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MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS

(CITYSCAPE)

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MASTER DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS AND GRANT OF EASEMENTS

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS (this "Declaration") is made effective as of this 13th day of January, 2009, by RED CITYSCAPE DEVELOPMENT, LLC, a Delaware limited liability company (the "Declarant").

RECITALS

A. Declarant, pursuant to the DRA (defined in Section 1.23) by and between Declarant, Phoenix CityScape Investments, Inc., an Arizona corporation, and the City of Phoenix, an Arizona municipal corporation (the "City"), has entered into one or more leases with the City permitting Declarant to control, possess, develop, improve and operate certain real property and improvements situated in the City of Phoenix, County of Maricopa, State of Arizona, as more particularly described on Exhibit "A" attached hereto and hereby incorporated by reference ("Project").

B. The Project is comprised of several parcels (the "Parcels"), which together comprise a mixed use development, and are generally depicted on the Site Plan attached hereto as Exhibit "B" and hereby incorporated by reference.

C. Declarant intends that the Project be developed, in phases, as a mixed use development consisting of office, commercial, Unofficial Document retail, theater, grocery store, hotel, restaurant, nightclub, bar and residential uses, together with accessory and related uses acceptable to Declarant (including, without limitation, parking areas and garages), all of a nature intended to be generally acceptable to institutional investors, although Declarant makes no warranty or representation that all or any of such uses shall be constructed or operated at the Project.

D. Declarant intends that each Owner shall be responsible to repair, insure, operate, manage and maintain its own Parcel; however, Declarant, and if applicable, the Association, shall perform said functions as to the Common Areas, as more particularly described in this Declaration.

E. Declarant intends that certain portions of the Project be subject to easements for the benefit of other portions of the Project as more particularly described in this Declaration for the purposes, among others, of allowing construction and reconstruction on and within the Parcels and permitting access across portions of the Project as more particularly described in this Declaration.

F. Declarant intends that the Owners (including Declarant and City) and all other Persons now holding, or subsequently acquiring any interest in the Project shall at all times enjoy the benefits of, and shall hold their respective interests subject to, this Declaration, which is recorded for the purpose of enhancing and protecting the value, desirability and attractiveness of the Project.

G. Pursuant to the terms of the consent of City appended to this Declaration, City as "City" under the DRA and the current owner of fee simple title to the Parcels, consents to the recording of this Declaration and agrees that all right, title and interest so held shall be subject to this Declaration. Except in the context of an express reference to the DRA or to the fee ownership of property in the Project, any reference in this Declaration to the "City" or the "City of Phoenix" shall refer to the City only in its capacity as the municipal governing body having and exercising its police powers and jurisdiction pursuant to the Phoenix City Code as may pertain to the Project.

NOW, THEREFORE, Declarant hereby declares, covenants, and agrees as follows:

ARTICLE 1. DEFINITIONS.

The following words, phrases or terms used in this Declaration shall have the following meanings:

Section 1.1 "Annual Assessment" shall mean the charge levied and assessed each year against each Parcel or Owner pursuant to Section 5.3 of this Declaration.

Section 1.2 "Annexable Property" shall mean any real property located contiguous or in close proximity to the Project which may be annexed into the Project and become subject to this Declaration in accordance with the provisions of Section 14.18 of this Declaration.

Section 1.3 "Appurtenant Amenities" shall mean those features shown on the Site Plan or Parcel Map, or any instrument Unofficial Document subsequently Recorded by Declarant or the Owners of the Parcels burdened and benefited, which designates or describes certain areas, Improvements, Subsurface Improvements, features, equipment or other portions of the Project (located within any portion of a Parcel, or located within the Common Area), as being designated as appurtenant to or benefiting or serving, and therefore a part of, a Parcel. Except as stated in Section 7.2, Appurtenant Amenities shall be operated, maintained, repaired, replaced and insured by the Owner(s) of the Parcel(s) benefited by such Appurtenant Amenities. For example, elevator shafts and equipment serving a Vertical Improvement, which extend below the bottom delineating plane of a Parcel and into a Parking Garage, shall exist as an Appurtenant Amenity for the benefit of such Parcel, and shall be operated, maintained, repaired, replaced and insured by the Owner of such Parcel. In addition, loading docks serving less than all of the Vertical Improvements at the Project shall be Appurtenant Amenities for the benefit of the Parcel(s) on which the applicable Vertical Improvements are located. An Appurtenant Amenity need not be contiguous with the Parcel to which it relates or benefits. To the extent an Appurtenant Amenity directly serves or benefits more than one Parcel, then the Owners of such served or benefited Parcels shall share, as may be reasonably allocated by Declarant, in the actual costs of operation, maintenance, repair, replacement and insurance as provided herein. Generally, an Appurtenant Amenity will not benefit or serve the entire Project; rather such a feature benefiting the entire Project will be deemed a Common Element. Any feature satisfying the foregoing definition of an Appurtenant Amenity may be so designated by Declarant or the Owners of the Parcels burdened and benefited, without mandate to do so. The Site Plan and/or Parcel Map may indicate (by cross-hatching or otherwise) some of the Appurtenant Amenities as the same exist, from time to time, at the Project.

Section 1.4 “Assessments” shall mean the charges levied and assessed against Owners and Parcels pursuant to ARTICLE 5 and ARTICLE 7 of this Declaration.

Section 1.5 “Assessment Lien” shall mean the lien created and imposed by Section 5.1 of this Declaration.

Section 1.6 “Benefited Parcel” shall mean the dominant parcel for whose benefit and appurtenant to which a particular easement in, on, over, under, upon or through a Burdened Parcel is granted or exists.

Section 1.7 “Block 22” shall mean that portion of the Project legally described on Exhibit “A-1” attached hereto and incorporated herein.

Section 1.8 “Block 77” shall mean that portion of the Project legally described on Exhibit “A-2” attached hereto and incorporated herein.

Section 1.9 “Block 77 Garage Declaration” shall mean that certain Amended and Restated Declaration of Horizontal Property Rights and Declaration of Covenants, Conditions and Restrictions for Patriot’s Square dated March 1, 1998 and recorded July 1, 1998 in Instrument No. 88-324976 in the Official Records of Maricopa County, Arizona, as amended by that certain First Amendment to Amended and Restated Declaration of Horizontal Property Regime and Declaration of Covenants, Conditions and Restrictions for Patriots Square dated September 15, 2007 and recorded November 21, 2007 in the Official Records of Maricopa County, Arizona in Instrument No. 20071242620.

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Section 1.10 “Block 22 Parking Garage” shall have the meaning assigned to such term in Section 9.2.

Section 1.11 “Block 77 Parking Garage” shall have the meaning assigned for such term in Section 9.2.

Section 1.12 “Building Area” shall mean that portion of the Project shaded or otherwise designated as such on the Site Plan.

Section 1.13 “Burdened Parcel” shall mean the servient parcel in, on, over, under, upon or through which an easement in favor of a Benefited Parcel is granted or exists.

Section 1.14 “City” or “City of Phoenix” shall mean the City of Phoenix, an Arizona municipal corporation, in the context as described in Recital (G), above.

Section 1.15 “CityScope Open Space” shall have the meaning assigned to such term in the Park Declaration.

Section 1.16 “COLA Index” shall mean the Consumer Price Index for All Items - All Urban Consumers, U.S. City Average (1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor, or any successor index thereof. If the COLA Index is converted to a different standard reference base or otherwise revised, then whenever the determination of a COLA Index adjustment is called for herein, it shall be made

with the use of such conversion factor, formula or table for converting the COLA Index as may be published by the U.S. Department of Labor, Bureau of Labor Statistics, or if not published by said organization, as may be published by Prentice-Hall, Inc. or any other nationally recognized publisher of similar statistical information. If the COLA Index ceases to be published on a monthly basis, then the shortest period for which the COLA Index is published which includes the relevant month herein specified shall be used in lieu of such specified month. If the COLA Index ceases to be published, and there is no successor thereto, such other index as Declarant shall select shall be substituted for the COLA Index.

Section 1.17 “Commercial Office Building” shall mean any Vertical Improvement designated on the Site Plan, or in regard to an Undeveloped Parcel, designated otherwise by Declarant pursuant to Section 1.69, primarily for office use. In the event a Vertical Improvement includes other use designations, then only the portion of said Vertical Improvement designated for office use shall be deemed a Commercial Office Building; provided, however, notwithstanding the foregoing, a Vertical Improvement which is comprised substantially of office use, regardless whether such Vertical Improvement contains other uses, shall be deemed entirely to be a Commercial Office Building.

Section 1.18 “Commercial Retail Building” shall mean any Vertical Improvement designated on the Site Plan, or in regard to an Undeveloped Parcel, designated otherwise by Declarant pursuant to Section 1.69, for retail, retail office, grocery or food market, pharmacy, restaurant, gymnasium, soft goods, retail banking, ATMs, theater, nightclub or bar use. In the event a Vertical Improvement includes other use designations, then only the portion of said Vertical Improvement designated for ~~retail~~ retail office, restaurant, theater, nightclub or bar use together with ancillary service areas, corridors and patios shall be deemed a Commercial Retail Building (subject to the last sentence of Section 1.17).

Section 1.19 “Common Area” and “Common Areas” shall mean all of the hardscape, landscape, sidewalks, waterscape and all other areas within or immediately adjacent to the Project (including, without limitation, the Pedestrian Bridge and any decorative paving in roadways adjacent to the Project), not within any Vertical Improvement or within the Parking Garages, to be used in common by the Owners, Tenants and Permittees. The Park and the CityScape Open Space shall each constitute a portion of the Common Area hereunder, but the use and operation thereof is subject to the Park Declaration. As the construction and development of Vertical Improvements commences, then the areas of the Project in which the Vertical Improvements are located and construction access shall no longer be Common Areas. Unless expressly so designated upon the Site Plan, Parking Areas are not Common Areas. The Site Plan and/or Parcel Map may indicate (by cross-hatching or otherwise) some of the Common Areas (also identified in the Parcel Map as “Common Elements”) as the same exist, from time to time, at the Project.

Section 1.20 “Common Area Rules” shall mean the rules and regulations adopted by Declarant pursuant to Section 8.2 of this Declaration, including the Park Declaration, as the same may from time to time be amended or supplemented.

Section 1.21 “Common Elements” shall mean the Improvements, Subsurface Improvements, features, equipment or other portion of the Project (located within any portion of

a Parcel, or the Common Area) which serve or benefit the entire Project. Declarant shall determine and/or identify the Common Elements that are located on an Undeveloped Parcel. The Site Plan and/or Parcel Map may indicate (by cross-hatching or otherwise) some of the Common Elements as the same exist, from time to time, at the Project.

Section 1.22 “Condominium Unit” shall mean any unit, together with any appurtenant interest in all condominium common elements, which is created by a condominium declaration.

Section 1.23 “DRA” shall mean the Disposition and Redevelopment Agreement by and between City, Declarant and Phoenix CityScape Investments, Inc., an Arizona corporation dated June 29, 2007, recorded June 29, 2007 as Instrument No. 2007-0755631 in the Official Records of Maricopa County, Arizona, as amended by that certain First Amendment to Disposition and Redevelopment Agreement dated October 24, 2007, recorded on November 2, 2007 as Instrument No. 2007-1183852 in the Official Records of Maricopa County, Arizona and that certain Second Amendment to Disposition and Redevelopment Agreement dated October 28, 2008, recorded October 29, 2008 as Instrument No. 2008-0930937 in the Official Records of Maricopa County, Arizona, as the same may now or hereafter be amended.

Section 1.24 “Declarant” shall initially mean RED CityScape Development, LLC, a Delaware limited liability company, and subsequently, express assignee(s) of Declarant’s rights and powers under this Declaration pursuant to a Recorded instrument reflecting such assignment(s) of rights as required by the provisions of Section 3.1, or such successor as contemplated pursuant to the terms of ARTICLE 3
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Section 1.25 “Declaration” shall mean this Declaration, as it may from time to time be amended or supplemented.

Section 1.26 “Declarant’s Property” shall mean, from time to time, that portion of the Project then owned in fee simple, or held as a Project Leasehold, by Declarant.

Section 1.27 “Default Rate” shall mean that annual rate of interest equal to the interest rate per annum designated by Bank of America, N.A. (or its successor) as its “prime rate”, as that rate is publicly announced, quoted or published by Bank of America N.A., at its main office in Phoenix, Arizona (or in the event Bank of America N.A. no longer exists or designates a “prime rate”, then that rate most nearly comparable to what its “prime rate” would have been, as determined by Declarant), from time to time plus five (5) percentage points per annum, but in no event more than the maximum rate of interest permitted by law.

Section 1.28 “Designated Spaces” shall have the meaning assigned to such term in Section 10.2.

Section 1.29 “Developed Parcel” shall mean any separately identified Parcel within the Project upon which Vertical Improvements have been developed, constructed and substantially completed to the degree necessary to be lawfully occupied.

Section 1.30 “Excise Taxes” shall mean the excise taxes imposed by the City pursuant to A.R.S. § 42-6201, et. seq., in lieu of Real Property Taxes.

Section 1.31 “Exempt Property” shall mean: (i) the Parking Garages (without regard to the ownership thereof), and (ii) those portions of the Project, including any Governmental Parcel, if any, comprised of land and Improvements owned by or dedicated to and accepted by, the United States, the State of Arizona, Maricopa County, the City of Phoenix, or any political subdivision thereof for public purposes (e.g. public rights of way, public utility easements, etc.), for as long as any such entity or political subdivision is the owner thereof or for so long as the dedication remains effective. Unless specifically designated by Declarant, the Parcels owned in fee title by the City (whether or not subject to a Project Leasehold) and intended for development shall not be Exempt Property.

Section 1.32 “Governmental Parcel” shall mean any Parcel designated as such by Declarant, or any Parcel owned or entirely occupied by the United States, the State of Arizona, Maricopa County, the City of Phoenix or any political subdivision thereof, for the purpose of conducting governmental activities and services therefrom (e.g. a police station, post office, etc.). The Block 77 Parking Garage does not constitute a Governmental Parcel.

Section 1.33 “Gross Building Area” shall mean the area designated for a particular Parcel or Vertical Improvement on the Site Plan. The Gross Building Area shall include, generally, the gross area on all floors of a Vertical Improvement, and shall include mezzanines, common areas, service areas, lobbies, elevator shafts, patios, loading areas, seating and public areas of cinemas and theatres, and other areas that may benefit an occupant but that may not otherwise constitute “leasable” area. Any outdoor food or retail service area established for the exclusive use of patrons of the establishment shall be included in Gross Building Area for that use. Upon completion of construction of a Vertical Improvement that is a Commercial Office Building, the Gross Building Area thereof shall be measured in accordance with the “Standard Method for Measuring Floor Area in Office Building”, published by Building Owners and Managers Association International, copyright 1996, and designated “ANSI/BOMA Z65.1-1996” (herein “BOMA Standards”), subject to the provisions of this Section 1.33 and such measured area shall be substituted for the area otherwise designated on the Site Plan.

Section 1.34 “Hotel Building” shall mean any building or portion thereof designated on the Site Plan for hotel or residential use or both.

Section 1.35 “Hotel Owner” shall mean the Owner of the Hotel Building. As used in this Declaration, any rights, restrictions, covenants or easements inuring to or imposed upon the Hotel Owner shall relate only to the Hotel Building, notwithstanding the ownership of other Parcels by the Hotel Owner.

Section 1.36 “Improvements” shall mean all (or less than all, if so limited) existing and future elements and improvements constructed on Common Areas, including plaza areas, as shown on the Site Plan, all Vertical Improvements and all other structures, kiosks, sidewalks, hardscape, paving, waterscape, and landscaping erected, built, placed or installed upon, above, through or under the Project, in each case with the prior written approval of Declarant.

Section 1.37 “Insurance Standards” means insurance having a combined single limit, on an occurrence basis, of not less than \$5,000,000.00 so long as a prudent business person

is able to obtain such insurance coverage at commercially reasonable rates in the marketplace, however, if the above-required coverages are not available then the Person required to maintain insurance herein shall obtain such insurance in such amounts as are then available to prudent business people at commercially reasonable rates, and such Person shall promptly notify all Owners and Lenders (who are required, pursuant to the applicable provisions hereof, to be named as additional insureds) of such revised insurance coverage. Each policy of insurance shall be valid and enforceable in Arizona and issued by duly licensed insurers having a rating of not less than B+, VIII in the then-current edition of "Best's Key Rating Guide", or if such rating guide is no longer published or available, then a substantially equivalent rating in a comparable insurance industry rating guide.

Section 1.38 "Lender" shall mean the holder (including as an agent for the benefit of one or more noteholders) of any mortgage, deed of trust or other financing encumbrance given in good faith and for value and which constitutes a lien on all or any part of the Project (including a Project Leasehold), but excluding holders of mortgages, deeds of trust, security interests or other financing encumbrances on any leasehold interest for occupancy of any Rentable Area (e.g., a leasehold interest in Rentable Business Space), which is not a Project Leasehold and consists of less than an entire Parcel in the Project.

Section 1.39 "Maintenance Assessment" shall mean any Assessment levied and assessed pursuant to Section 7.3 or Section 7.4.

Section 1.40 "Maintenance Violation" shall have the meaning assigned to such term in Section 7.4.

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Section 1.41 "Master Drainage Plan" shall mean cumulatively all on-site grading and drainage plans approved by Declarant and the City and all on-site grading and drainage permits issued by the City, as such plans and permits may be amended or modified from time to time, a copy of which shall be on file at all times in the office of Declarant.

Section 1.42 "Offsite Lot" shall mean any parking lot or garage which may be developed on Annexable Property at such time as it is annexed under this Declaration, and all entrance and exit ramps to such parking lot or garage located thereon.

Section 1.43 "Owner" shall mean (when so capitalized) the record holder of fee simple to, or holder of the interest of the tenant in a Project Leasehold of any Parcel (including the Parking Garages), but excluding Persons who hold such title merely as security; provided, however, in the event an item, matter or submission is subject to the approval of all Owners, or in the event a right or power is exercisable by an Owner, the term "Owner" shall not refer to each Owner of the Residential Units, or Condominium Units, but rather shall refer exclusively to the condominium association established pursuant to a condominium or other common scheme of ownership such as an owner's cooperation recorded against any Parcel. In the case of Parcels the title to which is vested of record in a trustee pursuant to Arizona Revised Statutes ("A.R.S.") Section 33-801 et seq., the Owner shall be deemed to be the trustor. An Owner shall include any Person who holds record title to a Parcel in joint ownership with any other Person or holds either an undivided ownership interest including as a Project Leasehold interest in any Parcel. The City shall not be an Owner in regard to any Parcel for which a Project

Leasehold exists; in such case, only the lessee (or the express assignee thereof) of the Project Leasehold interest shall be the Owner regarding a particular Parcel. In the event that a Parcel has more than one Owner, the Owners of such Parcel shall appoint one (1) owner to act on behalf of such Parcel.

Section 1.44 “Parcel” shall mean an area or estate of real property (including a Condominium Unit) within the Project which is created as a separate legal parcel (including a Condominium Unit) through, or evidenced by, the Recording of a deed, parcel map, lease, subdivision plat or a condominium declaration, easement or other instrument which creates a discrete estate or interest in real property, having locatable dimensions (whether two or three dimensions and specifically including an air space), and is identified as a Parcel upon the Site Plan or other document Recorded by Declarant, as contemplated below. Certain Parking Areas, including the Parking Garages may be deemed, at the election of Declarant (made pursuant to an instrument of conveyance of Declarant’s interest in the Block 22 Parking Garage and/or the Block 77 Parking Garage) to be a “Parcel” for purposes of this Declaration. Because the Block 22 Parking Garage and/or the Block 77 Parking Garage may be a Parcel(s) existing below the level of the ground and comprised of fee simple title, it is anticipated that separate Parcels may be created in the nature of fee simple, leasehold, easement or surface or air space rights on or above the ground level of the Project. Because any Parcel at the Project may be above or below other Parcels, whether in whole or in part, such Parcel may require descriptions with reference to horizontal and vertical boundaries, planes or faces. For example, one Parcel may protrude over a portion of another Parcel. In such event a Parcel may include surface and airspace rights above specified, described portions of other Parcels at the Project. Declarant’s Property shall be deemed to be a “Parcel” for purposes of this ^{Unofficial Document} Declaration. Annexable Property shall become a “Parcel” only upon annexation pursuant to Section 14.18. From time to time, an instrument may be recorded as contemplated above to create, alter, terminate or recognize the existence of a Parcel, or to subdivide or reconfigure a Parcel with another Parcel or Parcels. Any such instrument may include the designation of the use of such Parcel. Any such instrument shall require (i) the approval of Declarant, as to any Undeveloped Parcel, and (ii) the signature of the Owner (if other than Declarant) and, if applicable, the Lender, of such affected Parcel. As the context of this Declaration may require, a Parcel is deemed to be “owned” if title is held in fee simple, as an easement estate (for Parcels comprised of air space rights) or pursuant to a Project Leasehold.

Section 1.45 “Parcel Map” shall mean any recorded plat or parcel map which creates parcels of the real property, and all amendments, plats, modifications and parcel maps Recorded thereafter, with the express consent of Declarant. A Parcel Map shall create and identify Parcels.

Section 1.46 “Park” shall mean “Patriot’s Square Park” created pursuant to the Park Declaration, as Patriot’s Square Park may be expanded, contracted or otherwise modified in accordance with the Park Declaration.

Section 1.47 “Park Declaration” shall mean that certain Declaration of Park Restriction Covenant, City Contract No. 121451-DPR, dated September 15, 2007 and recorded November 21, 2007 in the Official Records of Maricopa County, Arizona in Instrument No. 2007-1242621.

Section 1.48 “Parking Areas” shall mean all surface parking, underground parking and at-grade and above-grade parking areas from time to time existing within the Project, including, to the extent applicable, the Parking Garages and any Offsite Lot.

Section 1.49 “Parking Garage” shall mean the Block 22 Parking Garage and/or the Block 77 Parking Garage, as the context requires.

Section 1.50 “Parking Garages” shall mean the Block 22 Parking Garage and the Block 77 Parking Garage, collectively.

Section 1.51 “Parking Garage Lessee” shall mean (i) with respect to Block 22, the Owner of the Block 22 Parking Garage pursuant to a Project Leasehold, which initially shall be Declarant, and (ii) with respect to Block 77, the holder from time to time of the rights in the Block 77 Parking Garage initially granted to Declarant pursuant to the Project Leasehold for the Block 77 Garage and the Block 77 Garage Declaration. If the Block 22 Parking Garage is designated as more than one (1) Parcel, then each such Parcel may be owned by different Parking Garage Lessees. If the Block 77 Parking Garage is designated as more than one (1) Parcel, then each such Parcel may be owned by different Parking Garage Lessees. As used in this Declaration, any rights, restrictions, covenants or easements inuring to or imposed upon a Parking Garage Lessee, solely in such capacity, shall relate only to the Block 22 Parking Garage and/or the Block 77 Parking Garage, as applicable, notwithstanding the ownership of other Parcels by such Parking Garage Lessee.

Section 1.52 “Parking Operator” shall have the meaning assigned to such term in Section 10.1.

Section 1.53 “Party Wall” shall mean a partition (by way of limitation, a horizontal slab, or a vertical wall), constructed on or immediately adjacent to the common boundary of Parcels.

Section 1.54 “Pedestrian Bridge” shall mean the contemplated elevated walkway across Central Avenue connecting Block 22 and Block 77, if and when constructed.

Section 1.55 “Permittees” shall mean the employees, agents, contractors, customers, visitors, invitees, licensees, lenders and concessionaires of an Owner or Tenant of any portion of the Project, all occupants and drivers of emergency vehicles and the family members of the Owner of a Residential Unit.

Section 1.56 “Person” shall mean a natural individual, corporation, partnership, limited liability company, trustee, governmental entity or other legal entity capable of holding title to real property.

Section 1.57 “Phoenix City Code” means the written laws, regulations, stipulations, ordinances, waivers, variances, special permits and any interpretations thereof of the City of Phoenix, Arizona, as same may be amended and supplemented from time to time.

Section 1.58 “Project” shall mean the mixed use planned development, as described in Recital (A), above.

Section 1.59 “Project Lease” shall mean a lease for a portion of the Project created pursuant to and as provided by the DRA. A “Project Lease” is limited to the first lease between the City as lessor and the tenant thereunder as lessee. Any lease subordinate to and created under a Project Lease (such as, without limitation, a lease for space in a Commercial Office Building) shall not be deemed to be a “Project Lease” for purposes of this Declaration.

Section 1.60 “Project Leasehold” shall mean a leasehold interest created by a “Project Lease” (as contemplated by and provided for pursuant to the DRA). Constructive notice of a Project Leasehold shall be provided by recording a memorandum thereof, which at a minimum shall be executed by the lessor and lessee thereof, and shall identify the Parcel which is subject to, and the term of, the leasehold. However, a lease for Rentable Business Space or a lease for a Residential Unit (which does not otherwise meet the criteria for a “Project Lease”) shall not be a Project Leasehold.

Section 1.61 “Real Property Taxes” shall mean any ad valorem real estate taxes and assessments (including, without limitation, so-called “downtown assessments”) levied or collected by the Maricopa County Assessor.

Section 1.62 “Recording” shall mean placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona and “Recorded” shall mean having been so placed of public record.

Section 1.63 “Rentable Area” shall mean the aggregate square footage or area of all floors of a Vertical Improvement measured to include all enclosed and covered areas, from the exterior surfaces of the Vertical Improvement. ^{Unofficial Document} BOMA Standards shall be utilized in the determination of Rentable Area of Commercial Office Buildings.

Section 1.64 “Rentable Business Space” shall mean an area within a Commercial Office Building or a Vertical Improvement either designed for lease or actually leased to a Tenant for commercial or business purposes.

Section 1.65 “Reserved Spaces” shall have the meaning assigned to such term in Section 10.2.

Section 1.66 “Residential Development” shall mean a residential building project including a residential condominium, if any, established under the laws of the State of Arizona, or an apartment project constructed for residential use. In the event a Vertical Improvement includes other use designations, then only the portion of said Vertical Improvement designated for residential use shall be deemed a Residential Development.

Section 1.67 “Residential Unit” shall mean any unit, together with any appurtenant interest in all common elements, which is created by a Residential Development.

Section 1.68 “Sign” means any structure, device or contrivance, electric or non-electric, upon or within which any poster, bill, bulletin, printing, lettering, painting, device or other advertising of any kind whatsoever is used, placed, posted, tacked, nailed, pasted or otherwise fastened or affixed.

Section 1.69 “Site Plan” shall mean the Site Plan attached hereto as Exhibit “B” and incorporated herein by reference and all amendments and modifications thereto. As portions of the Project are improved with Vertical Improvements, or are readied for development, the Site Plan may be amended or supplemented with the consent of Declarant, by updated plans, setting forth more details and specific depictions. The Site Plan, including any amendment or modification thereto, shall indicate, at a minimum, the approximate Building Area, use, the approximate Gross Building Area (upon determination) and the approximate height limitations (if more restrictive than the height limits imposed by Section 12.6), for the portions of the Project which are affected.

Section 1.70 “Special Assessment” shall mean any Assessment levied and assessed pursuant to Section 5.4.

Section 1.71 “Subsurface Improvements” shall mean, with respect to any Parcel under which any part of the Block 22 Parking Garage and/or the Block 77 Parking Garage is located, all elevator or ventilation shafts, elevator lobbies, stairways, pump rooms, storage areas, service entrance section rooms, primary switch rooms, conduit systems, utility meter vaults, and any and all mechanical, electrical and plumbing facilities serving the Vertical Improvements located on or within such Parcel, together with all support systems, shorings, footings, bearing walls, caissons and other foundation or support structures as are necessary for the foundation and structural support of the Vertical Improvements located on or within such Parcel.

Section 1.72 “Taxes” shall mean collectively, Real Property Taxes and Excise Taxes.

Section 1.73 “Tenant” shall mean any Person who occupies property including, but not limited to, a Residential Unit or a Rentable Business Space, located within the Project under any type of rental or letting arrangement (other than as a Project Leasehold) and any operator or manager of the Hotel Building.

Section 1.74 “Undeveloped Parcel” shall mean any separately identified Parcel within the Project upon or within which no Vertical Improvements have been constructed.

Section 1.75 “Unreserved Spaces” shall have the meaning assigned to such term in Section 10.2.

Section 1.76 “Vertical Improvements” shall mean any Commercial Office Building, Commercial Retail Building, Hotel Building and/or Residential Development, several of which uses may exist within any one structure.

Section 1.77 “Visitor Spaces” shall have the meaning assigned to such term in Section 10.2.

ARTICLE 2. PROPERTY SUBJECT TO DECLARATION.

Section 2.1 General Declaration. Declarant declares that all of the Project is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or

otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as it may be amended or modified from time to time. All of this Declaration shall run with the Project and all Parcels therein for all purposes and shall be binding upon and inure to the benefit of Declarant, all Owners, Lenders, and their respective successors in interest. Notwithstanding the foregoing, Declarant reserves the exclusive right to vary or waive, on a non-uniform basis from time to time, certain covenants, restrictions or provisions of this Declaration, provided any such variance or waiver shall not adversely and materially affect any adjacent Owner as reasonably determined by Declarant.

Section 2.2 Rights to Name. Declarant reserves all rights to the name "CityScape" and all derivations thereof, and the use thereof by any other Person, including any Owner, Tenant or Permittee, is pursuant to this license hereby granted by Declarant, which license is revocable in whole or in part at any time by Declarant. Notwithstanding the foregoing provisions of this Section 2.2, Declarant by separate agreement, may grant specific rights in and to the name "CityScape" to one or more Owners or Tenants, in which event the terms of such separation agreement shall control.

Section 2.3 Parcels. By this Declaration and Parcel Map, each Parcel created is deemed to be a separate and discrete legal Parcel for all purposes.

ARTICLE 3. DECLARANT.

Section 3.1 Assignment. Subject to the provisions of Section 3.2, Declarant, by Recorded instrument, may assign all or a portion of its rights, titles and interests as "Declarant" to any other Person, provided ^{Unofficial Document} further that such assignment is signed by both assignor and assignee. No conveyance by Declarant of any Parcel shall result in an assignment of Declarant's rights, titles and interests as "Declarant" in absence of express provision to that effect.

Section 3.2 Succession. So long as RED CityScape Development, LLC holds a Parcel, an interest in any Project Lease, or an interest in the DRA, then such entity shall be Declarant. No Person may be Declarant unless such Person holds a Parcel, an interest in any Project Lease or an interest in the DRA. No succeeding Declarant may terminate, rescind or revoke any rights, consents, variances or waivers previously granted by Declarant to a Person, including any Owner, Tenant or Permittee, without the express consent by such Person.

Section 3.3 Association. At such time when either: (i) no Person is eligible to be "Declarant"; (ii) the Owner constituting the "Declarant" elects to resign without appointment of a successor, by notice to all Owners; or (iii) substantially all Vertical Improvements contemplated by the Site Plan have been developed and constructed; then, at such time, the Owners shall form an "Association", and the Association shall assume and acquire automatically the obligations and rights of the "Declarant" provided for herein commencing (or arising from) the date the Association is formed, and the provisions of Exhibit "C" shall be operative and be deemed incorporated into this Declaration.

ARTICLE 4. TAXES

Section 4.1 Taxes on Parcels. Each Owner shall pay the Taxes imposed upon its Parcel. In the event two (2) or more Parcels are located or improved in a manner which does not allow for the creation of separate tax parcels or otherwise for the segregation of the Taxes applicable to each Parcel by the taxing governmental authority: (i) then the affected Owners shall allocate the burden of the Taxes based upon the relative fair market value of their respective Parcels (or, if the Taxes in question are assessed on a measurement other than value, then such allocation shall be based upon such other measurement); and (ii) each Owner owning such a Parcel shall have the right after reasonable notice to the other affected Owners, to pay the Taxes encumbering its Parcel and obtain reimbursement, plus interest thereon at the Default Rate (accruing ten (10) days after notice of demand for reimbursement is made) of the allocable amount from the other Owner(s) whose Parcel is within the same tax parcel. The "relative fair market value" of two (2) or more Parcels constituting one tax parcel shall be resolved, in absence of an agreement by the affected Owners, by a panel of three (3) independent MAI appraisers selected by the affected Owners (or in absence of an agreement, selected by the president of the Arizona chapter of the Appraisal Institute), and the panel of appraisers shall determine the relative values of the Parcels utilizing, if then existing, the methods and procedures of the Maricopa County Assessor's Office. Similarly, if Taxes are assessed based on a measurement other than value, then the affected Owners shall utilize such other means of measurement for purposes of allocation, and in absence of an agreement by the affected Owners, the allocation of the Taxes shall be resolved by a panel of three independent Certified Public Accountants (selected by the affected Owners, or in absence of an agreement, by the president of the Arizona Society of Certified Public Accountants). Unofficial Document

Section 4.2 Taxes on Parking Garages. Each Parking Garage Lessee shall request a separate tax parcel identification or a separate tax billing for each of the Block 22 Parking Garage and the Block 77 Parking Garage, as applicable, and the other Owners shall reasonably cooperate in connection therewith. If the applicable governmental authority does not so recognize the Block 22 Parking Garage or the Block 77 Parking Garage, as applicable, then the provisions of Section 4.1 shall apply.

ARTICLE 5. ASSESSMENTS

Section 5.1 Creation of Lien and Personal Obligation for Assessments. Declarant covenants and agrees, and each Owner by acceptance of a deed or the execution of a Project Leasehold for any Parcel, or any other instrument or process by which the status of "Owner" is established pursuant to Section 1.43 hereof (whether or not it shall be so expressed in such instrument or procedure) shall be deemed to covenant and agree, to pay to Declarant, or an Owner if applicable, such Assessments as are fixed, established and collected from time to time as provided in this Declaration. Said covenants and agreements shall automatically apply to the respective portions of the Annexable Property upon annexation thereof. The Assessments, together with interest thereon at the Default Rate and late charges (pursuant to Section 6.2), attorneys' fees, court costs and other costs of collection shall be a charge on the applicable Owner's interest in such Owner's respective Parcel(s) and shall be a continuing servitude and lien upon the Parcel against which each such Assessment is made (the "Assessment Lien"). Each such Assessment, together with interest at the Default Rate, late charges, attorneys' fees,

court costs and other costs of collection, shall also be the personal obligation of the Owner of the Parcel at the time the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by the successor in title.

Section 5.2 Purpose of Assessments. The Assessments levied by Declarant shall be used exclusively for the purpose of maintaining, repairing, replacing, restoring, reconstructing, insuring and otherwise operating the Common Areas and in furtherance of any duty or power of Declarant or of any requirement of the City imposed upon Declarant under this Declaration, the DRA or otherwise (other than requirements of the City imposed with respect to the development of Undeveloped Parcels or imposed upon an Owner or a Parcel, based on the use of, or the actions or omissions of the Owner of, a particular Parcel, in which event the cost of and obligation to comply with such requirements shall be borne solely by the Owner of the Parcel in question). Without obligation to do so, Declarant may provide for day porters or security services for the Common Areas, and the costs thereof shall be paid via Assessments.

Section 5.3 Annual Assessments. Each year Declarant shall assess against each Parcel an Annual Assessment. The amount of the Annual Assessment shall be in the sole discretion of Declarant, but shall be based upon the budget described in Section 8.1, shall be determined with the objective of collecting funds to pay the actual costs of fulfilling Declarant's obligations under this Declaration and providing reasonable reserves, and shall be commercially reasonable. The Annual Assessment shall not be imposed to pay costs relating to any purpose for which Declarant is authorized to assess a Special Assessment, nor the cost of constructing or reconstructing any Improvements contemplated by the Site Plan. Subject to the requirement of commercial reasonableness, Declarant may, during an assessment period, revise the amount of the Annual Assessment to meet expenses which exceed the amounts anticipated by Declarant in the above-referenced budget, and collect such increased Assessment over the remaining period of the Annual Assessment for the year in question.

Section 5.4 Special Assessments. In addition to the Annual Assessments authorized by this Declaration, Declarant may levy against each Parcel, in any assessment period, a Special Assessment applicable to that period only for the purpose of defraying, in whole or in part (a) the cost of any reconstruction, repair or replacement (including reserve funds) of Improvements (excluding Vertical Improvements) in, on, under, above or upon the Common Areas which exceeds the costs for such purposes included in the Annual Assessment, (b) the cost of constructing Improvements (excluding Vertical Improvements) in, on, under, above or upon the Common Areas which are not contemplated by the Site Plan, and which either are required by applicable governmental authority, or are for the common benefit of all Owners, Tenants and Permittees, or (c) other extraordinary costs or expenses in respect of the Common Areas which exceed the amounts anticipated by Declarant and reflected in the Annual Assessment. All Special Assessments shall be subject to the standard of commercial reasonableness. No Special Assessment may be made for the development (including initial Common Area Improvements) of any Undeveloped Parcel.

Section 5.5 Rate of Assessment. The amount of any Annual Assessment or Special Assessment against each Parcel shall be fixed at the percentage rates as set forth on the schedule attached hereto as Exhibit "D". Declarant reserves the right to update Exhibit "D" from

time to time. The percentage rate schedule assumes the development and construction of the Vertical Improvements pursuant to the Site Plan as of the date hereof. In the event the Site Plan is revised, from time to time, to add or delete one or more Parcels or Vertical Improvements, or to change, materially, the Gross Building Area of one or more Parcels, Declarant may modify the percentage rate schedule, however, the percentage rate assigned to any Parcels comprised primarily of Commercial Retail Buildings shall be determined with reference to the comparative Gross Building Areas of (i) such Parcels (multiplied by a factor of 1.15, to take into consideration the disproportionate burden that retail uses (as compared to residential, hotel or office uses) place upon common areas in a commercial mixed-use planned development) to (ii) the Gross Building Area of the entire Project. Anything in this Declaration herein to the contrary notwithstanding, in the event the Project is not fully developed, constructed or occupied during any calendar year, a reasonable and equitable adjustment may be made by Declarant in computing the Annual Assessments for such year so that the total of the Annual Assessments shall be adjusted to the amount that would have been incurred had the Project been fully developed, constructed and occupied during such year.

Section 5.6 Establishment of Annual Assessment and Special Assessment Periods. The period for which the Annual Assessment or any Special Assessment is to be levied shall be the calendar year. Declarant shall fix the amount of the Annual Assessment and Special Assessment against each Parcel by notice to all Owners, at least thirty (30) days in advance of each assessment period. Declarant shall send written notice to every Owner subject to such Assessments; but the failure of Declarant to send such written notice to an Owner shall not relieve such Owner of its liability for any such Annual Assessment or Special Assessment. The due dates for Annual Assessments and Special Assessments shall be established by Declarant, which due dates may be on a monthly, quarterly or annual basis.

Section 5.7 Certificate of Payment of Assessments. Within twenty (20) days after receipt by Declarant of a written request by an Owner or any Lender, Declarant shall issue to such Owner or Lender (or a Person designated by either) a written certificate stating whether Assessments relating to a specified Parcel have been paid and the amount of delinquency, if any. Declarant may collect a reasonable administrative charge for the issuance of such a certificate, which charge must be paid at the time the request for any such certificate is made. When issued, any such certificate shall be conclusive and binding with respect to any matter therein stated for the benefit of any bona fide purchaser of, or Lender on, the Parcel in question.

Section 5.8 Subordination of Lien to First Mortgage or Deed of Trust; Priority of Lien. The Assessment Lien shall be subordinate to any of the following encumbrances which exist at the time of the recordation of the notice of an Assessment Lien: any first mortgage or first deed of trust or other first financing encumbrance held by a Lender of a Parcel or a Condominium Unit, any lease (including a lease to an unrelated Person for Rentable Area within a Vertical Improvement) of all or any portion of any Parcel or any Vertical Improvement constructed or to be constructed on or within a Parcel, and any operating or management agreement for the operation of a Hotel Building. Further, any Assessments which are delinquent by more than ninety (90) days (subject to extension equal to any period in which a legal stay is applicable) past the due date at the time of recording of the notice of the Assessment Lien shall be subordinate to all consensual liens and encumbrances of record existing at the time of the recording of said notice. The Assessment Lien shall not attach to any interest of the City

in the Project. The Assessment Lien shall also be subject and subordinate to liens for Taxes and other public charges which by applicable law are expressly made superior. Except as above provided in this Section 5.8, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Parcel. The sale or transfer of any Parcel shall not affect the priority of an Assessment Lien. However, the sale or transfer of any Parcel pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or deed in lieu thereof, shall extinguish the lien of all such subordinate Assessments unless the Person who obtains title to such Parcel pursuant to the foreclosure or any sale or deed in lieu thereof is the Owner (or a Person "related" (as defined below) thereto) who is personally liable for such Assessment Lien; provided, however, no sale or transfer shall relieve such Parcel from liability for any Assessments thereafter accruing or from the lien thereof; and provided further, however, no sale or transfer shall relieve the Owner of such Parcel at the time the Assessment fell due from personal liability for any Assessments. For these purposes, an Owner and a Person shall be deemed "related" if, pursuant to §267 of the Internal Revenue Code of 1986, and all regulations promulgated thereunder, a loss on a transaction between said Owner and Person would not be recognized currently.

Section 5.9 Property Exempted from Assessments. Exempt Property shall be exempted from the Assessments; provided, however, that in the event any change of ownership of Exempt Property results in all or any part thereof no longer being Exempt Property, such portion thereupon shall be subject to Assessments.

Section 5.10 Reconciliation and Costs. As soon as reasonably possible after the end of each calendar year, Declarant shall provide a reconciling statement of the prior year's Annual Assessment budget with the actual costs and expenses incurred with appropriate adjustments, credits or payments (as the case may be) based upon any surpluses or deficits resulting. Declarant shall maintain financial records of the actual costs and expenses incurred pursuant to this ARTICLE 5, in accordance with the prevailing practice standards for prudent real estate management in the greater metropolitan Phoenix area, and shall retain each year's records for three (3) years after the end of each such year. Declarant shall provide to each Owner, within a reasonable time period after a request, such reasonable backup information as may be reasonably requested to verify such actual costs and expenses. Each budget and reconciliation shall provide reasonable detail of expense accounts broken out, at a minimum with the following (or similar) categories: energy, plumbing, trash removal, compacted trash removal, sign maintenance, cleaning, electrical repairs and maintenance, grounds and landscaping, general repairs and maintenance, and insurance. Each Assessment charged to each Owner may also include an administrative charge payable to Declarant of fifteen percent (15%) of the Owner's share of the aggregate costs and expenses incurred by Declarant in discharging its obligations and responsibilities hereunder; provided, however, the applicable administrative charge for Owners of Parcels comprised primarily of either Commercial Office Buildings or Hotel Buildings shall be ten percent (10%).

ARTICLE 6. EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES.

Section 6.1 Delinquency. Any Assessment which is not paid when due is delinquent. Whenever an Assessment is delinquent, Declarant, or an Owner if applicable, may, at its option, invoke any or all of the sanctions provided in this ARTICLE 6.

Section 6.2 Late Charge. If any Assessment is not paid within fifteen (15) days after the date upon which it becomes due and payable, the Owner shall be obligated to pay a late charge equal to five percent (5%) of the amount of the delinquent assessment. The amount of such late charge, until paid, shall constitute part of the Assessment Lien as provided for in Section 5.1 of this Declaration.

Section 6.3 Interest. If any Assessment is not paid within thirty (30) days after it becomes due and payable, interest at the Default Rate may be assessed on the amount owing (other than late charges) from the date due until such time as it is paid.

Section 6.4 Legal Action. Declarant may elect either to bring legal action to recover a delinquent Assessment personally against the Owner obligated to pay the same or, upon compliance with the notice provisions of this ARTICLE 6, to foreclose the Assessment Lien in accordance with then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency); provided, however, that Declarant's choice of a particular remedy shall not prejudice or constitute a waiver of Declarant's right to exercise any other remedy. The costs of preparing and filing the complaint shall be assessed against the delinquent Owner and such Owner's Parcel and reasonable attorneys' fees and court costs shall thereafter be added to the delinquent amount (plus interest at the Default Rate and/or late charges, if appropriate) in the event that a judgment is obtained by Declarant. Each Owner vests in Declarant or its assigns the right and power to bring legal actions and/or lien foreclosure suits for the collection of delinquent Assessments.

Section 6.5 Notice of Lien. The failure of Declarant to send a bill to an Owner shall not relieve any Owner of liability for any Assessment under this Declaration, but no foreclosure of the Assessment Lien shall be commenced nor shall such Assessment Lien be otherwise enforced until thirty (30) days after the date that a Notice of Claim of Lien is deposited in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Owner of the applicable Parcel (and any Lenders secured thereby known by Declarant) at the address for such Owner then maintained by Declarant and a copy thereof, together with the legal description for the applicable Parcel, is Recorded by Declarant.

Section 6.6 Foreclosure Sale. Any foreclosure sale provided for in this Declaration is to be conducted in accordance with the applicable provisions of Arizona law relating to the foreclosure of realty mortgages. Declarant may through its duly authorized agents have and exercise the power to bid on the Parcel at the foreclosure sale and to acquire, hold, lease, mortgage and convey such Parcel. Any title to a Parcel acquired pursuant to such foreclosure sale shall continue to be subject to this Declaration.

ARTICLE 7. MAINTENANCE AND MANAGEMENT SUPPORT.

Section 7.1 Common Areas and Other Landscaped Areas. Declarant shall be responsible for the insurance, maintenance, management, operation, reconstruction, restoration, repair and replacement of (i) all Improvements comprising the Common Areas, including, but not limited to, walkways (including, without limitation, the Pedestrian Bridge), streets, Parking Areas (other than the Parking Garages), drives, loading docks and surface lighting fixtures; (ii) all fountains, hardscape, entrance and exit ramps now or hereafter constructed within any portion of the Common Areas of the Project; (iii) all landscaping and irrigation systems within any portion of the Common Areas of the Project, which landscaping shall be maintained by Declarant at a consistent standard appropriate for an institutional-investor grade, mixed use planned development and at least to the standards required by the City of Phoenix, if any; (iv) all landscaping and irrigation systems within those areas located outside the Project but adjacent thereto which the City of Phoenix requires Declarant to maintain; (v) all Common Elements; and (vi) the Park as required by the Park Declaration. Declarant shall use a reasonably high standard of care in providing for the operation, insurance, repair, replacement, reconstruction, restoration, management and maintenance of the above described Common Areas, landscaping, and the other areas described above so that the Project will reflect a high pride of ownership and will be maintained in a good, clean condition and repair, comparable to the standards of similar projects in the greater metropolitan Phoenix area, and at a level intended to be generally acceptable to institutional investors. In this regard, Declarant may, in its discretion:

(a) Install, reconstruct, repair, replace, restore or refinish any Improvements constituting Common Areas provided, however, Declarant shall not reconstruct, install, maintain, replace, restore, refinish or repair the interior or exterior of any Vertical Improvements located in the Project (said obligations being the responsibility of the respective Owner of such Vertical Improvements); and provided further, however, Declarant and each Owner may only install Improvements upon the Common Areas to the extent such Improvements are reflected on the Site Plan or are consistent with the purposes for which the Common Areas are devoted;

(b) Place and maintain upon any Common Area on such Owner's Parcel such Signs as Declarant may deem appropriate for the proper identification, use and regulation of the Common Areas, including monument and directional signage with occupant names;

(c) Hire at market rates or at rates and other terms and conditions deemed acceptable by Declarant using its reasonable business judgment one (1) or more Persons to serve as managers or operators to manage or operate all or portions of the Common Areas on behalf of Declarant;

(d) Replace any injured or diseased trees and other vegetation within any area in which Declarant is required by this Declaration or by the City of Phoenix to maintain landscaping;

(e) Operate, maintain, repair, reconstruct, refinish and replace all fountains and other water features constructed within any portion of the Common Areas of the Project, including the Park;

(f) Engage affiliates of Declarant as vendors or contractors, but only at rates not exceeding the then prevailing market rates for comparable goods or services;

(g) Do all such other and further acts that Declarant reasonably deems necessary to preserve and protect the Common Areas and any other properties in the immediate vicinity of the Project required by the City to be maintained by Declarant and the beauty thereof, in accordance with the standards and general purposes specified in this Declaration; and

(h) Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Project may be taken by Declarant and allocated among the Owners. Although the various loading docks are intended to be Common Areas, by notice to the Owners of the Parcels served by a particular loading dock, Declarant may require such Owner to repair and maintain particular loading docks at its sole expense, or to pay as a surcharge in addition to the Annual Assessments to offset costs incurred by Declarant, directly attributable to such Owner's use. Examples of such surcharge may include additional costs for the loading dock, including "wet" trash compactor/receptacles, incurred due to the use by restaurants located within a Parcel.

Section 7.2 Vertical Improvements and Appurtenant Amenities in the Project.

Unless otherwise designated by Declarant in writing and approved by the applicable Owner, each Owner shall be responsible for maintaining the interior and exterior of all Vertical Improvements and Appurtenant Amenities within the Parcel owned by such Owner, including any Common Elements incorporated into such Vertical Improvements or Appurtenant Amenities; provided, however, that in the event that any Vertical Improvement is comprised of more than one (1) Parcel and owned by more than one (1) Owner, then in that event the maintenance and repair of the structural portions of the applicable Vertical Improvements shall be maintained pursuant to a separate agreement between the Owners of such Parcels. All Vertical Improvements and Appurtenant Amenities within the Project shall at all times be maintained in good, clean condition and repair, comparable to the standards of similar projects in the greater metropolitan Phoenix area, and all exterior surfaces shall at all times be maintained in a clean condition. No Owner shall permit fluids or other substances to leak or to be discharged from its Parcel, Vertical Improvements or Appurtenant Amenities to another Parcel. Notwithstanding the provision of Section 7.1, the responsibility for maintaining and repairing any kiosk or similar structure which is placed in the Common Area or any Parcel for the benefit of a particular Owner or Tenant shall be vested solely with such Owner or Tenant, and not with Declarant or with the Owner of the Common Area (if different). Any Appurtenant Amenity which directly serves or benefits more than one Parcel shall be operated, maintained, repaired, replaced and insured by Declarant, or at Declarant's election, by the Owner of the Parcel on which the Appurtenant Amenity is located, but the actual costs thereof shall be reasonably allocated to, and reimbursed by, the Owners of the served or benefited Parcels. Such allocation shall be determined by Declarant, and shall be based either on the respective use (if such use is susceptible to objective measurement by meter, equipment or device) or on the respective Gross Building Areas of the Parcels in question, with

appropriate adjustments for amounts of time, if less than 24 hours a day, 7 days a week. For example, in the event a facility is located on one Parcel which benefits more than one Parcel, then the actual costs thereof shall be allocated by Declarant and assessed by the Owner thereof, among (and will be promptly paid by the Owners of) all Parcels served or benefited by said facility. In absence of any method of measuring specific use or consumption, the expenses and costs (including costs to repair, maintain or replace) shall be reasonably and equitable determined by Declarant. If Declarant, or the responsible Owner, fails or neglects to maintain or make the repairs to the Appurtenant Amenity that Declarant, or the responsible Owner, is required to maintain or make in accordance with the provisions of this Declaration, which failure or neglect continues for thirty (30) days after written notice of such failure or neglect is deposited by an Owner in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to Declarant, or the responsible Owner, at its then current address specifying the necessity for such maintenance or repairs, such notifying Owner may, but shall not be obligated to, make such maintenance or repairs to the Common Areas and the Owners otherwise obligated shall reimburse such Owner for the amount of the reasonable cost thereof incurred by such Owner (plus an administrative charge of 15% of such cost, to compensate such Owner for its efforts), shall bear interest at the Default Rate, and shall be due upon receipt by the Owners otherwise obligated of a bill from such notifying Owner, together with copies of applicable invoices. Facilities such as a cooling facility, with shared benefits and use (as reasonably determined by Declarant), need not be expressly designated as an Appurtenant Amenity for the allocation and imposition of actual costs as provided herein. All obligations of reimbursement and assessment provided above may be enforced by Declarant in the same manner as enforcement of the payment and collection of Assessments as provided herein. The obligations described in this Declaration of an Owner to contribute funds or reimburse another Owner for costs incurred, including, without limitation, those set forth in this Section 7.2, are enforceable by such other Owner in the same manner as allowed in this Declaration for Declarant to enforce the payment and collection of assessments.

Section 7.3 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for replacement, reconstruction, refinishing, maintenance, insuring, or repair of Common Areas, Common Elements, or any other areas which Declarant is required to maintain pursuant to this Declaration is caused through the disproportionate use by, or the willful or negligent act or omission of, any Owner, or such Owner's Permittees or Tenants, or if a portion of the Common Area or Common Elements of a Parcel are extraordinary when compared with the Common Areas or Common Elements which exist generally at the Project, and therefore require extraordinary costs and expenses, Declarant may levy a Maintenance Assessment in the amount of (i) the cost of such replacement, reconstruction, refinishing, maintenance or repair, or (ii) the extraordinary costs and expenses against such Owner's Parcel, plus an administrative charge of 15% of such costs, to compensate Declarant for its efforts. Examples of the foregoing including costs incurred in regard to grease trap/interceptors, which capture substances generated primarily from restaurant operations or particular Parcels. The Maintenance Assessment shall be due upon demand, shall bear interest at the Default Rate, and shall be secured by the Assessment Lien.

Section 7.4 Improper Maintenance. If (a) any portion of any Parcel is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Parcels or other areas of the Project which are

substantially affected thereby or related thereto; (b) any portion of a Parcel is being used in a manner which violates this Declaration; (c) the Owner of any Parcel or portion thereof is failing to perform any of its maintenance or repair obligations under this Declaration (including maintaining such Parcel to the standard required by this Declaration), Declarant may make a finding to such effect specifying the particular condition or conditions which exist (a "Maintenance Violation") and may give notice of the Maintenance Violation to the offending Owner that unless corrective action is completed within thirty (30) days after the date written notice of such Maintenance Violation is deposited by Declarant in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to such Owner at the address for that Owner then maintained by Declarant (unless such corrective action is of a nature that reasonably requires more than thirty (30) days to complete, in which event unless such offending Owner immediately commences such corrective action and diligently and continuously prosecutes such corrective action to completion without interruption for a period not exceeding ninety (90) days), Declarant may cause appropriate corrective action to be taken at the offending Owner's cost. In this regard, if at the expiration of the requisite period of time appropriate corrective action has not been taken and/or completed, Declarant shall be authorized and empowered to cause such corrective action to be taken and to cause its agents or contractors to enter upon the Owner's Parcel in order to take any such corrective action and to assess a Maintenance Assessment in the amount of the reasonable cost thereof (plus an administrative charge of 15% of such cost, to compensate Declarant for its efforts) against such Owner's Parcel, which Maintenance Assessment shall be due upon demand, shall bear interest at the Default Rate and shall be secured by the Assessment Lien.

Section 7.5 Maintenance Unofficial Document Undeveloped Parcels. At the election of Declarant, the Owner of each Undeveloped Parcel, and not Declarant, shall be obligated to perform and satisfy the obligations of Declarant under Section 7.1, as to the entire Undeveloped Parcel, including the Common Areas thereon. In such case, the Owner of the Undeveloped Parcel shall be exempt from Annual Assessments, so long as Declarant's election is in effect.

ARTICLE 8. RIGHTS AND POWERS OF DECLARANT.

Section 8.1 Budget and Reserves. Declarant shall prepare an annual budget which shall determine the funds reasonably needed by Declarant during each year to maintain the Common Areas and to otherwise fund the expenses of Declarant contemplated by this Declaration. The annual budget shall contain estimates for the costs and expenses estimated to be incurred plus reasonable reserves for contingencies and repair or replacement of capital improvements, and the resulting estimates of the Annual Assessments and Special Assessments to be levied against each Parcel. On or before September 15 of each calendar year, Declarant shall deposit a draft of the proposed budget for the upcoming calendar year in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to each Owner at its then current address. Each Owner may, if it so elects, provide to Declarant comments to the proposed budget within twenty (20) days of its receipt. Declarant shall give fair consideration to such comments, and thereafter may (but shall not be obligated to), in its sole and absolute discretion, revise the budget to reflect any written comments received by Declarant from any Owner. The budget shall be prepared based upon prudent commercial real estate management practices, for comparable projects in the greater Phoenix metropolitan area.

Declarant may engage an experienced management company to perform Declarant's obligations required or allowed under this Declaration.

Section 8.2 Insurance. Declarant shall maintain such commercial general liability insurance as it is required to maintain pursuant to Section 9.15, together with contractual liability endorsements. Declarant shall also maintain commercial general liability insurance, with recognition of each Owner and a commercially reasonable number of Persons reasonably identified by an Owner in writing, as additional insureds therein, against liability incurred as a result of death or injury to persons or damage to property on Common Areas identified in the Site Plan, and otherwise consistent with the Insurance Standards. Declarant shall also (a) maintain property insurance against damage to property on those Common Areas (other than the Parking Garages, which insurance shall be maintained by Declarant or the applicable Parking Garage Lessee in accordance with the provisions of Section 10.7) in an amount determined by Declarant, but not less than replacement cost, with reasonable deductible amounts (which deductible amounts will constitute maintenance costs), (b) maintain worker's compensation and employer's liability insurance in connection with its employees, and (c) cause all officers, employees and managers, having fiscal responsibilities to be bonded. Declarant and each Owner shall cooperate with each other to implement a risk management strategy in the procurement of property damage and liability insurance to avoid unnecessary or duplicative coverage, and to achieve mutual cost savings, however, neither Declarant nor any Owner shall be required to accept a level or type of insurance coverage which is less than such party requires.

Section 8.3 Common Area Rules. Declarant shall have the right to adopt and promulgate commercially reasonable (taking Unofficial Document account that the Project is intended to be a mixed use project which may include office, retail, retail office, residential, hotel, restaurant and theater uses), uniform and non-discriminatory rules and regulations consistent with this Declaration, activities and duties, including, but not limited to, regulating the use of the Common Areas, establishing speed restrictions, and regulating parking, signage and signals within the Parking Areas (the "Common Area Rules"). The Common Area Rules shall not prohibit access to the Parking Garages or any Offsite Lot (to the extent applicable) except to the extent necessary to preserve the specific parking rights granted herein.

Section 8.4 Rights of Enforcement. Declarant shall have the right, but not the obligation, to enforce all covenants, Assessments, conditions, liens or easements provided for in this Declaration and in the Common Area Rules adopted by Declarant. Any Owner shall be entitled by legal action to enforce this Declaration or the Common Area Rules upon failure of Declarant to do so within thirty (30) days (or such shorter, reasonable time period as may be appropriate to prevent damage or injury, or in the event of an emergency) after written request for enforcement is deposited by such Owner in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to Declarant at its then current address. Declarant or any such Owner shall be entitled to recover reasonable attorneys' fees and any other costs incurred in connection with such enforcement.

Section 8.5 Easements Reserved. Certain easements and rights were granted under that Special Warranty Deed, Declaration, Grant Reservation of Easements and Covenants between Woodbury Lakes, L.L.C. as Grantor, and the City of Phoenix, as grantee, dated October 24, 2007, and Recorded on November 21, 2007 as Instrument No. 2007-1242624 (collectively

the “Easements”). The Easements were granted to enhance the development of the Project. No Owner may amend any of the Easements without the consent of the Declarant, including, without limitation, any Owner which subsequently obtains fee title to any portion of the Project from the City or otherwise. The City, by the execution of this Declaration agrees that no Owner may amend any of the Easements without consent of the Declarant. The Easements granted in the Deed and the Easements granted herein are to be interpreted so as to give the maximum development benefits for the Project in the event of any express conflict (if any) between such grants and Easements.

Section 8.6 Park. All rights under the Park Declaration, including the right to amend the Park Declaration, are reserved solely to Declarant. Any cost incurred in the operation of the Park shall be a Common Area maintenance expense under this agreement and billed and paid by the Owners in accordance with this Declaration. Declarant further reserves the exclusive right to deal with the Board (as defined in the Park Declaration) and the Park Rules. Further, Declarant reserves the right to exclusively control the Private Events (as defined in the Park Declaration) and all special events as further defined therein.

Section 8.7 Block 77 Garage Declaration. All rights under the Block 77 Garage Declaration, including the right to amend the Block 77 Garage Declaration, are reserved solely to Declarant.

ARTICLE 9. EASEMENTS.

Section 9.1 Declaration of Easements. Declarant hereby establishes and grants to, and each other Person who becomes an Owner (immediately upon becoming such an Owner and without further act) shall be deemed to have established and granted to, all other Owners and all Tenants and Permittees of the Project, irrevocable, non-exclusive easements over, across, upon and beneath the Project for the purposes set forth below in this ARTICLE 9. Nothing in this Section 9.1 or elsewhere in this Declaration shall be deemed to be or constitute a gift or dedication of any portion of the Project to the general public or for any public use or purpose whatsoever.

Section 9.2 Parking Garages. The Parking Garages shall consist of those subsurface portions of the Project identified as such on the Site Plan as the same may be amended from time to time, and shall include any contiguous portions of the adjacent rights-of-way for which the City of Phoenix from time to time granted use or possessory rights to the applicable Parking Garage Lessee. Each Parking Garage Lessee shall cause the Block 22 Parking Garage and/or the Block 77 Parking Garage, as applicable (including the Common Elements thereon but excluding any Appurtenant Amenity [which shall be maintained pursuant to Section 1.3 or Section 7.2]) and excluding any Subsurface Improvements (which shall be maintained as provided below) to be maintained at all times in good and clean condition and repair to the standards of similar facilities in the greater metropolitan Phoenix area. The Owners shall reimburse the applicable Parking Garage Lessee directly for the costs associated with the operation, maintenance and repair of the Block 22 Parking Garage and/or the Block 77 Parking Garage, as the case may be, as provided in Section 10.6. Each Parking Garage Lessee is granted those easements necessary for the location, construction, maintenance, management, repair, replacement, reconstruction, insurance and operation of the Block 22 Parking Garage and the

Block 77 Parking Garage and all temporary and permanent entrance and exit ramps related thereto; provided, however, there is hereby reserved for the benefit of the Owners of the Parcels existing above or adjacent to each of Block 22 Parking Garage and the Block 77 Parking Garage an easement for support and the right within the Block 22 Parking Garage and/or the Block 77 Parking Garage to construct (including related excavation, backfilling, underpinning and dowling), locate, maintain and expand Subsurface Improvements integral to the Vertical Improvements located or to be located on such Parcels. The Subsurface Improvements which support both Vertical Improvements and the Block 22 Parking Garage and/or the Block 77 Parking Garage, as the case may be, shall be repaired, maintained and replaced by the applicable Parking Garage Lessee, however, the cost of such repairs, maintenance and replacements shall be shared equally by the applicable Parking Garage Lessee and the Owner of such supported Vertical Improvements. The existence and use of the rights reserved to the Owners with respect to the Subsurface Improvements shall not preclude or unduly interfere with the use or operation of, or ingress to and egress from, the Improvements constructed on or within any Parcel or within the Parking Garages easement area, but relocation or removal of previously installed Subsurface Improvements shall not be required. Declarant hereby reserves the right to grant easements to the Parking Garage Lessees for air vents, escalators, elevators, stairways and transformers to be constructed in connection with the Block 22 Parking Garage and/or the Block 77 Parking Garage, as applicable, so long as such easements do not preclude or unduly interfere with the use or operation of, or ingress to and egress from, the Vertical Improvements constructed on or within any Parcel or any Subsurface Improvements.

Section 9.3 Construction and Other Easements. An easement is hereby created for the purposes described in this Se^{Unofficial Document}, including, without limitation, the location of construction equipment and materials, erection of protective barricades, use of airspace by overhead cranes during construction, scaffolding and fencing and access for construction vehicles and personnel in, on, and over the following portions of the Project:

(a) The Project shall be subject to an easement for the benefit of (i) Declarant and the Owners and Tenants of each Parcel and their respective employees, agents and contractors to construct Vertical Improvements, Subsurface Improvements and Appurtenant Amenities on or within such Parcel in accordance with the Site Plan, and (ii) Declarant and the Owners and Tenants of each Parcel and their respective employees, agents and contractors to construct the plazas, hardscape and other Improvements depicted on the Site Plan; provided, however, that such easement shall expire upon completion of construction of the applicable Vertical Improvements, Subsurface Improvements and Appurtenant Amenities on or within the subject Parcel and the plazas, hardscape and other Improvements; and provided, further, that the existence and use of such easement shall not preclude or unduly interfere with the use or operation of, or ingress or egress from, or other rights relating to, any Vertical Improvements constructed on the Project.

(b) If and to the extent any Annexable Property is annexed to the Project pursuant to the provisions of Section 14.18, the Project shall be subject to an easement for the benefit of the Owner of any such Annexable Property to construct an Offsite Lot or other Improvements in accordance with the Site Plan; provided, however, that such easement shall expire upon completion of construction of the Offsite Lot or

other Improvements; and provided, further, that the existence and use of such easement shall not preclude or unduly interfere with the use or operation of or ingress to or egress from, or other rights relating to the Vertical Improvements or Subsurface Improvements constructed on or within or serving any Parcel. Upon completion of construction of the Offsite Lot or other Improvements, the Owner(s) who constructed the Offsite Lot upon the Annexable Property shall immediately assign to the Parking Garage Lessee of such Offsite Lot, if any, all assignable warranties and guaranties relating to the Offsite Lot. In addition, an easement is hereby created for the benefit of the Parking Garage Lessee of such Offsite Lot for the location, construction, maintenance, management, repair, replacement, reconstruction, insurance and operation of the Offsite Lot located upon the Annexable Property.

(c) The Undeveloped Parcels shall be subject to an easement for the benefit of Declarant and the Owner of each Parcel and their respective employees, agents and contractors to construct all surface Parking Areas and Appurtenant Amenities as may be required from time to time by Declarant and all related Improvements required by Declarant in accordance with the Site Plan; provided, however, that this easement shall expire as to all or a portion of each Undeveloped Parcel upon commencement of construction of any Vertical Improvements on or within all or a portion of such Parcel, as shown on the Site Plan; and provided, further, however, that the existence and use of such easement shall not preclude or unduly interfere with the use or operation of, or ingress to and egress from, or other rights relating to, the Vertical Improvements, Appurtenant Amenities or Subsurface Improvements constructed on or within or serving any Parcel.

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(d) The Parcels upon or within which Vertical Improvements have been completed shall be subject to an easement for the benefit of Declarant and the Owners of contiguous Undeveloped Parcels and their respective employees, agents and contractors to construct any plaza area and Appurtenant Amenities adjacent to the Vertical Improvements to be constructed on or within the contiguous Undeveloped Parcel, which plaza area is shown on the Site Plan, and to construct and locate caissons and other support structures necessary for the structural support of the Vertical Improvements and Appurtenant Amenities to be constructed on or within the contiguous Undeveloped Parcel; provided, however, that this easement shall expire upon completion of construction of the Vertical Improvements and Appurtenant Amenities on or within the contiguous Undeveloped Parcel; and provided further, however, that the existence and use of such easement shall not preclude or unduly interfere with the use or operation of, or ingress to and egress from, or other rights relating to, the Vertical Improvements, Appurtenant Amenities or Subsurface Improvements constructed on or within or serving any Parcel.

(e) The Project shall be subject to an easement for the benefit of Declarant and the Owner and Tenants of each Parcel and their respective employees, agents and contractors to construct all entrances, drop off areas, sidewalks and landscaping adjacent to: each Parcel; the contiguous public rights-of-way; and any private roads, drive lanes, or service drives and courts within the Project all as depicted on the Site Plan; provided, however, that this easement shall expire upon completion of construction of such entrances, drop off areas, sidewalks and landscaping; and provided

further, however, that the existence and use of such easement shall not preclude or unduly interfere with the use or operation of, or ingress to and egress from, or other rights relating to, the Vertical Improvements, Appurtenant Amenities or Subsurface Improvements constructed on or within or serving any Parcel.

(f) The Project shall be subject to an easement for the benefit of Declarant and the Owners and Tenants of each Parcel and their respective employees, agents and contractors to enter onto adjacent Parcels within site construction areas or staging areas identified by Declarant to: (i) construct, reconstruct, repair, replace, maintain or demolish Improvements on the Benefited Parcel; (ii) with the written consent of Declarant, to make minor modifications to existing Improvements, including conduit and Appurtenant Amenities (other than Vertical Improvements) on or within the Burdened Parcel to accommodate future construction activities or future Improvements contemplated by or permitted under this Declaration; (iii) to construct Improvements in accordance with the Site Plan on or within the Benefited Parcel; and (iv) to construct drainage facilities in accordance with the Master Drainage Plan; provided, however, that the existence and use of this easement shall not preclude or unduly interfere with the use or operation of, or ingress to and egress from, or other rights relating to, the Vertical Improvements, Appurtenant Amenities or Subsurface Improvements constructed on or within or serving any Burdened Parcel.

(g) The Project shall be subject to an easement for the benefit of Declarant and the Owner and Tenants of a Parcel and their respective employees, agents and contractors to restore, repair, replace, rebuild, alter and/or demolish Improvements on or within such Owner's Parcel following the occurrence of damage to or destruction of such Improvements as a result of fire or other casualty, such restoration, repair, replacement, rebuilding, alteration or demolition to be performed in accordance with the Site Plan (to the extent applicable) and the requirements of ARTICLE 12 below; provided, however, that such easement shall expire upon completion of such restoration, rebuilding, repair, alteration or demolition of such Improvements; and provided further, however, that the existence and use of such easement shall not preclude or unduly interfere with the use or operation of, ingress or egress from, or other rights relating to any Vertical Improvements, Appurtenant Amenities or Subsurface Improvements constructed on the Project.

(h) The Parking Garages shall each be subject to an easement for the benefit of Declarant and the Owner and Tenants of each Parcel and their respective employees, agents and contractors on or within which there is situate Vertical Improvements or Appurtenant Amenities located above all or any portion of the applicable Parking Garage, for the purposes of re-constructing, re-developing, maintaining, repairing, servicing and operating such Vertical Improvements, Appurtenant Amenities and the Subsurface improvements; provided that the existence and use of such easement shall not preclude or unduly interfere with the use or operation of or ingress or egress from the Parking Garages, as the case may be; and provided further, that the Owner, Tenants and Permittees of each Parcel on or within which there is situate Vertical Improvements above all or any portion of the Parking Garages shall coordinate with the Parking Garage Lessee(s) any maintenance, repair, servicing and operation of the

Subsurface Improvements so as to not preclude or unduly interfere with the use or operation of, ingress to, egress from, or other rights relating to, the applicable Parking Garage.

Notwithstanding any expiration of the easements granted in this Section 9.3, in the event of any reconstruction of Improvements on or within a Parcel benefited by the easements granted in this Section 9.3 (whether such reconstruction is a result of casualty, demolition or remodeling of existing Improvements, Appurtenant Amenities or Subsurface Improvements), all of the easements granted in this Section 9.3 shall be reinstated and shall be in full force and effect during the course of such construction or reconstruction.

Section 9.4 Excavation Easement For The Benefit of the Owners of the Project. A non-exclusive easement is hereby created in, on, over, and under the Project for the benefit of Declarant and the Owners of each Parcel and their respective employees, agents and contractors for the purpose of excavating, backfilling, underpinning, dowing, constructing, locating and maintaining all support systems, shorings, footings, bearing walls, caissons and other foundation or support structures necessary for the foundation and structural support of the Vertical Improvements and Appurtenant Amenities to be constructed on, under, within or adjacent to such Parcels; provided, however, that the existence and use of such easement shall not preclude or unduly interfere with the use or operation of, or ingress to and egress from, or other rights relating to, the Vertical Improvements, Appurtenant Amenities or Subsurface Improvements constructed on or within or serving any Parcel, nor interfere with the structural integrity of any Vertical Improvements, Appurtenant Amenities or Subsurface Improvements constructed on or within or serving any Parcel. Unofficial Document

Section 9.5 Vehicular Ingress and Egress Easement. A non-exclusive easement is hereby created on and over all roadways, driveways and entrance and exit ramps for Parking Areas at any time located within the Project for vehicular ingress and egress for the benefit of Declarant and all Owners, Tenants and Permittees, however the applicable Parking Garage Lessee and Declarant, acting in concert, shall have the right to impose reasonable rules and regulations governing the use of the Block 22 Parking Garage and/or the Block 77 Parking Garage. Until construction of all Vertical Improvements shown on the Site Plan is completed, all such roadways and driveways may be relocated and/or the use thereof reasonably restricted by Declarant from time to time and at any time in connection with the construction, reconstruction, replacement, maintenance or repairs thereof and/or adjacent Improvements; provided, however, that the Owners, Tenants and Permittees of all Parcels shall always have reasonable access to the Parking Garages and to their Parcels. Further, any valet ramp to the Block 22 Parking Garage serving the Hotel Building as shown on the Site Plan shall not be closed or relocated after the Hotel opens for business without the consent of the Owner of the Hotel Building.

Section 9.6 Vehicular Parking Easement. A non-exclusive easement is hereby created on and over all Parking Areas at any time located within the Project for vehicular parking for the benefit of Declarant and all Owners, Tenants and Permittees, subject, however, to the rights of the Parking Garage Lessee(s) to control (including the right to impose reasonable rules and regulations governing the use of), the Parking Garages (including the obligation to pay the applicable charges for such parking and use, as set and imposed by the Parking Garage Lessee), subject further to the designation of Reserved Spaces and Unreserved Spaces for the

exclusive use of specific Owners, Tenants and Permittees as described in ARTICLE 10 below, subject further to the provisions of the Common Area Rules of Declarant, subject further to signage requirements imposed by Declarant from time to time (including hours of use), and subject further to the right of an Owner of a Parcel on the street level of which there may, from time to time, be located Parking Areas to construct Improvements within the Building Area located on or within such Parcel. The improvement or use of any portion of the Building Area for Parking Areas shall not be construed as a permanent inclusion of such portion within the Common Area and such portions may, at any time thereafter, subject to the provisions of this Declaration (including, without limitation, the parking rights afforded to the Owners under this Declaration), be improved with Improvements and appurtenances as permitted by the Site Plan.

Section 9.7 Pedestrian Easement. A non-exclusive easement is hereby created on and over all sidewalks, plaza areas, walkways (including, without limitation, the Pedestrian Bridge), escalators, stairways, elevators and any other means intended or designed for pedestrian access at any time located within the Common Areas of the Project including, without limitation, all plaza areas shown on the Site Plan, for pedestrian ingress and egress for the benefit of all Owners, Tenants and Permittees, subject to the Common Area Rules and the Park Declaration.

Section 9.8 Easement for Encroachments. A non-exclusive easement is hereby created in, over and under the Project for the benefit of Declarant and the Owners of any Parcel and their respective employees, agents and contractors for the limited purpose of constructing, operating, repairing, and maintaining those Improvements to be constructed on or within or serving the subject Parcel which Unofficial Document on the Site Plan, encroach onto the other Parcels; provided, however, the Owners of each Benefited Parcel shall exercise all reasonable efforts in good faith to minimize the scope and extent of such encroachment, and provided, further, that the existence and use of such easement shall not preclude or unduly interfere with the development, construction, use or operation of, or ingress to and egress from, or other rights relating to the Parking Garage(s) and/or the Vertical Improvements or Subsurface Improvements constructed on or within or serving the Burdened Parcels, nor interfere with the structural integrity of the Parking Garages and/or any Vertical Improvements or Subsurface Improvements constructed on or within or serving the Burdened Parcels. In addition, should any Vertical Improvements or Subsurface Improvements constructed within the Project encroach on, over or within any adjacent Parcel and the site encroachment does not exceed twelve (12) inches, the encroaching Owner shall not be liable for any damages and the Owner of the adjacent Parcel shall be deemed to have granted a non-exclusive easement effective as of the recording of this Declaration for such encroachment for so long as such encroachment shall exist, and shall execute such instruments as may reasonably be required by the encroaching party, its assignees, title insurer or Lender confirming such easement.

Section 9.9 Utility Easements. There is hereby created a blanket non-exclusive easement upon, across, over and under each Parcel for ingress to, egress from and the installation, replacing, repairing and maintaining of, all utility and service lines and systems, including, but not limited to water, sewers, gas, telephones, electricity, television cable, communication and security lines and systems, etc., as such utilities and services are installed in connection with the development of each Parcel and the construction of the Vertical Improvements or Subsurface Improvements thereon, subject, however, to any provider and its

services being reasonably approved by Declarant. Pursuant to this easement, a providing utility, service company or Declarant may install and maintain facilities and equipment on or within the Parcel (or in the land below the Parcel if the Parcel consists of surface rights) and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of Vertical Improvements on or within the Parcels for a stated purpose. The use and purpose of the easement may not be changed or be delegated without approval by Declarant. Notwithstanding anything to the contrary contained in this Declaration, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on or within any Parcel except as approved by the Owner of the Burdened Parcel and Declarant; provided, however, that Declarant and any applicable Owner shall be required to consent to or grant any easements for utility lines or service including reasonable access to fire pumps and primary telephone, electrical, gas and cable television service which may be reasonably required by the City of Phoenix or any regulated utility company as a condition to its provision of utility service to Undeveloped Parcels within the Project so long as such easements do not unduly interfere with any Vertical Improvements or Subsurface Improvements then constructed or shown on the Site Plan on or within or serving the Burdened Parcel, and so long as the City of Phoenix or the regulated utility company or the Owner of the Benefited Parcel agrees to repair any damage to the Burdened Parcel resulting from the installation of such utility lines or service.

Section 9.10 Surface Drainage Easement. There is hereby established for the benefit of each Parcel and the Common Areas non-exclusive surface drainage easements over and across the Project to permit the drainage of water from each Parcel or the Common Areas across the Project to the streets or drainage system adjacent to or within the Project in accordance with the Master Drainage Plan. No improvement^{Unofficial Document} grading or other alteration of the surface or ground level of any Parcel or the Common Areas shall be undertaken which would have the effect of impeding the proper surface drainage of the Project in accordance with the Master Drainage Plan, to the detriment of any Parcel or the Common Area.

Section 9.11 Landscaping and Maintenance Easement. A non-exclusive easement is hereby created on and over the Common Areas of the Project for the benefit of Declarant to maintain, repair and replace landscaping in accordance with landscaping plans approved by the City of Phoenix and to maintain and repair any and all portions of the Project required by Section 7.1 of this Declaration to be maintained and repaired by Declarant.

Section 9.12 Permitted Common Area Uses. In addition to the easements described in the preceding Sections of this ARTICLE 9, Declarant hereby establishes and grants to, and each other Person who becomes an Owner shall, immediately upon becoming such an Owner and without further act, be deemed to have established and granted to all other Owners and Tenants and Permittees of the Project, irrevocable, non-exclusive easements over, across, upon and beneath the Common Areas held by such Owner for the purposes set forth in this Section 9.12. Nothing in this Section 9.12 or elsewhere in this Declaration shall be deemed to be or constitute a gift or dedication of any portion of the Common Areas to the general public or for any public use or purpose whatsoever. Provided that such use does not damage existing Improvements nor unreasonably interfere with the normal use of the Common Area (and, should such damage occur, it shall be repaired by and at the expense of the Owner causing such damage (or the Owner whose Tenant caused such damage) within ten (10) days from the date of its occurrence), nor unreasonably interfere with business being conducted in the remainder of the

Project or with pedestrian or vehicular traffic flow within the Project, the appropriate portions of the Common Area may be used for the following purposes:

(a) The ingress and egress of any Permittees and their vehicles over walkways (including, without limitation, the Pedestrian Bridge) and driveways, as the case may be, to and from any portion of the Common Area and the public streets adjacent to the Common Area.

(b) After prior written consent of Declarant to the initial installation thereof, the installation, operation, maintenance, repair, replacement, relocation and removal of sanitary sewers, storm drains, water and gas mains, electric power lines and conduits, telephone lines and conduits, television cables, vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls and related utility and service facilities serving any part of the Project, all of which (except hydrants and transformers and other installations as may be requested by the utility company) shall be even with or below the surface of the Common Area. All Owners shall reasonably cooperate in the granting of appropriate and proper non-exclusive easements to each other or to utility companies and governmental authorities for the installation, operation, maintenance, repair, replacement, relocation and removal of the facilities set forth above. The initial location of the facilities set forth above shall be subject to the approval of Declarant and shall be subject to the approval of the Owner of the Common Area in question in accordance with the provisions of Section 9.9. In addition, if the location of the facilities set forth above shall be within the Block 22 Parking Garage or the Block 77 Parking Garage, the Parking Garage Lessee thereof (and any Unofficial Document Parcel whose structural support may be adversely affected) shall have the right to approve the location of such facilities, which approval shall not be unreasonably withheld, delayed or conditioned. Each Owner shall have the right to enter upon any portion of the Common Area as may be necessary or appropriate in order to accomplish the installation, operation, maintenance, repair, replacement, relocation and removal of the facilities referred to above; provided, however, such Owner does not unreasonably interfere with the use of the Common Area by Tenants or Permittees and that no relocation or removal of any such facilities shall be made without the prior written consent of Declarant and the Owner of the Common Area in question.

(c) Pedestrian and vehicular movement by Tenants and Permittees over walkways (including, without limitation, the Pedestrian Bridge) and driveways, as the case may be, to and from adjacent streets and between businesses and occupants located or to be located within the Project.

(d) The ingress and egress of delivery and service trucks and vehicles to and from the Parcels and the public streets adjacent to the Project, for the delivery of goods, wares, merchandise and the rendering of services to all Owners and/or Tenants. Each Owner and/or Tenant shall use commercially reasonable efforts to have deliveries made in a manner that causes the least amount of interference with the use of adjacent portions of the Common Area.

(e) Trash, refuse and garbage container storage areas if indicated as Common Area on the Site Plan and other incidental and related facilities.

(f) Subject to governmental restrictions and with the prior written consent of Declarant, the sale of merchandise or rendering of services by an Owner or a Tenant from kiosks and patios located within the Common Areas so long as such sales or services (i) do not impair pedestrian access along sidewalks; (ii) do not impede vehicular or pedestrian traffic flow within the Project; and (iii) do not encroach upon the sidewalks directly in front of the premises of any other Owner or Tenant of the Project. Any Person conducting such a sale or rendering services shall (A) clean and maintain that portion of the Common Area used by such Person; (B) repair any damage to that portion of the Common Area used by such Person caused by such use; (C) not conduct any auction or going out of business sale; and (D) cause payments for merchandise or services to be made from inside such Person's premises.

(g) Subject to the Park Declaration, use of the Park and the CityScope Open Space.

(h) The construction, maintenance, repair, replacement and reconstruction of sign pylons, monument signs and building signage located on any Vertical Improvement up to a height not exceeding forty (40) feet from the adjacent sidewalk or ground floor elevation of the Building (except as otherwise approved in writing by Declarant), or other structures (with appropriate underground electrical connections). The right to place signage on the exterior of any Vertical Improvements is reserved to the Owner of such Vertical Improvements from time to time, provided that all such signage must comply with the terms of any comprehensive sign plan for the Project approved by the City from time to time (the "Comprehensive Sign Plan"), and further provided that the prior written consent of Declarant shall be required with respect to any sign to be located on the exterior of a Vertical Improvement at a height of greater than forty (40) feet above street level. The costs of constructing, maintaining, repairing, replacing or reconstructing such sign structures which serve the Project shall be paid for pro rata by the Persons whose name or logo appear (at such Person's request) on such sign pylons in the ratio of their square footage usage of such sign structures. The location of all sign structures shall be subject to the prior written approval of Declarant, and comply with the Comprehensive Sign Plan.

(i) Those portions of the Common Area adjacent to a Building Area may be used by an Owner or by a Tenant occupying any of the Building Area for:

(1) The installation, removal, repair, replacement and maintenance of building canopies, together with canopy support framing and/or columns upon and over such sidewalks and other Common Area;

(2) Pedestrian sidewalks and flower boxes, planting containers and other decorative and landscaping features on the Common Area;

(3) The installation, removal, replacement, repair, use and maintenance of fire hose connections, downspouts, hose bibs, standpipes, yard or flood lights, subsurface building foundations and such signs or shadow boxes of occupants of the Vertical Improvements as may be attached to or form an integral part of a Vertical Improvements at any time situated upon any portion of the Building Area;

(4) The construction and operation of loading ramps and docks on or within a Parcel in the locations identified on the Site Plan for the exclusive use of the Owner or Tenant of such Parcel or for the shared use of specific Owners and Tenants;

(5) The construction and operation of trash enclosures in the locations identified on the Site Plan;

(6) The opening onto Common Area of doors from contiguous Building Areas;

(7) Outdoor patio and seating areas, in locations approved by Declarant, for food service, restaurant and entertainment use by customers of Tenants;

(8) The construction of stairwells, elevators and escalators affording access to the Parking Garages; and

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(9) During the course of construction of any Vertical Improvements which may hereafter be constructed upon or within a Parcel, portions of the Common Area immediately adjacent to the Building Area on or within such Parcel may be used by the Owner of that Parcel for the temporary storage of construction materials and equipment used and to be used in connection therewith; provided that all such construction materials and equipment shall be removed from the Common Area as soon as such construction is complete.

(j) Subject to the Park Declaration, governmental restrictions and with the prior written consent of Declarant, the holding and staging of festivals, celebrations and similar activities, so long as such activities comply with the provisions of Section 9.12(f).

(k) Subject to obtaining the consent of Declarant, the placement, construction, operation, maintenance and repair of any kiosk by an Owner or Tenant.

(l) Such other uses or Improvements deemed by Declarant to be reasonable and appropriate, including light standards or poles, flag poles, benches, directories and maps.

An Owner who is exercising the easement rights granted in this Section 9.12 shall, within thirty (30) days after written notice from the Owner of a Burdened Parcel and/or Declarant, reimburse the Owner of the Burdened Parcel and/or Declarant, as the case may be, for the reasonable

incremental costs incurred by Declarant and/or the Owner of the Burdened Parcel, as the case may be (such as cleaning, security, etc.), directly resulting from the exercise by such Owner of the easement rights granted in this Section 9.12. No Owner shall use the Common Area upon or within its Parcel in a manner inconsistent with this Section 9.12.

Section 9.13 Control of Loading Docks. Declarant shall have the sole right to control the use and operation of the loading docks and loading areas of the Project from time to time and to create rules and regulations applicable thereto. Declarant may, at Declarant's election, grant exclusive control of one or more loading docks to a specific Owner or Tenant. Declarant may also post reserved parking signs for delivery vehicles.

Section 9.14 Scope of Easements. The easements granted in this Declaration are appurtenant to the Benefited Parcel and a burden on the Burdened Parcel. The easements granted in this Declaration shall run with the land and shall inure to the benefit of, and be binding upon, Declarant, Owners, Tenants, and Permittees of any Benefited or Burdened Parcel, and their permitted successors and assigns.

Section 9.15 Responsibilities of Owners Exercising Easement Rights. Any Owner or Tenant who is exercising the short-term or temporary easement rights granted in this ARTICLE 9 shall undertake all reasonable efforts and shall utilize all reasonable diligence so that the period of construction or entry on or affecting the Burdened Parcel is as short as reasonably possible, without incurring any unduly burdensome obligation for payment of overtime or premium, so as not to unduly interfere with the use and enjoyment of the Burdened Parcel, and during the construction or entry Unofficial Document period shall also not unduly interfere with the use and enjoyment of or access to the Burdened Parcel. Further, the exercise of such short-term or temporary easement rights shall include the right to close or divert pedestrian and vehicles ingress and egress to the extent reasonably necessary for safety reasons. The Owner or Tenant who is exercising the short-term or temporary easement rights shall do all things reasonably necessary and proper in accordance with the standards of the building construction industry in Phoenix, Arizona to keep that portion of the Burdened Parcel which is subject to the easement in a safe and clean condition and shall also comply with all applicable governmental ordinances, statutes, rules and regulations. In addition, the Owner or Tenant who is exercising the short-term or temporary easement rights shall, within thirty (30) days after written notice from the Owner of a Burdened Parcel and/or Declarant, reimburse the Owner of the Burdened Parcel and/or Declarant, as the case may be, for the reasonable incremental extraordinary costs incurred by Declarant and/or the Owner of the Burdened Parcel, as the case may be (such as cleaning, security, etc.), directly resulting from the exercise by such Owner or Tenant of the short-term or temporary easement rights. The cleaning of normal dust shall not be deemed eligible for reimbursement as an extraordinary cost during the initial, phased construction of the Project. During all times in which an Owner or Tenant exercises any easement rights under this ARTICLE 9, such Owner or Tenant shall, at its expense, provide and keep in force commercial general liability insurance (including a contractual liability endorsement) with respect to the Burdened Parcel and the Owner thereof, naming the Owner of the Burdened Parcel as an additional insured, and otherwise consistent with the Insurance Standards. In addition, but subject to any applicable subrogation waiver, the Owner or Tenant exercising any easement rights shall protect, indemnify, defend and save the Owner of the Burdened Parcel harmless for, from and against all liabilities, obligations, claims, suits, damages, penalties, causes of action,

costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or asserted against the Owner of the Burdened Parcel by reason of any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on the Burdened Parcel arising out of the exercise by the indemnifying Owner or its Tenants of any easement rights granted in this ARTICLE 9, except to the extent caused by or resulting from the negligence of the Owner or Tenants of the Burdened Parcel. For purposes of this Section 9.15, "short-term or temporary" easement rights are those entry, construction, relocation and similar rights expressly granted in Section 9.3, Section 9.4, Section 9.5, Section 9.9 and Section 9.11, and "any" easement rights are those rights expressly granted in this ARTICLE 9, including "short-term or temporary" easement rights.

Section 9.16 Remedial Easements. Declarant and each Owner is hereby granted such reasonable and necessary easements as may be necessary to permit the exercise of remedies, including so-called "self-help" rights, as are expressly provided herein.

ARTICLE 10. OPERATION OF PARKING AREAS.

Section 10.1 Parking Operator. All or portions of the Parking Areas shall be operated by a parking operator, selected by the Parking Garage Lessees, with written approval by Declarant, in accordance with the customary standards for first-class parking garages providing parking for high rise office projects in metropolitan Phoenix, Arizona (the "Parking Operator"). It is contemplated that the Block 22 Parking Garage and the Block 77 Parking Garage will each be operated by a Single Parking Operator. The Parking Garage Lessees may only hire a reputable Parking Operator that has been ^{operating} similar types of parking garages and meets the customary standards for first-class parking garage operators for commercial, mixed-use projects in metropolitan Phoenix, Arizona. The Block 22 Parking Garage and any valet parking services therein shall be operated by a single Parking Operator; however, a Hotel Owner or the Owner of a Residential Parcel may engage its own valet services to serve its Tenants and Permittees, but such valet service shall be subject to the reasonable operational control of the Parking Operator. In the event there are more than one (1) Parking Garage Lessees, and they are unable to reach an agreement as to the selection of a single Parking Operator, then upon notice of such disagreement to Declarant by any Parking Garage Lessee, Declarant shall select the Parking Operator.

Section 10.2 Designation of Parking Spaces.

(a) Subject to the provisions of this Declaration and the Parking Rules (as defined in Section 10.16), of the Block 22 Parking Garage and the Block 77 Parking Garage shall each be operated as a single integrated parking facility. Declarant shall allocate to each Owner from time to time the right to use parking spaces within the Parking Garages in conjunction with the Vertical Improvements on such Owner's Parcel.

(b) No Owner may close, limit access to, or segregate the Parking Garages or establish "nested" parking areas by erecting gates, barriers or signs without the consent of Declarant.

(c) The Designated Spaces for each Owner of a Parcel upon or within which Vertical Improvements have been constructed shall be located within that portion of the Parking Garage which is located substantially beneath (or otherwise in reasonable proximity to) the Vertical Improvements constructed on or within such Owner's Parcel, as determined by Declarant, or such other location as may be determined by Declarant with the reasonable consent of the Owner of such Vertical Improvements. Declarant reserves the right to relocate an Owner's Designated Spaces from time to time within the applicable Parking Garage, so long as the Owner for whose benefit such parking spaces have been designated consents to such relocation. Each Owner shall have the right to allow its Tenants and Permittees to use the Designated Spaces of such Owner, but the right to use Designated Spaces shall be appurtenant to and may not be separated from ownership of the Residential Unit or Parcel to which the Designated Spaces are attributable. An Owner, by Recorded instrument (including pursuant to a lease memorandum), may indicate that certain of its Designated Spaces have been specifically allocated to an identified Tenant during the term of the applicable lease.

(d) Subject to the limitations in this Section 10.2, each Owner may, by notice to the applicable Parking Garage Lessee, determine whether any of its Designated Spaces shall be reserved for the use of specific Tenants and Permittees of such Owner ("Reserved Spaces"). Any Designated Spaces that are not Reserved Spaces shall be referred to as "Unreserved Spaces". Any Unreserved Spaces shall be available for the use of all Owners, Tenants and Permittees on a first come, first-served basis. All Owners confirm and agree that the Unreserved Spaces are available on a first come, first served basis and that it is customary in an Unofficial Document mixed use project to distribute a greater number of unreserved parking passes than the number of Unreserved Spaces. In this regard, until otherwise designated by Declarant based on industry custom for similar properties:

(i) The Owner of a Residential Building may designate up to 100% of its Designated Spaces as Reserved Spaces;

(ii) The Owner of a Commercial Office Building may designate up to 50% of its Designated Spaces as Reserved Spaces;

(iii) The Owner of a Commercial Retail Building may designate up to 10% of its Designated Spaces as Reserved Spaces;

(iv) The Owner of a Hotel Building and/or a Residential Development (or a building containing residential components) may not distribute a greater number of unreserved parking passes than the actual number of Unreserved Spaces designated for the benefit of such Owner;

(v) The Owner of a Commercial Office Building may distribute a greater number of unreserved parking passes than the actual number of Unreserved Spaces designated for the benefit of such Owner; provided, however, the maximum number of unreserved parking passes any Owner of a Commercial Office Building may distribute is one hundred twenty percent

(120%) of the number of Unreserved Spaces designated for the benefit of the Commercial Office Building owned by such Owner; and

(vi) Notwithstanding the provisions of clause (iii) above, if the Owner is operating a valet parking service for some or all of such Owner's Designated Spaces, and the valet can safely accommodate more vehicles in a stacked configuration without adversely affecting traffic circulation, then such Owner may distribute a greater number of unreserved parking passes than otherwise permitted in this Declaration to the extent such stacked spaces are available.

(e) Notwithstanding the provisions of this ARTICLE 10 to the contrary, any parking spaces which may be constructed within a Vertical Improvement shall be Designated Spaces for, and shall be owned and operated by, the Owner of the Vertical Improvement.

(f) Although Designated Spaces designated for an Owner are intended to be for the exclusive use by such Owner, between the hours of 6:00 p.m. and 7:00 a.m. on weekdays, and throughout the day on weekends and legal holidays ("Non-Business Hours"), all Designated Spaces other than the Reserved Spaces shall be available on a non-exclusive, first come – first served basis for the use of all Owners, Tenants and Permittees, subject to the reasonable control by the applicable Parking Garage Lessee. Each Parking Garage Lessee expressly reserves the exclusive right to temporarily license the available, vacant parking spaces ^{in the applicable Parking Garage (other than the Reserved Spaces unless otherwise agreed between an Owner entitled to use such Reserved Spaces and the applicable Parking Garage Lessee) to any Person, including members of the public attending downtown Phoenix events, during Non-Business Hours. No Owner may temporarily license its Reserved Spaces to any Person, including members of the public attending downtown Phoenix events, during Non-Business Hours except through the applicable Parking Garage Lessee.}

Section 10.3 Designation of Commercial Retail, Hotel or Other Parking Spaces. Except as expressly provided in Section 10.2, without the prior written consent of the applicable Parking Garage Lessee, no Owner shall be entitled to have any Designated Spaces in regard to portions of Vertical Improvements comprised of Commercial Retail Buildings. The foregoing provision shall not affect the right of each Parking Garage Lessee to otherwise allocate certain parking rights in accordance with Section 10.2.

Section 10.4 Interim Parking Requirements. The construction of Vertical Improvements on or within the Undeveloped Parcels shall be staged in a manner so that any then existing Vertical Improvements shall have access at all times to the number of Designated Spaces required pursuant to the provisions of this ARTICLE 10. Except as may be reasonably necessary in connection with the expansion, maintenance, repair or replacement of all or any portion of the Parking Garages, the Parking Garages shall not be closed, nor shall any parking spaces located therein be removed from service; however, a Parking Garage Lessee may install gates or other devices as may be necessary to reasonably limit access thereto during weekend and evening hours. Subject to the provisions of this Section 10.4, no Parking Garage Lessee shall

prohibit access to the Block 22 Parking Garage or the Block 77 Parking Garage during the regular business hours of any Permittee or Tenant.

Section 10.5 Parking Revenues and Fees. Any fees (including fees for visitor use) for Reserved and Unreserved Spaces on or in those portions of the Parking Areas (including the Parking Garages) which are operated by the Parking Operator shall be established from time to time by the applicable Parking Garage Lessee and approved by Declarant. Any fees for valet parking operated by the Parking Operator in accordance with the provisions of Section 10.13 shall be established from time to time by the applicable Parking Garage Lessee in consultation with the Parking Operator and the Owner requesting the establishment of such valet parking. Each Parking Garage Lessee shall enter into separate agreements upon request with one or more Owners in regard to the fees applicable for such Owner's Designated Spaces. As agent for the Parking Garage Lessee, the Parking Operator shall collect all fees (including the fees for Designated Spaces) and shall pay all maintenance, repair, replacement, operating and miscellaneous expenses and taxes in connection with all Parking Areas operated by the Parking Operator. All parking fees collected by the Parking Operator (including without limitation, fees from monthly contracts, gate specific sales, validation sales, or any other method used by the Parking Operator to identify the source of the revenue) shall be allocated by the applicable Parking Garage Lessee among the Owners having Designated Spaces in the applicable Parking Garage in accordance with this Section 10.5. Such fees shall be specifically allocated, to the extent a user of a specific Designated Space can be identified. For example, a Tenant of a Commercial Office Building may contract for a Reserved Space, in which event revenue for such Tenant's Reserved Space shall be collected from such Tenant by the Parking Operator and allocated to the Owner of the Commercial Unofficial Document Building in which such Tenant's premises is located. Revenues that cannot be allocated to a user of a specific Designated Space shall be allocated among the Owners to the extent and in proportion to each Owner's number of Designated Spaces that are available for visitors within the applicable Parking Garage i.e., that are not Reserved Spaces. Revenues from downtown special event parking shall be allocated to the Owners in proportion to the number of Designated Spaces allocated to each such Owner within the applicable Parking Garage; provided, however, that if any of such Owners makes less than such Owner's proportionate share of the number of Designated Spaces available for such downtown special event parking, then such revenues shall be divided among the Owners to the extent and in proportion to, the number of Designated Spaces which are available for parking for the downtown special event within the applicable Parking Garage. For example, if certain Designated Spaces are restricted or inaccessible for downtown special events, then said Designated Spaces shall not be deemed available for this purpose.

Section 10.6 Payment of Parking Garage Expenses. All costs and expenses associated with the ownership, operation, maintenance, and repair of the Parking Garages (the "Garage Expenses") shall, except as expressly set forth to the contrary hereinbelow, be allocated among the Owners in proportion to each Owner's number of Designated Spaces within the applicable Parking Garage. Garage Expenses shall include, without limitation, (i) all Excise Taxes and all rentals and other sums payable under any Project Lease for the applicable Parking Garage (the expenses described in this clause (i) being split evenly between all Owners); (ii) all Real Estate Taxes payable with respect to the applicable Parking Garage, subject, however, to the provisions of this Section 10.6; (iii) the premiums for all insurance policies maintained by the applicable Parking Garage Lessee with respect to the applicable Parking Garage including,

without limitation, those set forth in Section 10.7, (iv) all costs and expenses payable to the Parking Operator; (v) charges for all utilities provided to the applicable Parking Garage; (vi) all costs and expenses incurred to operate, maintain, repair and replace the applicable Parking Garage, (vii) the amount of any losses incurred to the extent of any deductibles under any insurance policies maintained with respect to the applicable Parking Garage and any uninsured losses; and (viii) reasonable and customary management fees. To the extent a Garage Expense is a capital expenditure, the same shall be amortized and recovered by the applicable Parking Garage Lessee over a period of time consistent with generally accepted accounting principles consistently applied; provided, however, if such Parking Expense was incurred as an upgrade to reduce the operating expenses of a Parking Garage, then such cost may be recovered over the projected payback period of the upgrade. Each Parking Garage Lessee shall be entitled to receive payment from each Owner its proportionate share (determined in accordance with the foregoing provisions of this of ARTICLE 10) of Garage Expenses as provided herein as a Maintenance Assessment, in the manner provided under Section 7.3.

The Owners and all other Persons acknowledge that the Block 22 Garage, including the parking spaces, ramps and driveways therein, is subject to a Project Lease. The lessee under such Project Lease (i.e., the Parking Garage Lessee of the Block 22 Parking Garage) pays, among other things, the City Excise Taxes and rentals. Real Property Taxes are currently not assessed against the Block 22 Parking Garage because of the existence of the Project Lease. Upon the expiration or termination of the Project Lease therefor, the lessee may acquire fee title to the Block 22 Parking Garage. Upon such acquisition, Real Estate Taxes will be assessed against the Block 22 Parking Garage, the amount of which is expected to exceed the Excise Taxes and rentals paid under the Project Lease with Unofficial Document the Block 22 Parking Garage. Except as otherwise provided in this Section 10.6, such Excise Taxes and rentals, and Real Estate Taxes, are part of the Garage Expenses shared by the Owners as described in this Section 10.6. Under the current terms of such Project Lease, the lessee thereunder also has the right, at any time prior to the expiration of such Project Lease, to acquire fee title to the Block 22 Parking Garage from the City upon exercise of an option to purchase as set forth therein. It is also acknowledged that if the lessee exercises the option to purchase the Block 22 Parking Garage, the Block 22 Parking Garage shall then be owned in fee by the lessee.

Accordingly, if the Parking Garage Lessee of the Block 22 Parking Garage voluntarily exercises the option to purchase the Block 22 Parking Garage before the expiration or termination of the Project Lease therefor, then the Garage Expenses shall specifically not include, and the Parking Garage Lessee of the Block 22 Parking Garage, shall not be entitled to recover from any other Owner, the Excess Tax Cost (as defined below) for the period of time commencing upon the date fee title to the Block 22 Parking Garage is conveyed to such Parking Garage Lessee and continuing until such Project Lease would have expired or terminated according to its terms. For purposes hereof, the "Excess Tax Cost" means an amount equal to the Real Estate Taxes levied with respect to the Block 22 Parking Garage during such period less the City Excise Taxes and rentals that would have been payable pursuant to the applicable Project Lease during such period.

Section 10.7 Casualty Insurance on Parking Areas. Each Parking Garage Lessee shall keep and maintain the Block 22 Parking Garage or the Block 77 Parking Garage, as applicable, insured against loss or damage by fire and against loss or damage by such other risks

now or hereafter embraced by “Special Risk” or “Special Perils” coverage insurance (formerly known as “All-Risk” or “All-Perils” insurance), together with such endorsements and against such other risks or hazards (with any special endorsements) as the applicable Parking Garage Lessee shall determine. Such insurance shall be maintained by the applicable Parking Garage Lessee for a sum not less than one hundred percent (100%) of the full replacement cost of the applicable Parking Garage with commercially reasonable deductible amounts. The insurance provided for in this Section 10.7 shall be effected under valid and enforceable policies issued by insurers which are licensed to do business in the State of Arizona and which have a rating of not less than B+, VIII in the then-current edition of “Best’s Key Rating Guide”, or if such rating guide is no longer published or available, then a substantially equivalent rating in a comparable insurance industry rating guide. Notwithstanding that the insurance requirements of this Section 10.7 may be different than those imposed pursuant to the applicable Project Leasehold for the Block 22 Parking Garage or the Block 77 Parking Garage, nothing in this Section 10.7 shall be deemed to reduce the insurance requirements imposed on a Parking Garage Lessee pursuant to the applicable Project Leasehold.

Section 10.8 Application of Proceeds. The proceeds of the insurance maintained by each Parking Garage Lessee pursuant to Section 10.7 shall be payable to an independent Person, generally qualified, with adequate financial safeguards, to serve as an insurance trustee for the benefit of the Owners and the applicable Parking Garage Lessee, and shall be used solely to restore, replace, reconstruct and rebuild the applicable Parking Garage to the condition existing immediately prior to the occurrence of such damage or destruction.

Section 10.9 Obligation to ^DRepair _{Official Document} Maintain and Restore. Each Parking Garage Lessee shall have the sole responsibility to repair and maintain the Parking Garage leased by such Parking Garage Lessee and the vehicular ramps providing access thereto. In the event of damage to or destruction of either Parking Garage, the applicable Parking Garage Lessee shall restore, repair, replace, rebuild or alter the applicable Parking Garage as nearly as possible to its value, condition and character immediately prior to such damage or destruction. Such restoration, repair, replacement, rebuilding or alteration shall be commenced as soon as reasonably possible following the occurrence of such damage or destruction and shall be diligently prosecuted to completion in good faith without interruption, subject, however, to force majeure.

Section 10.10 Failure by the Parking Garage Lessee to Repair. If either Parking Garage Lessee fails to commence the restoration, repair, replacement, rebuilding or alteration to the Parking Garage leased by such Parking Garage Lessee and/or any Offsite Lot, as the case may be, within thirty (30) days following the occurrence of such damage or destruction, or if the applicable Parking Garage Lessee shall have commenced such restoration, repair, replacement, rebuilding or alteration, but shall not be prosecuting the same to completion with due diligence, which failure is not cured within thirty (30) days after written notice from an Owner is deposited in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the applicable Parking Garage Lessee at its then current address, such Owner shall have the right, but not the obligation, to undertake such restoration, repair, replacement, rebuilding or alteration to the applicable Parking Garage and/or any Offsite Lot, as the case may be. Such restoration, repair, replacement, rebuilding or alteration shall be subject to the provisions of Section 10.9 and, in such event, the independent Person (as contemplated by

Section 10.8) shall make available to such Owner, in accordance with the methods of disbursement then utilized by prudent construction lenders in the Phoenix, Arizona metropolitan area, all insurance proceeds received on account of such damage or destruction. To the extent the costs and expenses incurred by such Owner in connection with any such restoration, repair, replacement, rebuilding or alteration exceed the insurance proceeds made available to such Owner by the applicable Parking Garage Lessee, the deficiency shall be the obligation of the Owners to fund as part of the Garage Expenses. Further, any Owner who undertakes such restoration, repair, replacement, rebuilding or alteration on behalf of the Parking Garage Lessee shall be entitled to recover, as well, an administrative charge of fifteen percent (15%) of the total, reasonable costs and expenses incurred, and to receive the reimbursement obligation of the other Owners by a Maintenance Assessment, in the manner provided under Section 7.4.

Section 10.11 Cooperation During Reconstruction. In the event of damage to or destruction of any portion of the Parking Garages and another Parcel as a result of fire or other casualty which also results in damage to or destruction of the Vertical Improvements on or within the other Parcel or on or within adjoining Parcels, the Owner(s) of the damaged or destroyed Vertical Improvements and the applicable Parking Garage Lessee(s) shall coordinate their respective reconstruction efforts and each shall cooperate with the other for the purpose and effect that the alteration, repair, restoration, rebuilding or other work with respect to the damaged or destroyed Vertical Improvements (including, without limitation, the alteration, repair and restoration, rebuilding or other work with respect to Subsurface Improvements) and the repair, alteration, rebuilding, restoration or other work with respect to the Parking Areas may both proceed in as expeditious a manner as possible.

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Section 10.12 Waiver of Subrogation. Each Parking Garage Lessee and each Owner and Tenant each hereby waive any rights each may have against the other on account of any loss or damage occasioned to them or their respective property, its contents or to other portions of the Project, arising from any risk generally covered, at the time of the loss or damage, by "Special Risk" or "Special Perils" coverage insurance (formerly known as "All Risk" or "All Perils" insurance) and from any other risk which is covered by property insurance the waiving Person then has in effect. In addition, each Parking Garage Lessee and each Owner and Tenant, for themselves and on behalf of their respective insurance companies, waive any right of subrogation that any such insurance company may have against the applicable Parking Garage Lessee and each Owner and Tenant, as the case may be.

Section 10.13 Valet Parking. No Owner or Tenant shall provide valet parking services except in accordance with this Section 10.13. At any time and from time to time, the Owner of a Parcel may deliver to a Parking Garage Lessee written notice requesting that the Parking Garage Lessee contract for valet parking for the benefit of the requesting Owner and in regard to said Owner's Designated Spaces. Within thirty (30) days after receipt by such Parking Garage Lessee of such written request, the applicable Parking Garage Lessee shall direct the Parking Operator to contract for valet parking service, or shall grant to such requesting Owner the right to engage its own valet parking service contractor, in cooperation with the Parking Operator. All costs and expenses incurred by a Parking Garage Lessee in connection with the provision of valet parking service shall be allocated among the requesting Owners, or, if a Parking Garage Lessee grants such right to an Owner to engage its own valet parking service

contractor, such costs and expenses, as well as revenues, shall be assigned directly to the Owner engaging the valet parking service contractor.

Section 10.14 Assignment of Parking Garage Lessee's Rights; Continuing Obligations. A Parking Garage Lessee may also be an Owner of a Parcel other than the Parking Garage leased by such Parking Garage Lessee. Such Parking Garage Lessee may assign or lease all or a part of its rights and powers in regard to the Parking Garage leased by such Parking Garage Lessee to a Person, other than a then-current Owner. Such assignment may result in severing the applicable Parking Garage from an existing Parcel, and thereby, the applicable Parking Garage (or portion thereof as so transferred) shall become a separate Parcel. Notwithstanding any assignment, each Parking Garage Lessee (or its assignees) shall be subject to the following provisions:

(a) The applicable Parking Garage Lessee shall, upon request from any Owner, furnish evidence that the insurance required to be carried by Section 10.7 is in effect. Such policies of insurance shall, to the extent obtainable, have attached thereto an endorsement that such policies shall not be cancelled or materially changed without at least thirty (30) days prior written notice to each Owner. If the applicable Parking Garage Lessee fails to obtain and maintain the insurance required by Section 10.7, then fifteen (15) days after notice by an Owner of such failure to such Parking Garage Lessee, such notifying Owner may obtain such insurance for the benefit of such Parking Garage Lessee and such Parking Garage Lessee shall, within thirty (30) days after written notice from such notifying Owner, together with a copy of the billing statement is deposited in the United States mail, certified or registered^{Unofficial Document} return receipt requested, postage prepaid, addressed to the Owner at its then current address, reimburse such Owner for the cost of such insurance procured by such Owner. Any such reimbursement not paid when due shall bear interest at the Default Rate until paid. The amount paid by such Parking Garage Lessee shall be a Garage Expense.

(b) If an Owner invokes its right to restore, repair, replace, rebuild or alter the Block 22 Parking Garage and/or the Block 77 Parking Garage, as applicable, pursuant to Section 10.9, to the extent the costs and expenses incurred by such Owner exceed the insurance proceeds made available to such Owner by the applicable Parking Garage Lessee, the deficiency shall be paid by the applicable Parking Garage Lessee to such Owner within thirty (30) days after written notice, accompanied by paid invoices and lien waivers are deposited in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Owner at its then current address. Such reimbursement shall be a Garage Expense.

Section 10.15 Project Specific Insurance. In the event a Parking Garage Lessee is required to obtain specific liability insurance (or other protection in the nature of a surety bond or other insurance) for the benefit of a third party as a condition to the grant, by such third party, of any permits, approvals or consents necessary or appropriate (in the reasonable discretion of the applicable Parking Garage Lessee) for the construction, maintenance or placement of the Block 22 Parking Garage and/or the Block 77 Parking Garage, as the case may be, then Declarant shall reimburse the applicable Parking Garage Lessee (within thirty (30) days of receipt of demand therefore) the actual costs, including premiums, incurred annually for such

insurance. The foregoing reimbursement obligation is in recognition of each of the Block 22 Parking Garage and the Block 77 Parking Garage as a necessary component of the Project, for the benefit of all Owners. Accordingly, such reimbursed costs shall be included as a Maintenance Assessment imposed upon each Parcel and Owner thereof.

Section 10.16 Parking Rules. The location of each Parcel's Designated Spaces, the operation of the Block 22 Parking Garage and the Block 77 Parking Garage, the allocation of revenue and Garage Expenses, and other matters may be addressed in "Parking Rules" adopted by Declarant, with the consent of the applicable Parking Garage Lessee, as may be amended. The Parking Rules shall complement and supplement the Declaration, and shall be enforceable in the same manner as this Declaration. Upon any conflict between the Parking Rules and this Declaration, this Declaration shall govern and control.

Section 10.17 Block 77 Garage Declaration. The Block 77 Parking Garage will at all times remain subject to the terms and conditions of the Block 77 Garage Declaration during the term thereof.

ARTICLE 11. REGULATION OF USES.

Section 11.1 Permitted Uses. No portion of the Project shall be used for any purpose other than offices, commercial businesses, hotels, retail businesses, retail office, grocery or food market or pharmacy, theaters, residential condominiums, residential apartments, restaurants, bars and nightclubs (with or without outdoor live music, patron dancing or dining or bar areas), open retail uses (such as, but not limited to, kiosks), parking, park use (with respect to the Park), uses deemed accessory to any of the foregoing, and any other uses approved by Declarant; all of such uses to be consistent with a high quality mixed use project, of a nature intended to be generally acceptable to institutional investors. All such permitted uses of the Project, and each part thereof, shall also comply with all applicable laws, codes and ordinances, including, without limitation, applicable laws pertaining to hazardous materials and the applicable zoning classification for the Project pursuant to the Phoenix City Code. By consenting to this Declaration, the City of Phoenix does not waive its governmental rights and powers (including, without limitation, to enforce the City zoning ordinances) pursuant to the Phoenix City Code.

Section 11.2 Prohibited Uses. Without prior written approval by Declarant, which approval may be granted or withheld in the sole and absolute discretion of Declarant, no portion of the Project may be used for any of the uses set forth on Exhibit "F" attached hereto and incorporated herein.

Section 11.3 Other Operations and Uses. Uses neither specifically prohibited nor specifically authorized under this Declaration may be permitted in a specific case if plans and specifications for all Improvements and operations in connection with such use are submitted to and approved in writing by Declarant. By way of example, Declarant may consider and approve outdoor events in the Common Areas on a temporary basis. Declarant's approval of such use shall be based upon the effect of such operations or uses on other portions of the Project and upon the Tenants or Owners thereof. If Declarant fails to approve such plans and specifications within thirty (30) days after receipt of same, it shall be conclusively presumed that

Declarant has disapproved said plans and specifications and the use contemplated thereby. The submittal and approval requirements contained in this Section 11.3 are in addition to and not in lieu of or satisfaction of the requirements contained in ARTICLE 12 below.

Section 11.4 Compliance With Law. All Improvements on or within any Parcel and all activities on or within any Parcel shall comply with all applicable governmental laws, rules, regulations, codes and zoning stipulations and with the regulations of public or private utilities providing utility service to the Project and/or the Parcel.

ARTICLE 12. REGULATION OF DESIGN AND DEVELOPMENT.

Section 12.1 Approval of Plans. Declarant intends to provide for an aesthetically and architecturally harmonious development of the Project. Accordingly, in addition to the other provisions of this Declaration, the following restrictions shall be applicable:

(a) Consent Required. No Improvements shall be erected, placed, modified, altered, added to or maintained on or within any Parcel until plans and specifications showing plot layout, all exterior elevations (including materials and colors) and structural design, Signs, lighting and landscaping, and any other plans reasonably requested by Declarant, shall have been submitted to and approved in writing by Declarant. All subsequent additions to or changes, modifications or alterations in any Improvements (structural or otherwise), including reconstruction or repair following condemnation or casualty and exterior color scheme and all changes in the grade of Parcels, shall be subject to the prior written approval of Declarant. Any request for approval shall be at the written request or concurrence of the Owner. Applicants must submit preliminary plans to Declarant for review and comment prior to submission of final plans. No material changes or deviations in or from the plans and specifications approved by Declarant shall be made without the prior written approval of Declarant. The provisions of this Section 12.1(a) shall not require submission of plans to Declarant for approval for Improvements which are both interior and non-structural Improvements within a Vertical Improvement.

(b) Basis for Approval. Approval by Declarant pursuant to Section 12.1(a) shall not be unreasonably withheld, delayed or conditioned and shall be based, among other things, upon the adequacy of Parcel dimensions, conformity and harmony of external design with neighboring structures; effect of location and use of Improvements on or within neighboring Parcels, Improvements, operations and uses; relation of topography, grade and finish to ground elevation of the Parcel being improved to that of neighboring Parcels; proper facing of main elevation with respect to nearby streets; completion of Improvements to any Common Areas on or within the Parcel or for the Parking Garages; and conformity of the plans and specifications to the restrictions set forth in this Declaration. Such approval is, however, in addition to, and not in substitution for, the restrictions set forth in this Declaration.

(c) Disapproval. If Declarant fails to approve or disapprove such plans and specifications within thirty (30) days after the same have been submitted to the Declarant, it shall be conclusively presumed that said plans and specifications have not

been approved. Upon written request, Declarant shall specify the changes required to be made to obtain approval.

(d) Declarant Not Liable. Declarant shall not be liable in damages to anyone submitting plans for approval, or to any affected Owner, by reason of a good faith mistake in judgment, negligence or nonfeasance arising in connection with the approval or disapproval or failure to approve any such plans or specifications. Every Person who submits plans to Declarant for approval agrees, by submission of such plans, and every Owner of a Parcel agrees, by acquiring title and/or possessory rights to such Parcel, that it will not bring any action or suit against Declarant (nor any of its officers, directors, agents and employees) to recover damages by reason of any such approval or disapproval. Anything in this Declaration to the contrary notwithstanding, the Declarant's approval of plans and specifications shall not constitute or be deemed or construed as a warranty or representation to any Owner, Tenant, or any other Person that any Improvements (or any part thereof, whether constructed or to be constructed) contemplated by such plans and specifications are structurally sound and free from defects.

Section 12.2 Restrictions. Unless more stringent restrictions are imposed by the Phoenix City Code, the following restrictions shall be applicable to the Project:

(a) Landscaping. Landscaping of each Parcel as required by the City of Phoenix Development Services Department, with new material (or otherwise consistent with the prevailing standard at the Project^{Unofficial Document}) shall be substantially completed by the Owner of the Parcel within forty-five (45) days after occupancy or completion of the first Vertical Improvement on or within such Parcel, whichever occurs first, and each Owner shall use its best efforts to obtain an assignable one (1) year warranty in connection with all landscaping installed by such Owner in Common Areas and shall assign any such warranty to Declarant after such landscaping has been installed. With the consent of Declarant, an Owner may be required to complete only such landscaping as is appurtenant to a phase (upon which a Vertical Improvement is constructed) within a Parcel.

(b) Maintenance of Plaza, Walkways, Driveways and Entrance and Exit Ramps. Declarant shall maintain all exterior paved and concrete areas located within any portion of the Common Areas of the Project, including without limitation sidewalks, the Pedestrian Bridge, driveways, entrance and exit ramps, hardscape, fountains and plazas, in good, clean condition and repair, comparable to the standards of similar projects in the greater metropolitan Phoenix area.

(c) Signs. Signs and identifications on buildings or Parcels shall only be in such numbers and of such size, design, material and color as are in conformance with a Comprehensive Sign Plan for Project established from time to time by Declarant, as the same may be modified from time to time by Declarant, which modification may be made by notice to the Owners, however, unless required by applicable law, ordinance or regulation, signs erected pursuant to the Comprehensive Sign Plan shall not be required

to be altered based solely upon a subsequent modification of the Comprehensive Sign Plan.

(d) Nuisances; Construction Activities. Except in connection with normal construction activities conducted in a good and workmanlike manner, no rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Parcel and no odors or loud noises shall be permitted to arise or emit from any Parcel, so as to render all or any portion of such Parcel or activity on such Parcel, unsanitary, unsightly, offensive or detrimental to any other Parcel or to the occupants of such other Parcel. No other nuisance shall be permitted to exist or operate upon or within any Parcel so as to be offensive or detrimental to any other Parcel or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, sound devices required by law or safety standards, or exterior speakers serving the patio area of a restaurant and playing music at commercially reasonable levels shall be located, used or placed on or within any such Parcel. Normal construction activities and parking in connection with the building of Improvements on or within a Parcel shall not be considered a nuisance or otherwise prohibited by this Declaration, but Parcels under construction shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, dust and smoke emissions shall be minimized to the extent reasonably feasible or otherwise required by Declarant, and soil, supplies of brick, block, lumber and other building materials will be piled and stored only in such areas as may be approved by Declarant, which may also require screening of ^(Unofficial Document) action areas. In addition, any construction equipment and building materials stored or kept on or within any Parcel during construction of Improvements may be kept only in areas approved by Declarant, which may also require screening of the storage areas. Declarant, in the exercise of its reasonable business judgment, shall have the right to determine: (i) the existence of any such nuisance; (ii) the times each day (which may, for a given project, be 24 hours) when construction activities may be performed; and (iii) the measures to be taken by the Owner engaged in construction activities, to reduce the adverse effect upon other Owners, Tenants and Permittees.

(e) Diseases and Insects. No Owner shall permit any thing or condition to exist upon or within any Parcel which shall induce, breed or harbor infectious plant diseases or noxious insects.

(f) Repair of Vertical Improvements and Subsurface Improvements. Each Owner shall prevent any Vertical Improvement or Subsurface Improvement on, within or under the Owner's Parcel from falling into disrepair and each Owner shall cause the Vertical Improvements and Subsurface Improvements on, within or under the Owner's Parcel to be kept in good, clean condition and repair (comparable to the standards of similar projects in the greater metropolitan Phoenix area), at all times. If any Vertical Improvements or Subsurface Improvements on, within or under an Owner's Parcel are damaged or destroyed, then, subject to the requirements of Section 12.1 above, such Owner shall cause such Vertical Improvements or Subsurface Improvements to be repaired, rebuilt or demolished immediately, and if demolished, the portion of the Parcel

on, within or under which the demolished Vertical Improvements or Subsurface improvements were located shall be landscaped by such Owner to the reasonable satisfaction of Declarant. If the damaged or destroyed Vertical Improvements are to be restored to a substantially equivalent state as existed prior to the damage or destruction, then the requirements of Section 12.1 shall be deemed to have been satisfied. Each Owner shall at all times maintain casualty or property damage insurance in sufficient amounts on a "Special Risk" form, occurrence basis, to insure such Owner's compliance with this subsection (f) and shall furnish evidence of insurance to Declarant upon request.

(g) Antennas. No antenna or other communication device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on or within any Parcel, whether attached to Improvements or otherwise, unless approved by Declarant, which approval shall not be unreasonably withheld, delayed or conditioned; provided, however, it shall be reasonable for Declarant to condition its approval on such antenna or other communication device being located in a manner and/or screened from view so as to not be visible from the interior of any Vertical Improvement or ground level of other portions of the Project or the surrounding streets or roadways.

(h) Window Coverings. No reflective materials, including, but not limited to, aluminum foil, reflective screens or glass, reflective tinting or similar items, shall be installed or placed upon the outside or inside of any windows of a Residential Unit without the prior written approval of Declarant. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Residential Unit shall be constructed or installed without the prior written consent of Declarant. Declarant may establish a "Condominium Standard" window treatment plan to ensure uniformity that will be complied with by all Residential Units. No tinting or film may be installed on any windows of a Residential Unit without the prior written approval of Declarant.

(i) Patios and Balconies. Furniture, furnishings, pots and plants kept and maintained on any patio or balcony (whether attached to a Residential Unit or otherwise) shall be of a neutral color harmonious with and not in conflict with the color scheme of the exterior walls of the Vertical Improvements in which the applicable patio or balcony is located and must be approved in writing by Declarant. No furniture, furnishings, pots, plants or other items which are at all visible from the exterior of any patio or balcony shall be kept and maintained on any patio or balcony unless approved in writing by Declarant. No patio or balcony shall be used as a storage area for items or materials that are not customarily intended for use on a patio or balcony, such as the use of a patio or balcony to store bicycles or exercise equipment. No items may be hung from any patio or balcony or the ceiling, wall or railing enclosing the patio or balcony. Declarant may adopt rules to govern and regulate the nature and extent of plants, shrubs, flowers and other landscaping that may be installed on patios and balconies. No spas or hot tubs shall be installed or kept on any patio or balcony.

(j) Trash Containers and Collection. No garbage or trash shall be placed or kept on or within any Parcel except in covered containers of a type, size and style which are approved by Declarant. Declarant may also, in its reasonable business

judgment and at its option, designate the location on or within a Parcel where such containers shall be stored between collection times in order to protect adjacent Parcels from noise or odors emitting from the use of such containers. All rubbish, trash, or garbage shall be removed from the Parcels by the Owners of the Parcels and shall not be allowed to accumulate. No outdoor incinerators shall be kept, maintained or used on or within any Parcel.

(k) Restriction on Further Subdivision, Property Restrictions and Rezoning. No Parcel shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Parcel, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, except in compliance with Section 1.44 or as otherwise approved by Declarant. No further covenants, conditions, restrictions (including the creation of any property owner's association) or easements shall be recorded by any Owner or other person against any Parcel without the provisions thereof having been first approved in writing by Declarant (which approval shall not be unreasonably withheld, delayed or conditioned) and any covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Parcel, and no applications for variances or use permits, shall be filed with any governmental authority unless the proposed use of the Parcel has been approved by Declarant and the proposed use otherwise complies with this Declaration. Further, no modification or amendment of the Site Plan shall be made, unless first approved in writing by Declarant. Notwithstanding anything contained in this Declaration to the contrary, no approval of Declarant shall be required for any Unofficial Document enter into any leases for Building Rentable Space or to grant any liens on such Owner's Parcel or Residential Unit to a Lender.

(l) Party Walls. Except as provided in this Declaration to the contrary, the rights and duties of Owners with respect to Party Walls between Parcels shall be as follows:

(i) The Owners of contiguous Parcels who have a Party Wall shall both equally have the right to use such Party Wall, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

(ii) In the event that any Party Wall is damaged or destroyed through the act of an Owner or any of its Tenants (whether or not such act is negligent or otherwise culpable), it shall be the obligation (subject to any applicable subrogation waiver) of such Owner to rebuild and repair the Party Wall without cost to the Owner of the adjoining Parcel. Any dispute over an Owner's liability for such damage shall be resolved as provided in subsection (v) below, but any liability imposed on an Owner under this Section shall not prevent the Owner from seeking indemnification from the persons causing such damage.

(iii) If any Party Wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time) other than by the act of an adjoining Owner or its Tenants, it shall be the obligation of all Owners

whose Parcels adjoin such Party Wall to rebuild and repair such Party Wall at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their respective Parcels on the Party Wall.

(iv) Notwithstanding anything to the contrary contained in this Declaration, there shall be no impairment of the structural integrity of any Party Wall without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

(v) If a dispute exists between Owners with respect to the construction, repair or rebuilding of a Party Wall or with respect to the sharing of the cost of such Party Wall, such adjoining Owners shall submit the dispute to Declarant (so long as Declarant is not one of the parties to the dispute), the decision of which shall be binding.

(vi) In the case of Party Walls (i) between Common Areas and Parcels, or (ii) constructed by an Owner on Common Areas within a Parcel, Declarant shall be responsible for all maintenance of such Party Walls subject to the provisions of ARTICLE 7, except that each Owner of a Parcel shall be responsible for painting the portion of any Party Wall facing its Parcel or the portion thereof which is not a portion of the Common Area.

(vii) If the plats or restrictions which are Recorded by the developer of a Residential Development(s) contain provisions regulating the rights and obligations of the owners of Residential Units with respect to Party Walls, then the provisions of this Section 12.2(1) shall not apply to any Party Wall which separates the interiors of two Residential Units.

(m) Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in, within or upon any Parcel unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on Improvements approved by Declarant, or unless such lines, wires or devices have been approved by Declarant pursuant to the provisions of subsection (g) above. No provision of this subsection (m) shall be deemed to forbid the erection of temporary power or telephone structures incidental to the construction of Vertical Improvements approved by Declarant.

(n) Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Parcel, and subject to compliance with any applicable Tenant lease and applicable law, any authorized representative of Declarant shall have the right to enter upon and inspect any Parcel and the Improvements on or within such Parcel, solely and only to the extent reasonably required, to ascertain whether or not the provisions of this Declaration have been or are being complied with and such Persons shall not be deemed guilty of trespass by reason of such entry. A representative of the Owner of the Parcel shall be permitted to accompany Declarant's representative in connection with any such entry.

(o) Health, Safety and Welfare. If additional uses, activities, and facilities are reasonably deemed by Declarant to be a nuisance or to adversely affect the health, safety or welfare of Owners or Tenants, Declarant may make commercially reasonable, non-discriminatory, uniformly applicable rules restricting or regulating their presence within the Project.

(p) Reservation by Declarant. Notwithstanding the foregoing provisions of this Section 12.2, Declarant reserves the right in Declarant's sole and absolute discretion, to modify design requests from time to time and to impose more restrictive standards of design from time to time.

Section 12.3 Completion of Construction. An Owner undertaking construction or repair of Improvements or an Appurtenant Amenity (excluding internal modifications to a Building located on an Owner's Parcel that do not affect an Appurtenant Amenity or a Common Area) costing in excess of \$100,000.00 or otherwise affecting the health or safety systems or facilities at the Project, shall maintain, and shall cause its contractors and subcontractors to maintain as applicable, the following insurance:

- (a) worker's compensation insurance as required by applicable law;
- (b) builder's "all risk" insurance in an amount at least equal to the replacement value of the improvements or repairs, and otherwise complying with the Insurance Standards; and
- (c) liability insurance ^{Unofficial Document} insuring against construction related risks in at least the form, amounts and coverages required under the Insurance Standards (or such other amount as Declarant may reasonably require, taking into account the nature and extent of the improvements or repairs). The insurance policies described in clauses (b) and (c) of this Section must name Declarant, each Owner, and each Owner's Lender as additional insureds.

The \$100,000.00 threshold amount set forth above shall be adjusted annually by the COLA Index.

The Owner will complete all such construction and repair in compliance with the requirements of this Declaration (a) by a contractor duly licensed and in good standing in the State of Arizona, (b) in a good and workmanlike manner in accordance with plans and specifications approved by the City, (c) in compliance with all applicable laws and regulations, (d) in accordance with Declarant's rules and regulations, including, without limitation, any operational standards applicable to third party contractors, subcontractors and suppliers performing work at the Project; and (e) in a manner reasonably designed to minimize interference with the use and enjoyment of the Project by other Owners, Tenants and Permittees. In no event will an Owner permit a mechanics', materialmens', designers' or other liens against any other Owner's Parcel arising out of any work performed, materials furnished or obligations incurred by or for such or any person or entity claiming by, through or under such Owner. An Owner shall give Declarant reasonable notice prior to commencing construction of any Improvements, and shall keep

Declarant reasonably informed of such Owner's construction activities. After commencement of construction of any Improvement(s), the Owner shall diligently prosecute the work on or within its Parcel to completion so that the Improvements shall not remain in a partly finished condition any longer than reasonably necessary.

Section 12.4 Excavation. No excavation shall be made except in connection with construction or repair of Improvements and, upon completion of construction, exposed openings shall be backfilled and disturbed ground shall be compacted, graded level and landscaped.

Section 12.5 Gross Building Area. As of the date of this Declaration, Declarant acknowledges, agrees and confirms that the Gross Building Area of each Parcel is expected to be as set forth on Exhibit "E" attached hereto and hereby incorporated by reference. The Gross Building Area as designated on Exhibit "E" for a Parcel may not be amended (except as a result of the measurement after completion, as described in Section 1.32), except in accordance with a modification of the Site Plan permitted by this Declaration.

Section 12.6 Buildings Only in Building Area. No Vertical Improvement shall be erected, placed or maintained on or within any portion of a Parcel except upon or within the portion of the Parcel designated as Building Area on the Site Plan. Further, no Vertical Improvement shall be erected, placed or maintained with a height in excess of the "T.O.P. EL" height shown on the Site Plan.

Section 12.7 Site Plan. The Site Plan may be amended from time to time exclusively by Declarant, with the approval of the Owners if specifically required under Section 13.2 to amend this Declaration. The Site Plan as existing from time to time, is not to be construed as a representation or an assurance to any Person by Declarant, or any Owner that the Project will be developed or improved as indicated. No Owner shall construct on or within any Parcel any Improvements which are inconsistent with the limitations on height, Building Area or other features of the Site Plan.

ARTICLE 13. TERM; AMENDMENTS; TERMINATION.

Section 13.1 Term; Method of Termination; Survival of Easements. This Declaration shall be effective upon the date it is Recorded and, as amended from time to time, shall continue in full force and effect for a term of sixty-five (65) years from the date this Declaration is Recorded. The term of this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless all Owners and Lenders agree in writing to terminate this Declaration within six (6) months prior to the expiration of the initial effective period of this Declaration or any ten (10) year extension. This Declaration may be terminated at any time upon the written consent of all Owners and Lenders. If the Owners and Lenders agree to terminate this Declaration, Declarant shall cause to be Recorded a Certificate of Termination. Thereupon this Declaration shall be of no further force and effect. Notwithstanding the foregoing, however, unless the Certificate of Termination specifically states that the easements set forth in ARTICLE 9 are also to be terminated (and that all Owners have consented to such termination), then said easements and the obligations associated with such easements shall be deemed to survive in perpetuity, notwithstanding such termination of this Declaration.

Section 13.2 Amendments. This Declaration, including the Exhibits hereto, may be amended at any time upon the written consent of Declarant and, once Vertical Improvements are completed, then also with the written consent of the Owners owning a majority of the Gross Building Area. Notwithstanding the foregoing, Declarant reserves the exclusive right, without consent by any Person (but with consent by the City, such consent not to be unreasonably withheld, conditioned or delayed), to amend this Declaration from time to time during the first twenty-four (24) months following the recordation hereof. Any amendment of this Declaration, whether adopted during the original term of this Declaration, or during the term of any extension of the original term of this Declaration, and regardless of the date of automatic renewal as set forth in Section 13.1, shall become effective immediately upon the Recording of the applicable amendment, duly signed and acknowledged by Declarant and such consenting Owners and setting forth in full the amendment adopted. However, in addition to the foregoing requirements of this Section 13.2, (i) any amendment of the Site Plan may be effected only by the written consent of each Owner of a Parcel which the proposed amendment to the Site Plan will reconfigure, (ii) no amendment to this Declaration that modifies a provision that expressly and specifically benefits one or more Owner(s) may be effected without the consent of the benefited Owner(s), and (iii) no amendment or modification of this Declaration, including the Site Plan, which affects the Block 22 Parking Garage and/or the Block 77 Parking Garage, a Parking Garage Lessee or the Parking Operator shall be effective without the prior written consent of the applicable Parking Garage Lessee.

ARTICLE 14. MISCELLANEOUS.

Section 14.1 Enforcement. Unofficial Document Failure of any Owner to satisfy and pay any monetary obligation within fifteen (15) days after the same is due under this Declaration shall give Declarant the right (in addition to any other rights and remedies afforded to Declarant under this Declaration) to pursue any and all remedies available at law or in equity, including, without limitation, seeking specific performance of such obligation. The violation or breach by an Owner of any non-monetary obligation, term, provision, covenant or condition contained in this Declaration (a "Non-Monetary Default") shall give Declarant the right (in addition to any other rights and remedies afforded to Declarant under this Declaration, at law or in equity), after thirty (30) days' advance written notice of such violation or breach has been given to the violating or breaching Owner (or without notice if Declarant, in Declarant's sole and absolute discretion, determines that such violation or breach has resulted in an emergency situation), and provided that such Owner fails to complete the cure of such violation or breach to the reasonable satisfaction of Declarant within the aforementioned thirty (30) day period (or without any cure period if Declarant, in Declarant's sole and absolute discretion, determines that such violation or breach has resulted in an emergency situation), to enter upon the Parcel(s) of said Owner, and summarily cure, abate and/or remove, at the expense of the Owner thereof, any improvement, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions of this Declaration, or to prosecute a proceeding at law or in equity against the Person or Persons who have violated or are attempting to violate any of the covenants, terms, provisions or conditions contained in this Declaration, and to enjoin or prevent them from doing so or to cause said violation to be remedied or to recover damages for said violation. Notwithstanding the foregoing, if a Non-Monetary Default is of a nature that cannot be cured within the aforementioned thirty (30) day period, then the violating or breaching Owner shall have as long as is reasonably necessary (not to exceed an additional ninety (90) days after the expiration of the

aforementioned thirty (30) day period) to complete the cure of such Non-Monetary Default, provided and subject to the condition that such Owner shall have commenced the cure of such Non-Monetary Default within such thirty (30) day period and thereafter shall diligently and continuously pursue completion of the cure of such Non-Monetary Default to the reasonable satisfaction of Declarant. Declarant may from time to time at any reasonable hour or hours and upon reasonable prior notice to the applicable Owner (except in the event of an emergency in which case no notice shall be required), enter and inspect any Parcel (and the Vertical Improvements, if any, located thereon) to ascertain compliance with this Declaration. Failure by Declarant to enforce any covenant, term, provision or condition herein contained shall in no event be deemed to be a waiver of the right of Declarant to do so thereafter nor of Declarant's right to enforce any other provision hereof. Wherever in this Declaration the consent or approval of Declarant is required, such consent shall all be effective only if in writing. All remedies provided for herein or at law or in equity shall be cumulative and not exclusive.

Section 14.2 Limitation of Liability. Notwithstanding anything to the contrary contained in this Declaration, the officers, directors, partners, shareholders, members or employees of Declarant shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of Declarant, and Declarant shall indemnify and forever hold each such officer, director, partner, shareholder, member or employee of Declarant free and harmless against any and all damage, injury and liability to others on account of any such contract or commitment.

Section 14.3 City Self-Help. Notwithstanding any other provision in this Declaration to the contrary, the City shall ^{Unofficial Document} have the right (but not the obligation) to enter the Project and exercise any right of "self-help" or similar remedy granted to the City in the DRA or in any applicable Project Lease in order ensure compliance with the terms of the DRA or any applicable Project Lease entered into pursuant to the DRA as may be reasonably necessary in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of the DRA or any Project Lease.

Section 14.4 Interpretation. Except for judicial construction, Declarant shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, Declarant's construction or interpretation of the provisions of this Declaration shall be final, conclusive and binding as to all Persons and property benefited or bound by the terms, covenants, easements and provisions of this Declaration.

Section 14.5 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions of this Declaration.

Section 14.6 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the rule against perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (a) those which would be used in determining the validity of the challenged interest, plus (b) those

of the issue of the President of the United States, George W. Bush, as of the date this Declaration is Recorded who are living at the time the period of perpetuities starts to run on the challenged interest. Notwithstanding the foregoing, to the extent applicable, the Uniform Statutory Rule Against Perpetuity as adopted in the State of Arizona (A.R.S. § 14-2901), shall determine the validity of any nonvested property interest.

Section 14.7 Chance of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

Section 14.8 Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat, other Recorded instrument or agreement, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Project can or will be carried out, or that any land now owned or hereafter acquired by it is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

Section 14.9 References to the Covenants in Deeds. Deeds to and instruments affecting any Parcel or any part of the Project may contain the covenants set forth in this Declaration by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants contained in this Declaration shall be binding upon the Person claiming through any instrument and its heirs, executors, administrators, successors and assigns.

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Section 14.10 Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any assignees of Declarant's rights and powers under this Declaration as reflected in a Recorded instrument reflecting such assignment as required by the provisions of Section 3.1.

Section 14.11 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

Section 14.12 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions of this Declaration or to be used in determining the intent or context of such provisions.

Section 14.13 Notices.

(a) If notice of any action or proposed action by Declarant and Owner or of any meeting, is required by applicable law, this Declaration or resolution of Declarant to be given to any Owner, then such notice requirement shall be deemed satisfied if notice of such action or meeting is hand delivered or mailed by certified mail, return receipt requested (postage prepaid) or delivered by private express delivery service (freight prepaid), to each Owner or Declarant, as applicable, at such Owner's address last

supplied by such Owner or Member to Declarant. This Section 14.13 shall not be construed to require that any notice be given if not otherwise required by this Declaration and shall not prohibit satisfaction of any notice requirement in any other manner.

(b) All notices, consents, approvals and other communications provided for herein, or given in connection herewith, shall be validly given, made, delivered or served, if in writing, and delivered personally, via overnight courier, or sent by registered or certified United States mail, postage prepaid, if to:

Declarant: RED CityScape Development, LLC
 c/o RED Development
 6263 North Scottsdale Road, Suite 330
 Scottsdale, Arizona 85250

or to such other address as Declarant or other Owners may from time to time designate in writing to all other Owners. Notices, consents, approvals and communications given by mail shall be deemed given twenty-four (24) hours after deposit thereof in the United States mail.

Section 14.14 Improvement District Additional Improvements. If all or any portion of the Project is included within an improvement district, or is otherwise required by any governmental entity to construct additional Improvements, the cost of any such improvement district assessments or such Improvements shall be borne separately by each separate Parcel within the Project and paid by the respective Owner of such Parcel. In no event shall the cost of any such Improvements be considered Tax^{Unofficial Document} otherwise treated as a shared expense except, subject to Section 10.6, to the extent the same are levied against a Parking Garage in which event the same shall be a Garage Expense. The Owner of each Parcel shall be entitled to negotiate separately with any improvement district or other governmental agency regarding the size and method of payment of any assessment against it or its Parcel. This Section shall apply to any contributions with respect to any improvement district, whether or not such arrangements are voluntary or involuntary on behalf of the Owner making such contributions. Nothing contained in this Section 14.14 shall waive any right of any Owner to protest or object to any governmental entity or improvement district requiring such Owner to pay the costs related to any such additional Improvements. Notwithstanding the foregoing, in the event the improvement district, or the obligation to construct additional Improvements, is imposed upon only a portion of the Project despite the benefits of such district or Improvements accruing clearly for the entire Project, then the costs of such assessments or Improvements shall be allocated as if they were Annual Assessments, in accordance with Section 5.3. Accordingly, by way of example, Improvements required to be constructed by a Owner in conjunction with its initial construction or renovation of the Vertical Improvements on or within its Parcel shall not be deemed to constitute Taxes, however, the costs and assessments of an improvement district to beautify an adjoining street which assesses only Parcels having frontage thereon would be appropriately characterized as Annual Assessments and allocable under Section 5.3.

Section 14.15 Notification to Lenders. Declarant shall provide each Lender with timely written notice of the following, provided that prior to the occurrence of any event which requires such notice to be given, Declarant has been notified in writing of the name and address of such Lender:

(a) Any condemnation loss or any casualty loss which affects a material portion of any portion of the Common Area the Block 22 Parking Garage or the Block 77 Parking Garage;

(b) Any delinquency in the payment of Assessments or charges owed by the Owner of a Parcel subject to a mortgage, deed of trust or other financing encumbrance held by such Lender or any other default in the performance by the Owner of any obligation under this Declaration, Common Area Rules or any other rule or regulation adopted by Declarant, which delinquency or default remains uncured for a period of sixty (60) days following written notice thereof by Declarant;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by Declarant;

(d) Any proposed action which requires the consent of any Lenders.

Section 14.16 Right to Inspection of Records. Declarant shall maintain books, records and financial statements regarding the operation and maintenance of the Common Areas in accordance with standards applicable to property management of projects comparable to the Project. Any Lender or Owner may, upon written request inspect the current copies of the Declaration, Common Area Rules and all other books, records and financial statements pertaining to the operation of the Common Areas, and the imposition and reconciliation of the Assessments, during normal business hours. If an Owner demonstrates, as a result of any audit or inspection, that after the annual reconciliation and adjustment, the total expenses for operating and maintaining the Common Areas have been ^{Unofficial Document} overstated by Declarant by greater than seven percent (7%) of the total of such expenses, then in addition to making the necessary reconciling refunds of or credits against the Assessments, Declarant shall reimburse to the inspecting or auditing Owner the reasonable, out-of-pocket expenses incurred, not to exceed \$2,500.00 (subject to annual increase by the COLA Index). Any such reimbursement which is not paid when due shall bear interest at the Default Rate.

Section 14.17 Condemnation or Insurance Proceeds. Subject to the provisions of Section 10.7 requiring the use of casualty insurance proceeds for reconstruction of the Parking Garages, nothing in this Declaration shall impair the rights of any Lender pursuant to its mortgage, deed of trust or other financing encumbrance to receive insurance proceeds or condemnation awards.

Section 14.18 Annexation of Annexable Property. If the Owner of any Annexable Property so requests or if Declarant so elects, Declarant shall have the right to annex and subject to this Declaration all or any portion of the Annexable Property. The annexation of all or any portion of the Annexable Property shall be effected by Declarant Recording a Declaration of Annexation setting forth the legal description of the portion of the Annexable Property being annexed and stating that such portion of the Annexable Property is annexed and subjected to this Declaration. The Annexable Property may be annexed as a whole, at one time, or in one or more portions at different times, or it may never be annexed, and there are no limitations upon the order of annexation or the boundaries thereof. The exercise of the right of annexation as to any portion of the Annexable Property shall not bar the further exercise of the

right of annexation as to any other portion of the Annexable Property. Declarant makes no assurance, representation or warranty as to which, if any, part of the Annexable Property may be annexed. As a condition to the annexation of all or any portion of the Annexable Property, the Owner of the Annexable Property may be required to agree, in writing, for the benefit of Declarant and all Owners to construct (or caused to be constructed) on the portion of the Annexable Property being annexed as of the date determined by Declarant, either an addition to the applicable Parking Garage or an Offsite Lot in substantial accordance with plans and specifications approved by Declarant.

Section 14.19 Removal of Property. Declarant shall have the right from time to time to remove real property from the encumbrance of this Declaration by Recording an amendment to this Declaration setting forth the legal description of the real property being removed from the encumbrance of this Declaration and stating that such real property is no longer encumbered by this Declaration.

Section 14.20 Successors and Assigns. Each easement, restriction and covenant contained in this Declaration shall be appurtenant to and for the benefit of all portions of the Project and shall be a burden thereon, for the benefit of all portions of the Project, and shall run with the land. This Declaration and the restrictions, easements, covenants, benefits and obligations granted hereby shall inure to the benefit of and be binding upon Declarant, all Owners and their successors, transferees and assigns; provided, however, that, if any Owner transfers all of its interest in the Project, the transferee thereof shall automatically be deemed to have assumed and agreed to be bound by the covenants and agreements in this Declaration.

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Section 14.21 No Cancellation. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner or Declarant may have under this Declaration by reason of any breach of this Declaration.

Section 14.22 No Merger. The ownership of the entire Project by the same party shall not effect the termination of this Declaration.

Section 14.23 No Third Party Beneficiary. Except as specifically provided in this Declaration, no rights, privileges or immunities set forth in this Declaration shall inure to the benefit of any Permittee of any Owner or Tenant of any portion of the Project, nor shall any Permittee of such Owner or Tenant be deemed to be a third party beneficiary of any of the provisions contained in this Declaration.

Section 14.24 Estoppel Certificates. Declarant and each Owner shall deliver to any other Owner or its designee, within twenty (20) days after request, a written statement setting forth that to the best of Declarant's or such Owner's knowledge, the requesting Owner is not in default in the performance of any of its obligations under this Declaration (or, if in default, setting forth the nature of such default), that to the best of Declarant's or such Owner's knowledge and belief, there are no outstanding Assessments against the requesting Owner's Parcel or stating the amount of any such Assessment and such other information as the requesting Owner may reasonably request. Declarant (but not any Owner) may require the

payment of a reasonable charge in connection with any such certificate as described in Section 5.7.

Section 14.25 Jurisdiction. Any matter arising between the Owners shall be governed by and determined in accordance with the laws of the State of Arizona. Any legal action or proceeding with respect to this Declaration may be brought in the courts of the State of Arizona or, if the requisites of jurisdiction are obtained, of the United States of America for the District of Arizona and every Owner and Tenant hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforementioned courts.

Section 14.26 Incorporation of Recitals. The Recitals are hereby incorporated into this Declaration and made a part hereof.

Section 14.27 Force Majeure. If Declarant or any Owner is delayed or prevented from performing any act required in the Declaration (excluding, however, the payment of money) by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, governmental laws, regulations, ordinance or orders, or failure or delay of governmental acts or approvals, and other causes beyond the Person's reasonable control, the performance of the required act shall be excused for the period of the delay.

Section 14.28 Waiver of Damages. Each Owner, by accepting title to, or an interest in any Parcel or portion thereof, waives all rights to pursue claims against any other Owner or Declarant for recovery of speculative, consequential, special or punitive damages.

Section 14.29 Reservation of ^{Unofficial Document} Rights in DRA. All rights and benefits of RED CityScape Development, LLC under the DRA are hereby reserved exclusively to the benefit of RED CityScape Development, LLC and shall in no even be assigned to or accrue to the benefit of Declarant or any other party having an interest in the Project unless specifically assigned in a recorded instrument executed by RED CityScape Development, LLC.


Section 14.30 Reservation of Rights in Special Warranty Deed, Declaration, Grant and Reservation of Easements and Covenants. All rights and benefits of the "Grantor" under that certain Special Warranty Deed, Declaration, Grant and Reservation of Easements and Covenants recorded in the Official Records of Maricopa County, Arizona in Instrument No. 2007-1242624 are hereby reserved exclusively to the benefit of RED CityScape Development, LLC and shall in no even be assigned to or accrue to the benefit of Declarant or any other party having an interest in the Project unless specifically assigned in a recorded instrument executed by RED CityScape Development, LLC.

Section 14.31 Consents. All persons subject to this Declaration shall not unreasonably withhold, condition or delay any consent or approval requested of such Person pursuant to the terms hereof.

Section 14.32 No Amendment of Underlying Documents. The consent by the City to this Declaration shall not constitute an amendment or modification of any other document to which the City and Declarant are parties, and in the event of a conflict between this Declaration and such other documents, such other documents shall control.

IN WITNESS WHEREOF, DECLARANT has executed and delivered this Master Declaration of Covenants, Conditions and Restrictions and Grant of Easements (CityScape Block 77) as of the day and year first above written.

RED CITYSCAPE DEVELOPMENT, LLC, a Delaware limited liability company

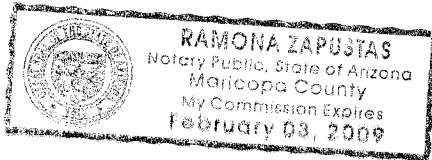
By: 
Name: MICHAEL EBERT
Title: MANAGER

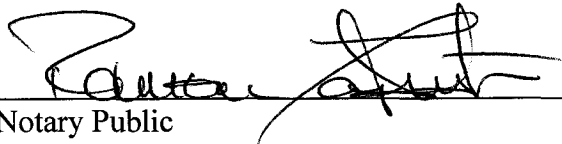
STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 23 day of December, 2008, by MICHAEL EBERT, the MANAGER of RED CITYSCAPE DEVELOPMENT, LLC, a Delaware limited liability company, on behalf of the limited liability company.

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IN WITNESS WHEREOF, I hereunto have set my hand and official seal.




Notary Public

CONSENT TO MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS

City Contract No. 121451-an
(CityScape Project)

The undersigned hereby acknowledges, approves and consents to the execution, delivery and recordation of the foregoing Master Declaration of Covenants, Conditions and Restrictions and Grant of Easements (the "Declaration") as to the interest of the undersigned with respect to the real property encumbered by the Declaration (the "Subject Property") and the undersigned hereby subordinates and subjects its interest in the Subject Property to the Declaration including granting the estates set forth herein; provided, however, that this Declaration shall in no event encumber any portion of the Block 77 Parking Garage in which Declarant does not hold an interest pursuant to that certain Declaration of Horizontal Property Rights and Declaration of Covenants, Conditions and Restrictions for Patriot's Square dated March 1, 1998 and recorded July 1, 1998 in Instrument No. 88-324976 in the Official Records of Maricopa County, Arizona, as amended by that certain Amended and Restated Declaration of Horizontal Property Regime and Declaration of Covenants, Conditions and Restrictions for Patriots Square dated September 15, 2007 and recorded November 21, 2007 in the Official Records of Maricopa County, Arizona in Instrument No. 20071242620.

Unofficial Document

CITY OF PHOENIX, a municipal corporation
FRANK FAIRBANKS, City Manager

By: [Signature]
John Chan, Director
Downtown Development Office

ATTEST:

[Signature]
City Clerk

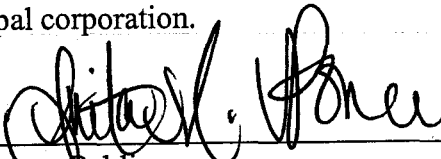


APPROVED AS TO FORM:

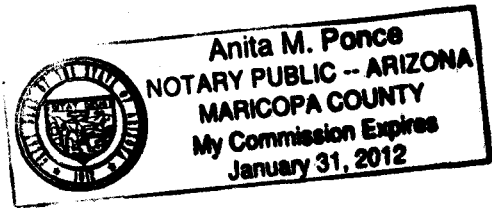
[Signature]
Acting City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this day of January, 2009 by John Chan, the Downtown Development Office Director of the CITY OF PHOENIX, a municipal corporation, on behalf of the municipal corporation.



Notary Public



Unofficial Document

CONSENT TO MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS

The undersigned hereby acknowledges, approves and consents to the execution, delivery and recordation of the foregoing Master Declaration of Covenants, Conditions and Restrictions and Grant of Easements (the "Declaration") as to the interest of the undersigned with respect to the real property encumbered by the Declaration (the "Subject Property") and the undersigned hereby subordinates and subjects its interest in the Subject Property to the Declaration including granting the estates set forth herein.

KEYBANK NATIONAL ASSOCIATION, a national banking association, as Agent for the Lender

By: Theodore J. Lewis
Theodore J. Lewis, Senior Vice President

STATE OF INDIANA)
) SS: Unofficial Document
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Theodore J. Lewis, known to me to be a Senior Vice President of KEYBANK NATIONAL ASSOCIATION, a national banking association, as Agent for the Lender and acknowledged the execution of the foregoing for and on behalf of said banking association.

Witness my hand and Notarial Seal, this 9th day of January, 2009.

Notary Public - State of Indiana
Johnson County
My Commission Expires:
September 6, 2014

Nanette Hammond
Notary Public - Signature

Notary Public - Printed

My County of Residence:

My Commission Expires:

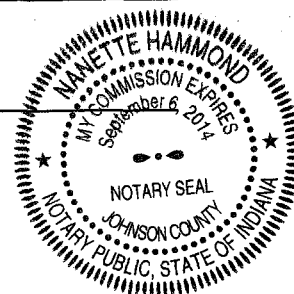


EXHIBIT A**LEGAL DESCRIPTION OF THE PROJECT**

PARCEL NO. 1:

A PORTION OF LOT 1 OF THE REPLAT OF BLOCK 22, RECORDED IN BOOK 978, PAGE 31, RECORDS OF MARICOPA COUNTY, ARIZONA AND A PORTION OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 1 NORTH, RANGE 3 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA BEING DESCRIBED AS FOLLOWS:

COMMENCING AT A STONE IN A HANDHOLE FOUND AT THE MONUMENTED CENTERLINE INTERSECTION OF JEFFERSON STREET AND CENTRAL AVENUE AS SHOWN ON SAID REPLAT OF BLOCK 22, FROM WHICH A BRASS CAP IN A HANDHOLE FOUND AT THE MONUMENTED CENTERLINE INTERSECTION OF 1ST AVENUE AND JEFFERSON STREET AS SHOWN ON SAID REPLAT OF BLOCK 22 BEARS SOUTH 89°42'15" WEST, 392.39 FEET; THENCE ALONG THE CENTERLINE LINE OF SAID CENTRAL AVENUE, NORTH 00°27'23" WEST 163.57 FEET; THENCE NORTH 89°32'37" EAST, 40.00 FEET TO A POINT ON THE WEST LINE OF SAID LOT 1 SAID POINT BEING THE TRUE POINT OF BEGINNING;

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THENCE ALONG SAID WEST LINE, NORTH 00°27'23" WEST, 186.57 FEET TO THE NORTHWEST CORNER OF SAID LOT 1;

THENCE ALONG THE NORTH LINE OF SAID LOT 1, NORTH 89°42'15" EAST, 300.37 FEET TO THE NORTHEAST COMER OF SAID LOT 1;

THENCE ALONG THE EAST LINE OF SAID LOT 1, SOUTH 00°20'21" EAST, 188.12 FEET;

THENCE WEST, 299.99 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 2:

A PORTION OF LOT 1 OF THE REPLAT OF BLOCK 22, RECORDED IN BOOK 978, PAGE 3 1, RECORDS OF MARICOPA COUNTY, ARIZONA AND A PORTION OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 1 NORTH, RANGE 3 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA BEING DESCRIBED AS FOLLOWS:

COMMENCING AT A STONE IN A HANDHOLE FOUND AT THE MONUMENTED CENTERLINE INTERSECTION OF JEFFERSON STREET AND CENTRAL AVENUE AS SHOWN ON SAID REPLAT OF BLOCK 22, FROM WHICH A BRASS CAP IN A HANDHOLE FOUND AT THE MONUMENTED CENTERLINE INTERSECTION OF 1ST

AVENUE AND JEFFERSON STREET AS SHOWN ON SAID REPLAT OF BLOCK 22 BEARS SOUTH 89°42'15" WEST, 392.39 FEET; THENCE ALONG THE CENTERLINE LINE OF SAID CENTRAL AVENUE, NORTH 00°27'23" WEST 49.88 FEET; THENCE NORTH 89°32'37" EAST, 40.00 FEET TO A POINT ON THE WEST LINE OF SAID LOT 1, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE ALONG SAID WEST LINE, NORTH 00°27'23" WEST, 113.69 FEET;

THENCE EAST, 299.99 FEET TO A POINT ON THE EAST LINE OF SAID LOT 1;

THENCE ALONG SAID EAST LINE, SOUTH 00°20'21" EAST, 112.20 FEET TO SOUTHEAST CORNER OF SAID LOT 1;

THENCE ALONG SAID SOUTH LINE, SOUTH 89°42'50" WEST, 299.75 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 3:

PARKING LEVELS 1,3,4 AND 5, AMENDED PLAT OF PATRIOTS SQUARE, A CONDOMINIUM, AS SET FORTH IN DECLARATION OF HORIZONTAL PROPERTY REGIME RECORDED IN INSTRUMENT NO. 85-603857, AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME RECORDED JULY 1,1988 IN INSTRUMENT NO. 88-324976, AND AS SET FORTH IN BOOK 323 OF MAPS, PAGE 9, RECORDS OF MARICOPA COUNTY, ARIZONA, ^{Unofficial Document}

TOGETHER WITH EACH UNITS UNDIVIDED INTEREST IN AND TO THE COMMON ELEMENTS, AND THE BENEFICIAL EASEMENTS CONTAINED THEREIN, AS SET FORTH IN SAID DECLARATION OF HORIZONTAL PROPERTY REGIME AND THE AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME AND CORRECTION OF HORIZONTAL PROPERTY REGIME;

EXCEPT TITLE TO ANY MINE OF GOLD, SILVER, CINNABAR OR COPPER OR TO ANY VALID CLAIM OR POSSESSION HELD UNDER THE MISTING LAWS OF CONGRESS, AS SET FORTH IN PATENT FROM THE UNITED STATES OF AMERICA RECORDED JUNE 28,1874 IN BOOK 1 OF DEEDS, PAGE 129.

PARCEL NO. 4:

SURFACE UNIT, AMENDED PLAT OF PATRIOTS SQUARE, A CONDOMINIUM, AS SET FORTH IN DECLARATION OF HORIZONTAL PROPERTY REGIME RECORDED IN INSTRUMENT NO. 85-603857, AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME RECORDED JULY 1, 1988 IN INSTRUMENT NO. 88-324976, AND AS SET FORTH IN BOOK 323 OF MAPS, PAGE 9, RECORDS OF MARICOPA COUNTY, ARIZONA;

TOGETHER WITH EACH UNITS UNDIVIDED INTEREST IN AND TO THE COMMON ELEMENTS, AND THE BENEFICIAL EASEMENTS CONTAINED THEREIN, AS SET

FORTH IN SAID DECLARATION OF HORIZONTAL PROPERTY REGIME AND THE AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME AND CORRECTION OF HORIZONTAL PROPERTY REGIME;

EXCEPT TITLE TO ANY MINE OF GOLD, SILVER, CINNABAR OR COPPER OR TO ANY VALID CLAIM OR POSSESSION HELD UNDER THE EXISTING LAWS OF CONGRESS, AS SET FORTH IN PATENT FROM THE UNITED STATES OF AMERICA RECORDED JUNE 28, 1874 IN BOOK 1 OF DEEDS, PAGE 129.

PARCEL NO. 5:

PARKING LEVEL 2, AMENDED PLAT OF PATRIOTS SQUARE, A CONDOMINIUM, AS SET FORTH IN DECLARATION OF HORIZONTAL PROPERTY REGIME RECORDED IN INSTRUMENT NO. 85-603857, AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME RECORDED JULY 1, 1988 IN INSTRUMENT NO. 88-324976, AND AS SET FORTH IN BOOK 323 OF MAPS, PAGE 9, RECORDS OF MARICOPA COUNTY, ARIZONA;

TOGETHER WITH EACH UNITS UNDIVIDED INTEREST IN AND TO THE COMMON ELEMENTS, AND THE BENEFICIAL EASEMENTS CONTAINED THEREIN, AS SET FORTH IN SAID DECLARATION OF HORIZONTAL PROPERTY REGIME AND THE AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME AND CORRECTION OF HORIZONTAL PROPERTY REGIME;

EXCEPT TITLE TO ANY MINE OF GOLD, SILVER, CINNABAR OR COPPER OR TO ANY VALID CLAIM OR POSSESSION HELD UNDER THE EXISTING LAWS OF CONGRESS, AS SET FORTH IN PATENT FROM THE UNITED STATES OF AMERICA RECORDED JUNE 28, 1874 IN BOOK 1 OF DEEDS, PAGE 129.

EXHIBIT A-1**LEGAL DESCRIPTION OF BLOCK 22**

PARCEL NO. 1:

A PORTION OF LOT 1 OF THE REPLAT OF BLOCK 22, RECORDED IN BOOK 978, PAGE 31, RECORDS OF MARICOPA COUNTY, ARIZONA AND A PORTION OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 1 NORTH, RANGE 3 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA BEING DESCRIBED AS FOLLOWS:

COMMENCING AT A STONE IN A HANDHOLE FOUND AT THE MONUMENTED CENTERLINE INTERSECTION OF JEFFERSON STREET AND CENTRAL AVENUE AS SHOWN ON SAID REPLAT OF BLOCK 22, FROM WHICH A BRASS CAP IN A HANDHOLE FOUND AT THE MONUMENTED CENTERLINE INTERSECTION OF 1ST AVENUE AND JEFFERSON STREET AS SHOWN ON SAID REPLAT OF BLOCK 22 BEARS SOUTH 89°42'15" WEST, 392.39 FEET; THENCE ALONG THE CENTERLINE LINE OF SAID CENTRAL AVENUE, NORTH 00°27'23" WEST 163.57 FEET; THENCE NORTH 89°32'37" EAST, 40.00 FEET TO A POINT ON THE WEST LINE OF SAID LOT 1 SAID POINT BEING THE TRUE POINT OF BEGINNING;

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THENCE ALONG SAID WEST LINE, NORTH 00°27'23" WEST, 186.57 FEET TO THE NORTHWEST CORNER OF SAID LOT 1;

THENCE ALONG THE NORTH LINE OF SAID LOT 1, NORTH 89°42'15" EAST, 300.37 FEET TO THE NORTHEAST COMER OF SAID LOT 1;

THENCE ALONG THE EAST LINE OF SAID LOT 1, SOUTH 00°20'21" EAST, 188.12 FEET;

THENCE WEST, 299.99 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 2:

A PORTION OF LOT 1 OF THE REPLAT OF BLOCK 22, RECORDED IN BOOK 978, PAGE 3 1, RECORDS OF MARICOPA COUNTY, ARIZONA AND A PORTION OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 1 NORTH, RANGE 3 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA BEING DESCRIBED AS FOLLOWS:

COMMENCING AT A STONE IN A HANDHOLE FOUND AT THE MONUMENTED CENTERLINE INTERSECTION OF JEFFERSON STREET AND CENTRAL AVENUE AS SHOWN ON SAID REPLAT OF BLOCK 22, FROM WHICH A BRASS CAP IN A HANDHOLE FOUND AT THE MONUMENTED CENTERLINE INTERSECTION OF 1ST

AVENUE AND JEFFERSON STREET AS SHOWN ON SAID REPLAT OF BLOCK 22 BEARS SOUTH 89°42'15" WEST, 392.39 FEET; THENCE ALONG THE CENTERLINE LINE OF SAID CENTRAL AVENUE, NORTH 00°27'23" WEST 49.88 FEET; THENCE NORTH 89°32'37" EAST, 40.00 FEET TO A POINT ON THE WEST LINE OF SAID LOT 1, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE ALONG SAID WEST LINE, NORTH 00°27'23" WEST, 113.69 FEET;

THENCE EAST, 299.99 FEET TO A POINT ON THE EAST LINE OF SAID LOT 1;

THENCE ALONG SAID EAST LINE, SOUTH 00°20'21" EAST, 112.20 FEET TO SOUTHEAST CORNER OF SAID LOT 1;

THENCE ALONG SAID SOUTH LINE, SOUTH 89°42'50" WEST, 299.75 FEET TO THE TRUE POINT OF BEGINNING.

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EXHIBIT A-2**LEGAL DESCRIPTION OF BLOCK 77****PARCEL NO. 1:**

PARKING LEVELS 1,3,4 AND 5, AMENDED PLAT OF PATRIOTS SQUARE, A CONDOMINIUM, AS SET FORTH IN DECLARATION OF HORIZONTAL PROPERTY REGIME RECORDED IN INSTRUMENT NO. 85-603857, AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME RECORDED JULY 1,1988 IN INSTRUMENT NO. 88-324976, AND AS SET FORTH IN BOOK 323 OF MAPS, PAGE 9, RECORDS OF MARICOPA COUNTY, ARIZONA;

TOGETHER WITH EACH UNITS UNDIVIDED INTEREST IN AND TO THE COMMON ELEMENTS, AND THE BENEFICIAL EASEMENTS CONTAINED THEREIN, AS SET FORTH IN SAID DECLARATION OF HORIZONTAL PROPERTY REGIME AND THE AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME AND CORRECTION OF HORIZONTAL PROPERTY REGIME;

EXCEPT TITLE TO ANY MINE OF GOLD, SILVER, CINNABAR OR COPPER OR TO ANY VALID CLAIM OR POSSESSION HELD UNDER THE MISTING LAWS OF CONGRESS, AS SET FORTH IN PATENT FROM THE UNITED STATES OF AMERICA RECORDED JUNE 28,1874 IN BOOK 1 OF DEEDS, PAGE 129.

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PARCEL NO. 2:

SURFACE UNIT, AMENDED PLAT OF PATRIOTS SQUARE, A CONDOMINIUM, AS SET FORTH IN DECLARATION OF HORIZONTAL PROPERTY REGIME RECORDED IN INSTRUMENT NO. 85-603857, AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME RECORDED JULY 1, 1988 IN INSTRUMENT NO. 88-324976, AND AS SET FORTH IN BOOK 323 OF MAPS, PAGE 9, RECORDS OF MARICOPA COUNTY, ARIZONA;

TOGETHER WITH EACH UNITS UNDIVIDED INTEREST IN AND TO THE COMMON ELEMENTS, AND THE BENEFICIAL EASEMENTS CONTAINED THEREIN, AS SET FORTH IN SAID DECLARATION OF HORIZONTAL PROPERTY REGIME AND THE AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME AND CORRECTION OF HORIZONTAL PROPERTY REGIME;

EXCEPT TITLE TO ANY MINE OF GOLD, SILVER, CINNABAR OR COPPER OR TO ANY VALID CLAIM OR POSSESSION HELD UNDER THE EXISTING LAWS OF CONGRESS, AS SET FORTH IN PATENT FROM THE UNITED STATES OF AMERICA RECORDED JUNE 28, 1874 IN BOOK 1 OF DEEDS, PAGE 129.

PARCEL NO. 3:

PARKING LEVEL 2, AMENDED PLAT OF PATRIOTS SQUARE, A CONDOMINIUM, AS SET FORTH IN DECLARATION OF HORIZONTAL PROPERTY REGIME RECORDED IN INSTRUMENT NO. 85-603857, AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME RECORDED JULY 1, 1988 IN INSTRUMENT NO. 88-324976, AND AS SET FORTH IN BOOK 323 OF MAPS, PAGE 9, RECORDS OF MARICOPA COUNTY, ARIZONA;

TOGETHER WITH EACH UNITS UNDIVIDED INTEREST IN AND TO THE COMMON ELEMENTS, AND THE BENEFICIAL EASEMENTS CONTAINED THEREIN, AS SET FORTH IN SAID DECLARATION OF HORIZONTAL PROPERTY REGIME AND THE AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME AND CORRECTION OF HORIZONTAL PROPERTY REGIME;

EXCEPT TITLE TO ANY MINE OF GOLD, SILVER, CINNABAR OR COPPER OR TO ANY VALID CLAIM OR POSSESSION HELD UNDER THE EXISTING LAWS OF CONGRESS, AS SET FORTH IN PATENT FROM THE UNITED STATES OF AMERICA RECORDED JUNE 28, 1874 IN BOOK 1 OF DEEDS, PAGE 129.

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EXHIBIT B
SITE PLAN

SEE ATTACHED

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WASHINGTON STREET
ONE WAY

NORTH BUILDING
11 W. WASHINGTON ST.
RETAIL
LEVEL 1 - 10,984 GROSS SF
LEVEL 2 - 10,271 GROSS SF

SOUTH BUILDING
50 W. JEFFERSON ST.
RETAIL
LEVEL 1 - 43,160 GROSS SF
LEVEL 2 - 48,180 GROSS SF
L1 TOC EL = 102'-8"
T.O.P. EL = 144'-11"

S. CENTRAL AVENUE
ONE WAY

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JEFFERSON STREET
ONE WAY

NORTH PODIUM
RETAIL
T.O.P. EL = 157'-9"
RETAIL
33,919 GROSS SF

SOUTH TOWER
2 E. JEFFERSON ST.
24 STORY
RESIDENTIAL
TOWER ABOVE
362,714 GROSS SF
L1 TOC EL = 100'-0"
T.O.P. EL = 398'-7"

NORTH TOWER
1 E. WASHINGTON ST.
27 STORY
OFFICE TOWER ABOVE
638,415 GROSS SF
T.O.P. EL = 468'-0"

RETAIL
LEVEL 1 - 17,740 GROSS SF
LEVEL 2 - 12,963 GROSS SF
8 STORY
HOTEL
156,329 SF
T.O.P. EL = 227'-3"

SOUTH PODIUM
RETAIL
T.O.P. EL = 158'-0"

HOTEL DROP OFF

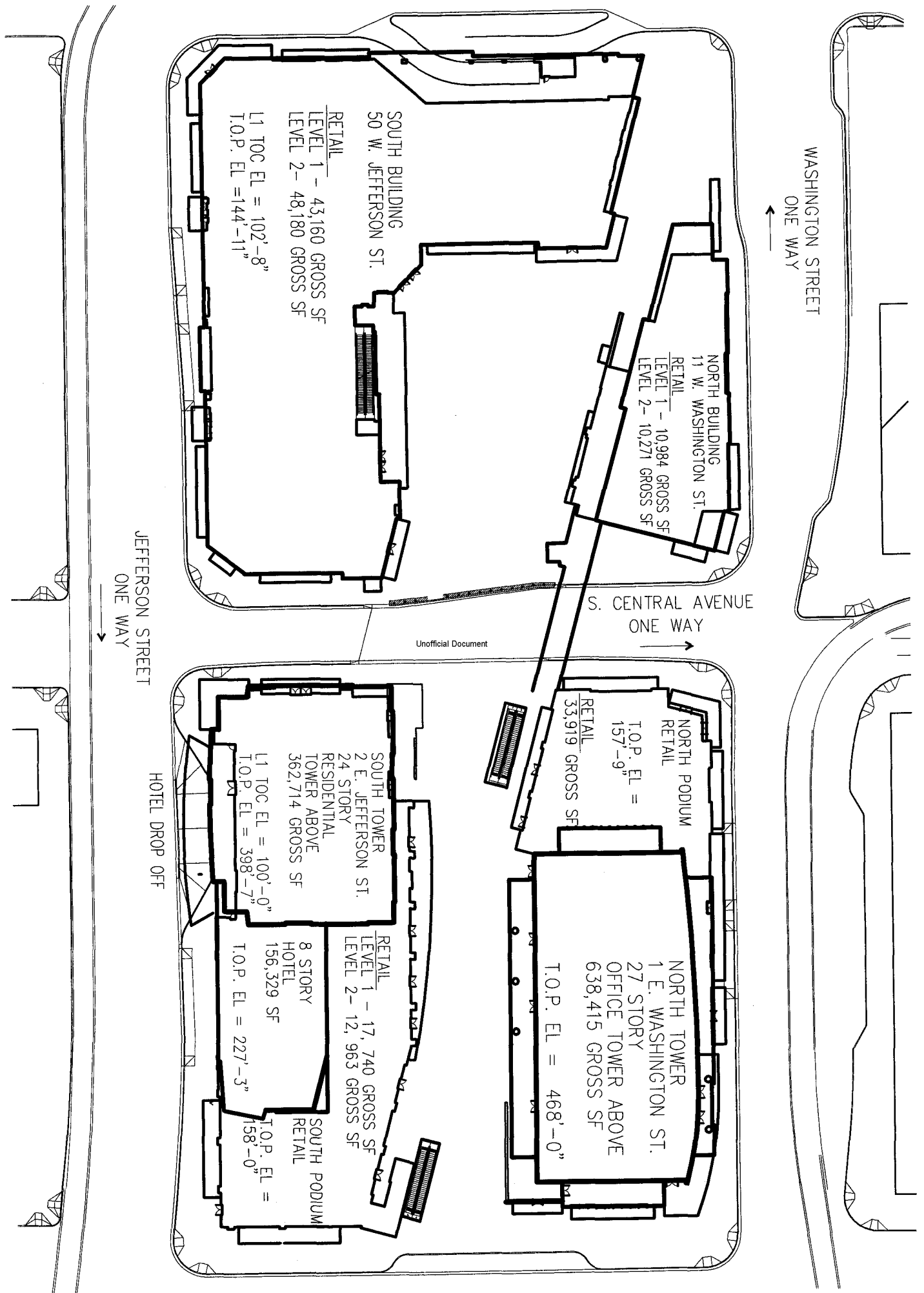


EXHIBIT C**PROVISIONS REGARDING ASSOCIATION**

ARTICLE 1. DEFINITIONS.

Section 1.1 “Association” shall mean The CityScape Association, an Arizona corporation (or a corporation with a name similar thereto), which shall be organized to administer and enforce this Declaration and to exercise the rights, powers and duties of the Declarant set forth in this Declaration.

Section 1.2 “Board” shall mean the Board of Directors of the Association which serves as the governing body of and for the Association.

Section 1.3 “Member” shall mean any Person holding a Membership in the Association pursuant to this Declaration.

Section 1.4 “Membership” shall mean a membership in the Association and the rights granted to the Owners, including the Declarant, pursuant to Article 17 of this Declaration to participate in the Association.

ARTICLE 2. THE ASSOCIATION.

Section 2.1 Formation. The Association shall be formed as a nonprofit Arizona corporation charged with the duties Unofficial Document set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 2.2 Board of Directors and Officers. The affairs of the Association shall be conducted by a Board elected by the Members and such officers as the Board may elect or appoint, in accordance with the Articles and the Bylaws. Whenever the approval, consent, decision or action of the Association is required under the provisions of this Declaration, unless the Declaration specifies that the vote of the Members is required, all such approvals, consents, decisions and action shall be performed by the Board on behalf of the Association. The Board may appoint a Person to act as manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager. The Board shall be comprised of no fewer than three (3) Persons as directors.

Section 2.3 Personal Liability. No member of the Board or any officer of the Association, no representative or employee of the Association, nor Declarant shall be personally liable to any Member or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, any representative or employee of the Association or any officer of the Association, it being intended that such personal liability be eliminated and indemnified to the fullest extent permitted by the nonprofit corporation laws of the State of Arizona; provided,

however, the foregoing limitations shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

ARTICLE 3. MEMBERSHIP AND VOTING.

Section 3.1 Owners of Parcels. Every Owner of a Parcel, other than an Owner of a Residential Unit or a Condominium Unit, shall be a Member of the Association. For the purposes of this Section 3 only, the Owner of a Parcel against which there has been Recorded a condominium or other residential common scheme declaration shall be the condominium or other residential association established pursuant to such declaration. Each Owner (which, for the purposes of this Exhibit "C", shall include only the condominium or residential association established pursuant to a condominium or residential declaration Recorded against any Parcel, and not the Owners of each Residential Unit or Condominium Unit) shall have the following number of Memberships:

(a) One (1) Membership for each square foot or fraction thereof of Gross Building Area in a Commercial Office Building, Commercial Retail Building, Hotel Building or Residential Development owned by the Member.

(b) In the case of the Owner of a Parcel designated for use as a Commercial Office Building, Commercial Retail Building, Hotel Building or Residential Development, but as to which construction either has not yet been started or has not been completed, one (1) Membership for each square foot or fraction thereof of uncompleted Gross Building Area which may be constructed upon or within such Parcel under the Site Plan then in effect. If a site plan for the Parcel is subsequently approved by the Association and the City of Phoenix for Vertical Improvements having a square footage different than the maximum square footage designated on the Site Plan, the number of Memberships shall be adjusted, as to the portion of the Parcel covered by the site plan and effective as of the date of adjustment, to reflect the actual square footage of commercial office, retail, hotel or residential condominium Gross Building Area authorized by the Site Plan. Each Membership shall be appurtenant to and may not be separated from ownership of the Parcel to which the Membership is attributable. There shall be only the Memberships for each Parcel, as such are described above, and joint ownership or ownership of undivided interests in any property which established a Membership shall not cause there to be more Memberships than the number established by assuming Declarant owned all of the property to which Memberships are attributable. Memberships shall be shared by any joint owners of, or owners of undivided interests in, the Parcel to which such Memberships are attributable (i.e., Memberships attributable to a Parcel shall not be increased because of multiple ownership thereof).

(c) In the case of the Parking Garage Lessee, one (1) membership for every ten (10) parking stalls in the applicable Parking Garage.

Section 3.2 Voting. The Association shall have one (1) class of voting Membership. Each Owner shall be entitled to one (1) vote for each Membership held by the Owner.

Section 3.3 Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes until the Board is given written notice of such change, together with reasonably satisfactory proof thereof. The vote for each such Membership must be cast as a unit; fractional votes shall not be allowed. If a Membership Is owned by more than one (1) Person and such owners are unable to agree unanimously among themselves as to how their vote shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that he or she was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. If more than one (1) vote is cast by an Owner or Owners for a particular Membership, none of such votes shall be counted and all such votes shall be deemed void.

ARTICLE 4. Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws.

ARTICLE 5. Transfer of Membership. The rights and obligations of the owner of a Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Parcel or in connection with a lien upon an Owner's Parcel, and then only to the transferee of ownership to the Parcel or to the Lender who holds the lien. A transfer of ownership to a Parcel may be effected by deed, intestate succession, testamentary disposition, foreclosure of a Recorded mortgage or deed of trust or such other legal process as now is in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any prohibited transfer shall be void. Any transfer of ownership to a Parcel shall operate to transfer the Membership(s) appurtenant to that Parcel to the new Owner.

ARTICLE 6. Cumulative Voting for Board Members. In any election of the members of the Board, every owner of a Membership entitled to vote for one (1) or more members of the Board at such an election shall have the number of votes for each Membership equal to the number of directors to be elected by the election in which the Member is entitled to participate. Each Member shall have the right to cumulate its votes for one (1) candidate or to divide such votes among any number of the candidates. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected.

EXHIBIT D**ASSESSMENT RATE PERCENTAGES**

Initially, the proposed development of the Project, and the allocation rates of Assessments are as follows:

<u>Parcel</u>	<u>Allocation Rate</u>	<u>Gross Building Area for Assessment purposes (estimated as of the date of recording of this Declaration)</u>
North Tower (Block 22)	49.75%	672,334 square feet
South Tower (Block 22)	40.68%	549,746 square feet
North Building (Block 77)	1.80%	24,443 square feet
South Building (Block 77)	7.77%	105,041 square feet
Total:	<hr/> 100%	<hr/> 1,351,564 square feet

The foregoing Gross Building Areas are conceptual in nature, are used to approximate the relative Assessment burden of each Parcel, and are subject to increase or decrease, in accordance with material changes to the Site Plan, in the sole and absolute discretion of Declarant. The Gross Building Areas of the North Building (Block 77) and the South Building (Block 77) have been adjusted in accordance with Section 5.5.

EXHIBIT E**GROSS BUILDING AREA**

Parcel	Square Feet of Gross Building Area (Estimated as of the date of recordation of this Declaration)
North Tower (Block 22)	672,334 square feet
South Tower (Block 22)	549,746 square feet
North Building (Block 77)	21,255 square feet
South Building (Block 77)	91,340 square feet
Total:	<hr/> 1,334,675 square feet

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EXHIBIT F
PROHIBITED USES

Without the prior written consent of Declarant, as the same may be granted or withheld in Declarant's sole and absolute discretion, no portion of the Project shall be used for any of the following uses:

1. Tattoo Shop.
2. Gas station.
3. Sexually-oriented business, such as adult bookstore (this shall not prohibit the operation of a Blockbuster Video, Hollywood Video or similar operation, or a Barnes & Noble, Borders Bookstore or similar operation, so long as such operations are not primarily adult oriented), adult theatre, massage parlor (this shall not prohibit the operation of a day spa or sports massage such as a Massage Envy or similar operation), adult live entertainment, erotic dance or performance studio, or adult novelty store.
4. Tavern selling alcoholic beverages for off-premises consumption.
5. Construction yard, except incidental to repair, restoration or construction of improvements on the property.
6. Employment agency for day labor.
7. Helistop or heliport.
8. Single room occupancy residence or motel (hotels, resorts and studio/loft type condominiums and/or apartments are not prohibited).
9. Manufacturing, fabrication, and assembly of finished products or subassemblies, except incidental to office and retail use (such as assembly of office cubicles).
10. Mortuary or crematorium.
11. Newspaper or magazine printing (except editorial and administrative offices or retail copying and printing services).
12. Stadium.
13. Dependent (assisted living) care center.
14. Rehabilitation facility, group home or sheltered workshop.
15. Halfway house.
16. Public baths.

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17. Blood bank and blood plasma center.
18. Pawnshop.
19. Bingo hall.
20. Public storage facilities.
21. Check-cashing, "pay-day loan" or similar services.
22. Any public or private nuisance.
23. Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness.
24. Any use which emits or results in strong, unusual or offensive odors (but not cooking odors as shall normally emit from restaurants, such as, but not limited to barbeque, rotisserie chicken and other cooking odors) fumes, dust or vapors, is a public or private nuisance, creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse, other than in enclosed receptacles intended for such purpose.
25. Any use which emits excessive quantities of dust, dirt, or fly ash; provided however, this prohibition shall not preclude the sale of soils, fertilizers, or other garden materials or building materials in containers if incidental to the operation of a home improvement or other similar store.
26. Any use which could result in, or cause, any fire, explosion or other damaging or dangerous hazard, including without limitation the storage, display or sale of explosives or fireworks.
27. Any operation primarily used as a storage facility, or for assembling, manufacturing, distillation, refining, smelting, agriculture or mining operations.
28. Any mobile home or trailer court, auction house, labor camp, junkyard, mortuary, funeral home or stock yard (except that, notwithstanding the foregoing, the provisions of this paragraph shall not prohibit the temporary use of construction trailers as approved by Declarant during periods of construction, reconstruction, or maintenance).
29. Any drilling for and/or removal of subsurface substances (such as minerals, oil, etc.).
30. Any flea market and/or swap meet or surplus store.
31. Any establishment selling drug related paraphernalia or any facility the use of which is unlawful, immoral, obscene, pornographic, or which tends to create or maintain a nuisance or do any act tending to injure the reputation of the Shopping Center.

32. Any abortion clinic, blood bank or drug rehabilitation clinic.
33. Any auction, fire or going out of business sale.

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