b), except that any Owner which has not assigned its award to the Manager shall not be entitled to any share of such excess amount.

Section 9.4 No Termination of Easements and Licenses. Nothing in this Article shall affect the existence of the easements granted under Article 4, except to the extent such easements burden the portion of land which is the subject of Condemnation.

Section 9.5 Mortgagee Participation. Nothing herein contained shall (a) be deemed to prohibit any Mortgagee or Occupant (including any Ground Tenant) from participating in any Condemnation proceedings on behalf of or in conjunction with any Owner, or (b) diminish any rights granted to a Mortgagee with respect to the property covered by its Mortgage in connection with any Condemnation.

ARTICLE 10
ARBITRATION

Section 10.1 **Arbitration**. Any dispute under this Declaration between any of the Owners and/or Ground Tenants (including any Mortgagee who shall become an Owner and/or Ground Tenant), in which one party shall notify the other in writing of its intention to arbitrate (the "Arbitration Notice"), shall be settled by final and binding arbitration in accordance with the rules then obtaining under the provisions of the California Code of Civil Procedure, Section 1280, et seq. Each party shall, within ten (10) business days after the giving of the Arbitration Notice, appoint an arbitrator and the two (2) arbitrators so appointed shall, within five (5) business days after the second of them has been appointed, appoint a third arbitrator, and such arbitrators shall constitute the "Arbitration Panel" and the decision of the majority as to any dispute shall be binding on all parties. If the two (2) arbitrators selected by the parties are unable to agree upon the third arbitrator within such five (5) business day period, either party may apply to the Alameda County Superior Court for the appointment of a third arbitrator. If either party fails to appoint an arbitrator within five (5) business days of the Arbitration Notice, the arbitrator appointed by the other party shall be deemed the "Arbitration Panel" and his decision as to any dispute shall be binding on all parties. Each arbitrator selected shall have at least five (5) years' experience in the operation and management of first-class office buildings or office complexes in the general area in which the Property is located. Each party shall make available to the Arbitration Panel in a timely fashion all books, records and other information requested by the Arbitration Panel. The Arbitration Panel shall have the right to consult experts to assist it in making its determination, but any such consultation shall be made in the presence of both parties with full right on their part to cross-examine. The Arbitration Panel shall, prior to rendering its determination, afford each of the parties an opportunity, orally or in writing, as the Arbitration Panel may deem appropriate, to express its point of view as to the proper determination of such matters. The Arbitration Panel shall diligently pursue the determination of any dispute under consideration and shall render its decision within thirty (30) days after submission of the Arbitration Panel shall be final and binding and may be enforced in any court of competent jurisdiction. Each party's cost of arbitration, attorneys' fees and costs of experts shall be borne in such proportion as the Arbitration Panel may determine.

ARTICLE 11
MORTGAGEE PROTECTION

Section 11.1 Conflict. The provisions and requirements of this Article 11, and any other provisions and requirements of this Declaration relating to the rights of Mortgagees, shall prevail over any conflicting provisions of this Declaration and are in addition to any other provisions of this Declaration.

Section 11.2 Termination, Amendment or Modification of Declaration. No cancellation, surrender, termination, supplement, amendment or modification of this Declaration, or the subordination hereof to any lien or encumbrance placed upon any of the property encumbered hereby, shall be valid without the prior written consent of Teachers (so long as it remains a Mortgagee) and any other Mortgagee of any Office Owner, provided, however, that the prior written consent of all other Mortgagees shall also be required with respect to (i) any cancellation, surrender, termination or subordination hereof, and (ii) any supplement, amendment or modification hereto or hereof if the same shall (a) impact the Joint Parking, (b) materially adversely affect the rights granted hereunder to, or obligations imposed hereunder upon, the Lot 4 Owner, the Lot 4 Adjacent Property Owner or any Ground Tenant of either such Owner, or (c) affect any notice, cure, consent or other rights or remedies granted hereunder to Mortgagees. Any such action taken without any Mortgagee consent required pursuant to the foregoing shall be void. In the event of a termination of this Declaration by operation of law (including, without limitation, by reason of the disaffirmance thereof by a receiver, liquidator or trustee for any Owner or its property) without each such required Mortgagee consent, the Owners, if requested by any Mortgagee whose consent was required but not obtained, will enter into a replacement agreement (a "New Agreement"), which New Agreement shall commence as of the date of such wrongful termination of this Declaration and shall run for the remainder of the term of this Declaration, upon the same terms, provisions, covenants and agreements contained herein, provided:

(i) Such Mortgagee makes written request upon the Owners for the New Agreement within 60 days after the date of wrongful termination;

(ii) Such Mortgagee shall pay to the Owners at the time of the execution and delivery of the New Agreement any and all sums which would, at the time of the execution and delivery thereof, be due and unpaid pursuant to this Declaration from its debtor but for its wrongful termination; and

(iii) Such Mortgagee shall perform and observe all covenants in this Declaration to be performed and observed by its

debtor, and shall further remedy any other conditions which its debtor was obligated to perform under this Declaration, to the extent the same are curable or may be performed by such Mortgagee.

The New Agreement shall be drafted such that each Owner and its Mortgagee has, to the closest extent reasonably practicable, the same respective rights and obligations with respect to this Declaration that each had prior to the wrongful termination.

Section 11.3 Mortgagee's Opportunity to Cure.

(a) Notwithstanding any default by any Owner in the performance or observance of any agreement, covenant or condition of this Declaration on its part to be performed or observed, the other Owners and Manager shall have no right to exercise any remedies hereunder unless an event of default shall have occurred and be continuing, the non-defaulting Owners shall have given to the defaulting Owner and its Mortgagee a written notice of such event of default, and the Mortgagee holding the Mortgage encumbering the defaulting Owner's property shall have failed to remedy such default or acquire the defaulting Owner's property or commence foreclosure or other appropriate proceedings in the nature thereof, all as set forth in, and within the time specified by, this Section 11.3.

(b) Any Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Declaration and without payment of any penalty, to pay all of the amounts due hereunder, to obtain any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of any Owner hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof. All payments so made and all things so done and performed by Mortgagee shall be effective to prevent a default under this Declaration as the same would have been if made, done and performed by the defaulting Owner instead of by Mortgagee.

(c) Should any event of default under this Declaration occur, the Mortgagee of the defaulting Owner shall have sixty (60) days after receipt of notice from any non-defaulting Owner or the Manager setting forth the nature of such event of default, and, if the default is such that possession of the property of the defaulting Owner may be reasonably necessary to remedy the default, any such Mortgagee shall have a reasonable time after the expiration of such sixty (60) day period within which to remedy the default provided that (i) such Mortgagee shall have fully cured any default in the payment of any monetary obligations of the defaulting Owner under this Declaration within such sixty (60) day period and shall continue to pay currently

such monetary obligations as and when the same are due, and (ii) such Mortgagee shall have acquired the defaulting Owner's property or commenced foreclosure or other appropriate proceedings in the nature thereof within such period, or prior thereto, and is diligently prosecuting any such proceedings. All remedies of the non-defaulting Owners as the result of the occurrence of any such event of default shall be subject to, and conditioned upon, any non-defaulting Owner or the Manager having first given the Mortgagee of the defaulting Owner written notice of such event of default and the Mortgagee of the defaulting Owner having failed to remedy such default or acquire the defaulting Owner's property or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in and within the time specified by this Section 11.3(c).

(d) Any event of default under this Declaration which in the nature thereof cannot be remedied by the Mortgagee of the defaulting Owner shall be deemed to be remedied if (i) within sixty (60) days after receiving written notice from any non-defaulting Owner or the Manager setting forth the nature of such event of default, or prior thereto, the Mortgagee of the defaulting Owner shall have acquired possession of the defaulting Owner's property or shall have commenced foreclosure or other appropriate proceedings in the nature thereof, (ii) the defaulting Owner's Mortgagee shall diligently prosecute any such proceedings to completion, and (iii) the defaulting Owner's Mortgagee shall have fully cured any default in the payment of any monetary obligations of the defaulting Owner hereunder which do not require possession of the defaulting Owner's property within such sixty (60) day period and shall thereafter continue to faithfully perform all such monetary obligations which do not require possession of such property, and (iv) after gaining possession of such property, the defaulting Owner's Mortgagee performs all other obligations of the defaulting Owner hereunder as and when the same are due.

(e) If the defaulting Owner's Mortgagee is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving the defaulting Owner from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified in subsections 11.3(c) and (d) above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that the defaulting Owner's Mortgagee shall have fully cured any default in the payment of any monetary obligations of the defaulting Owner under this Declaration and shall continue to pay currently such monetary obligations as and when the same fall due.

(f) Each Owner, Ground Tenant and Manager shall mail or deliver to each Mortgagee and each other Owner, Ground Tenant and Manager a duplicate copy of any and all notices which it may from time to time give to or serve upon any other Owner, Ground Tenant or Manager pursuant to the provisions of this Declaration, and such copy shall be mailed or delivered to each Mortgagee simultaneously with the mailing or delivery of the same to the other Owner. No notice by any Owner, Ground Tenant or Manager shall be deemed to have been given unless and until copies thereof shall have been mailed or delivered as set forth above. Notwithstanding the foregoing, the Office Owners and their respective Ground Tenants and the Manager shall not be required to mail or deliver to any Owner, Ground Tenant or Mortgagee of Lot 4 or the Lot 4 Adjacent Property a copy of any notices which are required to be given solely to one or more of the Office Owners (and their respective Mortgagees).

(g) Each Owner shall cooperate in including in this Declaration by suitable amendment from time to time any provision which may be requested by any proposed Mortgagee, or may otherwise be reasonably necessary, to implement the provisions of this Article 11; provided, however, that any such amendment shall not in any way affect adversely in any material respect any rights of a Mortgagee, Owner or Ground Tenant under this Declaration.

(h) If any Owner assigns to a Ground Tenant all or any part of such Owner's rights and/or obligations under this Declaration pursuant to Section 13.5, and if an event of default on the part of either such Owner and/or such Ground Tenant occurs hereunder, then (i) both such Owner and such Ground Tenant shall be deemed to be a "defaulting Owner" for the purposes of this Article 11, and (ii) both such Owner's Mortgagee(s) and such Ground Tenant's Mortgagee shall be deemed to be the Mortgagee of a defaulting Owner for the purposes of this Article 11 (and each such Mortgagee shall have the separate and independent right to enjoy and exercise all rights and remedies given to Mortgagees of defaulting Owners under this Article 11).

Section 11.4 Limitation of Enforcement Against Mortgagee. No violation of this Declaration by, or enforcement of this Declaration against, an Owner or Ground Tenant shall impair, defeat, extinguish or render invalid the lien of any Mortgage, but this Declaration shall be enforceable against any Owner or Ground Tenant whose title is acquired by foreclosure, trustee's sale, voluntary conveyance, or otherwise. Notwithstanding anything in the aforesaid to the contrary, no Mortgagee shall become personally liable for any obligations under any provision of this Declaration until such Mortgagee shall acquire title of the Owner or Ground Tenant, and such liability shall be applicable only to obligations accruing from and after such acquisition of title.

Such Mortgagee shall have no liability for any obligations under any provision of this Declaration and arising after the date such Mortgagee sells, transfers or otherwise conveys its interest in such Parcel.

Section 11.5 Damage or Destruction. Every Mortgagee is entitled to timely written notice from Manager (if Manager is notified in writing by such Mortgagee of Mortgagee's address) and its Owner of (a) any substantial damage to or destruction of the Office Parking Area or the improvements encumbered by such Mortgagee's Mortgage, and (b) any Condemnation proceeding involving, or any proposed acquisition by a condemning authority of, the Office Parking Area or such improvements or the real property, or portion thereof, encumbered by such Mortgagee's Mortgage.

Section 11.6 Insurance Proceeds. No provision of this Declaration shall be construed to give any Owner or any other Person priority over the rights of any Mortgagee of such Owner's or Ground Tenant's property with respect to the distribution of insurance proceeds or proceeds of losses to or a Condemnation of the property encumbered by such Mortgagee's Mortgage.

ARTICLE 12 ENFORCEMENT

Section 12.1 Injunctive Relief. In the event of any violation or threatened violation by any Owner or Occupant of any of the provisions of this Declaration, any Owner shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Nothing in this Section shall be deemed to affect whether or not injunctive relief is available on account of such violation or threatened violation.

Section 12.2 Payment on Default and Limitation on Liability. If under this Declaration any Owner is compelled or elects to pay any sum of money or do any acts that require the payment of money by reason of any other Owner's failure or inability to perform any of the provisions of this Declaration to be performed by such other Owner, the defaulting Owner shall promptly upon demand reimburse the paying Owner for such sums. All sums payable by an Owner to another Owner under this Declaration that are not paid when due shall bear interest at the rate of five percent (5%) per annum over the then-existing prime rate of interest announced by Wells Fargo Bank, N.A. (but in no event exceeding the maximum lawful annual rate) from the due date of payment thereof. In no event shall any defaulting Owner have any liability hereunder in excess of such Owner's interest in its portion of the Property.

Section 12.3 Excuse for Nonperformance. If performance by an Owner of any act or obligation hereunder is prevented or delayed by war, national emergency, labor disputes or strikes, acts of God, governmental restrictions or moratoria, or any other causes beyond the reasonable control of such Owner, then the time for performance of the act or obligation will be extended for the period that such act or obligation is delayed or prevented by any of the above causes. Any Owner claiming inability to perform pursuant to this Section 12.3 shall give prompt notice thereof (including the reason therefor) to all other Owners.

Section 12.4 Notice as Prerequisite for Default. An Owner shall not be in default under this Declaration except under such provisions as require the performance of an act on or before a specific date or within a specific period of time, unless the Owner and its Mortgagees (provided such Mortgagees have notified Manager in writing of such Mortgagees' addresses) have been given a written notice specifying the default and (a) fail to cure it for ten (10) days, or (b) fail to commence and diligently proceed to cure the default if such default cannot be cured in ten (10) days, but in no event shall an Owner have more than ninety (90) days in which to cure such default. If an Owner shall assign any of its rights or obligations hereunder to a Ground Tenant pursuant to Section 13.5, then notwithstanding such assignment such Owner (as well as such Ground Tenant) shall be entitled to receive the default notice and the cure period specified above.

Section 12.5 Default Shall Not Permit Termination. No default under this Declaration shall entitle any party to cancel or otherwise rescind this Declaration, provided, however, that this limitation shall not affect any other rights or remedies that a party may have by reason of any default hereunder.

Section 12.6 Waiver of Default. A waiver of any default by an Owner shall be in writing and no such waiver shall be implied from any omission by a party to take any action in respect of such default. No express written waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more written waivers of any default in the performance of any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained herein. A waiver by any party shall not be deemed to be a waiver by any other party. The consent or approval by any Owner to or of any act or request by another Owner requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or requests. The rights and remedies given by this Declaration shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other

right or remedy at law or in equity which a Person might otherwise have by virtue of a default under this Declaration, and the exercise of one such right or remedy shall not impair a Person's standing to exercise any other right or remedy.

ARTICLE 13
MISCELLANEOUS

Section 13.1 **Termination**. Except as specifically provided hereinabove, this Declaration shall remain in full force and effect for a term of ninety-nine (99) years from the date first set forth above, unless extended or earlier terminated by an agreement in accordance with the provisions of Section 13.2.

Section 13.2 **Amendment**. Except as otherwise provided for herein, this Declaration may be amended or otherwise modified (including the termination of any easements granted hereunder) only by a writing signed and acknowledged by each Office Owner and recorded in the Office of the Recorder for Alameda County, California, and only with the prior written consent of and approval of each Mortgagee of an Office Owner, except that if any such amendment or other modification shall (i) impact the Joint Parking Area, or (ii) materially, adversely affect the rights granted hereunder to, or materially increase the obligations imposed hereunder upon, the Lot 4 Owner, the Lot 4 Adjacent Property Owner or any Ground Tenant of either such Owner, the prior written consents of the Lot 4 Owner and the Lot 4 Adjacent Property Owner and/or such Ground Tenant, as the case may be, and of their respective Mortgagees also shall be required.

Section 13.3 **Notices**. Any notice, request, demand, instruction or other document to be given hereunder or pursuant hereto to any Person shall be in writing and shall either be personally delivered or delivered by a nationally recognized courier service (in which events such notice shall be deemed given only upon such delivery), or sent by registered or certified mail, postage prepaid, return receipt requested (in which event such notice shall be deemed given two (2) days after the date of mailing), (i) if such Person is a party hereto, to such party at the address specified by such party below its signature on this Declaration, (ii) if such Person is a Mortgagee, to such Mortgagee at the address specified for it in its Mortgage, (iii) if such Person is a Ground Tenant, to such Ground Tenant at the address specified for it in the recorded memorandum of such Ground Tenant's lease, (iv) if such Person is the Manager, to the Manager at the address specified below Declarant's signature on this Declaration, and (v) in the case of any other Person, to the address specified by such Person by notice to each Owner, Mortgagee, Ground Tenant and Association given in the manner provided above. Any Person may specify a

different or changed address by giving notice of such different or changed address to each Owner, Mortgagee, Ground Tenant and Association in the manner provided above.

Section 13.4 Captions. The 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 shall not affect the interpretation hereof.

Section 13.5 Declaration for Exclusive Benefit of the Owners. Except for provisions expressly stated to be for the benefit of a Mortgagee, Ground Tenant or other Person, the provisions of this Declaration are for the exclusive benefit of the Owners, their successors and assigns, and not for the benefit of any third Person, and this Declaration shall not be deemed to have conferred any rights upon any third Person, including any Occupant or Permittee, except as otherwise expressly provided herein. Any Office Owner may assign all or any portion of its rights hereunder, and delegate all or any portion of its duties hereunder, to any Ground Tenant of such Office Owner's Parcel, Lot 4 Owner may assign all or any portion of its rights hereunder, and delegate all or any portion of its duties hereunder, to any Ground Tenant of Lot 4, and the Lot 4 Adjacent Property Owner may assign all or any portion of its rights hereunder, and delegate all or any portion of its duties hereunder, to any Ground Tenant of the Lot 4 Adjacent Property. To be effective, any such assignment or delegation shall be in writing, duly executed and acknowledged by each such Person, shall be served upon the Owners, any other Ground Tenants and the Manager in accordance with the notice provisions of this Declaration, shall contain a certificate that a copy thereof has been so served, and shall be recorded in the Office of the Recorder of Alameda County. Notwithstanding anything to the contrary contained above, upon compliance with the foregoing, the Owners and the Manager shall recognize the exercise of rights (to the extent so assigned) and performance of obligations by such assignee with the same force and effect as if exercised or performed by the assignor Owner, and such assignee shall also be deemed an "Owner" of the applicable property hereunder and shall be subject to and bound by the provisions hereof with the same force and effect as if such assignee were originally named as an Owner hereunder and all references to an "Owner's" property shall also be deemed references to such assignee's property (i.e. its ground leasehold estate), except that in no event shall such assignee enjoy any rights hereunder to the extent not so assigned. No such assignment or delegation shall relieve any Owner from its obligations hereunder.

Section 13.6 No Partnership, Joint Venture or Principal-Agent Relationship. Neither anything in this Declaration nor

any acts of the Owners shall be deemed by the Owners, or by any third Person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the Owners, and, except as provided in Section 13.5 with respect to Ground Tenants, no provisions of this Declaration are intended to create or constitute any Person other than Mortgagees a third party beneficiary hereof.

Section 13.7 Rights, Privileges, and Easements with Respect to Liens. Except as specifically provided in Articles 9 and 11, this Declaration and the rights, privileges and easements of the Owners with respect to the other Owners and all of the property encumbered by this Declaration shall in all events be superior and senior to any lien placed upon any property, including the lien of any Mortgages, and any amendments or modification hereof (which shall have been approved as provided in this Declaration), whenever made, shall be deemed superior and senior to any and all liens, including the lien of Mortgages, the same as if such approved amendments or modifications had been executed concurrently herewith. Notwithstanding the foregoing, as more particularly set forth in Section 11.4 above, no enforcement of any lien created hereby or hereunder shall impair, defeat, extinguish or render invalid the lien of any Mortgage (and each Mortgage shall survive the foreclosure of any such lien).

Section 13.8 Successors. This Declaration shall be binding upon and inure to the benefit of the respective successors and assigns of the Owners.

Section 13.9 Severability. If any provision of this Declaration shall to any extent be invalid or unenforceable, the remainder of this (or the application of such provision to Persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Declaration, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

Section 13.10 Governing Laws. This Declaration shall be construed and governed in accordance with the laws of the State of California.

Section 13.11 Release. If any Owner or other Person obligated to comply with any provisions of this Declaration sells, transfers or otherwise conveys all of its interest in its property encumbered by this Declaration, or any part thereof, such Owner or Person shall, as respects the property conveyed, be released from all liabilities and obligations arising hereunder from and after the date of transfer, and the obligations of this Declaration from and after the date of transfer shall be binding

on such transferee. The transferring party shall remain liable for any obligation arising hereunder prior to the date of transfer to the extent of the value of such transferring party's interest in the property conveyed as of the time immediately preceding such transfer. No assignment or delegation to a Ground Tenant shall relieve any Owner from its obligations under this Declaration. The provisions of this Section 13.11 shall not be deemed to release any Owner from any restrictions on transfer (or due on sale provisions) contained in any Mortgage binding on such Owner or its property.

Section 13.12 Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any part of the property encumbered by this Declaration to or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes expressed herein. No Owner shall dedicate its property encumbered by this Declaration or any part thereof for public purposes without the consent of the other Owners, except as expressly contemplated herein.

Section 13.13 Attorneys' Fees. In the event that any Owner or Occupant fails to perform any of its obligations under this Declaration or in the event a dispute arises concerning the meaning or interpretation of any provision of this Declaration, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorney fees.

Section 13.14 Estoppel Certificate. Within ten (10) days after an Owner's written request to any other Owner or Ground Tenant, the Owner or Ground Tenant to whom the request has been directed shall issue to the requesting Owner or Ground Tenant, or to any Mortgagee, or to any prospective purchaser or prospective Mortgagee specified by such requesting Owner or Ground Tenant, an estoppel certificate stating: (a) whether the Owner or Ground Tenant to whom the request has been directed knows of any default under this Declaration, and if there are known defaults, specifying the nature thereof; (b) whether the Declaration has been modified or amended in any way, and if it has, stating the nature thereof; and (c) that to the Owner's or Ground Tenant's knowledge this Declaration as of that date is in full force and effect.

Section 13.15 Breach of Easement. Subject to Article 11 and Section 12.5, the result of every act or omission whereby any easement granted herein to any Owner is violated, in whole or in part, is hereby declared to be a private nuisance; and, without limitation of any other remedies, every remedy for private

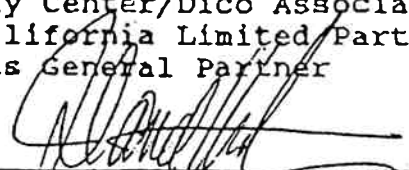
nuisance allowed by law or equity against an owner of the land burdened by such easement shall be available to any party whose rights hereunder are violated thereby.

Section 13.16 Incorporation of Declaration. Any deed or other instrument evidencing conveyance of all or any portion of or interest in the property encumbered by this Declaration, whether by fee, easement, leasehold interest or otherwise, shall be subject to the provisions of this Declaration. Any such instrument of conveyance shall be deemed to incorporate the provisions of the Declaration, regardless of whether such instrument makes reference thereto.

IN WITNESS WHEREOF, the undersigned parties have executed this Declaration as of the date first above written.

"Declarant"
JS BAY CENTER ASSOCIATES,
A CALIFORNIA LIMITED PARTNERSHIP

By: Bay Center/Dico Associates A
California Limited Partnership,
its General Partner

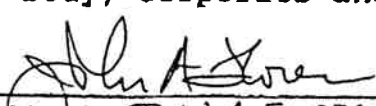
By: 

J. David Martin,
General Partner

Address: _____

"RDA"

THE EMERYVILLE REDEVELOPMENT AGENCY,
a public body, corporate and politic

By: 
Name: _____ JOHN A. FLORES
Title: _____ executive Director

Address: _____

STATE OF CALIFORNIA)
COUNTY OF Alameda)

On Aug 3 1992 before me, Gisela I Owens
J. David Nader, personally appeared J. David Nader
J. David Nader, personally known to me (or proved to me
on the basis of satisfactory evidence) to be the person whose
name is subscribed to the within instrument and acknowledged to
me that he or she executed the same in his or her authorized
capacity, and that by his or her signature on the instrument the
person, or the entity upon behalf of which the person acted,
executed the instrument.

WITNESS my hand and official seal.

Signature

J. David Nader

(Seal)



STATE OF CALIFORNIA)
COUNTY OF Alameda)

On Aug 3 1992 before me, Gisela I Owens
J. David Nader, personally appeared J. David Nader
J. David Nader, personally known to me (or proved to me
on the basis of satisfactory evidence) to be the person whose
name is subscribed to the within instrument and acknowledged to
me that he or she executed the same in his or her authorized
capacity, and that by his or her signature on the instrument the
person, or the entity upon behalf of which the person acted,
executed the instrument.

WITNESS my hand and official seal.

Signature

J. David Nader

(Seal)



EXHIBIT A
(LOT 4 ADJACENT PROPERTY)

PAGE 1 OF 1

REAL PROPERTY IN THE CITY OF EMERYVILLE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA,
DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERN LINE OF THE 5.0669 ACRE TRACT OF LAND (THE "PARAFFIN PARCEL") DESCRIBED IN THE DEED TO THE PARAFFIN COMPANIES, INC., DATED JULY 10, 1944, RECORDED JULY 11, 1944, IN BOOK 4533, PAGE 434, ALAMEDA COUNTY OFFICIAL RECORDS, WITH THE GENERAL EASTERN LINE OF THE PARCEL OF LAND (THE "GARRETT PARCEL") DESCRIBED IN THE DEED FROM ARTHUR LA COSTE, ET AL., TO GARRETT TERMINAL CORPORATION, DATED MAY 5, 1958, RECORDED MAY 14, 1958, IN BOOK 8670, PAGE 197, ALAMEDA COUNTY OFFICIAL RECORDS, AP/47230, SAID INTERSECTION BEING ALSO A POINT MEASURED ALONG THE NORTHERN LINE OF THE PARAFFIN PARCEL SOUTH 75° 45' 22" WEST, 260.00 FEET FROM THE INTERSECTION THEREOF WITH THE WESTERN LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY MAIN LINE RIGHT OF WAY DESCRIBED IN THE DEED FROM CHARLES CROCKER TO THE NORTHERN RAILWAY COMPANY, DATED JANUARY 23, 1879, RECORDED JANUARY 27, 1879, IN BOOK 175 OF DEEDS, PAGE 115, ALAMEDA COUNTY RECORDS; THENCE ALONG THE GENERAL EASTERN LINE OF THE GARRETT PARCEL NORTH 14° 20' 54" WEST, 397.79 FEET TO THE GENERAL SOUTHERN LINE OF THE GARRETT PARCEL, SAID SOUTHERN LINE BEING ALSO THE DIRECT EXTENSION WESTERLY OF THE SOUTHERN LINE OF THE "MAP OF THE MAXWELL TRACT", FILED SEPTEMBER 19, 1972, IN BOOK 5 OF MAPS, PAGE 21, ALAMEDA COUNTY RECORDS; THENCE ALONG SAID LAST NAMED LINE NORTH 70° 35' 54" EAST, 149.45 FEET; THENCE LEAVING SAID LINE, ALONG A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 530.00 FEET, THROUGH A CENTRAL ANGLE OF 14° 56' 34", AN ARC DISTANCE OF 138.22 FEET; THENCE SOUTH 27° 28' 24" EAST, 111.25 FEET; THENCE ALONG A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 470.00 FEET, THROUGH A CENTRAL ANGLE OF 13° 07' 04", AN ARC DISTANCE OF 107.61 FEET; THENCE SOUTH 14° 21' 20" EAST, 39.11 FEET; THENCE ALONG A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 90° 06' 42", AN ARC DISTANCE OF 31.45 FEET TO A POINT ON THE NORTHERN LINE OF THE PARAFFIN PARCEL; THENCE ALONG SAID LAST NAME LINE, SOUTH 75° 45' 22" WEST, 179.96 FEET TO THE POINT OF BEGINNING.

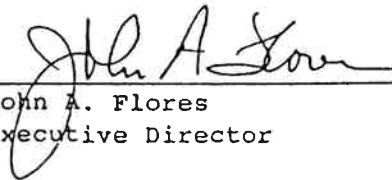
ASSESSOR'S PARCEL NUMBERS 049-1491-004-02 (PORTION) AND 049-1491-004-03 (PORTION)

CERTIFICATE OF ACCEPTANCE

This instrument certifies that the Amended and Restated Declaration of Covenants, Conditions, and Restrictions and Reciprocal Easement Agreements by and between JS Bay Center Associates, a California limited partnership and Emeryville Redevelopment Agency, a public body corporate and politic, is hereby accepted by the undersigned officer on behalf of said Emeryville Redevelopment Agency and said Agency hereby consents to recordation thereof by its duly authorized officer.

Emeryville Redevelopment Agency

By: _____


John A. Flores
Executive Director

CONSENT AND SUBORDINATION

The undersigned is the Beneficiary, Assignee or Secured Party, as the case may be, under the following instruments:

1. Deed of Trust and Assignment of Rents and Fixture Filing Statement dated September 30, 1987, executed by Bay Center Associates, a California limited partnership, as Trustor, Chicago Title Insurance Company, as Trustee, and the undersigned, as Beneficiary, recorded on October 1, 1987, Series No. 87-270772, Official Records of Alameda County, State of California ("Official Records"), as supplemented by First Supplement to Deed of Trust and Assignment of Rents and Fixture Filing Statement dated October 12, 1988 by and among such Trustor, Trustee and Beneficiary, recorded on October 17, 1988, Series No. 88-260823, Official Records;
2. Assignment of Lessor's Interest in Lease(s) dated September 30, 1987, executed by Bay Center Associates, a California limited partnership, as Assignor, to the undersigned, as Assignee,

recorded on October 1, 1987, Series No. 87-270773, Official Records, as supplemented by First Supplement to Assignment of Lessor's Interest in Leases by and between such Assignor and Assignee, dated October 12, 1988, recorded on October 17, 1988, Series No. 88-260824, Official Records; and

3. Financing Statement dated September 30, 1987, executed by Bay Center Associates, a California limited partnership, as Debtor, and the undersigned, as Secured Party, recorded on October 1, 1987, Series No. 87-270774, Official Records,

all of which instruments are collectively referred to hereafter as the "Security Instruments". The undersigned hereby consents to the preparation and filing for record of that certain "AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENT AGREEMENTS FOR EMERYBAY, PARCELS 1, 2 AND A" ("Declaration"), dated July 30, 1992, executed by JS Bay Center Associates, a California limited partnership, and The Redevelopment Agency of the City of Emeryville, to which this Consent and Subordination is attached and, further, hereby subordinates and makes junior in priority the liens of the Security Instruments, and all of its rights, titles and interests arising thereunder, to the lien and charge of each covenant, condition, restriction and easement established

and set forth in the Declaration upon the title to the land described in the Security Instruments, subject to the terms and conditions of the Declaration, and, in particular, Section 13.7 thereof.

It is the intent of the undersigned that the Security Instruments, and all modifications, amendments, renewals and extensions thereof, or of the indebtedness or obligations secured thereby, shall always be subordinated and inferior to each and every covenant, condition, restriction and easement set forth in the Declaration, subject to the terms and conditions of the Declaration, and, in particular, Section 13.7 thereof. The undersigned acknowledges and states that it has read and understands the Declaration, that this instrument is the sole and only agreement concerning the subordination of the Security Instruments to the lien and charge of the Declaration and that it has received adequate and satisfactory consideration in exchange for its execution of this instrument.

Dated: July 31, 1992

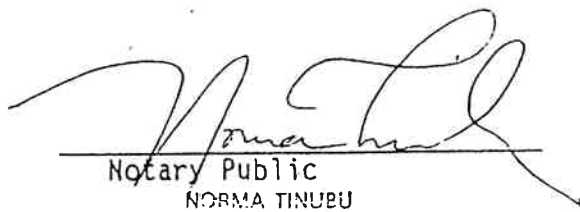
TEACHERS INSURANCE AND ANNUITY
ASSOCIATION OF AMERICA, a
New York corporation

By: *Arthur West* *AW*
Its: DIRECTOR

A C K N O W L E D G E M E N T

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

On this 31st day of July, 1992, before me personally came
HALTON WEST, to me known, and known to me to be the person who
executed the above instrument, who being by me duly sworn did depose and say
that he resides at 76 Rutland Road
Brooklyn, NY 11225; that he is a Director
of TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA, a
New York corporation and the corporation described in and which executed the
foregoing; and that he signed his/her name thereto by order of the Board of
Trustees of said corporation for the use and purposes mentioned therein.



Notary Public
NORMA TINUBU
Notary Public, State of New York
No. 41-317913
Qualified in Queens County
Commission Expires: 1/25/97
Certificate Filed in
New York County

CONSENT AND SUBORDINATION

The undersigned is the Beneficiary, Assignee or Secured Party, as the case may be, under the following instruments:

1. Deed of Trust and Assignment of Rents and Fixture Filing Statement dated December 21, 1988, executed by Bay Center Apartment Associates, a California limited partnership, as Trustor, Chicago Title Insurance Company, as Trustee, and the undersigned, as Beneficiary, recorded on December 23, 1988, Series No. 88-326381, Official Records;
2. Assignment of Lessor's Interest in Lease(s) dated December 21, 1988, executed by Bay Center Apartment Associates, a California limited partnership, as Assignor, to the undersigned, as Assignee, recorded on December 23, 1988, Series No. 88-326382, Official Records; and
3. Financing Statement dated December 21, 1988, executed by Bay Center Apartment Associates, a California limited partnership, as Debtor, and the undersigned, as Secured Party, recorded on December 23, 1988, Series No. 88-321693, Official Records,

all of which instruments are collectively referred to hereafter as the "Security Instruments". The undersigned hereby consents to the preparation and filing for record of that certain "AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENT AGREEMENTS FOR EMERYBAY, PARCELS 1, 2 AND A" ("Declaration"), dated July 30, 1992, executed by JS Bay Center Associates, a California limited partnership, and The Emeryville Redevelopment Agency, to which this Consent and Subordination is attached and, further, hereby subordinates and makes junior in priority the liens of the Security Instruments, and all of its rights, titles and interests arising thereunder, to the lien and charge of each covenant, condition, restriction and easement established and set forth in the Declaration upon the title to the land described in the Security Instruments, subject to the terms and conditions of the Declaration, and, in particular, Section 13.7 thereof.

It is the intent of the undersigned that the Security Instruments, and all modifications, amendments, renewals and extensions thereof, or of the indebtedness or obligations secured thereby, shall always be subordinated and inferior to each and every covenant, condition, restriction and easement set forth in the Declaration, subject to the terms and conditions of the Declaration, and, in particular, Section 13.7 thereof. The undersigned acknowledges and states that it has read and

understands the Declaration, that this instrument is the sole and only agreement concerning the subordination of the Security Instruments to the lien and charge of the Declaration and that it has received adequate and satisfactory consideration in exchange for its execution of this instrument.

Dated: July 31, 1992

TEACHERS INSURANCE AND ANNUITY
ASSOCIATION OF AMERICA, a
New York corporation

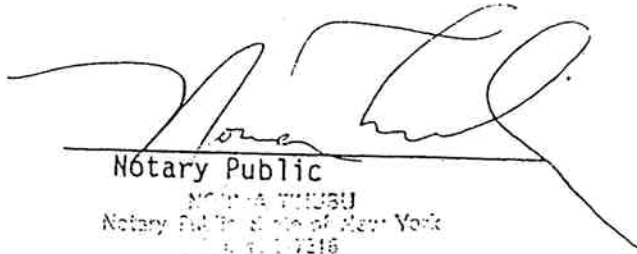
BY: *Hatten Met* *DM*
Its: DIRECTOR

F:\HOME\TINUBU\WP\CA2982CS

ACKNOWLEDGEMENT

STATE OF NEW YORK)
)SS:
COUNTY OF NEW YORK)

On this 31st day of July, 1992, before me personally came HALTON WEST, to me known, and known to me to be the person who executed the above instrument, who being by me duly sworn did depose and say that he resides at 76 Rutland Road Brooklyn, NY 11225; that he is a Director of TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA, a New York corporation and the corporation described in and which executed the foregoing; and that he signed his/her name thereto by order of the Board of Trustees of said corporation for the use and purposes mentioned therein.


Notary Public
NOTARY PUBLIC
Notary Public, State of New York
No. 107216
Qualified in Queens County
Commission Expires: 1/25/97
Certificate Filed in New York County