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DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF PARK AT THE PARK OWNERS ASSOCIATION AND
ESTABLISHMENT OF RECIPROCAL EASEMENTS

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EXHIBIT "A" Project Premises Legal Description

EXHIBIT "B" Ballpark Parcel Legal Description

EXHIBIT "C" Outfield Park Parcel Legal Description

EXHIBIT "D" Parking Parcel Legal Description

EXHIBIT "E" R2 Parcel Legal Description

EXHIBIT "F" R3 Parcel Legal Description

EXHIBIT "G" Common Maintenance Areas

EXHIBIT "H" Retail Common Maintenance Area

EXHIBIT "I" Ballpark Exclusive Use Area

EXHIBIT "J" Special Maintenance Requirements

EXHIBIT "K" Parking Access Ramps

EXHIBIT "L" Utility Facilities Easements

EXHIBIT "M" Preapproved Improvement Plans for R2 Parcel, R3 Parcel and Parking Parcel

EXHIBIT "N" Baseball Event Area

EXHIBIT "O" Non-Baseball Event Area

DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF PARK AT THE PARK OWNERS ASSOCIATION AND
ESTABLISHMENT OF RECIPROCAL EASEMENTS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF PARK AT THE PARK OWNERS ASSOCIATION AND ESTABLISHMENT OF RECIPROCAL EASEMENTS is made as of the _____ day of _____, 2000, by THE CITY OF SAN DIEGO, a municipal corporation, and PADRES L.P., a Delaware limited partnership, and PADRES' PARK AT THE PARK, LLC, a Delaware limited liability company. Capitalized terms used in the Recitals to this Declaration are defined in Article 1 below.

RECITALS

A. Statement of Purpose. This Declaration governs the formation and operation of an owner's association related to the planned development for a state-of-the-art, open-air baseball park, a grass and hardscape plaza, and a sports-oriented retail and entertainment complex located in the City of San Diego, County of San Diego, State of California, legally described in Exhibit "A". The Ballpark Project will implement, in part, the terms of a Memorandum of Understanding entered among the City of San Diego, The Redevelopment Agency of the City of San Diego, Centre City Development Corporation and Padres, L.P., a Delaware limited partnership. On November 3, 1998, the electorate of the City approved Proposition C, which adopted Ordinance No. 0-18613 authorizing the City to enter the MOU.

B. The Project Premises. The Project Premises consists, in part, of the five (5) separate parcels contained in the Parcel Map and which are described as follows:

(i) the Ballpark Parcel, which is owned in fee simple by the City, described as Parcel No. I of the Parcel Map, and more particularly described in Exhibit "B", upon which the City and the Padres intend to cause the construction and operation of the Ballpark, as the same may be developed, expanded or altered from time to time;

(ii) the Outfield Park Parcel, which is owned in fee simple by the City, described as Parcel No. E of the Parcel Map, and more particularly described in Exhibit "C", upon which the City and Padres intend to construct, operate or cause to be operated, the Outfield Park, as the same may be developed, expanded or altered from time to time;

(iii) the Parking Parcel, which is an underground parcel underlying all of the R2 Parcel (described below), the R3 Parcel (described below) and a portion of the Outfield Park Parcel, owned in fee simple by the Mixed-Use Owner, described as Parcel No. R1 of the Parcel Map, and more particularly described in Exhibit "D", upon which the Mixed-Use Owner desire to construct, operate or cause to be operated, the Parking Facility, as the same may be developed, expanded or altered from time to time; and

(iv) the R2 Parcel, which is owned in fee simple by the Mixed-Use Owner, described as Parcel No. R2 of the Parcel Map, and more particularly described in Exhibit "E", upon which the Mixed-Use Owner desire to construct, operate or cause to be operated, a Retail Facility, Residential Facility and/or an Office Facility, as the same may be developed, expanded or altered from time to time;

(v) the R3 Parcel, which is owned in fee simple by the Mixed-Use Owner, described as Parcel No. R3 of the Parcel Map, and more particularly described in Exhibit "E", upon which the Mixed-Use Owner desire to construct, operate or cause to be operated, a Retail Facility, Residential Facility and/or an Office Facility, as the same may be developed, expanded or altered from time to time.

C. Relationship of the Parcels. The Ballpark Project is a public/private collaboration. Section XVIII of the MOU states: "The Outfield Park Retail Parcels and Outfield Park will be subject to mutually agreed-upon appropriate reciprocal easement agreements, and operating and maintenance covenants to protect the respective interests of the Parties." In order to achieve the benefits of a comprehensive general plan of development, the City and the Mixed-Use Owner acknowledge that this Declaration shall also affect the Ballpark Parcel. Section XL of the MOU states: "... the planning, construction, operation, management, use and occupancy of the Ballpark ... shall be subject to the terms of more definitive agreements" The MOU describes the Outfield Park Parcel as the "Outfield Park."

D. Ownership of Ballpark and Outfield Park. Pursuant to the MOU, City shall own the land which constitutes the Ballpark Parcel and Outfield Parcel. Pursuant to the Procurement Agreement, the Padres will pay for and own certain Improvements, fixtures and equipment installed in the Ballpark and Outfield Park, and the City will pay for and own the structure of the Ballpark and the balance of the Improvements which comprise the Ballpark and the Outfield Park.

E. Nature of Project. The general plan for the Ballpark Project is composed of three basic components: (i) a Ballpark, (ii) the Outfield Park, and (iii) the Outfield Park Retail. The centerpiece of the development plan is an approximately 42,000 fixed-seat, open-air ballpark located on the Ballpark Parcel to exhibit Major League Baseball Games of the San Diego Padres, as well as concerts, large meetings, civic events, and other related uses. The plans for the Ballpark include two "garden buildings," consisting of a total of 259,000 square feet for ballpark concessions, retail uses, ticket offices, business offices and limited parking. Declarant's plan for development also includes the Outfield Park on the Outfield Park Parcel. The Outfield Park will be a grass and hardscape plaza located just beyond the outfield fence of the Ballpark. During events, the Outfield Park will accommodate up to 3,500 ticket holders. On the Outfield Park Retail Parcels, Declarant desires to construct the Outfield Park Retail mixed-use development area for retail, entertainment, office, residential and associated parking uses. Because of the synergy among these components, Declarant desires to establish certain easements and rights throughout the Ballpark Parcel, Outfield Park Parcel and common areas of the Outfield Park Retail Parcels. Declarant also plans the construction of a subterranean parking facility with approximately five hundred (500) spaces to provide parking for Outfield Park Retail Parcels and

certain other uses. Declarant finds that the foregoing land uses are complementary and should be integrated. Therefore, Declarant desires that this Declaration provide a general plan of development for the use of the Project Premises.

F. Rights and Obligations of Ballpark Owner. The relationship of the City and the Padres regarding the use, occupancy and management of the Ballpark and Outfield Park are set forth in the Use Agreement. Accordingly, whenever this Declaration grants or reserves a right to the Ballpark Owner, or identifies the Ballpark Owner as the obligor of any obligation, such right shall be exercised, and such obligation shall be performed, pursuant to the terms of the Use Agreement. City and Padres shall, from time to time, provide written notice to the other Owners of the identity of the entity authorized to act on behalf of the Ballpark Owner and Outfield Park Owner.

G. Covenants Affecting Parcels. To establish the Ballpark Project, Declarant desires to subject the Project Premises to this Declaration setting forth certain rights, duties, agreements, obligations and easements relating to, in, on, over and across the Parcels. Each separate interest of a party to this Declaration is intended to be coupled with reciprocal easement rights appurtenant to their separate interests, as more particularly described in this Declaration.

H. Covenants Affecting Common Maintenance Area. Declarant desires to make certain mutual provisions for the construction, maintenance and operation of the Common Maintenance Area and other buildings and improvements which now exist or which may in the future be constructed upon the Parcels, and to make certain other covenants and agreements as hereinafter specifically set forth. This Declaration will also establish rights vested in the Ball Park Owner to designate Event Periods during which pedestrian access may be limited and restricted in certain common areas and the Outfield Park Parcel.

I. Conveyance of Parcels Subject to Restrictions. Declarant intends to hold, sell, lease, license, subdivide or otherwise convey estates or other interests in the Parcels to other parties and desires that the ownership, use, operation and enjoyment of the Parcels be subject to the easements, agreements, covenants, conditions and restrictions set forth in this Declaration.

DECLARATION

Declarant declares that the Project Premises are, and shall be, held, conveyed, hypothecated, encumbered, licensed, rented, used and occupied subject to the following limitations, restrictions, easements, covenants, conditions, liens and charges, all of which are declared and agreed to be in furtherance of the subdivision, improvement, protection, maintenance and sale of Parcels within the Project Premises, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Project Premises. All of the limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land, shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in the Project Premises, shall be enforceable equitable servitudes and shall be binding on and inure to the benefit of the successors-in-interest of such parties.

ARTICLE 1

DEFINITIONS

As used in this Declaration, the following terms have the meanings set forth below.

1.1 Accounting Period. "Accounting Period" means any period beginning on January 1 and ending on the next following December 31, except that the first Accounting Period shall commence on the date of the recordation of a notice by Declarant stating that a temporary or permanent certificate of occupancy has been issued with respect to the Ballpark Parcel, Parking Parcel, R2 Parcel and R3 Parcel by Declarant and shall end on the following December 31, and the last Accounting Period shall end on the termination of this Declaration.

1.2 Admission Ticket Proceeds. "Admission Ticket Proceeds" means all proceeds from the sale of admission tickets to Ticket Holders for attendance at Events.

1.3 Affiliate. "Affiliate" means any Person (a) which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, any Owner or (b) which holds five percent (5%) or more of the equity interest held either beneficially or of record by Owner, as the context may require. "Control" means any possession, directly or indirectly, of the power to cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, family relationship or otherwise.

1.4 Agency. "Agency" means the Redevelopment Agency of the City of San Diego.

1.5 Allocable Share of Common Maintenance Area Costs. Subject to adjustment as provided in this Declaration, "Allocable Share of Common Maintenance Area Costs" means that portion of Common Maintenance Area Costs allocable to each respective Parcel for each Accounting Period, equal to the following percentages:

- (i) fifty-one percent (51%) for the Ballpark Parcel,
- (ii) thirty-three percent (33%) for the R2 Parcel, and
- (iii) sixteen percent (16%) for the R3 Parcel,

which amounts shall be payable as set forth in this Declaration.

1.6 Allocable Share of Incremental Event Expenses. "Allocable Share of Incremental Event Expenses" means the Incremental Event Expenses which are allocated entirely to, and shall be paid by, the Event Sponsor.

1.7 Allocable Share of Parking Operating Costs. "Allocable Share of Parking Operating Costs" means that portion of the Parking Operating Costs allocable solely to the R2 Owner and the R3 Owner on a monthly basis for each Accounting Period, equal to the following percentages for each such Parcel:

- (i) sixty-seven percent (67%) for the R2 Parcel, and
- (ii) thirty-three percent (33%) for the R3 Parcel,

which amounts shall be payable as set forth in this Declaration.

1.8 Allocable Share of Retail Common Maintenance Area Costs. Subject to adjustment as provided in this Declaration, "Allocable Share of Retail Common Maintenance Area Costs" means that portion of Retail Common Maintenance Area Costs allocable solely to each respective Parcel for each Accounting Period, equal to the following percentages:

- (i) sixty-seven percent (67%) for the R2 Parcel, and
- (ii) thirty-three percent (33%) for the R3 Parcel,

which amounts shall be payable as set forth in this Declaration.

1.9 Applicable Law. "Applicable Law" means any law, regulation, rule, order, policy or ordinance of any governmental or quasi-governmental entity, including the Agency, applicable to the Parcels, the Buildings or the Project or any portion or the use or occupancy thereof, now in effect or as hereafter promulgated, including, but not limited to, any applicable environmental mitigation measure and any use restrictions on the Ballpark Parcel as imposed by any law, regulation, statute, or ordinance relating to or regulating in any way the use, storage or presence of any chemical, material or substance, which is or may be prohibited, limited or regulated by any such governmental or quasi-governmental entity or could pose a hazard to the health or safety of any Person or Permittee.

1.10 Applicable Rate. "Applicable Rate" means the rate of interest chargeable pursuant to this Declaration equal to the lesser of twelve percent (12%) per annum or the maximum rate allowed by Applicable Law.

1.11 Architectural Committee. "Architectural Committee" means the Architectural Committee that shall be established pursuant to the provisions of Article 3 of this Declaration.

1.12 Architectural Guidelines. "Architectural Guidelines" means the design criteria to be adopted by the Architectural Committee pursuant to the provisions of Article 3 of this Declaration, as the same may be amended, modified or repealed as provided therein.

1.13 Articles. "Articles" means the articles of incorporation of the Association, as the same may be amended from time to time.

1.14 Association. "Association" means the Park at the Park Owners Association, the California non-profit mutual benefit corporation which shall perform the Maintenance and operation of the Common Maintenance Area and the other duties assigned to the Association under this Declaration.

1.15 Ballpark. "Ballpark" means the open-air, state-of-the-art, natural grass baseball facility, with multiple uses, and with approximately 42,000 fixed seats, constructed or to be constructed on the Ballpark Parcel pursuant to the provisions of Article 3 of this Declaration, comprising a portion of the Project.

1.16 Ballpark Owner. "Ballpark Owner" means the City and the Padres collectively as to their respective ownership interests in the Ballpark and Outfield Parcel as described in the Procurement Agreement, or any Person who becomes an Owner under this Declaration as successor-in-interest to the City and the Padres with respect to the Ballpark Parcel.

1.17 Ballpark Parcel. "Ballpark Parcel" means that certain parcel of real property located in the City of San Diego, County of San Diego, State of California as more particularly described in Exhibit "B."

1.18 Ballpark Project. "Ballpark Project" means collectively the Ballpark, the Outfield Park, the Retail Facilities, the Office Facilities, the Parking Facilities, the Residential Facilities and all other Buildings and Improvements located on the Project Premises as they presently exist or as they may be expanded, developed, constructed or altered from time to time, together with all fixtures, equipment or personal property now or hereafter situated or located in or upon the Project or used in connection with the Project and owned or leased by an Owner or the Association.

1.19 Ballpark Exclusive Use Area. "Ballpark Exclusive Use Area" means those certain areas designated in the Ballpark Parcel as shown on Exhibit "I" which are designated for the exclusive use of the Ballpark Owner.

1.20 Baseball Event. "Baseball Event" means (i) Major League Baseball Games, or (ii) other professional baseball game designated by the Padres with the prior written approval of the City which use both the Ballpark and the Baseball Event Area and during which access to the Baseball Event Area shall be limited to Ballpark Ticket Holders.

1.21 Baseball Event Area. "Baseball Event Area" means those certain areas within the Outfield Park and Common Maintenance Area as shown on Exhibit "N" to which access during Baseball Events is limited to Baseball Ticket Holders.

1.22 Baseball Ticket Holders. "Baseball Ticket Holders" means individuals holding admission tickets to the Ballpark and/or Baseball Event Area during Baseball Events.

1.23 Board of Directors. "Board of Directors" or "Board" means the Board of Directors of the Association.

1.24 Bond Indenture. "Bond Indenture" means that certain Indenture between the City and Bond Trustee, dated _____, 2000.

1.25 Bond Trustee. "Bond Trustee" means the bond trustee identified in the Bond Indenture.

1.26 Building(s). "Building(s)" means any structure or improvement located on any Parcel, including the Ballpark, the Outfield Park, the Parking Facility, a Retail Facility, an Office Facility, a Residential Facility or which comprises a separate facility, whether or not separately linked with other improvements or buildings on the Project Premises.

1.27 Building Architect. "Building Architect" means the architect(s) retained by each Owner for the planning and construction of Improvements upon or alterations to their respective Parcels.

1.28 Business Day. "Business Day" means a day other than a Saturday, Sunday or other day which (i) is a government holiday under the laws of the State of California, and/or (ii) commercial banks are authorized or required to close under the laws of the State of California.

1.29 Bylaws. "Bylaws" means the bylaws of the Association adopted by the Board, as the same may be amended from time to time.

1.30 City. "City" means the City of San Diego, a municipal corporation organized under the laws of the State of California.

1.31 City Maintenance Expense Cap. "City Maintenance Expense Cap" means the sum of \$3,500,000 in the first calendar year of operation of the Ballpark, increased annually thereafter by the percentage increase in the San Diego Consumer Price Index for all urban consumers (CPI-U).

1.32 Common Maintenance Area. "Common Maintenance Area" means all areas presently existing or as later altered, modified or improved within the exterior boundaries of the Project Premises (except as otherwise specified), including the Outfield Park, that are, or are designated and intended to be, constructed, installed or improved and available for the non-exclusive servicing, use, convenience or benefit (as the case may be) of the Owners and all Occupants and their respective Permittees, excepting therefrom: (i) the Ballpark Parcel; (ii) space occupied from time to time by an Owner's Improvements (except to the extent specifically provided herein); and (iii) Retail Common Maintenance Area. Exhibit "G" attached hereto depicts the Common Maintenance Areas to be constructed and subject to this Agreement as of the date of recording. The configuration, location and extent of the Common Maintenance Area may change from time to time corresponding to the extent permitted in Article 14 of this Declaration. In the event of any such material reconfiguration, the Association shall record a modified form of Exhibit "G."

1.33 Common Maintenance Area Costs.

1.33.1 Costs Included. "Common Maintenance Area Costs" shall mean all expenses and costs of every kind and nature which arise in connection with the Maintenance and operation of the Common Maintenance Area by the Association as required in this Declaration, and shall include, without limitation:

(a) Wages, salaries and related expenses and benefits of all personnel whether the Association's employees or employees of the Association's agents or independent contractors, whether on-site or off-site, while engaged directly in the operation, management, Maintenance, engineering and security of the Common Maintenance Area;

(b) The costs of supplies, materials and rental of equipment used in the operation, security, management and Maintenance of the Common Maintenance Area;

(c) Periodic charges for use of all Utility Facilities provided to the Common Maintenance Area (including any hook-up, connection, service charge or surcharge and energy allocation or energy use charges or surcharges in connection with the operation and management of the Common Maintenance Area);

(d) The costs of all Maintenance, janitorial and service agreements for the Common Maintenance Area and the equipment therein, including, without limitation, professional management and security services, alarm services, elevator and escalator Maintenance and landscaping services and rubbish removal;

(e) Legal expenses and accounting expenses incurred in the operation and management of the Common Maintenance Area including, without limitation, the calculation of the amount of Common Maintenance Area Costs by certified public accountants;

(f) All insurance premiums and costs associated with the insurance required to be carried by the Association pursuant to this Declaration and such other insurance as the Association may deem reasonably necessary to obtain in the future;

(g) The costs of general Maintenance (excluding general Maintenance required to be paid for by an Owner at the Owner's expense pursuant to this Declaration or otherwise performed or paid for by the Owners, the proceeds of insurance or third parties) of the Common Maintenance Area;

(h) Subject to Section 5.2.8, the costs of amortization of capital improvements and their replacements, modifications or improvements made to the Common Maintenance Area after initial construction of the Project (with the cost basis subject to amortization to include loan fees and points payable in connection with construction). The Association may establish reasonable schedules of amortization, based on then existing standards and customs in the industry, with respect to any capital improvements;

(i) The costs of utilities, insurance, materials, supplies and equipment related to or used in connection with services provided or available to be provided within the Common Maintenance Area;

(j) The costs of professionals retained on behalf of Association (i) to review Improvement Plans pursuant to Article 3 below and (ii) to prepare and maintain a set of plans for and of easements for use of Common Maintenance Area pursuant to Article 3 below;

(k) The costs of compliance with any and all Applicable Law with respect to the Common Maintenance Area including, without limitation, the costs of complying with any and all governmentally required traffic management and fire safety programs and any construction associated therewith;

(l) The costs of banners and signs related to the Project (and not related to commercial purposes), if any, placed by the Association; and

(m) The costs of Maintenance and operation of the public address, sound systems and video systems in the Outfield Park Parcel.

1.33.2 Costs Excluded. Notwithstanding anything to the contrary contained in this Section, Common Maintenance Area Costs shall not include:

(a) The cost of any construction or development other than described in Section 1.33.1;

(b) Depreciation on the construction costs other than with respect to amortization of the Improvements described in Section 1.33.1;

(c) Principal, interest or debt required to be paid on any Mortgage or deed of trust, provided that this Section shall not exclude amortization to the extent permitted under Section 1.33.1 for the cost of constructing the Improvements described in Section 1.33.1;

(d) The cost of special services, goods or materials provided to or specific costs incurred for the account of specific Owners, Occupants and Permittees; and

(e) Retail Common Maintenance Area Costs, Parking Operating Costs and Incremental Event Expenses.

1.34 Condemnation. "Condemnation" means the taking of all or any part of the Parcels or the possession thereof under the power of eminent domain; or the voluntary sale of all or any part of the Project (with the consent of any Owner having an interest therein) by any Owner as directed or designated by the governmental agency having the power of eminent domain, provided that such portion of the Project is then under threat of Condemnation evidenced by notice of the same from a governmental agency having the power to do so.

1.35 Condemnation Date. "Condemnation Date" means the earlier of the following: the date when possession of the condemned Parcel (or any part thereof) is taken by the condemning authority; or the date when title to the condemned Parcel (or any part thereof) vests in the condemning authority.

1.36 County. "County" means the County of San Diego, California.

1.37 Declarant. "Declarant" means the Mixed-Use Owner, the Ballpark Owner and their successors and assigns, if such successors and assigns acquire all of Declarant's then current interest in the Project, and Declarant has expressly transferred or assigned to such successors or assigns its rights and duties as Declarant to all of the Project. For any successor or assignee of "Declarant" to be deemed a Declarant under the terms hereof, Declarant shall record in the County a certificate so designating said successor or assignee as Declarant. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale.

1.38 Declaration. "Declaration" means and refers to this enabling Declaration of Covenants, Conditions and Restrictions of Park at the Park Owners Association, as said Declaration may from time to time be amended, modified or supplemented.

1.39 Enforcement Assessment. "Enforcement Assessment" means the assessments which may be levied by the Association against an Owner for failure to comply with this Declaration, as provided in Article 5 below.

1.40 Event. "Event" means a single Baseball Event or Non-Baseball Event to occur within a twenty-four (24) hour period.

1.41 Event Area. "Event Area" means the Baseball Event Area with respect to Baseball Events and the Non-Baseball Event Area with respect to Non-Baseball Events.

1.42 Event Period. "Event Period" means (i) with respect to Baseball Events, the period beginning four and one-half (4 ½) hours prior to the commencement of the Baseball Event and ending one (1) hour after termination of the Baseball Event, and (ii) with respect to Non-Baseball Events, the period beginning two (2) hours prior to the commencement of the Non-Baseball Event and ending one (1) hour after termination of the Non-Baseball Event.

1.43 Event Sponsor. "Event Sponsor" means the Person determined pursuant to Section 2.4.

1.44 Improvement Plans. "Improvement Plans" means the plans and specifications to be submitted to the Association for its review and approval pursuant to Article 3 of this Declaration.

1.45 Improvements. "Improvements" means, with respect to each Owner, its Building(s) and other items to be completed on its Parcel as shown in the Improvement Plans provided for in Article 3 of this Declaration, including, without limitation, all landscaping and signage installed and reinstalled on its Parcel.

1.46 Incremental Event Expenses. "Incremental Event Expenses" shall mean the following costs and expenses that are related directly and exclusively to an Event: (i) wages, benefits and incidentals paid to all Event staff, including ushers, ticket-takers, ticket-sellers and fan assistance personnel; (ii) Event security; (iii) on-site first aid and ambulance service; (iv) Event publicity and marketing; (v) concession services; (vi) licenses and permits required for such Events, as appropriate; (vii) event liability insurance obtained by the Event Sponsor; (viii) Outfield Park video board and scoreboard Event staff, entertainment and event production costs; (ix) public address system operations; (x) post-Event dismantling, cleaning and trash removal and costs and expenses necessary to restore all relevant portions of the Event Areas to their pre-Event condition; (xi) custodial staff and maintenance personnel during Events, such as electricians, plumbers and air-conditioning, elevator and escalator service personnel, sound system and field crew, and scoreboard and video board maintenance personnel; (xii) any costs for the preparation and set-up for Events, including the cost for one-time upgrades to any facility such as the provision of electricity to a particular location; (xiii) an amount reasonably determined by the Association based on schedules of amortization established by reference to existing standards and customs in the industry, as set forth in a schedule published and republished from time to time by the Association, for the cost of amortization of capital improvements and their replacement, modification or improvement, made to the Common Maintenance Areas after initial construction of the Project (with the cost basis subject to amortization to include loan fees and points payable in connection with construction), which schedule shall be made available to Event Sponsors; and (xiv) any other costs or expenses as determined by the Association to be related directly to one or more Events. The aggregate annual Incremental Event Expenses paid by Event Sponsors and attributable to the items described in clause (xiii) of this Section shall not exceed fifteen percent (15%) of the City Maintenance Expense Cap then in effect.

1.47 Lease. "Lease" means any lease, license or other instrument or arrangement in writing (other than this Declaration) whereby an Occupant acquires rights to use or occupy any portion of the Parcels.

1.48 License. "License" means those certain revocable licenses that may be entered into by the Ballpark Owner and Licensees within the Common Maintenance Area.

1.49 Licensee. "Licensee" means those certain Persons with which the Ballpark Owner may enter into Licenses.

1.50 Liens. "Liens" means any and all liens, encumbrances, Leases, licenses, easements, mortgages, deeds of trust and other rights with respect to the Project, granted, created or arising either prior to or after the recordation of this Declaration.

1.51 Maintenance. "Maintenance" and "Maintain" mean, without limitation, any and all of the following which shall be performed either by the Association or a particular designated Owner or the Owners, as applicable, and as further provided in this Declaration: (i) inspecting, servicing and otherwise maintaining structures, Buildings, building equipment, signage, landscape and other Improvements in first class condition, state of repair and working order, and performing any repairs, replacements and other work for such purposes; (ii) keeping the same well-painted, clean and clear of gum, rubbish, debris, graffiti, unlawful obstructions, oil, grease, ice and water as well as removing such; (iii) keeping the same lighted and heated, cooled and ventilated in accordance with the standards therefor set forth in this Declaration; (iv) making such additions, alterations, repairs, replacements and doing such other construction as is permitted under this Declaration to render any Building and other Improvements including, without limitation, machinery, equipment and equipment systems and fixtures in compliance in all respects with every Applicable Law; (v) inspecting, maintaining, repairing and replacing walking, driving and other Parcel surfaces in a smooth condition and evenly covered with the type of surface material originally installed thereon or such substitute therefor as shall be approved by the Association which shall in all respects be equal in or better in quality, appearance and durability to the materials originally installed; (vi) performing all landscaping work; and (vii) performing such other acts or work as reasonably incident to any of the foregoing. In all respects, Maintenance shall comply with the special maintenance requirements set forth in Exhibit "J," attached hereto.

1.52 Major League Baseball Game. "Major League Baseball Game" shall mean: (i) any baseball exhibition, regular season or post-season game, or (ii) any Major League All-Star game.

1.53 Member. "Member" means every Person who is a member of the Association pursuant to Article 4 of this Declaration.

1.54 Mixed-Use Owner. "Mixed-Use Owner" means Padres' Park at the Park, LLC, a Delaware limited liability company.

1.55 Mortgage. "Mortgage" means any mortgage, indenture of mortgage or deed of trust, with respect to any fee or ground lease interest.

1.56 Mortgagee. "Mortgagee" means any mortgagee, trustee or beneficiary under a first Mortgage and the Bond Trustee.

1.57 MOU. "MOU" means that certain Memorandum of Understanding among the City of San Diego, the Redevelopment Agency of the City of San Diego, the Centre City Development Corporation, and Padres, L.P., concerning a Ballpark District, construction of a Baseball Park, and a Redevelopment Project.

1.58 Non-Baseball Event. "Non-Baseball Event" means (1) concerts, (2) meetings and (3) other events excluding Baseball Events during which access to Non-Baseball Event Areas is limited to Non-Baseball Ticket Holders.

1.59 Non-Baseball Event Area. "Non-Baseball Event Area" means those certain areas within the Outfield Park and Common Maintenance Area as shown on Exhibit "O" to which access during Non-Baseball Events is limited to Non-Baseball Ticket Holders.

1.60 Non-Baseball Ticket Holders. "Non-Baseball Ticket Holders" means individuals holding admission tickets to the Non-Baseball Event Area during Non-Baseball Events.

1.61 Occupant. "Occupant" or "Occupants" means (a) each Owner and (b) any Person entitled by a Lease to use and occupy any portion of the Parcels.

1.62 Office Facility. "Office Facility" or "Office Facilities" means the office facility or office facilities constructed or to be constructed on the R2 and R3 Parcels pursuant to the provisions of Article 3 of this Declaration, comprising a portion of the Project.

1.63 Outfield Park. "Outfield Park" means the grass area, including a flat and sloped lawn and picnic area, stage, decomposed granite or hardscape walkways, and plaza areas concrete plaza on the Outfield Park Parcel.

1.64 Outfield Park Owner. "Outfield Park Owner" means the Ballpark Owner.

1.65 Outfield Park Parcel. "Outfield Park Parcel" means that certain parcel of real property located in the City of San Diego, County of San Diego, State of California as more particularly described in Exhibit "C."

1.66 Outfield Park Retail Parcels. "Outfield Park Retail Parcels" means the Parking Parcel, R2 Parcel and R3 Parcel.

1.67 Owner. "Owner" means Declarant or any successor acquiring all or any portion of the fee interest of Declarant in a Parcel as provided in this Declaration so long as any such party retains a fee ownership interest in any portion of the Project Premises. "Owners" means all of the foregoing, or any successor acquiring all or any portion of the fee of an Owner in such Parcel(s).

1.68 Padres. "Padres" means (i) the Padres L.P., a Delaware limited partnership, as a party with the City to the Use Agreement or, (ii) following termination of the Use Agreement, any third party granted rights of use and occupancy in the Ballpark and the Outfield Park pursuant to any successor Use Agreement.

1.69 Parcel. "Parcel" or "Parcels" means the Ballpark Parcel, the Outfield Park Parcel, the R2 Parcel, the R3 Parcel, and the Parking Parcel.

1.70 Parcel Map. "Parcel Map" shall mean the Final Parcel Map approved by the City with respect to the subdivision of the Parcels, as shown on Page _____ in Book _____ of Parcel Maps, filed in the Office of the County Recorder of San Diego County on _____, as the same may be amended or revised by Declarant as provided in this Declaration.

1.71 Parking Access Elevators. "Parking Access Elevators" means the parking shuttle elevators located in the Parking Parcel and a Retail Facility, Residential Facility and/or Office Facility to be Maintained in accordance with the provisions of Article 4 of this Declaration.

1.72 Parking Access Facilities. "Parking Access Facilities" means parking facilities within the Project Premises related to the Parking Structure such as accessways, driveways, pedestrian walkways, ramps, tunnels and stairways, elevators or escalators for use by Occupants or Permittees and located (in whole or in part) on the R2 Parcel and R3 Parcel.

1.73 Parking Access Ramps. "Parking Access Ramps" means the access ramps located on the R2 Parcel and R3 Parcel and within the public right-of-way, as depicted on Exhibit "K," over which the Parking Owner shall have an easement for the purpose of conducting certain Maintenance as provided in Article 4 of this Declaration

1.74 Parking Facilities. "Parking Facilities" means the Parking Structure providing parking accommodations for automobiles together with parking facilities related to the Parking Structure (including, without limitation, air ventilation shafts and equipment, accessways, driveways, parking spaces, pedestrian crossings or paths or ramps, stairways, elevators or escalators, walkways, tunnels, and curbs within or adjacent to areas used for parking of motor vehicles) for use by Occupants or Permittees located on the Parking Parcel as such may exist or may be constructed from time to time.

1.75 Parking Operating Costs. "Parking Operating Costs" means all costs and expenses incurred by the Parking Owner with respect to the Maintenance and operation of the Parking Facilities, Parking Access Ramps and Parking Access Elevators required to be maintained by the Parking Owner as provided herein, including, but not limited to payments for Property Taxes with the exception of any school or other fees levied on a one-time basis upon the issuance of a building permit for the initial construction of the Parking Facilities, or charges or penalties levied by any taxing authority for non-payment by Parking Owner for Property Taxes), utilities, insurance and contributions toward a reserve for capital replacements of equipment related to the operation of the Parking Facilities, Parking Access Ramps and Parking Access Elevators, which the R2 Owner and R3 Owner shall pay to the Parking Owner as each such Owners' Allocable Share of Parking Operating Costs as provided by the terms of this Declaration.

1.76 Parking Owner. "Parking Owner" means the Mixed-Use Owner or such other Person who becomes an Owner under this Declaration as successor-in-interest to Mixed-Use Owner with respect to the Parking Parcel.

1.77 Parking Parcel. "Parking Parcel" means that certain Parcel located in the City of San Diego, County of San Diego, State of California, as more particularly described in Exhibit "D."

1.78 Parking Spaces. "Parking Spaces" means collectively automobile and motorcycle parking spaces within the Parking Facilities.

1.79 Parking Structure. "Parking Structure" means the subterranean parking garage with approximately five hundred (500) spaces constructed or to be constructed pursuant to the provisions of Article 3 below within the Parking Parcel underlying the R2 Parcel and the R3 Parcel and a portion of the Outfield Park Parcel, as the same may be modified or amended from time to time.

1.80 Permittees. "Permittees" means all Occupants and their respective officers, directors, employees, agents, partners, contractors, customers, visitors, invitees, licensees and concessionaires.

1.81 Person. "Person" or "Persons" means any natural person, general partnership, limited partnership, limited liability company, association, unincorporated association, corporation, trust, trustee, governmental entity and any other form of organization permitted by law, or one or more of them, and the heirs, executors, administrators, legal representatives, successors and assigns of any of them, as the context may require, including the Owners.

1.82 Procurement Agreement. "Procurement Agreement" means that certain Ballpark Design Build Procurement Consultant Agreement among the City, the Redevelopment Agency of the City of San Diego, the Centre City Development Corporation, Padres, and Padres Construction L.P. (an Affiliate of Padres) dated _____, 2000.

1.83 Project Architect. "Project Architect" means the architect(s) retained by the Association for the purposes described in Article 3.

1.84 Project Premises. "Project Premises" means collectively the Ballpark Parcel, the Outfield Park Parcel, the R2 Parcel, the R3 Parcel, the Parking Parcel, and all Buildings and Improvements thereon and thereto as they presently exist or as they may be expanded, developed, constructed or altered from time to time, together with all fixtures, equipment or personal property now or hereafter situated or located in or upon the Project Premises or used in connection with the Project Premises.

1.85 Property Taxes. "Property Taxes" means all real and personal property taxes and assessments, transfer taxes in lieu of or in substitution of Property Taxes and all other taxes, charges, levies and license and permit fees of any kind or nature whatsoever, foreseen or unforeseen, general or special, ordinary or extraordinary, which are now or, at any time in the future levied, assessed, imposed upon, confirmed or become due and payable out of, or with respect to any Parcel; and any interest, penalties or delinquency charges thereon which attach for any reason. Property Taxes shall include the annual installments under any general or special assessment against any Parcel which fall due during the term hereof. Property Taxes shall not include (i) any taxes or assessments against the personal property of any Occupant whether or not such taxes and assessments are separately billed to any Occupant by the tax collecting authority, (ii) any income tax, gift tax, franchise tax or documentary transfer taxes of any Owner or Occupant or (iii) any school or other fees levied on a one-time basis upon issuance of a building permit for the initial construction or subsequent reconstruction of any portion of the Project. However, these exceptions are not intended to exclude ongoing charges for public services which

may be imposed as a condition of governmental approval of the Project but will have an ongoing effect such as special fees for parking and traffic management of the downtown area of the City and overlay fees which are being proposed by the City; or any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, for any assessment, tax, fee, levy or charge previously included within the definition of Property Tax, it being acknowledged by Declarant and each Owner that assessments, taxes, fees, levies and charges may be imposed by governmental agencies including, without limitation, Property Based Improvement Districts, for such services as fire protection, street, sidewalk and road maintenance, refuse removal, construction, maintenance and funding of schools and affordable housing programs, and for other governmental services formerly provided without charge to property owners or occupants. All such new and increased assessments, taxes, fees, levies and charges and similar assessments, taxes, fees, levies and charges made by governmental entities for governmental services which are commonly understood as real property taxes or which are based upon the value, occupancy, use, or ownership of real property shall be included within the definition of Property Taxes for the purposes of this Declaration. The Owners acknowledge that property owned by the City will not be subject to real and personal property taxes.

1.86 R2 Owner. "R2 Owner" means the Mixed-Use Owner or any Person who becomes an owner under this Declaration as successor-in-interest to the Mixed-Use Owner with respect to the R2 Parcel.

1.87 R2 Parcel. "R2 Parcel" means that certain parcel of real property located in the City of San Diego, County of San Diego, State of California as more particularly described in Exhibit "E."

1.88 R3 Owner. "R3 Owner" means the Mixed-Use Owner or any Person who becomes an Owner under this Declaration as successor-in-interest to the Mixed-Use Owner with respect to the R3 Parcel.

1.89 R3 Parcel. "R3 Parcel" means that certain parcel of real property located in the City of San Diego, County of San Diego, State of California as more particularly described in Exhibit "F."

1.90 Residential Facility. "Residential Facility" or "Residential Facilities" means the residential facility or residential facilities constructed or to be constructed on the R2 Parcel or R3 Parcel pursuant to the provisions of Article 3 of the Declaration, comprising a portion of the Project and including residential apartment or condominium units.

1.91 Retail Common Maintenance Area. "Retail Common Maintenance Area" means all areas presently existing or as later altered, modified or improved within the exterior boundaries of the R2 Parcel and the R3 Parcel that are, or are designated and intended to be, constructed, installed or improved and available for the non-exclusive servicing, use, convenience or benefit (as the case may be) of the Owners and all Occupants of such Parcels and their respective Permittees. Exhibit "H" attached hereto depicts the Retail Common Maintenance Areas to be constructed and subject to this Agreement as of the date of recording. The configuration, location and extent of

the Retail Common Maintenance Area may change from time to time corresponding to the extent permitted in Article 14 of this Declaration. In the event of any such material reconfiguration, the Association shall record a modified form of Exhibit "H."

1.92 Retail Common Maintenance Area Costs.

1.92.1 Costs Included. "Retail Common Maintenance Area Costs" shall mean all expenses and costs of every kind and nature which arise in connection with the Maintenance and operation of the Retail Common Maintenance Area by the Association as required in this Declaration, and shall include, without limitation:

- (a) Wages, salaries and related expenses and benefits of all personnel whether the Association's employees or employees of the Association's agents or independent contractors, whether on-site or off-site, while engaged directly in the operation, management, Maintenance, engineering and security of the Retail Common Maintenance Area;
- (b) The costs of supplies, materials and rental of equipment used in the operation, security, management and Maintenance of the Retail Common Maintenance Area;
- (c) Periodic charges for use of all Utility Facilities provided to the Retail Common Maintenance Area (including any hook-up, connection, service charge or surcharge and energy allocation or energy use charges or surcharges in connection with the operation and management of the Retail Common Maintenance Area);
- (d) The costs of all Maintenance, janitorial and service agreements for the Retail Common Maintenance Area and the equipment therein, including, without limitation, professional management and security services, alarm services, elevator and escalator Maintenance and landscaping services and rubbish removal;
- (e) Legal expenses and accounting expenses incurred in the operation and management of the Retail Common Maintenance Area including, without limitation, the calculation of the amount of Retail Common Maintenance Area Costs by certified public accountants;
- (f) All insurance premiums and costs associated with the insurance required to be carried by the Association pursuant to this Declaration and such other insurance as the Association may deem reasonably necessary to obtain in the future;
- (g) The costs of general Maintenance (excluding general Maintenance required to be paid for by an Owner at the Owner's expense pursuant to this Declaration or otherwise performed or paid for by the Owners, the proceeds of insurance or third parties) of the Retail Common Maintenance Area;
- (h) The costs of amortization of capital improvements and their replacements, modifications or improvements made to the Retail Common Maintenance Area

after initial construction of the Project (with the cost basis subject to amortization to include loan fees and points payable in connection with construction). The Association may establish reasonable schedules of amortization, based on then existing standards and customs in the industry, with respect to any capital improvements;

(i) The costs of utilities, insurance, materials, supplies and equipment related to or used in connection with services provided or available to be provided within the Retail Common Maintenance Area;

(j) The costs of professionals retained on behalf of Association (i) to review Improvement Plans related to Retail Common Maintenance Areas pursuant to Article 3 below and (ii) to prepare and maintain a set of plans for and of easements for use of Retail Common Maintenance Area pursuant to Article 3 below; and

(k) The costs of compliance with any and all Applicable Law with respect to the Retail Common Maintenance Area including, without limitation, the costs of complying with any and all governmentally required traffic management and fire safety programs and any construction associated therewith.

1.92.2 Costs Excluded. Notwithstanding anything to the contrary contained in this Section, Retail Common Maintenance Area Costs shall not include:

(a) cost of any construction or development other than described in Section 1.92.1;

(b) depreciation on the construction costs other than with respect to amortization of the Improvements described in Section 1.92.1;

(c) principal, interest or debt required to be paid on any Mortgage or deed of trust, provided that this Section shall not exclude amortization to the extent permitted under Section 1.92.1 for the cost of constructing the Improvements described in Section 1.92.1; and

(d) the cost of special services, goods or materials provided to or specific costs incurred for the account of specific Owners, Occupants and Permittees.

1.93 Retail Exclusive Use Area. "Retail Exclusive Use Area" means those certain areas outside of the Buildings on the Parcels as shown on Exhibit "H" which are designated for the exclusive use of the Owner of the Parcel upon which such Retail Exclusive Use Area is located.

1.94 Retail Facility. "Retail Facility" or "Retail Facilities" means the retail facility or facilities constructed or to be constructed on the R2 and R3 Parcels pursuant to the provisions of Article 3 of this Declaration, comprising a portion of the Project.

1.95 Rules and Regulations. "Rules and Regulations" means the rules and regulations adopted by the Association from time to time to govern the maintenance, use and operation of the Common Maintenance Area.

1.96 Store or Stores. "Store" means any individual retail or restaurant facility to be located on the R2 Parcel, the R3 Parcel, and Outfield Park and the term "Stores" shall mean all or any combination of the foregoing, as the context may appropriately require.

1.97 Structural Supports. "Structural Supports" means construction elements located on the Project Premises or within the Project which are load bearing with respect to the Improvements or which are necessary for the structural integrity of the Improvements, including, without limitation, foundations, footings, slabs, caissons, girders, columns, beams, bed plates, piling caps, braces and trusses, and any replacement, substitution or modification thereof.

1.98 Team. "Team" means a professional baseball team holding a franchise for the City of San Diego, California issued by The National League of Professional Baseball Clubs.

1.99 Ticket Holders. "Ticket Holders" means Baseball Ticket Holders and Non-Baseball Ticket Holders.

1.100 Use Agreement. "Use Agreement" means (i) that certain Use, Occupancy and Management Agreement between City and Padres, L.P., a Delaware limited partnership, dated _____, 2000, and (ii) such other and further rights of occupancy granted to third parties following termination of the Use Agreement for the use and occupancy of the Ballpark and the Outfield Park. The Use Agreement is subject and subordinate to this Declaration as to the matters set forth herein.

1.101 Utility Facilities. "Utility Facilities" means all intake and exhaust systems, storm and sanitary sewer systems, drainage systems, common ducting systems for ventilation and utility services, domestic water systems, natural gas systems, electrical systems, fire protection water systems, telephone systems, cable television systems, telecommunications systems, fiber optic systems, chilled water and heated water systems, central utility services and all other utility systems and facilities reasonably necessary to service any Improvement situated in, on, over and under any Parcel.

ARTICLE 2

EASEMENTS

2.1 Definitions and Documentation.

2.1.1 Definitions. For purposes of this Article 2 and Article 15, the following will apply:

(a) An Owner reserving or granting an easement over such Owner's Parcel is referred to herein as the "Grantor," it being intended that the grant shall thereby bind and include not only such Owner but also its grantees, successors and assigns.

(b) An Owner, or the Association, to whom an easement is granted is called the "Grantee," it being intended that the grant shall benefit and include not only such party but its successors, assigns and such Occupants or Permittees of the Grantee as the Grantee may permit from time to time. The Grantee may permit and designate from time to time its Permittees to use such easement, provided that such use shall be subject to the provisions of this Declaration and no such permission shall authorize a use of the easement contrary to the use as granted and no such unauthorized use shall act to extinguish the easement for the use as granted;

(c) The word "in" with respect to an easement granted "in" a particular Parcel means, as the context may require, "in," "to," "on," "over," "through," "upon," "across" and "under," or any one or more of the foregoing;

(d) The grant of an easement by a Grantor shall bind and burden the Grantor's Parcel, which, for the purpose of this Declaration, shall be the "Servient Parcel." Where only a portion of the Parcel is bound and burdened by the easement, only that portion so bound and burdened shall be the Servient Parcel;

(e) The grant of an easement to a Grantee shall benefit and be appurtenant to the Grantee's Parcel which shall, for the purpose of this Declaration, be the "Dominant Parcel." Where only a portion of the Parcel is benefited by the easement, only that portion so benefited shall be the Dominant Parcel; and

(f) Unless provided otherwise in this Declaration, all easements granted in this Declaration are appurtenant to the Parcel benefited and pass with the title to each Parcel, are non-exclusive and irrevocable and may not be transferred separately from the Parcel to which such easement is appurtenant.

2.1.2 Grant of Easements. All easements described in this Declaration shall be deemed granted and, except as provided herein, the use and enjoyment thereof by the Grantee may commence as of the date of recordation of this Declaration, without the necessity of confirmation by any other document. Upon the request of a Grantor or Grantee, the Grantor or Grantee or any other Owner so requested shall sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination or release (in whole or in part), as the case may be, of any easement, if the form and substance of the document is reasonably acceptable to such Grantor or Grantee or other Owner. Upon the termination or release of any easement by the Grantor and Grantee (in whole or in part other than a relocation as provided below), the same shall be effective upon the recording of a document so stating among the Official Records of the County. No consent of any Permittees shall be required to amend or terminate any easement unless such Permittee is also a Grantee of such easement.

2.1.3 Relocation of Easements. In the event a Grantor or Grantee desires to relocate any easement that either benefits or burdens its respective Parcel, other than the easements for the Common Maintenance Area granted hereunder, in connection with such Owner's construction, development, improvement of or operation of Improvements on its Parcel at any time, whether at the time of initial development or subsequent reconstruction or development, such Owner shall be entitled to the relocation of such easement provided that all of the following conditions are satisfied:

(a) The Owner desiring the relocation has given the other Owners whose rights hereunder are affected by such relocation thirty (30) days written notice of its desire to relocate the easement including plans and specifications for such relocation and reconstruction;

(b) The Owner desiring the relocation shall pay all costs of relocation relating to the relocation of the easement, including reconstruction of any Improvements thereon, if necessary, but shall not be liable for the payment of any costs which would otherwise be the sole responsibility of another Owner in the event the relocation was not sought. At the request of the Owner requested to approve the relocation of an easement as provided herein, a bond shall be posted by the Owner requesting such relocation in favor of the Owner requested to consent to such relocation in the full amount of such costs;

(c) The new location of an easement requested by Grantor shall not result in the unreasonable interference with or diminution of the benefits or services provided by such easement, nor termination of the services of such easement prior to completion of the relocation and a Grantor requesting such relocation shall have the duty to reasonably mitigate any interference to the reasonable satisfaction of the Grantee benefited by the easement to be relocated; provided, however, that temporary interferences with and diminution in services shall be permitted if they occur during non-business hours of any affected Grantee, or, if the business operates twenty-four (24) hours per day, then at such time as will least interfere with business operations of any affected Grantee and only if such interference cannot reasonably be avoided, and provided further that the Grantor desiring such relocation has given reasonable advance notice to any affected Grantee of such interference;

(d) The new location of an easement requested by a Grantor shall not diminish the level of services and benefits received from the easement to be relocated to any Grantee of such easement or any other easement granted hereunder and the Grantor desiring the relocation shall have the duty to reasonably mitigate any diminution of the level of services and benefits received;

(e) A Grantee may request the relocation of an easement on the Grantor's Parcel only if such relocation is absolutely necessary to preserve the rights of the Grantee with respect to such easement which in its present location no longer provides the level of service to such Grantee as originally contemplated due to changed circumstances materially impacting such easement and if the easement as relocated will not unreasonably interfere with the Grantor's use and operation of its Parcel. The Grantee requesting such relocation shall have the duty to reasonably mitigate any interference to the Grantor's Parcel burdened by the easement to

be relocated; provided, however, that temporary interferences with the use and operation of the Grantor's Parcel shall be permitted if they occur during non-business hours of any affected Grantor, or, if the business operates twenty-four (24) hours per day, then at such time as will least interfere with the business operations of any affected Grantor and only if such interference cannot reasonably be avoided, and provided further that the Grantee desiring such relocation has given reasonable advance notice to any affected such Grantor of such interference;

(f) Each Grantee whose easement is to be relocated or the Grantor on whose Parcel such relocation is requested shall have consented in writing to the relocation of such easement within thirty (30) days of such Owner's receipt of written notice from the Owner requesting such relocation; provided, however, that such consent shall not be unreasonably withheld if the conditions set forth in Subsections 2.1.3(a) through (e) as applicable are or will be satisfied by the Owner requesting such relocation;

(g) Upon the request of an Owner, each other Owner so requested shall sign and acknowledge a document memorializing the relocation of any easement if the form and substance of the document is acceptable to such Owner;

(h) Upon relocation of any easement which is shown on any Exhibit to this Declaration, the Owners shall amend this Declaration by replacing such Exhibit with a new Exhibit showing such new locations of such easements; and

(i) Each Owner with an interest in the affected Parcel(s) or other party with a prior Lien on the affected Parcel(s) shall have executed such documents necessary to cause the relocated easement to have the same priority over other Liens and other interests in the Servient Parcel as that of the original easement, provided that the condition of this Section need not be met if so agreed by all of the Owners affected by the order of priority.

The release of the previous easement which is desired to be relocated shall be effected by a document consistent with the provisions of this Section and memorializing such release if the form and substance of such release is reasonably acceptable to the Owner requested to consent to the relocation of an easement hereunder, which document shall be executed and recorded concurrently with the document to be recorded with respect to the relocated easement, as provided above.

2.2 Construction Easements.

2.2.1 Grant of Construction Easements in Common Maintenance Area. Each Owner shall have, and there is hereby reserved by Declarant for the benefit of the Parcels and granted to each Owner, nonexclusive easements in the Common Maintenance Area for installation, construction, repair, Maintenance, relocation and removal of any and all Buildings or Improvements made as or part of the Common Maintenance Area, if such installation, construction, repair, Maintenance, relocation or removal is required or permitted under this Declaration. Each Grantee agrees to use due care in the exercise of the rights granted in this Section so as to cause the least practicable interference with the operation of the Grantor's Parcel.

Each Grantee, at its expense, shall promptly repair, replace or restore any and all Improvements or other property of Grantor which have been damaged or destroyed by Grantee in the exercise of the easements granted under this Section.

2.2.2 Grant of Construction Easements in Parcels. Each Owner shall have and there is hereby reserved by Declarant for the benefit of the Parcels and granted to each Owner, a non-exclusive easement in each Parcel of the Project Premises (a) to the extent and for the duration needed, (b) in accordance with good construction practices, and (c) when and where approved pursuant to the terms of Article 3 of this Declaration, if applicable, for the following:

(i) The performance of construction approved pursuant to Article 3 of this Declaration. Said easement shall exist during the period of time that construction is proceeding in accordance with the terms of this Declaration;

(ii) The designation and use of a construction staging area on a Parcel of a Grantor at a location designated by the Grantor, provided that such staging area is reasonably necessary for purposes of construction and does not unreasonably interfere with (1) the easements granted by or pursuant to this Article 2, (2) the use, operation or construction of any Buildings and Improvements then existing on such Parcel, and (3) the use of the Common Maintenance Area by the other Owners;

(iii) The installation, construction, maintenance, use, repair, replacement and removal of common footings, common foundations and/or Structural Supports located on any Grantor's Parcel for any Grantee's respective Improvements and the attachment of Building Improvements, or otherwise connecting Buildings, constructed on a Grantee's Parcel to and on Building Improvements of a Grantor, provided the manner of installation, construction and attachment shall be designed in accordance with good construction and engineering practices in the manner customary for improvements of each type, and so as to not impose any material load on a Grantor's Building or Improvements, and provided further that such Improvements are approved pursuant to Article 3 of the Declaration and constructed in compliance with all other applicable provisions of this Declaration and other recorded documents applicable thereto. In performing construction within the above-described easement, the Owner performing such construction shall give the other Owners prior written notice of its construction schedule ("Construction Notice"). In performing any construction involving such installation, construction or attachment, the Grantee shall use its commercially reasonable efforts (without any obligation to make any payment except as set forth herein) to minimize disruption of any tenant of Grantor which is in possession of the premises in question during such construction. If the construction would result in any portion of the premises of a tenant in possession at the time of such construction being uninhabitable, or would substantially disrupt a tenant's use of its premises, then Grantee shall, during the time such space is uninhabitable or the tenant's use of its premises is substantially disrupted, as a result of such construction by the Grantee, pay the lesser of the following amounts as reasonably determined by the Grantor based on verifiable data: (1) the actual cost of relocation of such tenant; or (2) rent abatement equal to that proportion of the base rent payable by such tenant allocable to the portion of the premises which is uninhabitable or a

portion as to which the tenant's use of its premises is substantially disrupted, as a result of such construction by Grantee; and

(iv) The installation, use, Maintenance and removal of any permitted Improvement such as signs, entrances, marquees, canopies, awnings, lights, and lighting devices, fire stair towers and doors, alarm bells, wing walls, roof flashings, roof and building overhangs and other similar appurtenances and overhangs encroaching to a maximum lateral distance of three (3) feet.

2.2.3 Reasonable Approval of Location. The location and extent of all easements under this Section shall be subject to the reasonable approval of the respective Grantors; provided, however, that the location and extent of any easement which is reasonably consistent with the design and configuration of Buildings and other Improvements approved in accordance with Article 3 of this Declaration shall not be disapproved by an Owner. The plans and specifications showing the Improvements specified in Section 2.2.2(iii) together with a specific request by a Grantee for approval of the location and extent of the encroachment on the Parcel of the Grantor and engineering studies and reports prepared by licensed civil or structural engineers, as applicable, showing the feasibility of the proposed improvements, shall be submitted to the Grantor and approval thereof by the Grantor shall constitute designation by such Grantor of the portions of its Parcel to be used for such easements. The easements described in Section 2.2.2(iii) shall remain in existence so long as the Building(s) benefited by such easement (or any restoration or replacement thereof made during the term of this Declaration) remains in existence, subject to the limitations contained in this Declaration.

2.3 Common Maintenance Area Easements.

2.3.1 Grant of Common Maintenance Area Easements to Owners. Each Owner shall have and there is hereby reserved by Declarant for the benefit of all Parcels and granted to each Owner, non-exclusive easements in the Common Maintenance Area for purposes of:

- (a) Pedestrian ingress and egress from each Parcel;
- (b) Circulation, passage and accommodation of pedestrians and vehicles on accessways included in the Common Maintenance Area; and
- (c) The doing of such other things as are permitted, authorized or required to be done under this Declaration by an Owner, its Occupants and their respective Permittees in the Common Maintenance Area.

Notwithstanding the foregoing, the Owners (other than Declarant) shall have no right of use or enjoyment of any portion of the foregoing easement over the Common Maintenance Area until the City has issued a temporary or permanent certificate of occupancy, if applicable, with respect to the Improvements contained in the Common Maintenance Area; provided, however, that this limitation shall not be construed to restrict the use by an Owner of any easement it may have under Section 2.2 in the Common Maintenance Area for the construction of Improvements.

2.3.2 Grant of Common Maintenance Area Easement to Association. The Association shall have and there is hereby reserved by Declarant for the benefit of the Association and granted to the Association, a non-exclusive easement in the Common Maintenance Area for the purpose of exercising its rights and performing all of its duties and obligations as set forth in this Declaration; including, but not limited to, the right to enter into Licenses for use of the Common Maintenance Area as provided in this Declaration. Notwithstanding the foregoing, the Association shall have no right of use or enjoyment of any portion of the Common Maintenance Area until its obligation with respect to the Maintenance thereof have commenced as set forth in Article 4 of this Declaration.

2.3.3 Rights to Control Use of Common Maintenance Area. Each Owner (and the R2 Owner and R3 Owner with respect to the Retail Common Maintenance Area) and the Association shall have the right to eject or cause to be ejected from the Common Maintenance Area and Retail Common Maintenance Area on its Parcel any Person not authorized, empowered or privileged to use the same. In addition, each Owner shall have the right to temporarily close off the Common Maintenance Area and Retail Common Maintenance Area on its respective Parcel for such reasonable periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone or as necessary for maintenance of such Common Maintenance Area and Retail Common Maintenance Area or as provided in the Rules and Regulations; provided, however, before closing off any part of the Common Maintenance Area and Retail Common Maintenance Area, such Owner must give notice to the Association and each of the other Owners of its intention to do so and must coordinate its closing with the activities of each of the other Owners and the Association so that no unreasonable interference with the operation of the Project occurs.

2.3.4 Rights of Modification of Common Maintenance Area and Retail Common Maintenance Area. The easements provided for in this Section are subject to the rights to use or adapt the Common Maintenance Area and Retail Common Maintenance Area for other purposes specifically provided for in this Declaration and to the rights to develop, improve, alter, contract, reduce or otherwise modify the Common Maintenance Area and Retail Common Maintenance Area as provided in this Declaration.

2.3.5 Approval of Licenses Within Common Maintenance Area. No selling or retail activity may be conducted on or within the Common Maintenance Area or Retail Common Maintenance Area without a License between the Ballpark Owner and a Licensee to conduct such activities. All activities pursuant to such Licenses shall be conducted (i) in good taste, adhering to the standards of a first class mixed-use project, (ii) so as not to interfere with the use of, access to or the visibility of the entrances to any Building, and (iii) so as not to materially impede or interfere materially with circulation of pedestrians or vehicles within the Common Maintenance Area, the use by Permittees of the Common Maintenance Area or ingress and egress to Building and Parking Access Facilities and Parking Access Ramps, and (iv) in accordance with Applicable Law.

2.3.6 Rules and Regulations and Licenses. Enjoyment of each of the easements granted to the Owners by this Section shall be subject to Section 2.4 of this Declaration, any Rules and Regulations established from time to time by the Association pursuant to Article 4 of this Declaration and the rights of any Licensee under any Licenses granted by the Ballpark Owner pursuant to this Declaration.

2.4 Ballpark and Outfield Park Parcel Easements, Designation of Event Sponsors and Events.

2.4.1 Grant of Easements Over Ballpark Parcel. Subject to the terms of this Declaration, Outfield Park Owner shall have, and there is hereby reserved by Declarant for the benefit of Outfield Park Owner, an exclusive easement over the Ballpark Parcel for the purpose of permitting Baseball Ticket Holders and Non-Baseball Ticket Holders (with the permission of the City) seated or standing in the Outfield Park to view Events in the Ballpark.

2.4.2 Limitation on Common Maintenance Area. Notwithstanding the provisions of Section 2.3 or any other provision of this Declaration, each Owner's non-exclusive easement for ingress and egress in the Common Maintenance Area and Outfield Park Owner's use and enjoyment of the Outfield Park Parcel is subject to the rights of use granted to Event Sponsors with respect to the applicable Event Areas during Event Periods and the easements, covenants, conditions and restrictions of this Section 2.4.

2.4.3 Designation of Event Sponsors and Events. Each Owner hereby covenants and agrees for itself and its successors and assigns that its non-exclusive easement for ingress and egress in the Common Maintenance Area and the Outfield Park Parcel shall be subject and subordinate to the rights reserved to the Ballpark Owner with respect to the Outfield Park and the rights granted to Ballpark Owner with respect to the Common Maintenance Area outside the Outfield Park, in accordance with this Section 2.4.3. Ballpark Owner shall have the right to designate one Event for each day of the calendar year during the term of this Declaration, including any extension terms. Events shall be designated in accordance with the following procedure. Within ten (10) Business Days following the Padres' receipt of the schedule of Major League Baseball Games, the Padres shall deliver written notice ("Baseball Event Notice") to each Owner and Association of the following: (i) the date of each Baseball Event, and (ii) the scheduled commencement and termination of each Baseball Event. Padres shall provide additional Baseball Event Notices to each Owner and the Association for rescheduled Major League Baseball Games during the regular season and for post-season games provided such notice is delivered not less than two (2) days prior to such additional Baseball Event. Non-Baseball Events shall be designated in one or more additional notices ("Event Notice(s)") delivered by Ballpark Owner to each Owner and the Association including the following information: (i) the date or dates of the Event(s), (ii) the scheduled commencement and termination time of the Event(s), (iii) a description of the Event(s), (iv) the identity of the Event Sponsor, and (v) a statement that Ballpark Owner is exercising its right to exclusive use of the Non-Baseball Event Area during the Event Period. The Event Notice may designate one or more Events. Ballpark Owner may designate an Event less than two (2) days before the date of such

Event, provided Ballpark Owner receives approval of each Owner, which consent shall not be unreasonably withheld or delayed. Once Ballpark Owner has delivered a Baseball Event Notice, the Padres shall be deemed the Event Sponsor and possess the rights set forth in this Declaration with respect to such Baseball Events. Once Ballpark Owner has delivered an Event Notice, the Person identified in the Event Notice as the Event Sponsor shall be deemed the Event Sponsor and possess the rights set forth in this Declaration to the Non-Baseball Event Area.

2.4.4 Exclusive Use of Event Area on Event Periods. Subject to the terms and conditions of this Declaration, each Event Sponsor shall have, and there is hereby reserved by Declarant for the benefit of Event Sponsor, an exclusive easement over the Event Area during Event Periods (which easement is hereby superior in title to the Common Maintenance Area Easements granted herein) for the purpose of conducting Events in the Ballpark and the Event Area as described in this Declaration. During the Event Sponsor's exclusive use of the Event Area during Event Periods, Ticket Holders shall be granted reasonable ingress and egress to all Retail Exclusive Use Areas by Owners and Occupants of the R2 Parcel and the R3 Parcel. Each Owner shall use its commercially reasonable efforts to ensure that its Occupants are open for business during Event Periods and R2 Owner, R3 Owner and their Occupants may offer to Ticket Holders access to Stores and products and services permitted by this Declaration. Each Event Sponsor shall have the right to install and maintain during Event Periods temporary physical barriers in the Event Area to limit and/or control any and all ingress, egress and access in and to the Event Areas to Ticket Holders. The physical barriers shall consist of turnstiles, fences, gates or other reasonable means of controlling entry and exit by pedestrians. All such physical barriers shall be promptly removed at the conclusion of each Event Period.

2.4.5 Access Controls From R2 Parcel and R3 Parcel. The R2 Owner and the R3 Owner shall take all actions that are necessary to restrict and control ingress and egress from their respective parcels to the Event Area by Persons who are not Ticket Holders, including, without limitation, complying with such rules and regulations promulgated by the Association as to Event Area access during Event Periods.

2.4.6 Access to the Parking Parcel During Event Periods. Subject and subordinate to the rights granted R2 Owner and R3 Owner pursuant to Section 2.6, the Parking Owner shall allow Ticket Holders to park in the Parking Facilities during Event Periods.

2.4.7 Access between Ballpark and Baseball Event Area During Baseball Events. Subject to the limitations imposed by Event Sponsors on certain classes of admission tickets during all Major League Baseball Games, Ballpark Owner shall (i) provide ingress and egress to all Baseball Ticket Holders at all pedestrian bridges across the K Street Promenade and other points of access between the Ballpark and Baseball Event Area and (ii) shall take such other and further actions as are necessary to facilitate access of Ticket Holders to Retail Facilities adjacent to the Baseball Event Area.

2.4.8 Admission Tickets. All Admission Ticket Proceeds shall be collected by Event Sponsor, and shall be the sole and exclusive property of Event Sponsor.

2.4.9 Event Operations. During an Event Period, the Event Sponsor shall be responsible for: (i) providing and supervising all personnel, including ushers; (ii) providing crowd control, security and management within the Event Area, and those unenclosed portions of the Outfield Park Retail Parcels adjacent to the Event Area; (iii) providing and supervising first-aid personnel to operate the first-aid facilities for the Event Area and those unenclosed portions of the Outfield Park Retail Parcels adjacent to the Event Area; (iv) providing emergency medical assistance during such Events and cooperating with the City in respect thereof; (v) providing all other services and materials necessary to fulfill the Event Sponsor's obligations under this Declaration; and (vi) Event set-up and take down.

2.4.10 Indemnification by Ballpark Owner for Events. Ballpark Owner shall indemnify, defend and hold harmless the Outfield Park Owner, R2 Owner, R3 Owner and Parking Owner, and their respective directors, officers, members, managers, employees, agents, attorneys, consultants and representatives from and against any and all liabilities, claims, demands, obligations, losses, actions and causes of action whatsoever, including reasonable attorneys' fees and expenses, court costs and costs and expenses incurred in investigating, preparing or defending against any litigation or claim, action, suit, proceeding or demand of any kind or character, arising out of, related to, or in connection with any damage or injury to Persons or property occurring within or about the Event Area or the Outfield Park Retail Parcels arising out of or related to an Event Sponsor's operation or use of the Event Area and any adjoining portions of the Outfield Park Retail Parcels during an Event Period. The foregoing right of indemnity shall not extend to liabilities, claims, demands, obligations, losses, actions and causes of action caused by (i) the gross negligence or willful misconduct of the party seeking the benefit of such indemnity obligation, or (ii) the gross negligence or willful misconduct of such party's Permittees.

2.4.11 Operations, Maintenance and Cleanup of Event Areas During Event Periods. In connection with an Event Sponsor's activities in the Event Area during Event Periods, Event Sponsor shall provide: (i) Event security; (ii) on-site first aid and ambulance service, if appropriate; (iii) any and all licenses and permits required for such Events; (iv) Event liability insurance, including host liquor liability in amounts reasonably determined by Association; (v) public address system operation; (vi) post-Event dismantling, cleaning and trash removal necessary to restore all portions of the Event Areas to their pre-Event condition; (vii) custodial staff and maintenance personnel during Events, such as electricians, plumbers and air conditioning, elevator and escalator service personnel (if applicable), sound system and field crew, and scoreboard and video board maintenance personnel; (viii) all other preparation and set-up for Events; and (ix) all post-Event cleaning, maintenance, repair and restoration required to restore the Outfield Park to the condition existing prior to the Event. All post-Event cleaning, maintenance, restoration and repair by Event Sponsor following Events shall be completed prior to eight o'clock AM on the next following calendar day. Event Sponsor shall promptly pay all Incremental Event Expenses incurred in connection with Events.

2.4.12 Operating Hours of Outfield Park. Other than during Event Periods, the Outfield Park shall be open to the public at 7:00 a.m. and shall close at the later of (i) sunset or (ii) such other time established from time to time by the Association which is reasonably necessary

to accommodate Store operation in the Outfield Park Retail Parcels and identified in a written notice delivered to Ballpark Owner by Association. During Event Periods, the Outfield Park shall open at 7:00 a.m. and close at the later of (i) normal Outfield Park closing established in accordance with the first sentence of this section, or (ii) termination of the Event.

2.4.13 Alcohol Use in Outfield Park. The consumption and possession of alcoholic beverages shall be permitted in the Outfield Park, subject to Applicable Law. Each Owner and the Association shall take reasonable steps to control the sale and use of alcohol in the Outfield Park. The transportation of alcoholic beverages into the Outfield Park from locations outside of the Ballpark Project shall be prohibited.

2.5 Utility Facilities Easements

2.5.1 Grant of Utility Facility Easements. Subject to the provisions of this Section, each Owner shall have and there is hereby reserved by Declarant for the benefit of all Parcels and granted of each Owner, non-exclusive easements in the Project Premises, for the installation, use, operation, Maintenance, relocation and removal of Utility Facilities serving the Owner's Parcel and located on another Parcel, some of which are shown on Exhibit "L". Upon the addition of any new Utility Facilities subject to such easements, or upon the relocation of any existing Utility Facilities as provided below, the Owners shall amend this Declaration to update Exhibit "L" to correctly show the locations of all Utility Facilities easements. Notwithstanding the foregoing, to the extent that it is impossible or impractical to depict all such Utility Facilities in an exhibit to this Declaration, they shall be reflected in the structural record drawings of the Improvements for each Parcel to be maintained in the office of the Association as provided in Article 3 below.

2.5.2 Location of Additional Utility Facilities. The location of any Utility Facilities in addition to those depicted on Exhibit "L", shall be subject to the reasonable approval of the Owner across whose Parcel the same are to be located, in accordance with the procedures and shall be documented in the same manner provided in this Article 2 for the relocation of Utility Facilities easements.

2.5.3 Maintenance of Utility Facilities. Except as otherwise provided in this Declaration, the Grantee of any easement for Utility Facilities under this Section shall be responsible, as between such Grantee and the Grantor, for the installation, Maintenance, and removal of all Utility Facilities installed by or on behalf of the Grantee within the easements, as well as for all Utility Facilities installed by the Grantee on its own Parcel. After initial installation is completed, any installation, Maintenance, relocation and removal of Utility Facilities that is required to be performed by Grantee must be performed by Grantee, and then only after fifteen (15) days' advance notice to Grantor of Grantee's intention to do such work; provided, however, that no such notice shall be required for future Maintenance of Utility Facilities when performed by the Association which does not result in any interruption in utility services during business hours or if the business operates twenty-four (24) hours per day then during those hours which will cause the least possible interference with such business. However, in the case of an emergency, any such work may be immediately performed by Grantee after such advance notice

to Grantor as is practicable under the circumstances. In addition, all such installation, Maintenance and removal shall be performed in a manner that causes as little disturbance to Grantor and all affected Owners as may be practicable under the circumstances, and any and all portions of the easement area of Grantor's Parcel which may have been excavated, damaged or otherwise disturbed as a result of such work shall be restored, at the sole cost and expense of Grantee, to essentially the same condition as such portions were in prior to the commencement of any such work.

2.5.4 Use of Utility Facilities by Grantor. The Grantor of any easement for Utility Facilities under this Section may use the Utility Facilities as so installed, provided that (i) such use shall not interfere with or diminish the utility services to the Grantee (unless such interference or diminution is temporary and either is immaterial or, to the extent not immaterial, Grantor promptly reimburses Grantee for all costs, expenses and losses incurred by Grantee as a result of the interference or diminution); (ii) such use does not unreasonably impair the usefulness or function of the Utility Facilities in question; (iii) the increase in costs incurred to make such Utility Facilities adequate to serve Grantor's use shall be borne by the Grantor; (iv) Grantor complies with the requirements hereof pertaining to the relocation by a Grantor of Utility Facilities Easements; and, (v) the costs of operating and maintaining such Utility Facilities shall be borne by Grantor and Grantee in proportion to the respective use and the benefit derived by each therefrom. Any dispute as to the allocation of costs under this Section shall be resolved in accordance with Article 16.

2.6 Parking Easements.

2.6.1 Grant of Easements for Parking Facilities, Parking Access Facilities, Parking Access Ramps and Parking Access Elevators. Subject to the regulation by the Grantors as provided herein, R2 Owner and R3 Owner shall have, and there is hereby reserved by Declarant for the benefit of the R2 Parcel and R3 Parcel and granted to R2 Owner and R3 Owner for their use, and for the use of their respective Permittees, in common with all others entitled to use the same, non-exclusive easements in (i) the Parking Access Facilities, Parking Access Ramps and Parking Access Elevators for ingress to and egress to and from the Parking Parcel, (ii) the Parking Access Ramps, Parking Access Elevators, Parking Access Facilities and Parking Facilities for the passage of vehicles and passage and accommodation of pedestrians on the respective portions of the Parking Access Ramps, Parking Access Elevators, Parking Access Facilities and Parking Facilities and (iii) the Parking Facilities for _____ (_____) parking spaces at monthly and daily parking rates similar to those charged by similar parking facilities in the vicinity of the Project. Notwithstanding the foregoing, the Owners and their Permittees shall have no right of use or enjoyment of the foregoing easement until a temporary or permanent certificate of occupancy has been issued by the City, if applicable, with respect to both the Parking Facilities and the Building located on such Owner's Parcel or occupied by such Permittee. The use and enjoyment of the easements granted herein shall be further subject to the right of the Grantors thereof to control the use of the Parking Facilities, Parking Access Facilities, Parking Access Ramps and Parking Access Elevators, including, but not limited to, (i) the right of the Parking Owner to establish and charge monthly, daily and hourly rates for parking in the Parking

Structure, maintain in effect a system of parking fee validation, issue entry control cards, operate during hours determined by the Parking Owner, provide approximately five hundred (500) Parking Spaces, provide valet and/or tandem parking and adopt reasonable rules and regulations governing the use of the Parking Structure, and (ii) Parking Access Facilities and the Parking Access Elevators located on or within their respective Parcels.

2.6.2 Allocable Shares of Parking Operating Costs.

(a) Payment. Parking Operating Costs shall be the sole responsibility of R2 Owner, R3 Owner and Parking Owner as set forth herein. Beginning on the first day of the first month following the commencement by R2 Owner and R3 Owner of their use and enjoyment of the easement granted in Section 2.6.1 above, the R2 Owner and R3 Owner shall pay to the Parking Owner an amount equal to such Owner's Allocable Share of Parking Operating Costs estimated by the Parking Owner to have been incurred by the Parking Owner during the previous month with respect to Parking Operating Costs as set forth in a written statement by the Parking Owner delivered to each such Owner. All amounts due for an Owner's Allocable Share of Parking Operating Costs for less than a full calendar month shall be prorated by the Parking Owner. All Allocable Shares of Parking Operating Costs shall be payable in the amount specified by the Parking Owner and no offset against such amount shall be permitted for any reason. Any disputes pertaining to the amount due from R2 Owner or the R3 Owner shall be resolved on an annual basis as set forth in Subsection (d) below. The Parking Owner may require the payment of a late charge and/or interest with respect to the delinquent payment of an Owner's Allocable Share of Parking Operating Costs and may modify the due date for Parking Operating Costs payment of the Allocable Shares for Parking Operating Costs upon written notice thereof to the R2 Owner and R3 Owner. In no event shall the payment by an Owner of its Allocable Share of Parking Operating Costs be construed as an allocation of rights to use the Parking Structure, which use shall be regulated by the Parking Owner as provided above.

(b) Creation of Lien and Personal Obligation for Payment of Allocable Share of Parking Operating Costs. In consideration of the easement rights granted in this Section 2.6, the R2 Owner and R3 Owner, by acceptance of a deed for their respective Parcels, whether or not it shall be so expressed in such deed, are deemed to covenant and agree to pay to the Parking Owner their Allocable Share of Parking Operating Costs levied pursuant to the provisions of this Declaration and all other sums to which the Parking Owner shall be entitled under this Declaration, which amount, together with interest, costs and reasonable attorneys' fees incurred in the collection of such Owner's Allocable Share of Parking Operating Costs, shall be a charge on each such Owner's Parcel, and shall be a continuing lien on such Parcels against which each such levy is made, the lien to be effective upon recordation of a notice of delinquency by the Association as provided herein. Each such amount shall be the personal obligation of the Person who was the Owner of such Parcel at the time when such amounts fell due and shall bind his heirs, devisees, personal representatives and assigns; provided, however, that the personal obligation for the payment of delinquent amounts hereunder shall not pass to successive Owners, unless expressly assumed by such successive Owner, but except as provided in Article 18 with respect to Mortgagees, shall remain as a lien and charge against the Parcel of the previous delinquent Owner

enforceable by the Association as provided below, in addition to remaining a personal obligation of such previous delinquent Owner to the Parking Owner. No assumption of personal liability by a successive Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for a delinquent payment owed by such Owner. If more than one (1) Person was the Owner of a Parcel, the personal obligation to pay such amount respecting such Parcel shall be joint and several. Notwithstanding the foregoing, if any Owner fails to pay any portion of his Allocable Share of Parking Operating Costs when due, the Parking Owner may thereafter allocate such unpaid amount to the other Owners that are liable for Parking Operating Costs under this Declaration (except for any Mortgagee who acquired title to a Parcel following foreclosure or acceptance of a deed in lieu of foreclosure) as a Parking Operating Cost; provided, however, that such reallocation shall not diminish the lien upon the subject Parcel or liability of the defaulting Owner, and provided further that the Parking Owner shall continue to pursue the collection of such amounts from the defaulting Owner. Upon collection by the Parking Owner of such unpaid amounts from the defaulting Owner or payment thereof by the Association as provided below, the Parking Owner shall reimburse any Owner that has paid any amounts on behalf of the defaulting Owner.

(c) Annual Reconciliation of Parking Operating Costs. Within ninety (90) days of the end of each Accounting Period, the Parking Owner shall give to the R2 Owner and the R3 Owner a full, complete and itemized statement of the Parking Operating Costs applicable to such Owner for such Accounting Period ("Parking Owner's Annual Statement"). If the Parking Owner's Annual Statement discloses that the R2 Owner or R3 Owner has paid more than its Allocable Share of Parking Operating Costs during any Accounting Period, the Parking Owner shall credit the full amount of such overpayment to the account of such Owner and such amounts shall be applied by the Parking Owner toward the next payment due from such Owner for its Allocable Share of Parking Operating Costs. If the R2 Owner or R3 Owner have paid less than their Allocable Share of Parking Operating Costs for the previous Accounting Period, then such Owner shall pay to the Parking Owner the full amount of such deficiency in its Allocable Share of Parking Operating Costs within thirty (30) days following its receipt of the Parking Owner's Annual Statement.

(d) Disputes Between Parking Owner and Other Owners.

(i) Disapproval Notice. In the event that the R2 Owner or R3 Owner disputes the amount set forth in the Parking Owner's monthly statement for such Owner's Allocable Share of Parking Operating Costs or the Parking Owner's Annual Statement, within thirty (30) days following its receipt of the Parking Owner's Annual Statement, such Owner shall still pay to the Parking Owner all such amounts due pursuant to such statements in the manner provided herein; provided, however, that within thirty (30) days of such Owner's receipt of the Parking Owner's Annual Statement, it shall also deliver to the Parking Owner a written statement disapproving the amount of its Allocable Share of Parking Operating Costs paid during the preceding Accounting Period ("Disapproval Notice"), which shall set forth with specificity the reasons for such disapproval. Failure by the R2 Owner or R3 Owner to deliver a Disapproval Notice within this 30-day period shall be deemed to be its full and complete approval

of the matters set forth in the Parking Owner's Annual Statement. In no event shall the R2 Owner or R3 Owner be relieved of their obligation to pay their respective Allocable Shares of Parking Operating Costs pursuant to the Parking Owner's Annual Statement. Failure by the R2 Owner or R3 Owner to pay its Allocable Share of Parking Operating Costs to the Parking Owner as provided herein shall be deemed to be a full and complete waiver of any such Owner's rights to review the books and records of the Parking Owner or to conduct the audit described in Section 2.6.2(d)(ii) below.

(ii) Right of Audit. Provided that a disputing Owner has paid the full amount of its Allocable Share of Parking Operating Costs as set forth in the Parking Owner's Annual Statement, within sixty (60) days of its delivery of a Disapproval Notice an Owner shall have the right to review the Parking Owner's books and records pertaining to Parking Operating Costs, which books and records the Parking Owner shall make available for such Owner's review during reasonable business hours, in order that the disputing Owner may verify the statement of the Parking Owner with respect to such Owner's Allocable Share of Parking Operating Costs. In the event that, after reviewing the Parking Owner's books and records, such disputing Owner still disputes the Parking Owner's Annual Statement, the Parking Owner and the disputing Owner shall meet to attempt to resolve the dispute. If the Parking Owner and the disputing Owner are unable to resolve the dispute within thirty (30) days of their initial meeting, then the disputing Owner shall have the right to cause an audit of the calculations of the Parking Owner by a certified public accountant retained by the disputing Owner at its sole cost and expense and a complete copy of such audit shall be delivered to the Parking Owner. In the event that such audit discloses an inaccuracy in favor of the disputing Owner and the Parking Owner agrees with the results of the audit conducted by the disputing Owner, the Parking Owner shall credit the account of the disputing Owner in the manner set forth in Section 2.6.2(c) above. If such an error in favor of the disputing Owner is greater than five percent (5%) of such disputing Owner's Allocable Share of Parking Operating Costs, the Parking Owner shall reimburse the disputing Owner for the costs of such audit within thirty (30) days of receipt of the disputing Owner's audit and written notice with respect thereto. In the event that the Parking owner disagrees with the results of the audit obtained by the disputing Owner, such matter shall be resolved in accordance with the arbitration provision set forth in Article 16 below.

(e) Non-payment of Allocable Share of Parking Operating Costs. In the event that the R2 Owner or R3 Owner does not pay its Allocable Share of Parking Operating Costs in the manner provided in this Section, and the Parking Owner determines that such delinquency has a materially adverse impact on its continued operation of the Parking Facilities, it may, at its sole option, provide written notice thereof to the Association. If the Association agrees with the Parking Owner's determination that such delinquency has a materially adverse impact on the continued operation of the Parking Facilities, the Association shall pay to the Parking Owner an amount equal to such delinquency and other charges with respect thereto and shall levy an assessment with respect thereto against the delinquent Owner, which assessment shall be enforced by the Association in the same manner as an assessment for an Owner's Allocable Share of Common Maintenance Area Costs as provided in Article 12 of this Declaration. Upon such payment by the Association to the Parking Owner, the delinquent

Owner's obligation to the Parking Owner shall be deemed satisfied as to the Parking Owner and assigned to the Association. Nothing contained herein shall be deemed to limit the rights of the Parking Owner to pursue and enforce any rights and remedies it may have against a delinquent Owner in the manner provided in Article 12 of this Declaration for violations of covenants contained in this Declaration in the event that the Parking Owner elects not to assign its remedies against such delinquent Owner to the Association.

2.6.3 Control of Parking Facilities. The Grantors of any easements set forth in this Section shall have the right to eject or cause the ejection from any Parking Facilities, Parking Access Facilities, Parking Access Ramps and Parking Access Elevators from time to time any Owner, Owners or Permittees not authorized, empowered or privileged to use such facilities. Notwithstanding the foregoing, such Grantors shall have the right to close off such facilities for such reasonable period or periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone or for purposes of Maintenance thereof; provided, however, that prior to closing off any portion of such facilities, as herein provided, such Grantors shall give written notice to each other Owner of its intention so to do, and shall coordinate such closing with all such Owners so that no unreasonable interference with the operation of the Project shall occur.

2.6.4 Indemnity of Ballpark Owner and Outfield Park Owner. R2 Owner, R3 Owner and Parking Owner shall indemnify, defend and hold harmless the Ballpark Owner and Outfield Park Owner, and their respective directors, officers, members, managers, employees, agents, attorneys, consultants and representatives from and against any and all liabilities, claims, demands, obligations, losses, actions and causes of action whatsoever, including reasonable attorneys' fees and expenses, court costs and costs and expenses incurred in investigating, preparing or defending against any litigation or claim, action, suit, proceeding or demand of any kind or character, arising out of, related to, or in connection with any damage or injury to Persons or property occurring within the Parking Parcel. The foregoing right of indemnity shall not extend to liabilities, claims, demands, obligations, losses, actions and causes of action caused by (i) the gross negligence or willful misconduct of the parties seeking the benefit of such indemnity obligation, or (ii) the gross negligence or willful misconduct of such parties' Permittees.

2.7 Grant of Structural Support Easement. Each Owner shall have and there is hereby reserved by Declarant for the benefit of the Parcels and granted to each Owner, a non-exclusive easement in the Structural Supports located in any Parcel necessary for the structural integrity of adjacent Improvements presently located on the Project Premises or to be constructed in the future on any portion of the Project Premises, and any replacement, substitution or modification thereof as permitted by this Declaration. Each Grantor hereby disclaims any representation or warranty, whether express or implied, concerning any matter with regard to the adequacy or sufficiency of the design, specifications, installation and/or construction of the Structural Supports (including any defect(s), omission(s) or error(s) in the design, specifications, installation and/or construction thereof) for the purposes herein provided or contemplated; and each Owner hereby acknowledges that it has satisfied or will satisfy itself as to the adequacy and sufficiency of the design, specifications, installation and/or construction of the Structural Supports. The foregoing

disclaimer shall not be construed to affect any contractual arrangement that otherwise may exist between a Grantor and Grantee with respect to the matters included in the foregoing disclaimer.

2.8 Encroachments.

2.8.1 Easement for Encroachments. Each Owner shall have, and there is hereby reserved by Declarant for the benefit of the Parcels and granted to each Owner, an easement in the Project Premises for encroachments and maintenance thereof in the event that, and to the extent that:

(a) there are minor variations from the plans in the construction of the Improvements occurring due to construction accuracy, methods and/or techniques;

(b) there is minor settlement or shifting of the Improvements over time so that any part of the Improvements encroaches or shall hereafter encroach upon any part of an adjacent Parcel; and

(c) there are canopies, overhangs, doorswings, signs or other similar encroachments as approved in writing by the Association, together with their replacements as such replacements may be reasonably modified.

Such easement for the maintenance of encroachments shall exist, as to a particular encroachment, only so long as the encroaching portion of the Improvement shall remain standing and in existence. However, in no event shall an easement for any encroachment be created or maintained in favor of one Parcel if such encroachment materially and adversely interferes with the use, operation and enjoyment of another Parcel by an Owner or its Occupants or Permittees. Nothing herein contained shall in any manner be construed as diminishing or be deemed to constitute a waiver of any rights of an Owner resulting from another Owner's failure to construct its Improvements as herein required, and this Section shall not relieve or excuse an Owner from exercising all due diligence to construct its Improvements within the boundaries of such Owner's Parcel.

2.9 Airspace Easements. In addition to the other easements granted pursuant to this Declaration, the Owners of the R2 Parcel, the R3 Parcel and the Ballpark Parcel shall have, and there is hereby reserved by Declarant and granted to such Owners, non-exclusive airspace easements in the Outfield Park Parcel (a) to construct, develop, use, operate, Maintain, remove, demolish, alter and improve the Improvements owned by such Grantees on such Parcel, (b) with the prior written consent of the Servient Parcel Owner, to replace, repair and demolish all necessary and desirable Structural Supports to support Improvements which may be constructed and maintained from time to time within the Dominant Parcels, together with incidental rights of Maintenance, construction, excavation and entry onto the Servient Parcel for such and related purposes (provided that at all times proper structural, lateral and subjacent support is given to all other Owners' Improvements during the course of such work and such work is conducted in a manner which will not unreasonably interfere with the use and operation of all other Owners' Buildings and Improvements during the course of such work), and (c) to provide vertical, lateral

and subjacent support of the Dominant Parcels. In addition, there is hereby reserved by the Declarant and granted to the Association a non-exclusive airspace easement in the Outfield Park Parcel, R2 Parcel, R3 Parcel, and Parking Parcel to hang banners and signs, subject to Applicable Law.

2.10 Setback Easement. Each Owner shall have and there is hereby reserved by Declarant and granted to each Owner non-exclusive easements in their respective Parcels to the extent required by and for the purpose of complying with any setback requirement ("Setback Restrictions") contained in any Applicable Law, prior agreements or covenants, conditions and restrictions affecting the Project Premises as of the issuance of building permits for the initial construction of the Improvements within the Project Premises pursuant to the Preapproved Improvement Plans (as defined in Article 3 below and any approved modifications thereto). Nothing contained herein shall require an Owner to relocate any Improvements to be constructed or constructed on its Parcel in compliance with the Preapproved Improvement Plans for such Improvements to allow for a setback easement described herein or to grant any additional Setback Easement due to changes in any Applicable Law affecting the Setback Restrictions applicable to an adjacent Parcel.

2.11 Accent Light Easements. Subject to Applicable Law, each Owner shall have, and there is hereby reserved by Declarant for the benefit of each Parcel and granted to each Owner, an easement in the Project Premises to install and Maintain, at the individual expense (including the cost of electricity used in the operation thereof) of each Grantee, accent lights to illuminate Grantee's Buildings and Improvements. If any Grantee desires to exercise its rights under this Section, it shall prepare plans and specifications showing the exact locations of such accent lights and detailing all other specific information with respect thereto, which plans and specifications shall be subject to Grantor's reasonable approval, such approval not to be withheld or delayed unless, in Grantor's opinion, the position, type of character of such accent lights is not architecturally harmonious with the Grantor's approved treatment of the Grantor's Building or the existing use of the Grantor's parcel. In addition to the foregoing, such plans and specifications shall be reviewed and approved by the Architectural Committee as provided in Article 3 hereof. Each Grantee agrees to use due care in the exercise of the rights granted under this Section and to obtain Grantor's consent as to methods and timing in the exercise of such rights. During construction, each Owner who is a Grantee of the accent light easement, at such Owner's sole expense, shall, upon thirty (30) days' notice from any Owner who shall be engaging in construction on such Owner's Parcel, promptly remove all lights so installed by the Grantee from the area to be used for or in connection with any Improvements and Buildings being constructed by the Grantor. Upon completion of construction of each Improvement and Building, each Grantee shall have the right to reinstall said lights subject to compliance with the above provisions if the Grantor's Improvement and Buildings have not materially altered the area in which the lights were located. Notwithstanding the foregoing, Ballpark Owner shall have the right to withhold its approval if the placement, luminosity or number of glass lights interferes with Ballpark Owner's use and enjoyment of the Ballpark Parcel.

2.12 Maintenance Easements. Each Owner and the Association shall have and there is hereby reserved by Declarant for the benefit of the Owners and the Association and granted to the Association and the Owners, a non-exclusive easement in the Parcels for the purpose of performing their obligations for Maintenance as set forth in this Declaration.

2.13 Project Integration, Maintenance and Development Easement. In addition to the easements provided for in this Article 2 and to allow for minor variations or setbacks in the actual locations of the completed Improvements and Buildings and to assure that each Owner can, where necessary, develop, construct and Maintain its Improvements and Buildings so that they abut and/or connect to the Improvements and Buildings that have been completed on adjacent Parcels, and the Project Premises can properly function as an integrated mixed-use project, each Owner shall have, and there is hereby reserved by Declarant for the benefit of the Parcels and granted to each Owner, easements in the Project Premises at any level above or below the ground to the extent to which such easements may reasonably be required for the following purposes:

(a) to enable any Grantee to enter upon an adjacent Parcel for the purposes set forth in this Declaration and subject to the rights and restrictions set forth herein;

(b) to permanently Maintain its Improvements and Buildings;

(c) to reconstruct, renovate, remodel, replace, remove, demolish or otherwise improve its Improvements and Buildings at any time and from time to time subject to the Sections of this Article entitled "Construction Easements";

(d) to Maintain the operation and integrity of the heating, ventilation and air conditioning system(s) of the Project so that all of the development on the Project will give the appearance of having been developed as, and will be able to be used as, a part of an overall unified integrated development;

(e) to enforce the signage criteria described in Section 3.10.3; and

(f) to comply with any provision of Applicable Law with respect to exiting in the event of fire or other emergency.

In addition, each Owner shall consent to any other easement not provided or restricted herein which may be reasonably necessary to carry out the construction contemplated by Improvement Plans approved in accordance with Article 3; provided, however, that the location of any such additional easements shall be governed by the provisions of this Article pertaining to the relocation of easements; and provided further that, with respect to any such additional easement, this Section is not intended to relieve any Owner of the obligation to comply with the specific requirements of and specific protections provided for in the other Sections of this Declaration applicable to any easements granted in this Section.

2.14 Light, Air and View. Except as provided in Section 2.4.1, no Owner shall have an easement for light, air or view over the Parcel of another Owner and no diminution of light, air or

view by any Building or Improvement now existing or hereafter erected shall entitle the Owner owning any Building or Improvement or an interest therein or any Permittee to claim any easement for light, air or view within the Project Premises.

2.15 No Dedication of Easements and Benefits. Nothing contained in this Article 2, including the grant of any or all easements hereunder, shall be deemed to constitute a dedication of any Parcel or any portion or portions thereof to the City, the Agency, the County or any other governmental body, agency or entity or to the general public, or be construed to create any rights in or for the benefit of any Person not an Owner to this Declaration, it being the intention that this Declaration shall be strictly limited to and for the purposes herein expressed.

2.16 Right to Grant Easements. Nothing contained in this Declaration shall be deemed to prohibit or limit the right of any Owner to grant easements in its own Parcel to any owner of a portion of the Project for any purpose, or to any governmental unit, public body and/or utility company for the construction, installation, operation, Maintenance, relocation, modification, extension or alteration of streets or Utility Facilities in its Parcel so long as such Utility Facilities service to the other Parcels shall continue unimpaired and provided that no grant of easement pursuant to this Section or exercise thereof shall limit, restrict or interfere with any other rights under this Declaration or prevent the exercise by any party of rights created by this Declaration.

2.17 Grant of Easements to Utility Companies, Etc. Each Owner, upon request of any other Owner, shall grant a perpetual easement(s) in gross to any governmental unit, public body and/or utility company within appropriate locations approved by the Owner of such Servient Parcel on its respective Parcel in its reasonable discretion or within any Utility Facilities for the construction, installation, operation, use, Maintenance, relocation, modification, enlargement, replacement and removal of any Utility Facilities including, without limitation, electrical power lines, transformers and transformer pads.

2.18 Indemnity. Notwithstanding anything in this Article to the contrary, each Grantee under this Article agrees, respectively, that its use of the easements set forth in this Article shall not result in any injury or damage to persons and property and shall not unreasonably interfere with the operation of a Grantor's Improvements nor shall it cause any violation of Applicable Law, and each such Grantee agrees to indemnify, defend and hold harmless the Grantor and its directors, officers, members, managers, employees, agents, attorneys, consultants, representatives and Permittees from and against any and all liabilities, claims, demands, obligations, losses, costs, expenses, actions and causes of action whatsoever, including reasonable attorneys' fees and expenses, court costs and expenses incurred in investigating, preparing or defending against any litigation or claim, action, suit, proceeding or demand of any kind or character arising out of, related to, or in connection with any such injury, damage, unreasonable interference or violation with respect to its use of such easements to the extent and as provided in Article 7 below. A Grantee shall, at its sole expense, promptly repair, replace and restore any and all of Grantor's Improvements which have been damaged or destroyed by such Grantee in the exercise of its rights under this Article 2.

2.19 Naming Rights. Subject to the Use Agreement, Ballpark Owner is hereby granted the sole and exclusive right to name the Ballpark Parcel and the Outfield Park Parcel, any portion thereof and any Improvement constructed thereon, for the term of the Declaration and any extensions to this Declaration. Such naming rights shall include the right to place one or more signs on those portions of the R2 Parcel, R3 Parcel, Parking Parcel which face the Outfield Park and Ballpark and the right to place one or more signs on the Outfield Park Parcel and the Ballpark Parcel, subject to the sign criteria described in Section 3.10.3 and further subject to Applicable Law.

ARTICLE 3

CONSTRUCTION

3.1 Scope of Improvements. This Declaration contemplates the construction of Buildings and Improvements in, on, over and across the Ballpark Parcel, the R2 Parcel, the R3 Parcel, the Outfield Park Parcel, and the Parking Parcel, the construction and development of the Common Maintenance Area and the construction of Utilities Facilities, all in accordance with the Parcel Map and this Declaration.

3.2 Architectural Committee. An Architectural Committee composed of five (5) persons shall be formed by the Association in accordance with this Section to perform all of the functions of the Association under this Article 3 with respect to the review and approval of Improvement Plans. There may also be an alternate for each member of the Architectural Committee, any of whom may be designated by the Architectural Committee to act as a substitute for the member of the Architectural Committee for whom such alternate is appointed to represent as provided below, in the event of the unavailability or disability of a member of the Architectural Committee.

3.2.1 Organization of the Architectural Committee. The members of the Architectural Committee shall be appointed as provided in this Section. The Ballpark Owner shall be entitled to appoint three (3) members and three (3) alternate members, and the R2 Owner and R3 Owner shall each be entitled to appoint one (1) member and one (1) alternate member of the Architectural Committee during the term of this Declaration. In the event of a failure by the Ballpark Owner, the R2 Owner, or the R3 Owner to appoint a member to the Architectural Committee within thirty (30) days of the creation of a vacancy with respect thereto, the Association shall appoint such member to the Architectural Committee. If the Ballpark Owner, the R2 Owner or the R3 Owner fails to appoint a member to the Architectural Committee on two (2) consecutive occasions, the right to appoint and remove a member of the Architectural Committee shall terminate as to the Owner so failing and such right shall thereafter be vested solely in the Association. Members appointed to the Architectural Committee need not be Owners.

3.2.2 Terms of Office. Initially, the three (3) members of the Architectural Committee appointed by the Ballpark Owner shall serve a term of one (1) year; the member appointed by the R2 Owner shall serve a term of two (2) years and the member appointed by the

R3 Owner shall serve a term of three (3) years. Thereafter the term of all Architectural Committee members appointed shall be three (3) years. Any new member appointed to replace a member who has resigned or been removed shall serve such members' unexpired term. Members whose terms have expired may be reappointed.

3.2.3 Resignations and Vacancies; Removal. Any member of the Architectural Committee may, at any time, resign from the Architectural Committee upon written notice to both the Person with the right to appoint such member and written notice to the remaining Architectural Committee members. Vacancies on the Architectural Committee shall be filled by the Person having the right to appoint members as provided herein. The right to remove a member or alternate member of the Architectural Committee shall be vested solely in the Person who appointed such member; provided, however, that the Association shall have the right to remove any member of the Architectural Committee that has acted with gross negligence or willful misconduct in the performance of its duties as a member of the Architectural Committee.

3.2.4 Duties of the Architectural Committee. Subject to Applicable Law, it shall be the duty of the Architectural Committee to perform the functions required of it by this Declaration. Each member of the Architectural Committee shall consider the financial impacts on each Parcel that may result from actions of the Architectural Committee and each member shall exercise its discretion as a member in a balanced and nondiscriminatory manner.

3.2.5 Meetings. Meetings of the Architectural Committee are subject to Applicable Law. The Architectural Committee shall meet as often as it, in its sole discretion, shall deem necessary to properly perform its duties hereunder. The vote or written consent of any three (3) members shall constitute an act by the Architectural Committee.

3.2.6 Compensation. The members of the Architectural Committee shall receive no compensation for services rendered other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder, unless the Association retains a professional architect, engineer or designer as a member of the Architectural Committee for the purpose of providing professional services, in which event reasonable compensation for such member may be approved by the Association.

3.3 Exemption of Ballpark and Outfield Park Parcels and Preapproved Improvement Plans. Notwithstanding any provision to the contrary set forth in this Article 3, the Owners shall not be required to submit any Improvement Plans for review and approval as set forth in this Article 3 (i) with respect to the initial construction of Improvements on the Ballpark Parcel and Outfield Park Parcel which initial construction is exempt from this Article 3, and (ii) with respect to the initial construction of Improvements on the R2 Parcel, R3 Parcel and Parking Parcel unless such Improvement Plans contain material modifications to those certain Improvement Plans with respect to the construction of the R2 Parcel, R3 Parcel and Parking Parcel described in Exhibit "M" (the "Preapproved Improvement Plans"). Any material deviations or modification to the Preapproved Improvement Plans with respect to the R2 Parcel, R3 Parcel and the Parking Parcel including modifications with respect thereto following a Condemnation or event of damage

or destruction, shall be submitted for review and approval in accordance with the provisions of Section 3.6 below.

3.4 Improvement Plans. Subject to Section 3.3, prior to constructing Improvements or Buildings on their respective Parcels or altering, modifying or improving the exterior character, appearance, design or materials used in existing Improvements or Buildings on their respective Parcels, each Owner will cause its Building Architect to prepare Improvement Plans. The reference to "exterior character" in the previous sentence (i) shall include the construction, alteration, modification or improvement to areas of any Building that are not completely enclosed, (ii) shall not limit architectural review under this Article 3 with respect to any aspect of the Parking Facilities. From time to time during the course of the preparation of such Improvement Plans, such Owner shall cause its Building Architect to submit progressive working drawings to the Architectural Committee in reproducible form (in sepias or reproducible transparencies) for review, recommendation and approval. Each document submitted for review pursuant to this Article shall contain a cover page prominently listing the date mailed, the required return date, and if such Improvement Plans differ from the Improvement Plans previously delivered, a statement delineating the nature and extent of the changes. All Improvement Plans and changes or modification to the Preapproved Improvement Plans shall be reviewed and approved in accordance with the procedures and policies set forth in the Architectural Guidelines adopted by the Architectural Committee as provided below. The Architectural Committee may retain the Project Architect and other professionals to advise it regarding all Improvement Plans submitted to it pursuant to this Declaration. The Owner desiring to construct new Improvements or Buildings shall pay the cost of the Project Architect and other professionals retained on behalf of the Architectural Committee to review Improvement Plans as provided herein, as well as all other costs and expenses incurred by the Architectural Committee in conducting such review. At its discretion, the Association may establish a fee for the review and approval of the Improvement Plans by the Architectural Committee. All approvals granted by the Architectural Committee hereunder shall be valid for a period of one (1) year from the date such approval is granted.

3.5 Submittal of As-Built Plans and Record Drawings. The Association shall retain the services of a Project Architect or other qualified professionals to prepare and maintain on a current basis during the term of this Declaration a set of comprehensive plans or maps depicting the location (as of January 1st of each calendar year) of easements for Common Maintenance Area, Utility Facilities and Structural Supports. Each Owner shall, within six (6) months of completion of construction of any Building or Improvement on its Parcel and after each alteration and modification thereof, submit to the Association one copy of the structural record drawings based on the as-built plans for each Building, Improvement or any modification or alteration thereof on such Owner's Parcel, depicting all easements for Common Maintenance Area, Utility Facilities, Structural Supports and Retail Common Maintenance Area located thereon, all of which shall be maintained in the office of the Association.

3.6 Changes in Improvement Plans. Material changes may be made to any Improvement Plans approved pursuant to this Article, including Preapproved Improvement Plans, only by prior written consent of the Architectural Committee and the vote or prior written consent

of the Members holding at least seventy-five percent (75%) of the voting rights under this Declaration, which approvals shall not be unreasonably withheld. The vote or written consent of the Members shall be obtained as provided in Article 4 of this Declaration. All such proposed changes shall be submitted to the Architectural Committee for review, comment and approval pursuant to the provisions of this Article. Notwithstanding the foregoing, the approval of the Architectural Committee shall not be required with respect to a proposed change that does not materially alter the design or materially delay the completion of the proposed Building or Improvement or any change required by the Agency. In the event that an Owner determines that the approval of the Architectural Committee is not required with respect to a proposed change, such Owner shall deliver a copy of the revised Improvement Plans to the Architectural Committee. Any such Improvement Plans which differ from the last previously delivered Improvement Plans, including those not requiring the approval of the Architectural Committee as provided below, shall contain a statement by the Building Architect delineating the nature and extent of the changes.

3.7 Approval and Delivery of Improvement Plans. All approved Improvement Plans shall be stamped "approved," dated, and certified by the Project Architect and maintained by it in a safe and convenient place. In the event of the designation of another Project Architect, all Improvement Plans and other records relating thereto shall be delivered to the new Project Architect at the time of such designation.

3.8 Common Maintenance Area Construction. Each Owner shall obtain approval of all Improvement Plans in accordance with this Declaration, and shall diligently construct that portion of the Improvements to the Common Maintenance Area on its respective Parcel in accordance with such Improvement Plans.

3.9 Addresses to Which Plans Are to be Sent. Each Owner shall designate a person to whose attention should be sent all plans, specifications, approvals, comments and objections submitted pursuant to this Article 3, as well as any Improvement Plans submitted in accordance with any other provision of this Declaration.

3.10 Construction and Landscaping Compatibility.

3.10.1 Architectural Guidelines. Subject to Section 3.3, to produce an architecturally compatible and unified Project, the locations, number of levels, exterior configurations, designs, color treatments, signages and exterior materials of all Buildings and Improvements to be constructed or reconstructed by each of the Owners on its respective Parcel shall be subject to the prior written approval of the Architectural Committee as provided in this Declaration. The design standards for the Buildings and Improvements located on the Project Premises shall be architecturally harmonious to the judgment of the Association. The Architectural Committee shall adopt and may, from time to time, amend, Architectural Guidelines to interpret and implement the provisions hereof, procedures for review of Improvement Plans by the Architectural Committee and guidelines for architectural design of Buildings and other Improvements, placement of Improvements, color schemes, exterior finishes and materials and similar features which are recommended for use in the Project; provided, however, that such

Architectural Guidelines shall be consistent with the design standards established by the Preapproved Improvement Plans and shall not be in derogation of standards required by this Declaration. In determining whether to approve or disapprove Improvement Plans, the Architectural Committee shall have the right to reject and disapprove any Improvement Plans which, in its reasonable opinion, are not suitable or desirable with respect to the individual Improvement, or the Project as a whole. In this regard, the Architectural Committee shall have the right to take into consideration the matters mentioned above, the Architectural Guidelines, as well as the aesthetics of the proposed Building or other Improvements, the harmony thereof with the surrounds, and the effect on the Project as a whole.

3.10.2 Landscaping Design. Subject to Section 3.3, no trees, bushes or mass plantings or other landscaping shall be planted or placed upon the Project by any Owner except pursuant to Improvement Plans which have been reviewed and approved in writing by the Architectural Committee. Said Improvement Plans as submitted to the Architectural Committee shall be prepared by a landscape architect licensed to practice landscape architecture in the State of California and shall show in detail the proposed elevations and locations of all trees, bushes, shrubs or plants, including the location and the elevation of the same in relation to the remainder of the Project. The Architectural Committee may disapprove such Improvement Plans if in its reasonable opinion the aesthetic beauty of any part of the Project would be unduly marred by the location of such tree, bush, shrub or plant, or in any other manner. Further, approval of such Improvement Plans shall be withheld if, in the reasonable opinion of the Architectural Committee, they do not provide for an adequate amount of landscaping relative to the aesthetic requirements of the area for which they are submitted. The Architectural Committee shall adopt rules and regulations ("Landscaping Standards") which set forth guidelines and standards for the planting and emplacement of certain species of trees, bushes or mass plantings in particular locations which are consistent with the standards set forth in this Declaration, the Architectural Guidelines and the Preapproved Improvement Plans.

3.10.3 Signage Criteria. The foregoing notwithstanding, Ballpark Owner is hereby granted the sole and exclusive right to adopt signage criteria containing overall signage requirements with respect to the Project Premises, subject to Applicable Law and provisions of the Use Agreement. Following initial adoption of the signage criteria by the Ballpark Owner, any modifications or amendments to such signage criteria must be approved by at least four (4) votes of the Architectural Committee. Subject to (a) compliance with Applicable Law, (b) compliance with the then existing signage criteria, and (c) the Ballpark Owner's prior written approval, a Building Owner may install tenant or building identification signs on, or around its Building. Ballpark Owner may withhold its approval under clause (c) of the preceding sentence only if the proposed sign promotes or identifies a product, service or firm which, in Ballpark Owner's reasonable discretion, competes with any product, service or firm which has been granted exclusive concession rights in the Ballpark. In addition, Ballpark Owner may impose size limitations on proposed signage (in addition to those contained in the signage criteria established pursuant to this section) based on whether allocations may be necessary to comply with the City's signage criteria (ordinances, rules and regulations), taking into consideration the total square footage of then identifiable future requests for additional sign approvals. All temporary and

permanent signs, window displays, awnings and posters of any kind whatsoever within the Project Premises shall conform to the overall signage requirements specified in the signage criteria established by the Ballpark Owner and shall be reviewed and approved by the Ballpark Owner in accordance with the procedures set forth in such signage criteria. Notwithstanding the foregoing, to the extent that the signage criteria adopted by the Ballpark Owner or any sign submitted for approval by an Owner to the Ballpark Owner, conflicts with any signage requirement provided in any Applicable Law, then such requirement shall control. All such requirements and potential conflicts with Applicable Law shall be specified by an Owner in any request for review of the subject sign by the Ballpark Owner.

3.11 Compliance with Applicable Law. The application to and review and approval by the Architectural Committee of any Improvement Plans or other submittal hereunder shall in no way be deemed to be satisfaction of or compliance with any building permit process or other Applicable Law pertaining to the construction of Improvements, the responsibility for which shall lie solely with the respective Owner.

3.12 Variances. The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including, without limitation, restrictions upon height, size, floor area or placement of structure or Improvements or other similar restrictions, when circumstances such as topography, natural obstructions, aesthetic or environmental considerations may require. Such variances shall be evidenced in writing and must be signed by a majority of the Architectural Committee. In addition to the foregoing, any material variances to the architectural provisions of this Declaration must be approved by the vote or prior written consent of the Members possessing at least seventy-five percent (75%) of the voting rights under this Declaration. Such approval of the Members shall be obtained as provided in Article 4 of this Declaration. Any such variances may be recorded in the Office of the County Recorder at the request of the applicant Owner or at the election of the Architectural Committee. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Parcel and particular provision hereof covered by the variance, and shall be subject to compliance by the Owner of the affected Parcel with Applicable Law and any conditions imposed by the Architectural Committee in connection with granting of such variance.

3.13 Performance of Construction. The word "Construction" as used in this Section includes initial and subsequent construction under this Declaration and alterations, additions, repair and Maintenance, restoration, replacement, rebuilding, demolition and razing permitted or required under this Declaration. Each Owner shall perform its respective Construction (a) in accordance with the Improvement Plans approved in accordance with this Article, (b) with due diligence and in a good and workmanlike manner, using first class materials, (c) in full cooperation with each of the other Owners to the extent necessary to effect a unified integrated development, (d) in accordance with all Applicable Law, and (e) in accordance with the terms and provisions of this Declaration. In so performing such construction, each Owner shall not:

(i) cause any increase in the cost of construction of the other Owners or any other costs or expenses of such other Owners in the ownership and operation of their Parcels; (ii) unreasonably interfere with any other construction being performed on the Parcels by other Owners; or (iii) unreasonably impair the use, occupancy or enjoyment of the Parcels by the Owners, Occupants, and/or Permittees thereof.

3.14 Safety Measures and Maintenance of Construction Sites. Each Owner shall at all times take any and all safety measures reasonably required to protect every other Owner and all Occupants and Permittees from injury or damage caused by or resulting from the performance of its construction. The Owner carrying on construction shall erect or cause to be erected adequate and proper-appearing, painted, construction barricades, by woven wire or solid fence, at least eight (8) feet in height substantially enclosing the area of its construction and shall maintain such barricades until such construction has been substantially completed (to the extent necessary to remove such hazardous condition). Such barricades shall be kept in place, in good condition and repair, until the Building or Improvement being constructed is safe and otherwise secure from unauthorized intrusion. All Owners, with respect to their construction and in accordance with practices observed in a first class mixed-use project, will cause all Occupants and their respective contractors to keep all construction materials within their respective Parcels and to refrain from allowing any accumulation of refuse on the balance of the Project.

3.15 Construction Staging Areas and Schedule. Prior to the commencement of any work performed by any Owner after the initial construction of the Improvements, each Owner shall submit to each other Owner for informational purposes only: (a) a plot plan of the Parcel showing the buildings, material and equipment storage sites, construction shacks and other temporary improvements, including access and temporary utilities, and workmen's parking area; and (b) a time schedule indicating the approximate date or dates when such construction, including on-site work and Parcel preparation, shall commence and be completed.

3.16 Inspection and Correction of Work.

3.16.1 Right of Inspection During Course of Construction. The Architectural Committee or its duly authorized representatives, may enter upon any Parcel, from time to time during the course of construction of any Buildings or Improvements thereon for the purpose of inspecting such construction and/or installation. If the Architectural Committee determines that such construction and/or installation is not being done in substantial compliance with the approved Improvement Plans, it shall notify the Owner of the subject Parcel of such non-compliance and such Owner shall promptly remedy such non-compliance.

3.16.2 Inspection Following Completion of Construction. Following the delivery to the Architectural Committee of the certificates as set forth in Section 3.17 below, the Architectural Committee or its duly authorized representatives, may inspect the Improvement completed to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approved Improvement Plans. If the Architectural Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved Improvement Plans, it shall notify the Owner in writing of such

non-compliance within thirty (30) days of delivery by the Owner to the Architectural Committee of the certificates referenced in Section 3.17 below, specifying the particulars of such non-compliance and shall require the Owner to remedy such non-compliance. If, upon the expiration of thirty (30) days from the date of such notification, the Owner has failed to remedy such non-compliance, the Association may record a notice of such non-compliance and may pursue its remedies under Article 12 of this Declaration.

3.16.3 No Obligation to Conduct Inspection. Nothing contained in this Section shall be construed to require the Architectural Committee to conduct inspections and any determination by the Architectural Committee, as the case may be, not to conduct such an inspection shall not be construed as a waiver of any of the requirements set forth in this Article with respect to the construction of Improvements.

3.17 Evidence of Issuance of Certificate of Completion or Occupancy. An Owner who has completed the construction of a Building or Improvement shall deliver to the Architectural Committee a certificate of occupancy or completion within thirty (30) days after the date upon which such Owner obtains a copy of its certificate of occupancy or completion, or, at the request of another Owner, such Owner shall deliver a copy of such certificate of occupancy or completion within the later of (a) thirty (30) days of the date such request is received or (b) thirty (30) days after the date upon which such Owner obtains a copy of its certificate of occupancy or completion. In addition, each such Owner shall deliver a certificate of its Building Architect certifying the completion of such Improvements in accordance with Improvement Plans approved by the Architectural Committee as provided in this Article.

3.18 Separation of Work. For all purposes applicable to the provisions of statutory law of the State of California, the construction of any Improvements to the Project Premises shall nevertheless each be deemed to be a separate and distinct work of improvement.

3.19 Liens.

3.19.1 Indemnification of Other Owners. Any Owner ordering or contracting for any service, labor or materials in respect of any design of Improvements for or construction on any part of its Parcel shall promptly pay all costs, expenses, liabilities and liens arising out of or in any way connected with such design or construction, and shall defend, protect, indemnify and hold harmless the other Owners and the Association from all loss, damage, liability, expense or claims whatsoever by reason of any lien which may be filed against the Association, any other Owner or such Owner's Parcel for such work, services or materials performed or supplied by any architect, engineer, or contractor with whom such Owner has contracted for the design and construction of any Improvements or any other person acting directly or indirectly by, through or under such architect, engineer, materialman or contractor supplying services, labor, materials or equipment and shall pay all expenses incurred in connection therewith, including attorneys' fees and other costs of defending against the foregoing by such other Owner incurred prior to the defense by the Owner responsible. An Owner shall not be construed to be the agent or partner of any other Owner, and each such Owner assumes all responsibility and liability for the cost of the

performance of any construction or other services contracted for by such Owner and any disputes in regard thereto and the agreements therefor.

3.19.2 Duty to Discharge Lien. In the event any such lien is filed, the Owner responsible shall pay and discharge the same of record as promptly as possible but in no event later than forty-five (45) days after notice of the filing thereof, subject to the provisions of this Section. Each such Owner shall have the right to contest the validity, amount or applicability of any such respective liens by appropriate legal proceedings so long as it shall furnish a bond as required by California law to discharge the lien as a matter of record, within forty-five (45) days after notice of the filing of such lien.

3.20 Non-Liability. Each Owner shall defend, protect, indemnify and save harmless the Association and the Architectural Committee against any claims, suits, demands, actions or causes of action made by any person for faulty design, negligent or improper construction or any aspect of such Owner's construction on or development of its Parcel. Neither the Association nor the Architectural Committee shall incur liability under this Declaration with respect to the construction and development activity of any Owner by reason of the review and/or approval of Improvement Plans or inspection of Improvements under this Article 3 by the Association or the Architectural Committee, except to the extent of losses arising from gross negligence or willful misconduct resulting in property damage or bodily injury caused solely by the Association or the Architectural Committee in the performance of the inspection of Improvements hereunder. Neither the Association nor the Architectural Committee shall be deemed to have given any warranty or representation as to the compliance with Applicable Law or as to the engineering, construction methods or structural integrity or fitness of any Building or Improvement, or as to the construction methods used in connection with the construction of any Building or Improvement, solely by reason of its review and/or approval of an Owner's Improvement Plans under this Declaration.

3.21 Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Architectural Committee by an Owner and upon payment to the Architectural Committee of a reasonable fee (as fixed from time to time by the Association), the Architectural Committee shall provide an estoppel certificate in recordable form, executed and acknowledged by a majority of the members of the Architectural Committee certifying with respect to the Building of Improvements on the Parcel of such Owner that as of the date thereof, either: (a) all Improvements made or other work completed by said Owner comply with this Declaration, or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in such Parcel through him, shall be entitled to rely on such certificate with respect to the matters therein set forth, such matters being conclusive as between the Architectural Committee and all Owners.

3.22 Notice of Noncompliance or Noncompletion. Notwithstanding any other provision of this Declaration, after the expiration of one (1) year from the date of issuance of a certificate of completion or occupancy by a municipal or other governmental authority for any

Improvement, said Improvement shall, in favor of purchasers and encumbrancers in good faith and for value, be deemed to be in compliance with all provisions of this Declaration, unless actual notice of such noncompliance or noncompletion, executed by the Architectural Committee, shall appear of record in the Office of the County Recorder of the County of San Diego, or unless legal proceedings shall have been instituted to enforce compliance or completion, within such one-year period.

3.23 Amendment to Parcel Map. Following the completion of the Improvements initially constructed on a Parcel or the Parcels, Declarant may, at its sole option, elect to amend the Parcel Map based upon the actual location of such Improvements within the Project Premises as reflected in the structural record drawings of such Improvements delivered to the Association as provided in Section 3.5 above. Upon the request of Declarant, each Owner shall execute any such amendment and any other documents necessary to effect such amendment to the Parcel Map. All costs associated with such amendment shall be payable by each Owner to the Declarant in an amount equal to each Owner's Allocable Share of Common Maintenance Area Costs. No such modification to the Parcel Map shall materially or adversely interfere with the use, operation and enjoyment of an Owner's Parcel. Nothing contained in this Section shall relieve any Owner from its obligations to construct its Improvements as required under this Declaration and shall not relieve or excuse an Owner from exercising all due diligence to construct its Improvements within the boundaries of such Owner's Parcel.

ARTICLE 4

THE ASSOCIATION AND VOTING RIGHTS OF MEMBERS

4.1 The Association.

4.1.1 Incorporation. The Association is a non-profit mutual benefit corporation formed under the Non-Profit Mutual Benefit Law of the State of California. Upon the recordation of this Declaration, the Association shall be charged with the duties and invested with the powers set forth in the Articles, the Bylaws and this Declaration. Notwithstanding the foregoing, the Association's powers and duties with respect to the control and maintenance of any portion of the Common Maintenance Area and the facilities therein and thereon shall not commence until a certificate of occupancy has been issued by the City, if applicable with respect thereto and a certification of completion has been issued by the Agency, if applicable with respect thereto.

4.1.2 Action Through Designated Officers. Except as in matters requiring the approval of Owners or matters that may be approved by the Architectural Committee as set forth in this Declaration, the affairs of the Association, including the exercise of its powers and duties, shall be conducted by the Board, such officers as the Board may elect or appoint, or such persons or entities with delegated authority pursuant to the Bylaws.

4.1.3 Initial Board of Directors. The Board shall be appointed and elected as set forth in the Bylaws. Elected directors may be elected by cumulative voting as provided in California Corporations Code Section 7615 or any successor statute or law.

4.1.4 Membership Meetings. The Board may call the first annual meeting of Members at any time but no later than forty-five (45) days after the commencement of the Maintenance Obligations of the Association as set forth herein. Thereafter, the Association shall hold an annual meeting of the Members in accordance with the Bylaws.

4.1.5 Powers of the Association. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the General Nonprofit Mutual Benefit Corporation Law of California, subject only to such limitations on the exercise of its powers as set forth in the Articles, the Bylaws and this Declaration. The Association shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under this Declaration, the Articles and the Bylaws, and to do and perform any acts that may be necessary or proper for or incidental to, the exercise of any of the express powers or duties of the Association enumerated in this Declaration, including, but not limited to, the powers set forth below.

(a) Right to Determine Common Maintenance Area Costs and Allocable Shares of Common Maintenance Area Costs. The Association shall have the power to calculate Common Maintenance Area Costs and assess the Allocable Share of Common Maintenance Area Costs of each Owner with respect thereto as set forth in this Declaration.

(b) Right to Establish Rules Regulating Use of Common Maintenance Area. Subject to the vote or prior written consent of the Members holding at least seventy-five percent (75%) of the voting rights under this Declaration obtained as provided in this Article 4, the Association may from time to time adopt, amend, and repeal the Rules and Regulations as it considers appropriate to reasonably regulate the use and enjoyment of the Common Maintenance Area. A copy of the Rules and Regulations as adopted, amended, or repealed shall be mailed or otherwise delivered to each Owner. If any provision in this Declaration, the Articles or the Bylaws is inconsistent with or materially alters any of the Rules and Regulations, this Declaration, the Articles or the Bylaws shall control to the extent of any such inconsistency.

(c) Right to Contract for Goods and Services. The Association shall have the power to enter into such contracts for services or materials as may be necessary to perform its duties, including contracts with the City, the Mixed-Use Owner, or their Affiliates; provided, however, that any contract between the Association and any Owner or an Affiliate of an Owner shall be on terms which are commercially reasonable given the nature and location of the Project and the obligations contained within such contract or are approved by the vote or prior written consent of the Members holding at least seventy-five percent (75%) of the voting rights under this Declaration obtained as provided in this Article 4. Notwithstanding the foregoing, the Association shall obtain and maintain the insurance described in Article 7.

(d) Right of Enforcement. The Association in its own name and on its own behalf, or on behalf of any Owner who consents, may commence and maintain actions for damages or to restrain or enjoin any actual or threatened breach of any provision of the Articles, Bylaws, this Declaration, the Rules and Regulations, Architectural Guidelines or any actions of the Board or the Architectural Review Committee, and to enforce by mandatory injunction, or otherwise, all of these provisions, as more particularly provided in Article 12 of this Declaration.

(e) Right to Establish Architectural Committee. The Association, through the Board, shall have the power to create, and to appoint and remove members of, the Architectural Committee as provided in this Declaration.

(f) Delegation of Powers; Professional Management. The Association acting by and through the Board can delegate its powers, duties and responsibilities, to the extent permitted by law, to committees or employees, including a professional managing agent.

4.1.6 Duties of the Association. In addition to the powers delegated to it by its Articles or the Bylaws, and without limiting their generality, the Association, acting by and through the Board, has the obligation to conduct all business affairs of common interest to all Owners and to perform each of the duties set forth below.

(a) Operation and Maintenance of Common Maintenance Area. As more particularly set forth in Article 5 below, the Association shall have the duty to operate, maintain and otherwise manage or provide for the operation, maintenance, management and repair of the Common Maintenance Area.

(b) Water and Other Utilities. The Association shall have the duty to acquire, provide and pay for water, sewer, garbage disposal, refuse and rubble collection, electrical, telephone, gas and other necessary utility services for the Common Maintenance Area.

(c) Insurance. The Association shall have the duty to obtain and maintain the insurance described in the Article hereof entitled "Insurance."

(d) Enforcement of Restrictions and Rules. The Association shall have the duty to take such other action, whether or not expressly authorized by this Declaration including the hiring of legal counsel and undertaking legal action, as may be reasonably necessary to enforce the covenants, conditions and restrictions contained herein or the provisions of the Articles, Bylaws or Rules and Regulations.

4.1.7 Personal Liability. No member of the Board, or any committee of the Association, or any officer of the Association, or any manager or Declarant, or any agent of Declarant, shall be personally liable to any Owner, or any other party, including the Association, for damage, loss or prejudice suffered or claimed on account of any act, omission, error, negligence of any such Person if such Person has, on the basis of such information as may be possessed by such Person or it, acted in good faith without willful or intentional misconduct. Notwithstanding the foregoing, nothing contained in this Section is intended to exculpate any of

the foregoing Persons from liability that may arise by contract, such as any liability incurred by any professional retained by the Association or a committee of the Association to provide services to the Association or such committee.

4.2 Membership and Voting Rights.

4.2.1 Qualifications and Transfer of Membership. Each Owner, including Declarant so long as it is an Owner, shall be a Member of the Association. Membership shall be appurtenant to each Parcel and the holding of an ownership interest in a Parcel shall be the sole qualification for membership. Membership shall terminate automatically when the Owner no longer holds any ownership interest in any Parcel. Membership may not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to a Parcel and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Parcel shall transfer automatically the appurtenant membership to the transferee. Any party that holds an interest in a Parcel merely as security for performance of an obligation shall not be a Member. Each Member shall have the rights, duties, and obligations set forth in this Declaration, the Articles, Bylaws and the Rules and Regulations.

4.2.2 Weighted Voting. Each Member shall be entitled to a number of votes set forth below:

(i)	Ballpark Owner	=	50 votes
(ii)	Outfield Park Owner	=	1 vote
(iii)	R2 Owner	=	32 votes
(iv)	R3 Owner	=	16 votes
(v)	Parking Owner	=	1 vote
(vi)	Total	=	100 votes

4.2.3 Approval Required. Except as otherwise provided in this Declaration, and subject to Applicable Law, the Articles, the Bylaws, and all matters requiring the approval of all Owners shall be deemed approved if Owners holding a majority of the total voting power of all Owners assent to such matters by written consent, written ballot or if approved at any duly called regular or special meeting at which a quorum is present, either in person or by proxy, by Owners holding a majority of the total voting power of all Owners present, either in person or by proxy, as further set forth in the Bylaws.

4.2.4 Super-Majority Approvals. Subject to Applicable Law, in the event that a provision of this Declaration requires the vote or prior written consent of the Members holding at least seventy-five percent (75%) of the voting rights under this Declaration, all such matters shall be deemed approved if the Owners holding such voting rights assent to such matters by written

consent, written ballot or if approved at any duly called regular or special meeting at which a quorum is present, either in person or by proxy, by Owners holding seventy-five percent (75%) of the voting power of all Owners present, either in person or by proxy, as further set forth in the Bylaws.

4.2.5 Joint Ownership Votes. The vote that is attributed to each Parcel may not be cast on a fractional basis. If more than one (1) Person owns a Parcel, the vote on behalf of the Owner shall be exercised by an Owner's agent in the manner set forth in Section 4.2.6 below.

4.2.6 Designation of Agent for Consents and Voting. In the event a successor of Declarant acquires title to a Parcel by a transfer or conveyance, including a conveyance by a deed in lieu of foreclosure, or by foreclosure, or to an undivided interest in the fee ownership of a Parcel, such as a joint tenant, or tenant in common, the Persons holding all of the interests in such Parcel or Parcels are to be jointly considered a single Owner under this Declaration. In order that the Association and other Owners shall not be required with respect to said Parcel or Parcels to obtain the action or agreement of, or to proceed against more than one person in carrying out or enforcing the terms, covenants, provisions and conditions of this Declaration, the Persons holding the interest of the Owner in and to more than fifty percent (50%) of such Parcel or Parcels, shall designate one of such Persons as such Owner's agent to act on behalf of all of such Persons comprising the Owner. Such Owner's agent shall at all times have an address for service of process in the United States. In the absence of a written designation, the acts of any Person comprising the Owner whose interest is so divided or held in undivided interests (whether or not such Person retains any interest in the Parcel or Parcels in question) shall be binding upon all Persons having an interest in such Parcel or Parcels, until such time as written notice of designation of an agent is given to the Association (by Persons holding more than fifty percent (50%) of the ownership of such Parcel or Parcels) and recorded in the Office of the County Recorder of the County and a copy thereof is served upon each of the other Owners, by registered or certified mail. The exercise of any powers and rights of an Owner under this Declaration by such Owner's agent shall be binding upon all Persons having an interest in any such Parcel or Parcels owned by such Owner and the other Owners may rely upon the acts or omissions of such agent. An Owner's agent shall, so long as such designation remains in effect, be deemed to be an Owner hereunder and the remaining Persons owning such Parcel or Parcels shall be deemed not to be Owners but such designation shall not relieve any Person from the obligations created by this Declaration. Until a successor Owner's agent has been appointed and notice of such appointment has been given pursuant to the provisions of this Section, the designation of an Owner's agent shall remain irrevocable. For purposes of the provisions of this Section, a partnership (whether general or limited) or a limited liability company which acquires either an interest in a Parcel or an interest in the assets of an Owner shall be considered a single entity or Person, without regard to any tenancy in partnership, membership or other similar undivided interest created in the Parcel or Owner by virtue of the partnership or membership relationship. In addition, the other Owners and the Association shall have the right to rely on the acts of the general partner, or partners of any such partnership or the manager or managing member of any such limited liability company as binding on the partnership or limited liability company in accordance with Applicable Law, in the

exercise by such partnership or limited liability company of its rights and obligations under this Section or as an Owner under this Declaration or as a Member of the Association.

ARTICLE 5

MAINTENANCE AND OPERATION OF COMMON MAINTENANCE AREA AND RETAIL COMMON MAINTENANCE AREA

5.1 Association's Obligations. The Association shall have the obligation for the Maintenance of the Common Maintenance Area pursuant to this Article 5.

5.1.1 Maintenance of the Common Maintenance Area. The Association shall cause all Maintenance of the Common Maintenance Area to be performed and shall take such other action necessary or appropriate to operate the Common Maintenance Area in a manner comparable with other first class entertainment or mixed-use complexes in Southern California from and after it has become charged with its duties and obligations under this Declaration as provided in Article 4 above. Ballpark Owner shall have the exclusive right to designate the entity to perform Maintenance of the Common Maintenance Area on behalf of the Association.

5.1.2 Operation of the Common Maintenance Area. Subject to Section 2.4.12, the Common Maintenance Area shall be open to the public, Occupants and Permittees and the heating, ventilating, cooling and lighting systems for the enclosed portions thereof shall be operated in accordance with the standards and customs common in the industry for first class entertainment mixed-use complexes in Southern California.

5.1.3 Duty to Protect Owners Against Mechanics Liens. In performing its obligations for Maintenance of the Common Maintenance Area as provided in this Declaration, the Association shall promptly pay all costs, expenses, liabilities and liens arising out of or in any way connected with contracts for any service, labor or materials provided or supplied to the Common Maintenance Area or the construction of any Improvements on the Common Maintenance Area and shall defend, protect, indemnify and hold harmless the Owners from any loss, damage, liability, expense or claims whatsoever by reason of any lien which may be filed against the Owners or such Owner's Parcel for such work, services or materials performed or supplied by any architect, engineer or contractor with whom the Association has contracted or any other person acting directly or indirectly by, through or under such architect, engineer or contractor supplying services, labor, materials or equipment and shall pay all expenses incurred in connection therewith, including attorneys' fees and costs of defending against the foregoing claims by an Owner incurred prior in the defense thereof by the Association. In the event that any such lien is filed for which the Association is responsible, the Association shall promptly discharge such lien as provided in the Section of Article 3 of this Declaration entitled "Duty to Discharge Lien."

5.2 Payment and Collection of Common Maintenance Area Costs.

5.2.1 Creation of Lien and Personal Obligation for Payment of Allocable Shares of Common Maintenance Area Costs. Declarant, for each Parcel owned within the Project, hereby covenants, and each Owner of a Parcel by acceptance of the deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association, its Allocable Share of Common Maintenance Area Costs levied pursuant to the provisions of this Declaration and all other sums which the Association shall be entitled to levy under this Declaration. All such amounts levied hereunder, together with interest, costs and reasonable attorneys' fees assessed hereunder, shall be a charge on each Parcel and shall be a continuing lien upon the Parcel against which each such levy is made, the lien to be effective upon recordation of a notice of delinquency as provided herein. Each such amount, together with interest, costs and reasonable attorneys' fees, shall be in the personal obligation of the Person who was the Owner of such Parcel at the time when such amounts fell due and shall bind such Person's heirs, devisees, personal representatives and assigns; provided, however, that the personal obligation for the payment of delinquent amounts hereunder shall not pass to successive Owners, unless expressly assumed by such successive Owner, but except as provided in Article 18 with respect to any Mortgagee, shall remain as a lien and charge against the Parcel of the previous delinquent Owner enforceable by the Association as provided in Article 9 of this Declaration, in addition to remaining a personal obligation of such previous delinquent Owner. No assumption of personal liability by a successive Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for a delinquent payment owed by such Owner. If more than one Person was the Owner of a Parcel, the personal obligation to pay such amount respecting such Parcel shall be joint and several. Notwithstanding the foregoing, if any Owner fails to pay any portion of its Allocable Share of Common Maintenance Area Costs when due, the Association may thereafter allocate such unpaid amount to the other Owners (except for any Mortgagee who acquired title to a Parcel following foreclosure or deed in lieu of foreclosure) as a Common Maintenance Area Cost; provided, however that such reallocation shall not diminish the lien upon the Parcel if the liability of the defaulting Owner, and provided further that the Association shall continue to pursue the collection of such amounts from the defaulting Owner. Upon collection by the Association of such unpaid amounts from the defaulting Owner, the Association shall reimburse the other Owners for any amounts paid by them on behalf of the defaulting Owner. Notwithstanding the foregoing, any lien arising from this Declaration shall be subject and subordinate to the rights of the Bond Trustee pursuant to the Bond Indenture.

5.2.2 Payment of Allocable Shares of Common Maintenance Area Costs.

Subject to Section 5.2.7, each Owner shall, beginning on the first day of the first month during the first Accounting Period, pay to the Association on account of such Owner's monthly Allocable Share of Common Maintenance Area Costs an amount estimated by the Association and shall pay a like amount on the first day of each calendar month thereafter. All Allocable Shares of Common Maintenance Area Costs shall be payable in the amount specified by the Association and no offsets against such amount shall be permitted for any reason. If an Owner shall fail to pay such Owner's Allocable Share of Common Maintenance Area Costs within fifteen (15) days after the due date therefor, then a late charge in the amount of the greater of ten percent (10%) of the

amount of the delinquent amount due or Twenty Dollars (\$20.00), interest charged on the amount due at the Applicable Rate commencing thirty (30) days from the date of delinquency, and reasonable costs of collection, including attorneys' fees and costs, shall be levied by the Association; provided, however, that upon any amendments to California Civil Code Section 1366 or any successor statute or law, the amount of the Applicable Rate and the late charge shall be adjusted to comply with the provisions of any such applicable statute or law. All amounts due from any Owner with respect to delinquent payment of its Allocable Share of Common Maintenance Area Costs shall be a lien against the Parcel, which lien shall attach and be enforced as provided in Article 12 below.

5.2.3 Funds Held in Trust. The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and Maintenance of the Common Maintenance Area and to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Articles, Bylaws, Rules and Regulations and this Declaration, as provided for in this Declaration. Upon the sale or transfer of any Parcel, the Owner's interests in said funds shall be deemed automatically transferred to the successor in interest of such Owner.

5.2.4 Estimates of Common Maintenance Area Costs. Estimates of Allocable Shares of Common Maintenance Area Costs shall be subject to review and change in accordance with the provisions set forth in this Section. Within ninety (90) days after the end of each Accounting Period, the Association shall give each Owner full, complete and itemized separate statements of the Common Maintenance Area Costs applicable to such Owner for such Accounting Period. Each such statement shall identify that portion of the Allocable Share of Common Maintenance Area Costs which is attributable to the cost of amortization of capital improvements and their replacement, modification or improvement. If any Owner has paid more than its Allocable Share of Common Maintenance Area Costs during any Accounting Period, such Owner shall receive a credit by the Association toward its next Allocable Share of Common Maintenance Area Costs payment. If any Owner has paid less than its Allocable Share of Common Maintenance Area Costs for such Accounting Period, then such Owner shall pay to the Association within thirty (30) days following the receipt of the Association's statement of the deficiency in its Allocable Share of Common Maintenance Area Costs. At the close of the first twelve-month Accounting Period, the Association shall make a determination of whether the estimated payment is more or less than that reasonably required for such maintenance and operation, and if an adjustment would be appropriate, then the estimated payment shall be adjusted upwards or downwards to meet more nearly the requirement of such Common Maintenance Area Costs. Thereafter, such determination shall be made at the end of each Accounting Period and adjustments made accordingly. The Association shall maintain separate and complete records accurately reflecting all items affecting or entering into a determination of the Allocable Share of Common Maintenance Area Costs of each Owner for each Accounting Period.

5.2.5 Additional Common Maintenance Area Costs. In the event that during any Accounting Period, the Board determines that the estimated total amount of funds necessary to

defray the Common Maintenance Area Costs or other expenses of the Association for a given Accounting Period is or will become inadequate to pay such Common Maintenance Area Costs or expenses due to unanticipated delinquencies, costs of additional Maintenance or unexpected repairs or replacement of portions of the Common Maintenance Area, or of funds otherwise required for any authorized activity of the Association, the Board may levy a special assessment chargeable to each Owner based upon such Owner's Allocable Share of Common Maintenance Area Costs to defray such costs, which levy shall be approved by a majority vote of the Board. The Board may, in its discretion, prorate such additional payment over the remaining months of the Accounting Period or may levy it immediately against each Parcel. Any such additional Allocable Share of Common Maintenance Area Costs payments shall be due and payable within fifteen (15) days after an Owner receives written notice from the Board specifying such Owner's Allocable Share of Common Maintenance Area Costs thereof, unless the Board specifies on such notice a later date for payment, and shall be subject to charges for late payment and interest as set forth in Section 5.2.2 above.

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

5.2.7 Limitation on Assessments Payable by City. Pursuant to the MOU and the Use Agreement, the City's annual Allocable Share of Common Maintenance Area Costs, when added to costs payable by the City for Maintenance of the Ballpark and Outfield Park pursuant to the Use Agreement will not exceed the City Maintenance Expense Cap. Notwithstanding any provision of this Declaration to the contrary, the City's aggregate annual liability for the Allocable Share of Common Maintenance Area Costs (excluding any amount attributable to the costs of amortization of capital improvements and their replacement, modification and improvement), when added to the amount of Joint Ballpark Ownership Expenses (as defined in the Use Agreement) payable by the City under the Use Agreement shall not exceed the City Maintenance Expense Cap; any such excess shall be paid by the Padres in accordance with this Declaration.

5.2.8 Limitation on Capital Amortization Payments by R2 Owner and R3 Owner. Notwithstanding any provision of this Declaration to the contrary, the aggregate annual liability of

R2 Owner and R3 Owner for that portion of Common Maintenance Area Costs attributable to the costs of amortization of capital improvements and their replacement, modification or improvement shall not exceed fifteen percent (15%) of the City Maintenance Expense Cap then in effect, reduced by the portion of Incremental Ballpark Expense payments made by Event Sponsor, attributable to the costs of amortization of capital improvements and their replacement, modification or improvement.

5.3 Retail Common Maintenance Area; Association's Obligations. The Association shall have the obligation for the Maintenance of the Retail Common Maintenance Area which obligation shall be performed in accordance with Sections 5.1 and 5.2, except that (i) R2 Owner and R3 Owner shall be solely responsible for payment of their respective Allocable Shares of Retail Common Maintenance Area Costs, and (ii) all references to Common Maintenance Area shall be deemed to refer to Retail Common Maintenance Area.

ARTICLE 6

MAINTENANCE OBLIGATIONS OF OWNERS AND USE RESTRICTIONS

6.1 Maintenance of Buildings and Improvements on Each Parcel. Subject to the additional Maintenance covenants set forth in Subsections 6.1.1 through 6.1.3 below and in addition to any other Maintenance obligations of Owners set forth in this Declaration, each Owner shall Maintain or cause to be Maintained the exterior and structural integrity of all Buildings and Improvements on its Parcel not included within the Common Maintenance Area as well as all Structural Supports on its Parcel necessary for the structural integrity of the Buildings and Improvements of any other Owner and all portions of the Parking Access Facilities (and mechanical systems related thereto) located on its Parcel in accordance with Applicable Law and standards and customs common in the industry for first class mixed-use projects in Southern California. All such Maintenance shall be made and done with reasonable promptness and irrespective of whether such be ordinary or extraordinary, foreseen or unforeseen. If an Owner fails to Maintain such exterior and structural integrity with respect to the Building or Improvements of any other Owner, such other Owner may provide notice to such other Owner and may pursue all available remedies against such Owner as provided in Article 12 below. If an Owner fails to maintain such exterior and structural integrity of its Building or Improvements, the Association, in addition to the rights under Article 12, shall have the right to cure such Owner's failure as set forth in this Article 6.

6.1.1 Maintenance of Parking Access Elevators. The Parking Owner shall be solely responsible for the Maintenance of all elevators located in the Parking Structure that provide service in and to the R2 Parcel and R3 Parcel. All such Maintenance shall be performed in accordance with Section 6.1 above and any other applicable provisions of this Declaration.

6.1.2 Maintenance of Parking Access Ramps. The Parking Owner shall have the sole obligation to Maintain all Parking Access Ramps in accordance with Section 6.1 above and any other applicable provisions of this Declaration.

6.1.3 Maintenance of Exclusive Ballpark Parking. The Ballpark Owner shall have the obligation to Maintain at its sole cost any parking area reserved for the exclusive use of Ballpark employees.

6.2 Use Restrictions. No use or operation shall be made, conducted or permitted on or with respect to all or any part of the Project, which use or operation violates Applicable Law or the provisions of this Declaration. In addition to the foregoing, no Parcel or any part of the Project shall be used for an activity or purpose considered by the Association or an Owner to be obnoxious to or out of harmony with the development or operation of a first class mixed-use project or to pose a safety hazard or health risk within the Project Premises, including but not limited to, the following:

- (a) Any public or private nuisance;
- (b) Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness;
- (c) Any obnoxious odor;
- (d) Any noxious, hazardous, toxic, caustic, explosive or corrosive fuel, gas or other substance;
- (e) Any dust, dirt or fly ash in excessive quantities;
- (f) Any fire, explosion or other damaging or dangerous hazard, including the storage or sale of explosives or fireworks (except that Ballpark Owner may store and use fireworks in accordance with Applicable Law);
- (g) Any distillation, refining, smelting or mining operations;
- (h) Any mobile home or trailer court, labor camp, junk yard, stock yard or animal raising;
- (i) Any drilling for and/or removal of subsurface substances (other than excavation for approved Buildings or Improvements) which (i) creates any significant adverse visual impact within the Project, (ii) creates material adverse impacts on the surface of any Parcel in the Project, or (iii) materially interferes with the use and enjoyment of any of the easements granted in this Declaration;
- (j) Any dumping of garbage or refuse;
- (k) Any veterinary hospital, mortuary or funeral service establishment;
- (l) Any automobile body and fender repair work or any automobile, truck, trailer, or recreational vehicles sales or leasing;

(m) Any use or activity which has a material adverse effect on the use or enjoyment by any Owner, Occupant or Permittee of the Common Maintenance Area for the uses described in this Declaration;

(n) Any use or activity which would in any way increase the rate or cause a cancellation of any insurance or place limitations upon the insurance coverage of any other Owner of which such Owner has notice;

(o) Any parking of any vehicles on any portion of the Project Premises except that vehicles may be parked within the Retail Exclusive Use Area on the Ballpark Parcel in the location designated on Exhibit "J" or as otherwise provided in this Declaration;

(p) Any massage parlor, casino, card club, bingo parlor, adult book or adult video tape store (which are defined as stores in which any portion of the inventory is not available for sale or rental to children under 18 years old because such inventory explicitly deals with or depicts human sexuality);

(q) Any fire sale, bankruptcy sale (unless pursuant to court order) or auction operation or a pawn shop or shop selling "second hand" goods (except baseball cards and sports memorabilia);

(r) Any sale of firearms; or

(s) Any use inconsistent with the operation of a first-class ballpark and entertainment facility.

None of the foregoing use restrictions shall be construed as limiting the use, exercise or enjoyment of the construction and related easements granted in Article 2 of this Declaration.

6.3 Fences and Other Obstructions. Except as expressly provided in this Declaration, no fence, structure or other obstruction of any kind (except as required for construction of Improvements to the Common Maintenance Area) shall, except as set forth in this Declaration, be placed, kept, permitted or maintained upon the Common Maintenance Areas, without the prior written consent of the Association.

6.4 Compliance With Law. Each Owner, Occupant and Permittee, shall, at its sole cost and expense, promptly comply with all Applicable Law and all recorded documents or recorded amendments thereto affecting such Owner's Parcel or any portion thereof, and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use or occupancy of such Parcel.

6.5 Rules and Regulations. Each Owner shall have the right to adopt additional rules and regulations governing the use of such Owner's Buildings and/or Improvements provided such additional rules and regulations do not conflict with those adopted by the Association.

6.6 Specific Prohibitions on Use of Parcels. In addition to the prohibitions on use provided in Section 6.2, no use or operation shall be made, conducted or permitted on or with respect to certain of the Parcels except as follows:

6.6.1 Ballpark Parcel. The Ballpark Parcel shall be used only for construction and operation of the Ballpark, playing of Major League Baseball Games and other Events in accordance with this Declaration, MOU and Use Agreement.

6.6.2 R2 Parcel. Except as otherwise provided in this Declaration, the R2 Parcel shall be used only for the construction, operation and maintenance thereon of retail mercantile businesses, service oriented businesses, businesses serving food and beverages, business and professional offices, financial institutions, residential uses, and related uses comprising approximately _____ square feet. The R2 Owner shall use its commercially reasonable efforts to devote retail and entertainment activities comprising approximately _____ square feet to the bottom two floors of any Building on the R2 Parcel.

6.6.3 Outfield Park Parcel. The Outfield Park Parcel shall be used only for the uses described in this Declaration, the MOU and the Use Agreement.

6.6.4 R3 Parcel. Except as otherwise provided in this Declaration, the R3 Parcel shall be used only for the construction, operation and maintenance thereon of retail mercantile businesses, service oriented businesses, businesses serving food and beverages, business and professional offices, financial institutions, a theater, residential uses, and related uses comprising approximately _____ square feet. The R3 Owner shall use its commercially reasonable efforts to devote retail and entertainment activities comprising approximately _____ square feet to the bottom two floors of any Building on the R3 Parcel.

6.6.5 Parking Parcel. The Parking Parcel shall be used only for the construction, operation and maintenance of the Parking Structure to accommodate automobiles and for other ancillary uses commonly provided in Southern California to patrons of parking garages, and for no other use or purpose. No Owner or Occupant shall use any portion of the Parking Structure for motor vehicle parking purposes, except those portions designated for employee parking.

6.6.6 Easement Uses. The foregoing specific restrictions on use shall not be construed as restricting the use, exercise or enjoyment of any easements reserved and granted in this Declaration.

6.6.7 Deliveries. During Events, no Owner or Occupant shall use any part of the Common Maintenance Area, except for the deliveries to Occupants of the Outfield Park Retail Parcels.

6.6.8 Boundaries for Doing Business. Under no circumstances shall there be any sale of merchandise or display of merchandise outside the defined boundaries of Buildings in the Common Maintenance Area, without the prior written consent of the Association.

6.7 Security Within the Project Premises. Each Owner and the Association shall provide reasonable security services and facilities in and on their respective Parcels or the Common Maintenance Area, as applicable, to protect the general public from undesirable or unsafe conditions and to protect their property and the property of others from damage or harm, to such an extent and during such hours as is reasonable under the circumstances.

6.8 Retail Use Restrictions and Special Maintenance Covenants.

6.8.1 Operation of Retail Uses. Subject to the provisions of Article 11 of this Declaration and to any interruptions due to damage, destruction or condemnation and subject to the other provisions of this Article, the R2 Owner and R3 Owner, as applicable, shall, from and after the date on which construction of their respective Buildings and Improvements are substantially complete and opened for business, manage and operate or cause to be managed and operated, the Stores located in such Buildings in the following manner:

(a) The Stores shall be operated as complexes of retail stores and commercial and service enterprises which are an integral part of a first class mixed-use development; and

(b) R2 Owner and R3 Owner, as applicable, shall use their commercially reasonable efforts to:

(i) Have the rentable floor area of the Stores occupied and doing business in their entirety;

(ii) Have at all times a balanced and diversified mixture of retail stores, merchandise, restaurants and services in their Parcels; and

(iii) Maintain a quality of management and operation with respect to the Stores not less than that generally adhered to in first class mixed-use projects in Southern California.

(c) The R2 Owner and R3 Owner shall include in all Leases for Stores (i) a continuous operation clause requiring that Stores be open for business with adequately stocked inventory during Events, and (ii) a provision that "going dark" shall constitute a material default if not remedied within a thirty (30) day period and shall constitute grounds for termination of the Lease.

6.8.2 Special Maintenance Covenants. In addition to the obligation of the R2 Owner and R3 Owner to Maintain their Parcels as provided in this Declaration, such Owners shall be subject to any maintenance guidelines with respect to the Stores as may be adopted from time to time by the Association following approval by the Members as Rules and Regulations as set forth in this Declaration and all Leases with respect to the Stores shall incorporate such maintenance guidelines as exhibits thereto.

6.9 Non-Compliance With Maintenance Obligations. In the event that any Owner fails to Maintain the Improvements on its Parcel as set forth in this Article 6, the Association, in addition to the rights set forth in Article 12 below, shall have the right to cure such Owner's failure as set forth in this Section.

6.9.1 Maintenance Deficiencies. Upon a finding by the Association of a deficiency by an Owner in its Maintenance obligations hereunder, the Association may provide a written notice to the Owner responsible for such Maintenance (the "Notice of Deficiency"), which shall briefly specify the condition or conditions which the Association finds to be deficient, and request that such deficiency be cured within a specified reasonable period of time. In the event that the Association determines that such deficiency continues to exist at the end of the period of time specified in the Notice of Deficiency, the Association may, at its option, either: (a) enter on and accomplish the Maintenance of such portion of the Project Premises that continues to be deficient; (b) contract with another party to accomplish such maintenance; or (c) seek any other remedy available at law or in equity including, without limitation, specific performance or an injunction to enforce the Owner's Maintenance obligations provided herein as set forth in Article 12 below. Any of the foregoing remedies may be employed at the option of the Association, and the failure to employ any of such remedies upon any occurrence giving rise to such remedies shall not be a waiver of the right to employ such remedies in connection with any other occurrence.

6.9.2 Emergency Maintenance. If the Association determines that such deficiency constitutes an emergency that involves a situation of a sudden or unexpected nature or that poses a threat of injury or damage to persons or property which requires action by an Owner prior to the expiration of any cure period, the Association may take the actions provided for in Section 6.9.1 without a Notice of Deficiency being given in advance of taking such action, provided that as soon as reasonably practicable after taking the emergency action the Association gives a Notice of Deficiency (without providing a cure period) to the Owner responsible for such Maintenance.

6.9.3 Reimbursement of Association. If the Association elects to perform a defaulting Owner's Maintenance obligations whether by use of its own employees and equipment or by contract with a third party, the entire cost of accomplishing such Maintenance shall be an obligation of the defaulting Owner and shall be reimbursed by such Owner to the Association with interest at the Applicable Rate and the Association may levy an Enforcement Assessment with respect thereto.

ARTICLE 7

INDEMNIFICATION AND INSURANCE

7.1 Indemnification. By acceptance of a deed for a Parcel, each Owner, severally and not jointly, shall defend, and does hereby agree to, indemnify, protect and hold harmless each of the other Owners and the Association and their respective agents, employees, Affiliates, successors and assigns from and against all claims and all costs, losses, liens, damages, injuries,

expenses, and liabilities (including reasonable attorneys' fees and costs) incurred by an Owner or the Association in connection with all claims, losses or liabilities of any kind or nature including any action or proceedings brought thereon, arising from or as a result of the death of, or any accident, injury, loss or damage whatsoever caused to any Person, or to the property of any Person, as shall arise as a result of (a) the negligence or willful act or omission of such indemnifying Owner or its agents or employees in connection with the exercise by or on behalf of such Owner of the rights granted by this Declaration, (b) the default by such indemnifying Owner with respect to the covenants and restrictions contained in this Declaration, (c) the activities of such Owner in any part of the Project, including, but not limited to, the exercise by such Owner of its rights under any easement or right of use granted or reserved under Article 2 of this Declaration, or (d) the storage, use or presence of hazardous, toxic or contaminated wastes or materials by an Owner on or within its Parcel or any easements appurtenant thereto located on another Parcel. The foregoing indemnity shall also include any and all sums paid or liabilities incurred in settlement and any and all expenses paid or incurred in (i) enforcing the terms of this indemnity, (ii) procuring or attempting to procure any release from liability, or (iii) recovering or attempting to recover any losses or expenses paid or incurred in contesting any claims, suits or judgments arising from the foregoing events. Nothing contained in this Section shall be construed as requiring indemnification by an Owner of another Owner or the Association to the extent that any claim, loss or liability arising under the scope of the foregoing indemnity is caused by the acts or omissions of such Owner, its Permittees or the Association (including the Grantor of an easement granted or reserved under Article 2 of this Declaration), concessionaires, agents, servants or employees. This indemnity shall not require payment by the indemnitee as a condition precedent to the effectiveness of such indemnity. Any Person indemnified hereunder which is not a party to this Agreement shall have the rights of a third party beneficiary coupled with an interest with respect to the covenants set forth in this Section. The indemnitee shall give the indemnitor notice of any suit or proceeding entitling the indemnitee to indemnification pursuant to this Section and the indemnitor shall defend the indemnitee in said suit or proceeding by counsel reasonably approved by the indemnitee.

7.2 Common Maintenance Area Liability Insurance. The Association shall at all applicable times during the term of this Declaration, maintain or cause to be maintained, in full force and effect, a commercial general public liability insurance policy conforming to the public liability insurance policy carried by the Ballpark Owner for the Ballpark pursuant to the Use Agreement, as described in this Article 7, covering the Common Maintenance Area, with an insurance company or companies that conform with the requirements of Section 7.6 below and the Use Agreement. The foregoing policy of insurance shall be acquired and maintained by the Ballpark Owner. The Ballpark Owner shall furnish to all other Owners, on or before the effective date of any such policy, evidence that the insurance referred to in this Section is in force and effect and that the premiums therefor have been paid. Such insurance shall name all other Owners (and Mortgagees, if required by such Mortgagees) as additional insureds thereunder and shall provide that the same may not be cancelled or materially amended without at least thirty (30) days' prior written notice being given by the insurer to all other Owners. Ballpark Owner shall have the right to provide the insurance described in this Section on behalf of the Association.

7.3 Owners' Liability Insurance. Commencing with the earliest of (i) the start of construction by an Owner on its Parcel or (ii) the start of the first Accounting Period, each Owner shall, severally and not jointly, maintain in full force and effect under a commercial general public liability insurance policy covering its Parcel, with an insurance company or companies that conform with the requirements of Section 7.6 below, including coverage for any accident resulting in bodily injury to or death of any person and consequential damages arising therefrom, and comprehensive property damage insurance, in an amount not less than Five Million Dollars (\$5,000,000) per occurrence, and contractual liability insurance in an amount not less than Five Million Dollars (\$5,000,000) to insure the indemnities set forth in Section 7.1. The foregoing policy of insurance may be maintained in part by an Owner under an excess or umbrella policy. Such insurance shall name all other Owners, the Association, the Public Facilities Financing Authority and the Bond Trustee as additional insureds thereunder and shall provide that the same may not be cancelled or materially amended without at least thirty (30) days' prior written notice being given by the insurer to all other Owners and the Association.

7.4 Annual Increases. The amounts specified in Sections 7.3 ("Amounts") shall be subject to annual increases as set forth herein. On March 1st of each year during the term of the Declaration and any extensions thereof, each of the Amounts shall be adjusted to either: (a) the greater of (i) such Amount which had been in effect during the prior calendar year or (ii) an amount equal to such Amount as stated in this Declaration, multiplied by a fraction, the denominator of which shall be the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for all Urban Consumers, San Diego, California (1982-84 = 100) ("Index") of the month in which the date hereof occurs, and the numerator of which shall be the Index for the immediate preceding December; or (b) an amount determined by the Association in its reasonable discretion to provide protection reasonably believed necessary. If the Index is changed so that the base year differs from that in effect when the Declaration commences, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of the Declaration or any extension thereof, the Index shall be substituted with such other similar government index which would have obtained substantially the same result as the Index on the most recent March 1st calculation date had such substituted index been then used.

7.5 Insurance on Improvements. Each Owner, with respect to its Parcel, shall carry or cause to be carried, insurance in an amount at least equal to one hundred percent (100%) of the full replacement cost of the Buildings and Improvements on such Parcel (including Common Maintenance Area Improvements) and any Structural Supports for such Buildings and Improvements which are located on any other Parcel, under a "special causes of loss form," with coverage for (a) for all obligations of an Owner to reconstruct or demolish Improvements as provided in Article 9 of this Declaration and (b) the following perils: flood, earthquake, loss or damage by fire, windstorm, cyclone, tornado, hail, explosion, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, aircraft, vehicle, smoke damage and sprinkler leakage and such other perils commonly covered by such form; provided, however, that an Owner may elect not to carry earthquake insurance with respect to the Building or Improvements located on its Parcel, if such insurance cannot be obtained at a commercially reasonable cost, except with

respect to any Structural Supports that are necessary for the structural integrity of such Building or Improvements and are located on another Parcel or are necessary for the structural integrity of another Owner's Building or Improvements and are located on the insuring Owner's Parcel or any Utility Facility benefiting another Owner's Building or Improvements, for which earthquake insurance must be maintained at all times throughout the term of this Declaration. Such insurance shall include an endorsement excluding any limitations on the foregoing coverage for depreciation and shall be carried with an insurance company or companies that conform with the requirements of Section 7.6 below. Such insurance shall name the Association and all other Owners as named insureds but only to the extent of coverage for Common Maintenance Area Improvements located on an insured Owner's Parcel and all other Owners to the extent of coverage for Structural Supports for such Buildings and Improvements located on an insured Owner's Parcel or Utility Facilities benefiting another Owner's Building and Improvements which Utility Facilities are located on an insured Owner's Parcel. If an Owner should elect not to rebuild its Building or Improvements, then the insurance proceeds necessary to repair damage to the Common Maintenance Area and to Structural Supports which are necessary for the structural integrity of the Project Premises and Utility Facilities necessary for another Owner's Buildings and Improvements shall, be paid to the other Owners to be held in trust by them and disbursed for the reconstruction of such Common Maintenance Area Improvements, Structural Supports and Utility Facilities, and if such Buildings and Improvements are removed, reconstruction of the Common Maintenance Area shall include grading and installation of hard and soft landscaping in the manner described in Section 9.2. Each Owner agrees that such policies shall contain a provision that the same may not be cancelled or materially amended without at least thirty (30) days' prior written notice being given by the insurer to the other Owners and the Association.

7.6 Form of Policies. The insurance described in this Article 7 shall: (a) be either (i) an "occurrence" policy (or policies) or (ii) a "claims made" policy (or policies) with a retroactive effective date of no later than the date when such policy of insurance was first required under this Declaration; (b) is issued by an insurance company having a rating of not less than a 7 in Best's Key Rating Guide and licensed to do business in the State of California or which is otherwise reasonably acceptable to the Association and all Owners; (c) except as otherwise provided in this Article 7, be primary insurance as to all claims thereunder and provide that any insurance carried by any other Owner or the Association (as the case may be) is excess and non-contributing with any insurance required of such Owner; (d) contain a cross liability endorsement or severability of interest clause and a waiver of subrogation clause; (e) contain only standard exclusions from coverage; and (f) not be subject to deductible amounts in excess of Twenty-Five Thousand Dollars (\$25,000) per occurrence (subject to adjustment in the same proportion as the required insurance coverage amounts are adjusted under Section 7.4), except with respect to (i) any public liability insurance required hereunder, for which no deductible amounts shall be allowed unless such insurance cannot be maintained at a commercially reasonable cost in the absence of such a deductible amount and (ii) any earthquake and flood insurance required hereunder, for which any deductible amounts shall not exceed commercially reasonable amounts. With the prior written consent of the Association (which it may withhold in its reasonable discretion), the insurance described in this Article 7 may be carried under a policy or policies covering other liabilities and locations of the Owners, or a subsidiary, successor,

Affiliate or controlling corporation of such Owners; provided, however, that such policy or policies apply to the properties required to be insured in an amount not less than the amount of insurance required to be carried by such Owner with respect thereto.

7.7 Evidence of Coverage. On an annual basis, each Owner shall provide to the Association, a certificate evidencing that the insurance coverage the Owner is required to maintain pursuant to this Declaration is in full force and effect and that the premiums therefor have been paid. Each Owner shall, upon the request of any other Owner, Mortgagee or the Association furnish to such other Owner, Mortgagee or the Association (i) evidence that any insurance coverage such Owner is required to maintain pursuant to this Declaration is in full force and effect and that the premiums therefor have been paid, and (ii) a complete copy of the policy. In the event that an Owner fails to maintain the policies of insurance as required hereunder, any other Owner and the Association shall have the right to pay the premium or premiums therefor and seek reimbursement from the defaulting Owner as provided in Article 12 of this Declaration.

7.8 Mutual Release. Each Owner and the Association for itself and to the extent legally possible for it to do so on behalf of its insurer, hereby waives and releases each of the other Owners and the Association from any liability for any loss or damage to such waiving Owner or loss of its property located upon the Project Premises, which loss or damage is of the type covered by the insurance required to be maintained by it hereunder, irrespective of any negligence on the part of the other Owners or the Association which may have contributed to or caused such loss. Each insured Owner covenants that it will obtain for the benefit of each other Owner and the Association a waiver of any right of subrogation which the insurer of such insured party may acquire against any other Owner or Owners or the Association by virtue of the payment of any such loss covered by such insurance.

7.9 Waiver of Subrogation. In the event any insured party is by law, statute or governmental regulation unable to obtain a waiver of the right of subrogation for the benefit of each other Owner and the Association, then, during any period of time when such waiver is unobtainable, said insured party shall be deemed not to have released any subrogated claim of its insurance carrier against the other Owners and the Association, and during the same period of time each other Owner and the Association shall be deemed not to have released the insured party who has been unable to obtain such waiver from any claims they or their insurance carriers may assert which otherwise would have been released pursuant to this Section. In the event that any insured party is unable to obtain such waiver of the right of subrogation for the benefit of any other Owner or Owners or the Association, such insured party shall, within thirty (30) days of receiving notice of such inability, give each other Owner and the Association written notice of such inability.

ARTICLE 8

CONDEMNATION

8.1 Restoration Upon Condemnation. Subject to the provisions of Article 3, if any part of the Common Maintenance Area, Structural Supports or Utility Facilities is taken by

Condemnation, the Owner owning the Parcel upon which such Common Maintenance Area is situated shall reconstruct such Common Maintenance Area as nearly as possible to the condition that existed immediately prior to such condemnation, and shall reconstruct any Structural Supports which are necessary for the structural integrity of the Project Premises or Utility Facilities required for the Project Premises to the extent proceeds available to the Owner from the Condemnation award are adequate and to the extent economically feasible in such Owner's reasonable judgment. Notwithstanding anything in this Declaration to the contrary, in the event of a Condemnation which takes any of the Parking Facilities, the provisions of Section 8.1.1. below with respect thereto shall apply.

8.1.1 Condemnation of Parking Facilities. Except as provided herein, in the event of a total taking of the Parking Facilities by Condemnation, the proceeds (award, judgment or agreed to payment) of such Condemnation proceeding shall belong solely to and shall be distributed to the Parking Owner and its Mortgagees as their respective interests appear. In the event of a Condemnation of a portion of the Parking Structure, provided that it is physically feasible to use the remaining portions of the Parking Facilities (after reconstruction) to provide parking for the users of the Project, all of the proceeds (award, judgment or agreed to payment) received in connection with the partial Condemnation shall be applied by Parking Owner, to the extent necessary, to restore the Parking Facilities to an operating condition and the Parking Owner shall cause the restoration to be undertaken and completed with reasonable promptness, even though it may not be feasible to restore the Parking Facilities to a size comparable to that before Condemnation but only to the extent the proceeds (award, judgment or agreed to payment) made available to the Parking Owner are adequate and to the extent economically feasible in the reasonable judgment of the Parking Owner. In the event the total proceeds (award, judgment or agreed to payment) for partial Condemnation exceeds the cost of restoration, that excess shall be distributed to the Parking Owner, subject to the rights of any Mortgagees. Notwithstanding the foregoing, in the event that all or a portion of any easement rights of an Owner hereunder, are taken by Condemnation, such Owner shall be entitled to any portion of the Condemnation award allocated by the condemning authority for loss of use of such easement rights.

8.2 Waiver of Award. Except as expressly provided herein, in the event a Parcel, or any part thereof, is taken by Condemnation, each Owner waives, in favor of the Owner whose Parcel or any part thereof is taken by Condemnation, any value of the Condemnation award attributable to any easements which the other Owner holds in the Parcel taken by Condemnation; however, a waiver under this Section shall not preclude the holder of any interest in another Parcel from claiming and collecting from the condemning authority the severance and consequential damages to its own Parcel resulting from the taking of the condemned portion of the other Parcel.

8.3 No Termination of Easements. Nothing in this Article 8 shall affect the existence of the easements granted under Article 2 except to the extent such easements burden the Parcel or portion thereof taken by Condemnation. In the event of any Condemnation affecting the existence of any easement granted in this Declaration, the Owners shall, to the extent feasible, relocate such easements pursuant to the provisions and standards set forth in Article 2.

8.4 Mortgagee Participation. Nothing contained in this Declaration shall be deemed to prohibit any Mortgagee from participating in any eminent domain proceedings on behalf of any Owner, or in conjunction with any Owner.

ARTICLE 9

DAMAGE AND DESTRUCTION

9.1 Damage to or Destruction of Common Maintenance Area. If any of the Common Maintenance Area is damaged or destroyed by fire or any other cause whatsoever, whether insured or uninsured, during the term of this Declaration, each Owner as to such Common Maintenance Area on its Parcel, shall promptly rebuild, replace and repair such damaged or destroyed Common Maintenance Area substantially to the same condition and general appearance as existed immediately prior to such damage or destruction, upon the prior approval of the Association, in a manner which is the functional equivalent of such Common Maintenance Area. If such Owner's Improvements are also damaged or destroyed, such Owner shall not be obligated under this Section unless it elects to rebuild its Improvements. Any such reconstruction shall be governed by Article 3. The rebuilding, replacement or repair of any Common Maintenance Area Improvements which an Owner is required or elects to rebuild, replace or repair shall be diligently prosecuted to completion.

9.2 Damage or Destruction to Buildings or Improvements. In the event that an Owner whose Buildings or Improvements other than any Building or Improvement providing Structural Supports to another Parcel or any Improvement on another Parcel or any Utility Facilities benefiting another Owner's Buildings and Improvements, have been damaged or destroyed determines not to rebuild such Improvements or Building, then such Owner to the extent of insurance proceeds received by each such Owner (from its policy of insurance or that of another Owner received by such Owner as an additional insured) and any deductible amounts paid by such Owner with respect to such insurance proceeds, shall (a) demolish and remove the damaged or destroyed Building or Improvement and shall remove all debris and rubbish with respect thereto from the Project Premises in compliance with Applicable Law; (b) cause the site on which such Improvement or Building was located to be graded and landscaped in the manner necessary to bring such area into visual and aesthetic compatibility with the remainder of the Project; (c) restore the exterior portions of any Buildings or Improvements, to which the damaged or destroyed Buildings or Improvements were attached or connected, to their condition prior to such attachment or connection (to the extent that such is possible) so that such Buildings and Improvements are aesthetically presentable; and (d) restore all Structural Supports located on such Owner's Parcel which are necessary for the structural integrity of any Building or Improvement of any other Owner. Failure by an Owner to obtain the insurance required by Article 7 with respect to the foregoing obligations such that insurance proceeds are not received by an Owner that otherwise would have been received by such Owner had such Owner maintained the required insurance shall not relieve an Owner from any obligations it may have under this Section, up to the amount of insurance proceeds that would have been received had such insurance been maintained. If any Improvements are removed or destroyed at a time when the

Owner thereof is not required to restore the same under this Declaration, each Owner will leave in place and hereby grants an easement for the use of party walls or Structural Supports (or portions thereof) not destroyed if, immediately before such removal or destruction, such party walls or Structural Supports (or portions thereof) were shared jointly between such Owners. Such Owner shall be obligated to leave those party walls and Structural Supports in place and the easement shall exist for so long as: (i) the Improvement (as it is originally constructed or replaced under this Declaration) benefited by such party wall or Structural Support shall stand or shall be in the process of being restored or replaced or (ii) the Structural Supports are necessary for the support or structural integrity of the Buildings and Improvements of any other Owner. Notwithstanding the foregoing, except with respect to the reconstruction of Structural Support as provided in this Section, the obligations of the Parking Owner with respect to an event of damage or destruction that impacts the Parking Facilities, shall be as set forth in Section 9.2.1 below.

9.2.1 Damage or Destruction of Parking Facilities. In the event of any damage to, or destruction of, the Parking Facilities, then the Parking Owner to the extent of the insurance proceeds received by the Parking Owner and any deductible amounts paid by the Parking Owner with respect to such insurance proceeds shall restore the Parking Facilities to their pre-existing condition (to the extent practicable through the use of such insurance proceeds and deductible amounts). Failure by the Parking Owner to obtain insurance required by Article 7 with respect to the Parking Facilities such that insurance proceeds are not received by the Parking Owner that otherwise would have been received had the Parking Owner maintained the required insurance, shall not relieve the Parking Owner from its obligations to repair or reconstruct the Parking Facilities as provided herein, up to the amount of insurance proceeds that would have been received had such insurance been maintained.

ARTICLE 10

REAL ESTATE TAXES

10.1 Payment of Taxes. Each Owner shall pay (or cause to be paid), before delinquency, all Property Taxes levied on its Parcel(s) and the Improvements and Buildings situated on its Parcel, including those portions which are Common Maintenance Area. Each Owner shall provide written evidence of payment of such taxes, in a form acceptable to Association, within five (5) days after written request of the Association.

10.2 Contesting Taxes. Each Owner may, at its cost, by appropriate proceedings, contest the validity, applicability and/or the amount of any Property Tax on its Parcel(s). Upon the institution of such a contest each Owner shall so provide written notice with respect thereto to the Association and each other Owner and will also provide written notice to the Association and each other Owner as to the ultimate result of such contest.

10.3 Failure to Pay Taxes. Subject to the provisions of Section 10.2, if an Owner fails to comply with this Article 10, the Association or any other Owner may pay the Property Taxes in question and shall be entitled to prompt reimbursement from the defaulting Owner upon demand for the sums so expended with interest thereon as stated in Section 12.11.

10.4 Allocation of Property Taxes by Association. The Owners agree that if Property Taxes with respect to the Parcels within the Project Premises have not have been separately allocated to the individual Parcels by the taxing authorities at that time, each Owner shall pay its proportionate share of such Property Taxes directly to Association until such separate allocation is made by the applicable taxing authority and Association shall pay such amounts directly to the taxing authority prior to delinquency. Any such allocation shall be made by Association's civil engineer based upon the relative appraised value of an individual Parcel to the assessed value of the entire Project Premises as determined by the taxing authority. Upon the receipt by Association of a statement of Property Taxes attributable in part to a Parcel, Association shall request its civil engineer to determine the amount of Property Taxes with respect thereto. Association shall then deliver a statement setting forth the amount of the Property Taxes and a copy of the Property Tax statement or statements received by Association to each Owner. Each Owner shall, within fifteen (15) days of such delivery by Association, pay such amount directly to Association. Each Owner shall be responsible for any penalty imposed by the taxing authority for its late payment of its Property Taxes. In the event that an Owner disputes the amount of Property Taxes allocated by Association to its Parcel, such Owner shall provide written notice thereof to Association within the above-referenced fifteen (15) day period and the parties shall promptly meet and attempt to resolve such dispute. In the event that the parties are unable to resolve such dispute within thirty (30) days of such Owner's delivery of its notice disputing the amount of Property Taxes allocated to its Parcel to Association, this matter shall be resolved by arbitration as provided in Article 16 of this Declaration.

10.5 Possessory Interest Taxes. The use or occupancy of portions of the Project Premises pursuant to this Declaration may create possessory interests subject to taxation by the State of California. The City shall have no liability for such possessory interest taxes.

ARTICLE 11

EXCUSES FOR NON-PERFORMANCE

In addition to specific provisions of this Declaration, and notwithstanding anything contained in this Declaration, with respect to any obligation under this Declaration, except any obligation to pay any sums of money under the applicable provisions of this Declaration, the time for such performance shall be extended, and the Owner shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lockouts; riots, floods; earthquakes; fires; casualties; acts of God; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; unusually severe weather; inability to secure necessary labor, materials or tools; acts of any other Owner (except to the extent another Owner is the same Person as the Owner otherwise entitled to an extension of time for performance hereunder and such other Owner is not entitled to an extension of time for performance hereunder); acts or failure to act of the City, the Agency or the County or any other public or governmental agency or entity acting in their governmental capacity; or any other cause beyond the control or without the fault of the Owner claiming an extension of time to perform (other than the lack of or inability to procure funds or financing), provided that the Owner benefited by this Article 11 has commenced and is

diligently pursuing all reasonable and available means and measures necessary to minimize or eliminate such delay resulting from any such causes or conditions and provided further that the extension granted hereunder for such performance shall not be greater than the period of time occupied by any of the events set forth herein. Each Owner shall give written notice of any such delay to the other Owners within thirty (30) days of such Owner's knowledge of the occurrence of such event.

ARTICLE 12

ENFORCEMENT

12.1 Rights of Enforcement. Subject to the provisions of Article 16 hereof, any Owner or the Association, as applicable, may proceed at law or in equity to prevent the violation or continuing violation of any of the covenants, conditions and restrictions set forth in this Declaration for the benefit of such Owner or the Association, to cause any violation to be remedied and to recover damages therefor except that Owners shall not have any right of enforcement concerning Liens against an Owner for non-payment of such Owner's Allocable Share of Common Maintenance Area Costs or other assessments levied by the Association under this Declaration.

12.2 Notice of Default. Except with respect to any monetary defaults under this Declaration, no Owner shall be deemed to be in default in the performance of any of its obligations under this Declaration unless the Association or an Owner claiming such a default, as applicable, shall have given to the Owner alleged to have been in default written notice of such default, setting forth with reasonable specificity the nature of the default. A copy of such notice shall be provided to the other Owners and the Association, as may be applicable. Any notice regarding the default of the Ballpark Owner shall be delivered to the City and the Padres.

12.3 Time to Cure. Unless otherwise specified in a particular Section of this Declaration, which requires an Owner to cure or commence to cure an alleged default within the time so specified in such Sections, an Owner shall have thirty (30) days subsequent to the giving of notice within which to cure a default. If such default cannot with the exercise of due diligence be cured within such thirty (30) days, such thirty (30) day period shall be extended for such additional time as may be required to cure the default with due diligence, provided the curing Owner commences to cure the default within such thirty (30) day period and thereafter proceeds diligently to cure such default.

12.4 Right to Cure. If any Owner fails to perform any of its duties or obligations provided for in this Declaration within the time designated for such performance, another Owner or the Association, as applicable, may at any time give a written notice to the failing Owner as provided in Section 12.2 above and if any such failure is not thereafter corrected as provided in Section 12.3 above, the Owner or the Association giving such notice shall have the right to correct such failures to the extent reasonably practicable, including the right to enter upon any Parcel not owned by such notifying Owner or the Association to the extent that such default relates to:

12.4.1 Utility Easements if the breach is a failure to correct a default in the Maintenance of such Utility Easement; or

12.4.2 Structural Supports (and the easement areas providing access to such Structural Supports) if the breach is a failure to correct a default in the Maintenance of such Structural Supports; or

12.4.3 Emergency situations (as defined below);

and the Owner receiving such notice shall pay the reasonable costs thereof. The defaulting Owner shall pay to the Association or any Owner performing such obligations such amount with interest at the Applicable Rate commencing thirty (30) days from the date of such notice without prejudice to the Owner receiving such notice to contest the right of the other Owner to make such repairs or expend the monies and to withhold such amounts. Notwithstanding any other provision of this Declaration, in the event of any emergency situation, an Owner or the Association may without notice cure any such default and thereafter, shall be entitled to the benefits of this Section. For these purposes, "emergency situation" shall mean any situation of a sudden and unexpected nature or a situation that poses a threat of injury or damage to persons or property which requires action by an Owner or the Association prior to the expiration of the 30-day period or such other time period for cure set forth in this Declaration.

12.5 Levy of Enforcement Assessments. The Association shall have the right to levy an Enforcement Assessment against an Owner as provided in Article 5 above with respect to any amounts expended by the Association in bringing an Owner or its Parcel into compliance with the provisions of this Declaration.

12.6 Collection of Assessments; Liens.

12.6.1 Right to Enforce. The right to collect and enforce the obligation of Owners to pay their Allocable Shares of Common Maintenance Area Costs or other assessments levied by the Association as provided in this Declaration is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative, can enforce the obligations of the Owners to pay such amounts provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings, or, through the exercise of the power of sale pursuant to Section 12.6.3, enforce the lien rights created. Suit to recover a money judgment for unpaid assessments together with reasonable attorneys' fees and costs, late charges and interest at the Applicable Rate as provided in this Declaration and such other reasonable costs that may be incurred by the Association in the process of collecting delinquent sums due hereunder, shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein, an Enforcement Assessment or other monetary penalty imposed by the Association as a disciplinary measure for failure of an Owner to comply with this Declaration or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Maintenance Area and facilities for which the Owner was allegedly responsible or in bringing the Owner and his Parcel into compliance with the governing instruments of the Association may not be

characterized nor treated as an assessment which may become a lien against the Owner's Parcel enforceable by a sale of the interest hereunder. The limitation in the preceding sentence however, does not apply to any costs related to the collection of delinquent payments of an Owner's Allocable Share of Common Maintenance Area Costs.

12.6.2 Creation of Lien. If there is a delinquency in the payment of assessments levied by the Association hereunder, any amounts that are delinquent, together with the late charge described in this Declaration and interest at the Applicable Rate, or such other rates as may be permitted in California Civil Code, Section 1366, or any successor statute or law, if applicable, and all costs that are incurred by the Board or its authorized representative in the collection of the amounts, including reasonable attorneys' fees, shall be a Lien against such Parcel upon the recordation in the Office of the County Recorder of a notice of delinquent assessment ("Notice of Delinquent Assessment") as provided in California Civil Code, Section 1367 or any successor statute or law. The Notice of Delinquent Assessment shall not be recorded unless and until the Board or its authorized representative has delivered to the delinquent Owner or Owners, not less than fifteen (15) days before the recordation of the Notice of Delinquent Assessment, a written notice of default and a demand for payment, and unless such delinquency has not been cured within said fifteen (15) day period.

12.6.3 Notice of Default; Foreclosure. Not more than one (1) year, nor less than fifteen (15) days, after the recording of the Notice of Delinquent Assessment, the Association or its authorized representative can record a notice of default and can cause the Parcel with respect to which a notice of default has been recorded to be sold in the same manner as a sale is conducted under California Civil Code, Sections 2924, 2924b and 2924c, or through judicial foreclosure. However, as a condition precedent to the holding of any such sale under Section 2924c, appropriate publication shall be made. In connection with any sale under Section 2924c, the Association 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 Association or its authorized representative, shall cause to be recorded in the office of the County Recorder a certificate setting forth the satisfaction of such claim and release of such lien upon payment of actual expenses incurred, including reasonable attorneys' fees and all interest due under this Declaration, by any delinquent Owner. The Association, acting on behalf of the Owners, shall have the power to bid upon the Parcel at foreclosure sale and to acquire, hold, lease, mortgage and convey the Parcel and vote as an Owner of the Parcel.

12.7 Notice to Mortgagees of Right to Cure. If the Association files a Notice of Delinquent Assessment as provided above, it shall give notice of such filing to any Mortgagee which shall have given notice to the Association of its desire to receive such notice and the address where such notice should be sent not later than ten (10) days after recording such notice. Such Mortgagee shall have the right, but not the obligation, both before and for sixty (60) days after notice of the recording of the Association's lien, to cure such defaults, including the payment of interest and other charges as provided herein; provided, however, that in any event such

Mortgagee shall retain all of its rights as provided in Article 18 whether or not such Mortgagee takes any action to cure.

12.8 Cumulative Remedies. The remedies hereby specified are cumulative, and the specification shall not be deemed to preclude an aggrieved person's resort to any other remedy at law, in equity or under any statute.

12.9 Deemed to Constitute a Nuisance. The result of every action or omission whereby the provisions of this Declaration are related in whole or in part is hereby declared to constitute a nuisance, and every remedy allowed by law or equity against any Owner. Permittee or Occupant shall be applicable in respect to every such result and may be exercised by Declarant or any Owner or Occupant to whose benefit this Declaration inures.

12.10 Attorneys' Fees. In any arbitration, quasi-judicial or administrative proceedings or any action in any court of competent jurisdiction, brought by the Association or any Owner to enforce any covenant or any of such Owner's rights or remedies under this Declaration, including any action for declaratory relief, or any action to collect any payment required under this Declaration or for damages for breach of this Declaration, the prevailing party shall be entitled to reasonable attorneys' fees and all costs, expenses and disbursements in connection with such action, including the costs of reasonable investigation, preparation and professional or expert consultation, which sums may be included in any judgment or decree entered in such proceeding or action in favor of the Association or prevailing Owner.

12.11 Payment on Default. If under this Declaration an Owner is compelled or elects to pay any sum of money or do any acts that require the payment of money by reason of another Owner's default, the defaulting Owner shall promptly upon demand reimburse the paying Owner for such sums, and all such sums shall bear interest at the Applicable Rate from the date of expenditure until the date of such reimbursement.

ARTICLE 13

NOTICES

Each notice, demand, request, consent, approval, disapproval, designation or other communication (all of the foregoing are herein referred to as "notice"), that an Owner or the Association is required or desires to give or make or communicate to any other Owner or the Association shall be in writing and shall be deemed to have been given or made when delivered personally or three (3) days after depositing in the United States Postal Service by certified or registered United States Mail, postage prepared, return receipt requested, or when made by private express mail service (with return receipt or proof of delivery), at the address designated by the Owner, in writing to the Association from time to time. Such address shall be effective as of the day of receipt of the notice by the other Owner or the Association.

ARTICLE 14

AMENDMENT

14.1 Approval of Amendments. Except as provided herein, this Declaration may be amended, modified or terminated by the vote or written consent of Owners possession at least sixty-five percent (65%) of the voting rights under this Declaration. Notwithstanding the foregoing, in the case of a material amendment or modification of this Declaration, the vote or prior written consent of Owners possessing at least seventy-five percent (75%) of the voting rights under this Declaration and the vote or prior written consent of seventy-five percent (75%) of all Mortgagees who have given written notice to the Association requesting written notice of material amendments shall also be required, with each such Mortgagee having the same number of votes allocated to the Owner of the Parcel encumbered by its Mortgage. Such vote or written consent shall be obtained as provided in this Declaration. "Material amendment" shall mean, for the purposes of this Section, any amendments to provisions of this Declaration governing any of the following subjects:

- 14.1.1 The fundamental purpose for which the Project was created;
- 14.1.2 Amount and collection of Allocable Shares of Common Maintenance Area Costs, liens with respect thereto and subordination of such liens;
- 14.1.3 Maintenance obligations of the Association and the Owners;
- 14.1.4 Casualty and liability insurance of the Association and the Owners;
- 14.1.5 Reconstruction of the Common Maintenance Area Improvements or Improvements on the Parcels in the event of damage or destruction;
- 14.1.6 Reconfiguration of and rights to use the Common Maintenance Area;
- 14.1.7 Voting rights;
- 14.1.8 Any provision which, by its terms, is specifically for the benefit of Mortgagees, or specifically confers rights on Mortgagees;
- 14.1.9 Expansion or contraction of the Project or the subdivision, lot split, parcelization, addition or withdrawal of property to or from the Project;
- 14.1.10 Imposition of any restriction on any Owner's right to sell or transfer such Owner's Parcel; and
- 14.1.11 Any modification to the use restrictions contained in Article VI of this Declaration.

In addition to the foregoing, no amendment hereof shall materially modify or terminate the easements granted pursuant to this Declaration without the written consent of the Grantee of the respective easement in the manner provided in Article 15 below. Nothing contained herein precludes any separate agreement between two or more Owners provided that the Association and the other Owners shall not be bound or affected thereby. Any such amendment, modification or termination, in order to be effective, shall be made by written instrument in recordable form executed by each of the requisite number of the Owners and duly recorded in the Office of the County Recorder of the County. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

ARTICLE 15

TERM OF DECLARATION

15.1 Term. Subject to Section 15.3, this Declaration shall continue in full force and effect for a term equal to the greater of (i) the term of the Use Agreement plus any extensions thereto, or (ii) thirty (30) years from the date of this Declaration (unless sooner terminated under the provisions of Article 14), after which time this Declaration may be extended for successive periods of ten (10) years each with the written consent of Owners possessing at least seventy-five percent (75%) of the voting rights of the Owners under this Declaration. Any such extension shall be evidenced by a recorded document referring to this Declaration and identifying the period of extension shall be accomplished or obtained as provided in Article 4 of this Declaration. In no event shall any termination be effective as to any easements granted by or pursuant to this Declaration unless reasonable alternative means are provided by the Owners desiring to terminate this Declaration to provide the access, utilities, parking, rights of structural support or other rights provided by such easements and the Grantee(s) with respect thereto consent to such termination in writing. In the event such alternative means are provided with respect to any easements granted pursuant to this Declaration, the Owners shall comply with Article 2 above pertaining to the relocation of easements and after any relocation, the costs of operation and Maintenance shall be borne by the Owner of the Parcel benefited by any easement and any grant of easement may so provide. In no event shall this Declaration or any easement granted herein be terminated or relocated in a manner that is in violation of Applicable Law. Notwithstanding anything to the contrary contained herein, this Declaration, or any easement granted herein, shall terminate in all events with the written consent of all Owners and Mortgagees, unless any such termination would constitute a violation of Applicable Law.

15.2 Early Termination. If, following execution and recordation of this Declaration, construction of the initial Improvements to the Ballpark Parcel and Outfield Park Parcel ("Initial Construction") is permanently delayed or terminated, any Owner ("Terminating Owner") may terminate this Declaration by delivering written notice ("Notice of Termination") to the other Owners ("Non-Terminating Owners") stating: (i) Terminating Owner's intent to terminate this Declaration; and (ii) identifying the facts and circumstances that support Terminating Owner's conclusion that Initial Construction is permanently delayed or terminated. If a Non-Terminating Owner does not dispute the Termination Notice, such Non-Terminating Owner shall deliver to

Terminating Owner a quitclaim deed in form and of content necessary to expunge this Declaration from the Official Records and to terminate its continuing force and effect. Upon receipt of such quitclaim deeds from all Owners, Terminating Owner shall record such quitclaim deeds in the Official Records of the San Diego County.

If a Non-Terminating Owner disputes the conclusion set forth in the Termination Notice, such dispute will be settled in accordance with Article 16 of this Declaration. In the event of such a dispute, the Initial Construction shall be rebuttably presumed to be permanently delayed or terminated if: (i) commencement of the Initial Construction has been delayed for more than twelve (12) months; or (ii) following commencement of Initial Construction, construction has ceased for twenty-four (24) continuous months.

ARTICLE 16

ARBITRATION

16.1 Arbitration Panel. Any dispute between the Owners or between an Owner or Owners and the Association arising under the provisions of this Declaration, including, but not limited to, the enforceability, interpretation, scope, performance or breach of any of the provisions of this Declaration, in which an Owner or the Association shall notify the other Owner(s) or the Association, as the case may be, of its intention to arbitrate (the "Arbitration Notice"), shall be settled by final and binding arbitration in accordance with the rules then in effect under the provisions of the California Code of Civil Procedure, Sections 1280 et seq. (or any successor statute).

16.1.1 No Cure or Waiver. The delivery or receipt of any Arbitration Notice shall not cure or waive any alleged breach of obligations or default under the terms of this Declaration, or otherwise have any impact on the applicable periods for curing any such breach or default or in any way constitute a waiver or relinquishment of any rights granted under this Declaration or otherwise by any party with regards to any alleged breach or default (whether or not the subject of an Arbitration Notice), including, but not limited to, the obligation of every Person to pay as and when due any and all liens, amounts of money, charges, and or fees required under this Declaration or otherwise.

16.1.2 Appointment of Arbitration Panel. Each Owner or the Association which delivers or receives an Arbitration Notice shall, within ten (10) business days after the giving of the Arbitration Notice, appoint an arbitrator and the arbitrators so appointed shall, within five (5) business days after all of them have been appointed, appoint another arbitrator, and such arbitrators shall constitute the "Arbitration Panel." The decision of the majority of the Arbitration Panel as to any dispute shall be binding on all Owners and/or the Association to the extent they are parties to such arbitration; provided, however, that following the appointment of such an arbitrator by the other arbitrators, if the Arbitration Panel consists of an even number of arbitrators and a "tie" with respect to any issue results, the Arbitration Panel shall appoint an additional arbitrator within five (5) business days thereafter and the vote shall again be taken. If the arbitrators selected are unable to agree upon any additional arbitrator required to be selected

by the arbitrators hereunder within such five (5) business day period, any party to the arbitration may apply to the San Diego County Superior Court for the appointment of the additional arbitrator. If any Owner fails to appoint an arbitrator within ten (10) business days of the Arbitration Notice, the arbitrators appointed by the other Owner(s) or the Association shall be deemed the "Arbitration Panel" and his (their) decision as to any dispute shall be binding on the parties. Each arbitrator selected shall have at least ten (10) years experience in the operation and management of a first class office building and related facilities in the San Diego County area.

16.2 Provisions of Materials to Arbitration Panel and Parties. Each Owner shall make available to the Arbitration Panel all books, records and other information requested by the Arbitration Panel. Such matters are to be made available to the Arbitration Panel at such times as are deemed necessary by the Arbitration Panel to make its decision as herein provided. The Arbitration Panel may, in its discretion, and as a cost of Arbitration, employ experts to assist it in making its determination. The Arbitration Panel shall, prior to rendering its determination, afford each of the parties an opportunity, orally or in writing, to express its point of view as to the proper determination of such matters; provided, however, that (a) any party to such arbitration submitting written materials shall be required to deliver a copy of such written materials to the other parties and such other parties shall have the opportunity to submit a written reply, and (b) any party to such arbitration submitting oral statements shall afford the other parties a reasonable opportunity to be present at the time of making such oral statements. The parties may engage experts for the purpose of presenting evidence to the Arbitration Panel. Each party to such Arbitration shall have reasonable access during normal business hours to such books, records and other data as are reasonably necessary to analyze the dispute under consideration with the right to copy any of the same at its expense.

16.3 Determination by the Arbitration Panel. 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 Owners and the Association agree that the decision of the Arbitration Panel shall be final and binding and may be enforced in any court of competent jurisdiction. The Owners and the Association, if applicable, agree to indemnify and hold harmless each member of the Arbitration Panel against any claim or demand arising out of any arbitration contemplated herein, unless resulting from the willful misconduct of the member to be indemnified. The cost of arbitration, attorneys fees' and costs of experts shall be borne in such proportion between the parties thereto as the Arbitration Panel may determine.

16.4 Provisional Relief. In the event that an Owner or the Association would otherwise be entitled to seek provisional relief from a court of law with respect to the matter being disputed between an Owner(s) and/or the Association, as applicable, including, but not limited to, injunctive relief, each party shall appoint its arbitrator within three (3) business days after the giving of the Arbitration Notice and the arbitrators so appointed shall select the additional arbitrator within two (2) business days after their appointment. In such event, any failure by such arbitrators to appoint an additional arbitrator within such two-day period shall allow any party to the arbitration to immediately apply to the San Diego County Superior Court for the appointment of the additional arbitrator. After the Arbitration Panel has been so designated, its determination

shall be made within five (5) business days after submission of the dispute to it. The decision of the Arbitration Panel shall be final and binding upon the parties to such arbitration and may be enforced by any court of competent jurisdiction in the same manner as an order for provisional relief would be enforced. Except as provided herein, all other provisions set forth in this Article 16 with respect to arbitration shall apply.

ARTICLE 17

COVENANTS OF NONDISCRIMINATION, GOOD FAITH AND COOPERATION

17.1 Nondiscrimination. By its acceptance of a deed for a Parcel, each Owner covenants for itself, and its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of sex, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of any portion of the Project, nor shall any Occupant of any portion of the Project, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendors in any portion of the Project.

17.2 Good Faith. Each Owner and the Association shall not discriminate against any other Owner in performing any of its obligations or in exercising its rights under this Declaration. Because of the lengthy term of this Declaration, it is likely that conditions and circumstances will change significantly during the term of this Declaration. Consequently, the Owners shall cooperate in good faith to amend this Declaration with the consent of any Mortgagees as may be required so as to carry out the intentions of the Owners as manifested in this Declaration in the event of such changed conditions and circumstances.

ARTICLE 18

PROTECTION OF MORTGAGEES

18.1 Mortgagee's Opportunity to Cure. In addition to the other rights of Mortgagees set forth in this Declaration, during the continuance of any Mortgage and until such time as the lien of any Mortgage has been extinguished, the Mortgagee shall have the rights set forth below.

18.1.1 Payments by Mortgagees. Any Mortgagee shall have the right, but not the obligation subject to Section 18.2, and without payment of any penalty, to pay all of the amounts due hereunder, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any act or thing required of the applicable 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 to prevent a default under this Declaration by an Owner of the Parcel encumbered by such Mortgagee's Mortgage. All payments so made and all things so done and performed by a 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 the Mortgagee.

18.1.2 Notice to Mortgagees. At the request of a Mortgagee given in accordance with the notice provisions of this Declaration, the Association and each Owner shall mail or deliver to such Mortgagee a duplicate copy of any and all notices which the Association or each Owner may from time to time give to or serve upon another Owner pursuant to the provisions of this Declaration and such copy shall be mailed or delivered to each Mortgagee simultaneously with and in the same manner as the mailing or delivery of the same to the other Owner.

18.2 Application of Charges to Mortgagees. Notwithstanding anything contained in this Declaration to the contrary, although authorized to make such payments pursuant to this Article 18, no Mortgagee shall be liable for payments for the Allocable Share of Common Maintenance Area Costs or the Allocable Share of Parking Operating Costs due with respect to the Parcel encumbered by its Mortgage, except those accruing after such Mortgagee obtains title to the Parcel encumbered by its Mortgage pursuant to its remedies under the Mortgage or pursuant to a deed in lieu of foreclosure. Each Mortgagee who obtains title pursuant to its remedies under the Mortgage or pursuant to a deed in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take title to the Parcel free and clear of any claims for unpaid payments, assessments and charges, and liens therefor, which accrued prior to such acquisition of title. Except as provided in this Section 18.2, any such sale or conveyance in lieu of foreclosure shall extinguish such liens for payments, assessments and liens accrued prior to such acquisition of title, but the purchaser or Mortgagee who so acquires title shall be liable for payments and impositions accruing after the date of such sale or conveyance in lieu of foreclosure. Following any such sale or transfer in lieu of foreclosure, the Association shall seek payment of all unpaid payments, assessments and charges accruing prior to such acquisition of title solely from the defaulting Owner as provided in this Declaration.

18.3 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 an Owner whose title is acquired by foreclosure, trustee's sale, voluntary conveyance, assumption or otherwise.

18.4 Damage or Destruction. Every Mortgagee who has requested the Association or an Owner to provide written notice with respect to (a) any substantial damage to or destruction of Parcels or Improvements and (b) any Condemnation proceeding involving, or any proposed acquisition by a condemning authority of, Parcels or Improvements or any portion thereof, shall be entitled to timely written notice from the Association or an Owner, as applicable, as provided in Section 18.1.2.

18.5 Insurance and Condemnation 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 Condemnation of the Parcels or Improvements encumbered by such Mortgagee's Mortgage.

ARTICLE 19

MISCELLANEOUS

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

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

19.3 Leases and License. Any Lease or License shall provide that the terms of such Lease or License shall be subject in all respects to the provisions of this Declaration, and any amendments hereto, the Architectural Guidelines, Rules and Regulations, signage criteria, Landscaping Standards and Applicable Law. All of the Owners shall be responsible for assuring compliance by such Owner's Permittees and the Association shall be responsible for assuring compliance by any Licensee of the Association, with this Declaration and the Architectural Guidelines, Rules and Regulations, signage criteria, Landscaping Standards and Applicable Law. In addition, any Owner leasing his Parcel or any portion thereof (a) shall be liable for all obligations contained in this Declaration and (b) shall be deemed to have agreed in connection with such Lease, that upon being requested to do so by the Declarant, or the Association, that such Owner shall immediately take such action or actions with respect to such Owner's Permittee as may be necessary or required to cause such Permittee to fully comply with each and all terms and provisions of this Declaration and the Architectural Guidelines, Rules and Regulations, signage criteria, Landscaping Standards and Applicable Law.

19.4 Waiver of Default. A waiver by the Association or any Owner, as applicable, of any default by an Owner must be in writing, and no such waiver shall be implied from any omission by an Owner 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 by such express waiver. One or more written waivers of any default of 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 an 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.

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

19.6 Successors. This Declaration shall be binding upon and inure to the benefit of the Owners hereto and their respective successors and assigns and grantees of the Owners.

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

19.8 Consents. Except as otherwise may be provided in this Declaration, whenever an Owner is requested to consent to or approve of any matter with respect to which its consent or approval is required by this Declaration, such consent or approval, if given, shall be given in writing. Wherever an Owner is required to obtain the consent or approval of the Association or any other Owner, such consent or approval shall not be unreasonably withheld and shall be given in writing within a reasonable period of time; provided however, that this provision shall not apply where the Declaration specifically states that such consent or approval may be unreasonably withheld or is subject to the sole discretion of any Owner or words of similar import.

19.9 Default Shall Not Permit Termination of Declaration. No default under this Declaration shall entitle any Owner to terminate, cancel or otherwise rescind this Declaration; provided, however, that this limitation shall not affect any other rights or remedies that the Owners may have by reason of any default under this Declaration.

19.10 Notice of Non-Conformity to Law. In the event that any Owner receives a notice from any governmental agency or authority to the effect that the Owner so notified is in violation of Applicable Law in respect of the operation of any part of such Owner's Parcel, the Owner so receiving such notice shall promptly transmit a copy thereof to the other Owners.

19.11 Counterparts. This Declaration may be signed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument.

19.12 Estoppel Certificate. Each Owner and the Association hereby covenant that, within thirty (30) days of any written request of any other Owner, it will issue to such requesting Owner, as to any Mortgagee or to a bona fide purchaser under an agreement of sale or similar document, an estoppel certificate stating as of the date of such certificate whether the Owner or the Association to whom the request has been directed knows: (a) of any default under the Declaration or any separate agreement thereto (that affects such Owner's obligations set forth in the Declaration); and if there are known defaults, specifying the nature thereof; (b) whether, to its knowledge, the Declaration has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); and (c) that, to its knowledge, the Declaration is in full force and effect. Such statements shall act as a waiver of any claim by an Owner (but not by its Mortgagee) furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent that the claim is asserted against a bona fide purchaser under an agreement of sale or similar document or against any Mortgagee for value, without knowledge of facts contrary to those contained in the statement and has acted in reasonable reliance upon the statement. However, such statement shall in no event subject the Owner furnishing it to any

liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Owner to disclose correct or relevant information.

19.13 Severability. If any term, provision or condition contained in this Declaration shall, to any extent, be invalid or unenforceable, the remainder of this Declaration (or the application of such term, provision or condition to Owners or circumstances other than those in respect of which it is invalid or enforceable), shall not be affected thereby, and each term, provision and condition of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

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

19.15 Exhibits. All exhibits referred to in this Declaration are incorporated herein by reference. In addition, by acceptance of a deed for a Parcel, all Owners acknowledge and agree that all exhibits attached hereto that are diagrammatic in format are intended to depict the general location of the items set forth therein and not the exact location of such items.

19.16 Executory Easements and Rights. To the extent that any provision of this Declaration creates easements or other rights in favor of an Owner in the Parcel of another Owner that may not be in existence or exercisable at the time this Declaration is recorded, but, are subject to coming into existence or being exercised in the future, any Mortgagee or other Person acquiring any interest in the Project Premises or a Parcel therein subsequent to the date this Declaration is recorded, shall take title to such Parcel subject to the lien of such easements and other rights.

This Declaration has been executed as of the day and year first above written and shall be effective upon recording.

DECLARANT:
PADRES L.P.,
a Delaware limited liability company

PADRES' PARK AT THE PARK, L.L.C.,
a Delaware limited liability company

By: Padres Inc., a Delaware corporation
General Partner

By: Padres L.P., a Delaware limited partnership,
Managing Member

By: _____
Its: _____

By: Padres Inc., a Delaware corporation
General Partner

By: _____
Its: _____

THE CITY OF SAN DIEGO,
a municipal corporation

By: _____
Its: _____

I HEREBY APPROVE the form and legality of the foregoing Declaration of Covenants, Conditions and Restrictions of Park at the Park Owners Association and Establishment of Reciprocal Easements this ____ day of _____, 2000.

CASEY GWINN, City Attorney

By: _____

EXHIBIT "A"

Project Premises Legal Description

[Legal Description will be inserted upon final approval and recordation of Parcel Map.]

EXHIBIT "B"

Ballpark Parcel Legal Description

[Legal Description will be inserted upon final approval and recordation of Parcel Map.]

EXHIBIT "C"

Outfield Park Parcel Legal Description

[Legal Description will be inserted upon final approval and recordation of Parcel Map.]

EXHIBIT "D"

Parking Parcel Legal Description

[Legal Description will be inserted upon final approval and recordation of Parcel Map.]

EXHIBIT "E"

R2 Parcel Legal Description

[Legal Description will be inserted upon final approval and recordation of Parcel Map.]

EXHIBIT "F"

R3 Parcel Legal Description

[Legal Description will be inserted upon final approval and recordation of Parcel Map.]

EXHIBIT "G"

Common Maintenance Areas

EXHIBIT "H"

Retail Common Maintenance Area

EXHIBIT "I"

Ballpark Exclusive Use Area

[This Exhibit will be inserted upon completion of Ballpark design.]

EXHIBIT "J"

Special Maintenance Requirements

[Insert upon completion of design of all Improvements within Project Premises.]

EXHIBIT "K"

Parking Access Ramps

EXHIBIT "L"

Utility Facilities Easements .

[Utility Facilities Easements will be established on completion of Ballpark, Outfield Park, Mixed-Use and Parking Structure design and approval and recordation of the Parcel Map.]

EXHIBIT "N"

Baseball Event Area

EXHIBIT "O"

Non-Baseball Event Area