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Attn: David G. Estes, Esq.

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
AND RECIPROCAL EASEMENT AGREEMENTS  
FOR BAY CENTER, PARCELS 1,2 AND A

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Bay Center  
Emeryville, California

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR BAY CENTER

This Declaration of Covenants, Conditions and Restrictions ("Declaration") for BAY CENTER is made as of this 28th day of September 28, 1987, by BAY CENTER ASSOCIATES, A California Limited Partnership ("Declarant").

RECITALS

A. Declarant is the owner of certain improved real property ("Property") located within the City of Emeryville, State of California, comprised of Parcels 1 and 2 on that certain parcel map entitled "Parcel Map No. 4664" ("Parcel Map 4664"), filed December 30, 1985, in Book 159 of Maps at Pages 16 and 17, Alameda County Records, and Parcel A on that certain parcel map entitled "Parcel Map No. 4947" ("Parcel Map 4947"), filed February 26, 1987, in Book 165 of 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, July 12, 1987, and XXXXX, 1987 (collectively "Participation Agreement"), by and between the Emeryville Redevelopment Agency 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") presently owned by Declarant. The Condominium Development was created by that certain Tract 5781 - Final Map for Condominium Purposes ("Plan") filed in the Office of the Recorder of the County of Alameda, State of California on February 26, 1987, in Book 165 of Maps at Pages 96 through 97, inclusive. One condominium of the Condominium Development contains ground level parking for the Buildings ("Office Parking Area").

E. Concurrent with the creation of the Condominium Development, Declarant recorded a Declaration of Covenants, Conditions and Restrictions Establishing a Plan of Condominium Ownership ("Condo CC&Rs"), establishing a common area and establishing a commercial association ("Commercial Condo Association") and a residential association to govern the relationship between the owners of the condominiums in the Condominium Development.

F. 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. The future owner of Parcel 1, if any, shall hereinafter be referred to as Owner 1, the future owner of Parcel 2, if any, shall hereinafter be referred to as Owner 2, and the future owner of Parcel A, if any, shall hereinafter be referred to as Owner A.

G. 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.

H. Owners 1, 2 and A shall also have the right to use the Office Parking Area in accordance with the terms and conditions hereinafter set forth and the terms and conditions set and in the Condo CC&Rs.

I. In order to provide for efficient development of the Property and to provide for orderly ingress, egress and parking, and to provide for common utilities, storm drains and sanitary sewers across the Property and outside the Buildings, Declarant desires to declare the Property subject to the following covenants, conditions, and restrictions.

**NOW THEREFORE,** Declarant hereby declares that all of the Office Complex, as hereinafter defined, is 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 each Parcel when sold or otherwise disposed of shall be subject to the reciprocal 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 the subsequent subdivision, improvement, lease or sale of the Property, or any part thereof, and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. All CC&Rs and reciprocal 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 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 buildings designated as Buildings A, B, and C on Parcels 1, 2, and A, respectively, as 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 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 Housing Area. "Housing Area" means all of the Residences, including the residential common area and the individual residential units.

Section 1.5 Manager. "Manager" means any Person or Persons assuming the rights, duties, and obligations of the Manager as set forth in Article VIII of this Declaration.

Section 1.6 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 1.7 Mortgage and Mortgagee. "Mortgage" means any 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 the Office Complex. "Mortgagee" means the holder, from time to time, of a Mortgage.

Section 1.8 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, whether as an Owner, lessee, sublessee, licensee or otherwise pursuant to any lease, sublease, license or other occupancy agreement entered into with the Owner of such portion of the Property.

Section 1.9 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 provided for the use of all Occupants and Permittees.

Section 1.10 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 Complex. Office Common Area Improvements include all improvements constructed by Declarant as a part of the Office Common Area, including the Office Parking Area, and such other improvements as the Owners may from time to time agree should be constructed or installed on the Office Common Area.

Section 1.11 Office Complex. "Office Complex" means the Buildings, the Office Common Area, the Office

Common Area Improvements, and the real property on which the foregoing improvements are constructed.

Section 1.12 Office Parking Area. "Office Parking Area" shall have the meaning set forth in Recital D.

Section 1.13 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, or A.

Section 1.14 Parcel. "Parcel" means one of those parcels of land, designated Parcel 1, 2, or A, which is a portion of the Property and which results from a division of the Property as contemplated and provided under the Subdivision Map Act, Government Code Section 66410 et seq.

Section 1.15 Participation Agreement. "Participation Agreement" shall have the meaning set forth in Recital B.

Section 1.16 Permittees. "Permittees" means the officers, directors, employees, agents, partners, contractors, customers, visitors, invitees, licensees, and concessionaires of an Owner or Occupant.

Section 1.17 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 1.18 Phase I. "Phase I" means the period in which the Buildings are constructed and certain of the following improvements, without limitation, are made on the Property: (i) construction of approximately one thousand two hundred (1,200) parking spaces; (ii) extension of Christie Avenue between 64th Street and 65th Street for vehicular travel; (iii) construction of a water element at Christie Avenue and 64th Street; and (iv) construction of the Office Parking Area.

Section 1.19 Phase II. "Phase II" means the period during which, subject to certain conditions, certain of the following improvements may be made to the Office Parking Area and the Housing Area, including, but not limited to: (i) residences may be constructed in the Housing Area; and (ii) conditioned upon the extension of Bay Street, the conversion of Christie Avenue into a pedestrian mall.

Section 1.20 Property. "Property" means that certain real property consisting of Parcels 1, 2, and A and located in the City of Emeryville, County of Alameda, State of California.

Section 1.21 Residences. "Residences" means those residential housing units which may be constructed on the Housing Area.

Section 1.22 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 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 parking garage and the residential common area.

Section 1.23 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. 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 from 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 "Bay Center" and such name shall not be changed without the unanimous consent of the 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 all Occupants' premises. 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. Approval shall not be required for storage of materials, equipment and supplies in relation to and as a part of the construction of Phase I or Phase II, provided that such materials,

equipment and supplies are removed immediately upon completion of construction.

Section 2.7 Temporary Structures. No temporary buildings or other temporary structures shall be permitted on the Office Complex, except for construction purposes during the construction of Phase I and Phase II.

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, except to shield off construction areas during construction of Phase I and Phase II, and for security purposes approved by 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 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 Manager and the unanimous consent of the other Owners; the Owners acknowledge that such consent may be withheld in the absolute discretion of the Manager or other Owners.

Section 2.13 Soil Contamination. Each 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 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.



ARTICLE 3

IMPROVEMENTS

Section 3.1 General. Each Building 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 Buildings. Any work done pursuant to this Article III 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 shall be approved under Section 3.2 which will adversely affect the fire resistivity of such Building.

Section 3.2 Approval Process. Prior to the addition to or construction (including reconstruction after a Building has been damaged) of any new building or existing Building upon any portion of the Property, and prior to any exterior changes, alterations or modifications of any existing Building, 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 for such Building, 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 Building 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 its approval of such plans and specifications if they are in conformity with the intent of this Article and with the operation of a first-class office center. 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 X. All such exterior changes, alterations or modifications shall be consistent with the standard set forth in Section 3.1 above.

Section 3.3 Maintenance of Buildings. Each Owner shall maintain or cause to be maintained in good

order, condition and repair, commensurate with the operation of a first-class office center, the Building located on such Owner's Parcel, 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 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 shall be as follows:

(a) In the event that an Owner's Building is damaged or destroyed, such Owner, subject to the rights of any Mortgagee, shall determine in its sole discretion whether or not to restore the affected property. Should such Owner elect to restore the affected property, then it shall be obligated to promptly and diligently rebuild, replace and repair any damaged or destroyed Building and any damaged or destroyed Office Common Area Improvements (except as limited by Section 3.4(c)) located on the Parcel on which such Building is located, substantially to the same condition and general appearance as existed immediately prior to such damage or destruction. Should such Owner elect not to restore the affected property, then it shall be obligated to promptly and diligently raze and remove that portion of the Building damaged or destroyed and all damaged or destroyed Office Common Area Improvements located on its Parcel and undertake whatever action is necessary to return that portion of the Parcel to a safe and sightly condition.

(b) In the event that more than fifty percent (50%) of the total Square Footage of all substantially completed Buildings is damaged or destroyed and no single Building remains unaffected or is to be reconstructed, and the Owners of the affected Parcels, subject to the rights of any Mortgagee, elect not to restore such affected Parcels,

then each Owner of an affected Parcel shall be obligated to promptly and diligently raze and remove all damaged or destroyed Building and Office Common Area Improvements located on its Parcel and undertake whatever action is necessary to return that Parcel to a safe and sightly condition.

(c) In the event any Office Common Area Improvements are damaged or destroyed and if no Owner is obligated to replace or repair any damaged or destroyed Office Common Area Improvements as set forth in Section 3.4(a), above, or if insurance proceeds are available to the Manager pursuant to the insurance carried under Section 6.2, then the Manager shall promptly and diligently rebuild, replace and repair 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. Each Owner shall be obligated to pay its share of restoration costs incurred by the Manager for such restoration as allocated under Section 8.3 to the extent such costs are not covered by any applicable insurance. In the event of damage or destruction as described in Section 3.4(b) above, the Manager shall have no obligation to restore the Office Common Area Improvements, subject to the rights of any Mortgagee, and this Declaration shall terminate and be of no further force or effect.

ARTICLE 4

EASEMENTS

Section 4.1 Easements for Office Common Area.

Any conveyance of all or any portion of Parcels 1, 2, or A (the "Conveyed Parcel") shall include the following appurtenant easements over and across the Conveyed Parcel in favor of the non-conveying Owners.

(a) Access Roads Easements. Nonexclusive easements on, over and across all vehicular ingress, egress and access roads constructed on 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 on, over and across the Conveyed Parcel which is improved for parking. Notwithstanding the foregoing grant of easement, each Owner shall have the right to designate and reserve certain parking spaces within Parcels 1, 2, and A for certain Occupants and Permittees. 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 Owners, from (i) imposing parking fees on Persons using such easements, or (ii) installing a card-operated gate or other similar device to regulate vehicular access to Parcels 1, 2, and A in accordance with the right

of exclusive parking set forth in the preceding sentence. Such easements are for the purpose of vehicular circulation and parking for vehicles of the non-conveying Owners, Occupants and Permittees.

(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, Occupants and Permittees.

(d) Utilities Easements. Nonexclusive easements in, on and under the Conveyed Property as set forth in any applicable as-built drawings for the Conveyed Property 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 property 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 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 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 Owners against all claims, costs, expenses (including attorneys' fees), and liabilities arising from such use of the easements unless occasioned by the other Owner's sole negligence or willful misconduct.

Section 4.2 Owners' Rights in Office Parking Area.

The Office Parking Area shall be appurtenant to the Property and the Owners shall each own an undivided interest in the Office Parking Area in the ratios set forth in Section 8.3. Each Owner shall have a non-exclusive right to use the Office Parking Area in common with the other Owners. In the event an Owner's cotenancy interest ("Forfeiting Owner") in the Office Parking Area is terminated as a result of any Mortgage executed by another Owner (e.g., by a Mortgagee's foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise) then the Person acquiring the Forfeiting Owner's interest shall execute such documents and agreements, including, without limitation, an easement for parking in the Office Parking Area and access easements thereto, as may be reasonably necessary to ensure the Forfeiting Owner's



uninterrupted right to use the Office Parking Area as provided in this Section 4.2. No Owner may transfer, convey or encumber all or any part of the Office Parking Area separately from its respective Parcel. 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, establish and designate reasonable parking areas in the Office Complex for the benefit of visitors to the Buildings and to the Housing Area.

ARTICLE 5

OPERATION AND MAINTENANCE OF OFFICE COMMON AREA

Section 5.1 Possession. Each Owner may at any time, remove, exclude, and restrain any Person from the use or occupancy of the Office Common Area of which it has an ownership interest, except for persons who use such area in accordance with, and pursuant to, the provisions of this Declaration.

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 Owners unanimously consent in writing to such alteration.

Section 5.3 Power to Grant Easements. Declarant or the Manager shall have the power to grant and convey in the name of all the Owners as their attorney-in-fact 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, expressly consents to such easements and rights-of-way and appoints the Manager (and Declarant so long as Declarant owns a Parcel) as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Notwithstanding the foregoing, no such easement or right-of-way may be granted if it would permanently interfere with the use, occupancy or enjoyment of any Owner with its Parcel or right to use the Office Parking Area.

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 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. 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 Manager shall operate, maintain and repair all of the Office Common Area and Office Common Area Improvements and keep them in good

order, condition and repair, commensurate with the operation of a first-class office center in the San Francisco Bay Area. 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 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 centers;

(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.

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 Owners. 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 Owner shall use its best efforts to 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 Manager shall use its best efforts to 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 or Office Common Area Improvements being insured or such 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. 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 shall insure against claims for personal injury or death or property damages occurring upon, in or about each Owner's Building, 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 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 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;



(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

(d) Each Owner shall be named an additional insured 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.

Section 6.5 Use of Policy Proceeds. Subject to the rights of any Mortgagee to such proceeds and subject to the rights contained in Section 3.4, fire and extended coverage insurance proceeds paid to an Owner or the Manager by reason of damage to or destruction of any Building or Office Common Area Improvements shall be used by each Owner or the Manager, as the case may be, for the repair or rebuilding of the damaged improvement.

Section 6.6 Indemnification by Parties. Each Owner ("Indemnitor") shall indemnify, defend and hold harmless all other Owners 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 IV) 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 its Parcel 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 Permittees 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 IV, 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 Sections 6.1, 6.2 and 6.3, 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 cover the Office Common Area and any or all remaining portions of the Office Complex,

which policies shall be in conformity with the requirements of this Article VI. Each Owner shall pay to the Manager all premiums for such policies that are obtained by Manager which represent coverage of any Building or Buildings located on such Owner's Parcel pursuant to the terms of Section 8.3.

Section 6.8 Certificate of Insurance. Each Owner and Manager shall, on the request of any other Owner or Manager, 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 pursuant to Section 6.7, the Manager shall furnish such certificate. Each Owner shall reimburse the 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, which losses and damages are of the type covered under the policies required by this Article to the extent that said loss is reimbursed by 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 (1) Owner or Manager may acquire against all 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.

ARTICLE 7

REAL ESTATE TAXES

Section 7.1 "Real Estate Taxes" Defined. For purposes of this Article VII, "Real Estate Taxes" shall mean all taxes, assessments and charges levied upon or with respect to the Office Complex (including the Office Parking Area) or any personal property used by the Manager 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 to the the Office Complex, service payments in lieu of taxes, and any tax, fee or excise or the act of entering into any lease, or on the use or occupancy of the Office Complex, 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 the Office Complex, that are now or hereafter levied or assessed against an Owner in connection with the Office Complex, 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 Owner shall pay or cause to be paid before delinquency all Real Estate Taxes affecting such Owner's Parcel and any improvements thereon. All Real Estate Taxes assessed against the Office Parking Area and to be paid by the Owners as set forth in the preceding section 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.

Section 7.3 Owner's Right to Contest. Each Owner, subject to the rights of any Mortgagee, 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, Owner may withhold or defer payment or pay under protest but shall protect the Office Complex and the Parcel 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 Bay Center 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. The Owners at any time may terminate the Manager (including Declarant) and (a) appoint an alternative Manager as provided herein, or (b) approve an alternative form of management, including but not limited to, a non-profit entity composed of all Owners as provided herein, provided, however, that all such actions shall require the unanimous consent of the Owners. All Mortgagees shall be notified if and when the Owners approve an alternative form of management.

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



as a first-class office and research service center for the benefit of the Owners, Occupants and Permittees including the following:

(a) Operate and maintain the Office Common Area as provided in Section 5.5;

(b) Establish, publish and enforce reasonable rules and regulations governing the Buildings or Office Common Area and any facilities or activities thereon;

(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 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 Condo Association on behalf of the Owners; and

(j) Take any other actions which are reasonably required for the operation and maintenance of the Office Complex or which will 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 5.6, (b) the cost of performance of the Manager's obligations under Section 8.2, including the cost of personnel of 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 levied against the Office Parking Area by the Condo Association pursuant to the Condo CC&Rs, (e) the cost of Office Common Area Improvement restoration costs as defined in Section 3.4(c), and (f) an administrative charge equal to three percent (3%) of the total amount expended by the Manager under subsections (a) through (e) above. Each Owner shall pay to the Manager on

the first of each month in advance, one-twelfth (1/12) of the estimated amount, provided the amounts set forth in subsections (c) and (d) above may be accelerated so that such amounts are fully reimbursed to Manager prior to Manager's obligation to make such payments. 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. Each Owner's share 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.

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.

(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 such Owner's portion of the Property 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 ten (10) 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 ten (10) 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.

Section 8.5 Indemnification of Manager. The Owners shall 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 negligence or willful act or omission of the Indemnified.

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.

Section 8.7 Selection of New Managers. In the event the Owners desire or need to select a successor to serve as Manager, the 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 Owners of Parcels 1, 2, and A shall each have the right for a period of one (1) month following the decision by two (2) of the three (3) 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 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 Amendments to Declaration; Voting.

This Declaration shall not be amended without the unanimous consent of all Owners entitled to vote as provided in this Section and the consent of any Mortgagees as provided in Section 13.2. In the event that any Owner shall transfer or convey its interest in its Parcel, or any portion of its Parcel or interest in its Parcel, in such manner as to vest ownership of the Parcel or interest therein in more than one Person, then the Persons owning all of such interest in such Parcel 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. Any such designation shall be in writing, duly executed, verified and acknowledged by each such Person, shall be served upon the Owners 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, 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 in question.

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 Office Complex 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 Office Complex to any Person having the power of eminent domain, provided that the Office Complex 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 Office Common Area Improvements on any Owner's Parcel is taken by condemnation, such Owner shall reconstruct such Building or Office Common Area Improvements as nearly as possible to the condition as existed immediately prior to such taking to the extent that proceeds available to the Owner from the condemnation award are adequate and the reconstruction is economically feasible in such Owner's reasonable judgment. Notwithstanding

anything to the contrary contained in this Article IX, in no event shall any Owner be required to rebuild, replace or restore any Building or Office Common Area Improvements beyond the extent it would be required to do so pursuant to Section 3.4.

Section 9.3 Restoration of Office Common Area.

If any part of the Office Parking Area is taken by condemnation, and the Owners are separately awarded condemnation proceeds, as a result thereof, the Owners shall assign such proceeds to the Manager. The Manager shall then reconstruct such improvements as existed on the Office Parking Area 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 greater than the sum required to restore the Office Parking Area, any excess sums shall, subject to the rights of any Mortgagee, be payable to the Owners as their interests appear in accordance with Section 8.3. Notwithstanding anything to the contrary contained in this Article IX, in no event shall the Manager be required to rebuild, replace or restore any portion of the Office Parking Area beyond the extent it would be required to do so pursuant to Section 3.4.

Section 9.4 No Termination of Easements and Licenses. Nothing in this Article shall affect the existence

of the easements granted under Article IV, except to the extent such easements burden the portion of land taken by condemnation.

Section 9.5 Mortgagee Participation. Nothing herein contained shall be deemed to prohibit any Mortgagee or Occupant from participating in any eminent domain proceedings on behalf of or in conjunction with any Owner.

ARTICLE 10

ARBITRATION

Section 10.1 Arbitration. Any dispute between any of the Owners under this Declaration, 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 dispute to it. The parties agree that the decision 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 XI, 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 Mortgagee's Opportunity to Cure. During the continuance of any Mortgage and until such time as the lien of any Mortgage has been extinguished:

(a) None of the Owners shall agree to any termination, amendment or modification of this Declaration, without the prior written consent of all Mortgagees.

(b) 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 Managers 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 11.2.

(c) 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.

(d) 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 the non-defaulting Owner 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, a reasonable time after the expiration of such sixty (60) day period within which to remedy the default; provided that (i) 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) 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, the non-defaulting Owner 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 created here by or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in and within the time specified by this Section 11.2(d).

(e) 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 the non-defaulting Owners setting forth the nature of such event of default, or prior thereto, the Mortgagee of the defaulting Owner shall have acquired 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.

(f) 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 11.2(d) and (e) 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.

(g) Each Owner shall mail or deliver to each Mortgagee a duplicate copy of any and all notices which each Owner may from time to time give to or serve upon the other Owners 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 an Owner to the others hereunder shall be deemed to have been given unless and until a copy thereof shall have been mailed or delivered to each Mortgagee as herein set forth.

(h) 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 XI; provided, however, that any such amendment shall not in any way affect the term hereby demised nor affect adversely in any material respect any rights of a Mortgagee under this Declaration.

Section 11.3 Limitation of Enforcement Against Mortgagee. No violation of this Declaration by, or enforcement of this Declaration against, an Owner shall impair, defeat, or render invalid the lien of any Mortgage, but this Declaration shall be enforceable against any Owner whose title is acquired by foreclosure, trustee's sale, voluntary conveyance, or otherwise.

Section 11.4 Damage or Destruction. Every Mortgagee is entitled to timely written notice of (a) any substantial damage to or destruction of the Property, Office Common Area Improvements, or Building encumbered by such Mortgagee's Mortgage, and (b) any condemnation or eminent domain proceeding involving, or any proposed acquisition by a condemning authority of, either such Property, Office Common Area Improvements, or Building, or portion thereof.

Section 11.5 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 with respect to the distribution of insurance proceeds or proceeds of losses to or a taking of the Property, Office Common Area Improvements, or Building 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 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 has been given a written notice specifying the default and (a) fails to cure it for ten (10) days, or (b) fails 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.

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. 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 to an Owner 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 party might otherwise have by virtue of a default under this Declaration, and the exercise of one such right or remedy by an Owner shall not impair such Owner'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 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.

Section 13.3 Notices. Any notice, request, demand, instruction or other document to be given hereunder or pursuant hereto to any party shall be in writing and shall either be personally delivered (in which event 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), to such party at the last address listed with the Manager. For purposes of this Section, notice of any change in address shall be given to the Manager in the manner provided above.



Section 13.4 Table of Contents and 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, 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.

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 no provisions of this Declaration are intended to create or constitute any Person a third party beneficiary hereof.

Section 13.7 Rights, Privileges, and Easements with Respect to Liens. Except as specifically provided in Articles VI, IX and XI, this Declaration and the rights,

privileges and easements of the Owners with respect to the other Owners and all of the Property 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, whenever made, shall be deemed superior and senior to any and all liens, including the lien of Mortgages, the same as if such amendments or modifications had been executed concurrently herewith.

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 its por-

tion of the Property, 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.

Section 13.12 Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any part of the Property 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 portion of the Property 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, the Owner to whom the request has been directed shall issue to the requesting Owner, or to any Mortgagee, or to any prospective purchaser or prospective Mortgagee specified by such requesting Owner, an estoppel certificate stating: (a) whether the Owner 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 knowledge this Declaration as of that date is in full force and effect.

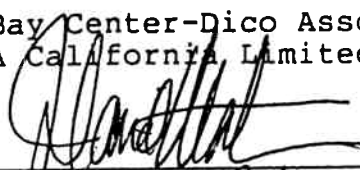
Section 13.15 Incorporation of Declaration. Any deed or other instrument evidencing conveyance of all or any portion of the Property, whether by fee, easement, leasehold interest or otherwise, shall be subject to the provisions of this Declaration. Any such instrument of conveyance shall be deemed to incorporate the provisions of the Declaration,

regardless of whether such instrument makes reference  
thereto.

IN WITNESS WHEREOF, Declarant has executed this  
Declaration on the date first above written.

**BAY CENTER ASSOCIATES,**  
A California Limited Partnership

By Bay Center-Dico Associates  
A California Limited Partnership

By  \_\_\_\_\_  
Its *General Partner* \_\_\_\_\_

PARTNERSHIP ACKNOWLEDGMENT

State of California

County of Contra Costa

On this the 28th day of September 19 87, before me, Michelle R. Sagdahl, the undersigned Notary Public, personally appeared J. David Martin,

X personally known to me

         proved to me on the basis of satisfactory evidence

to be the person(s) who executed the within instrument on behalf of the partnership, and acknowledged to me that the partnership executed it.

WITNESS my hand and official seal.

Michelle R. Sagdahl  
Notary's Signature

