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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
PROVIDING FOR RECIPROCAL EASEMENTS, JOINT USE AND  
MAINTENANCE FOR CORNERSTONE TRANSIT ORIENTED DEVELOPMENT, SAN  
LEANDRO**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS PROVIDING FOR RECIPROCAL EASEMENTS, JOINT USE AND MAINTENANCE FOR CORNERSTONE TRANSIT ORIENTED DEVELOPMENT, SAN LEANDRO (the "Declaration") is made as of September \_\_\_, 2014 (the "Effective Date"), by the San Francisco Bay Area Rapid Transit Authority a rapid transit district established pursuant to California Public Utilities Code Section 28500 et seq. ("BART" or the "Declarant"), with reference to the following facts:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Declaration. The Declarant intends to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. The Declarant owns certain real property bordered by San Leandro Boulevard to the west, West Juana Avenue to the south and Carpentier Street to the east in the City, as more particularly described in Exhibit A attached hereto and incorporated herein (the "Property"), and the Declarant has caused the subdivision of the Property into the Project and the Phase II Parcel pursuant to the Map. The Map and this Declaration collectively delineate the Project and the Phase II Parcel. The Project as set forth on the Map, and described in this Declaration, is composed of the BART Parking Parcel, the Phase II Parking Parcel, and the Family Parcel.

C. Declarant has no current intention of developing the Project or the Property itself. Concurrently with the Effective Date, BART will lease the BART Parking Parcel to the BART Parking Parcel Lessee pursuant to the BART Parking Parcel Ground Lease for the development of the BART Parking Development; will lease the Phase II Parking Parcel to the Phase II Parking Parcel Lessee pursuant to the Phase II Parking Parcel Ground Lease for the development of Phase II Parking Development; and will lease the Family Parcel to the Family Parcel Lessee pursuant to Family Parcel Ground Lease for the development of Family Development, to allow for separate ownership, financing, and development of the Lessee Parcels. Declarant intends to retain fee ownership of the Phase II Parcel until it is separately developed.

D. Through the Map Declarant has granted certain access and parking easements to the Lessee Parcels.

E. Through this Declaration, the Declarant is setting forth certain rights and responsibilities pertaining to the easements granted through the Map and certain easements granted through this Declaration, and to provide for the management, maintenance and operation of the Parcels, and certain joint uses therein. Because of the physical proximity and interrelation of the Parcels (they being a "vertical subdivision" each resting under, beside, or over the other), the Declarant intends by this Declaration to impose upon the Parcels mutually beneficial

restrictions under a general plan of improvement for the benefit of the Lessees and their successors and assigns and the Users.

F. The Project is not a common interest development as defined by Civil Code Section 1351(c). The Project and the Lessees are therefore not subject to the Davis-Stirling Common Interest Development Act (codified at Civil Code Sections 1350 et seq.).

WITH REFERENCE TO THE FACTS RECITED ABOVE, the Declarant declares as follows:

## ARTICLE 1 DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Declaration, the following definitions shall apply:

- (a) "Assessments" means Joint Expenses Assessments, Reimbursement Assessments and/or Special Joint Expenses Assessments.
- (b) "BART" has the meaning set forth in the first paragraph of this Declaration.
- (c) "BART Parking Development" means the approximately \_\_\_\_\_ (\_\_\_\_\_) square foot parking garage to be constructed within the BART Parking Parcel containing two hundred forty-six (246) parking spaces, parking attendant office, stairs, and ramps to grade level.
- (d) "BART Parking Parcel Ground Lease" means that certain ground lease to be entered by and between BART and the BART Parking Parcel Lessee for the BART Parking Parcel, as amended from time to time.
- (e) "BART Parking Parcel" means the portion of the Property designated as "Parcel 3" on the Map located on the parking level and ground floor of the Building.
- (f) "BART Parking Parcel Lessee" means (i) the long term lessee of the BART Parking Parcel, which is anticipated to be \_\_\_\_\_, and its successors or assigns or, (ii) if the BART Parking Parcel Ground Lease is terminated and is not replaced by a long term lease, the owner of the BART Parking Parcel.
- (g) "BART Parking Parcel Project-Serving Component" means a Project-Serving Component located in the BART Parking Parcel.
- (h) "Building" means the structure that contains the Family Development and the Parking Garage.
- (i) "City" means the City of San Leandro, a municipal corporation.

(j) "Credit Lessee" means a Lessee to whom an Assessment is owed by another Lessee.

(k) "Debtor Lessee" means a Lessee who owes an Assessment to another Lessee.

(l) "Declarant" has the meaning set forth in the first paragraph of this Declaration.

(m) "Declaration" means this Declaration of Covenants, Conditions and Restrictions Providing Reciprocal Easements, Joint Use and Maintenance for Cornerstone Transit Oriented Development, San Leandro, and all amendments, modifications and supplements executed in accordance herewith.

(n) "Designated Share" means the following percentages for Project-Serving Components Maintenance:

Family Parcel Lessee	%
BART Parking Parcel Lessee	%
Phase II Parking Parcel Lessee	%

(o) "Easements" means the Map Easements and the Project Easements.

(p) "Encroachments" means minor encroachments among the Parcels due to any of the following: engineering errors; errors in original construction, reconstruction, or repair; settlement, shifting or movement of the Improvements; the insertion of nails, screws, or similar hardware through a boundary among Parcels for the purpose of securing an item; or any similar cause.

(q) "Family Development" means the approximately \_\_\_\_\_ (\_\_\_\_\_) square foot affordable housing development to be constructed within the Family Parcel containing one hundred fifteen (115) dwelling units, and community space for the exclusive use of the residents, mechanical rooms, utility meters and parking spaces among other supporting uses, and a day care center, and retail and office space.

(r) "Family Limited Partner" means the investor limited partner in the Family Parcel Lessee and its successors or assigns.

(s) "Family Parcel" means the portion of the Property designated as "Parcel 4" on the Map, located on all floors of the Building.

(t) "Family Parcel Ground Lease" means that certain ground lease to be entered by and between BART and the Family Parcel Lessee for the Family Parcel, as amended from time to time.

(u) "Family Parcel Lessee" means (i) the ground lessee of the Family Parcel

pursuant to the Family Parcel Ground Lease, which is anticipated to be Alameda Housing Associates, L.P., a California limited partnership, and its successors and assigns, or, (ii) if the Family Parcel Ground Lease is terminated and is not replaced by a long term lease, the owner of the Family Parcel.

(v) "Family Parcel Project-Serving Component" means a Project-Serving Component located in the Family Parcel.

(w) "Improvements" means, collectively, the Parking Garage, the Family Development, and all other improvements that may be built on and fixtures that may be installed in the Lessee Parcels from time to time, including landscaping and the improvements constructed on the Phase II Parcel by the Phase II Parking Parcel Lessee.

(x) "Joint Expenses" means, collectively, (i) all expenses and costs of the Joint Policy, (ii) all costs and expenses of Maintenance of Project-Serving Components, and (iii) any other expenses that this Declaration provides to be paid by a Lessee according to its Designated Share.

(y) "Joint Expenses Assessment" has the meaning given in Section 4.6.

(z) "Joint Expenses Budget" has the meaning given in Section 4.3.

(aa) "Joint Maintenance Committee" means the committee comprised of one representative appointed by each Lessee, and designated pursuant to this Declaration as responsible for the coordination of the Maintenance of Project-Serving Components and other duties as set forth in more detail in Section 4.1 below.

(bb) "Joint Policy" means the master policy of insurance coverage to be maintained by the Lessees covering the Project as set forth in more detail in Section 4.10 below.

(cc) "Leases" means the Family Parcel Ground Lease, the BART Parking Parcel Ground Lease, the Phase II Parking Parcel Ground Lease, and the Phase II Parcel Ground Lease if entered into between BART and the Phase II Parking Parcel Lessee.

(dd) "Lessee" means any of the Family Parcel Lessee, the BART Parking Parcel Lessee or the Phase II Parking Parcel Lessee, collectively referred to as the "Lessees."

(ee) "Lessee Parcel" means any of the Family Parcel, the BART Parking Parcel the Phase II Parking Parcel, or the Phase II Parcel once leased to the Phase II Parking Parcel Lessee, collectively referred to as "Lessee Parcels."

(ff) "Maintain" means undertake Maintenance.

(gg) "Maintenance" means the maintaining (including cleaning but not the routine, day to day, janitorial services), repairing and replacing of any improvement on a Parcel, or related to an Easement.

(hh) "Major Alteration" has the meaning given in Section 2.10(b)(ii).

(ii) "Map" means that certain parcel map entitled Parcel Map No. 10213 filed in the Official Records on \_\_\_\_\_, 2014 as file number \_\_\_\_\_, subdividing the Property into the Parcels, a copy of which is attached to this Declaration as Exhibit B and incorporated herein.

(jj) "Map Easements" mean the easements granted by Declarant through the Map.

(kk) "Mortgage" means a recorded mortgage or deed of trust encumbering a Lessee Parcel, which is given as security by a Lessee for the payment of money or performance of an obligation.

(ll) "Mortgagee" means any person, entity, bank, savings and loan association, insurance company, or other financial institution that is either a mortgagee under a mortgage or the beneficiary under a deed of trust and any holder, governmental guarantor, or insurer of a mortgage.

(mm) "Official Records" means the Official Records of the County of Alameda, State of California.

(nn) "Parcels" means the Lessee Parcels and the Phase II Parcel.

(oo) "Parking Garage" means the two floor underground parking facility to be constructed in the BART Parking Parcel, Parcel II Parking Parcel, and Family Parcel including the BART Parking Development, Phase II Parking Development, and the portion of the Family Development which includes \_\_\_\_\_ (\_\_\_\_\_) parking spaces.

(pp) "Person" means a natural person, a corporation, a partnership, a limited liability company, a trust, or other legal entity.

(qq) "Phase II Parcel" means the portion of the Property designated as "Parcel 1" on the Map.

(rr) "Phase II Parcel Ground Lease" means that certain ground lease which may be entered into by and between BART and the Phase II Parking Parcel Lessee for the Phase II Parcel, as amended from time to time.

(ss) "Phase II Parking Parcel Ground Lease" means that certain ground lease to be entered by and between BART and the Phase II Parking Parcel Lessee for the Phase II Parking Parcel, as amended from time to time.

(tt) "Phase II Parking Parcel" means the portion of the Property designated as "Parcel 2" on the Map located on the ground floor of the Building.

(uu) "Phase II Parking Parcel Lessee" means (i) the long term lessee of the Phase II Parking Parcel and the Phase II Parcel, which is anticipated to be \_\_\_\_\_, and its successors or assigns, or (ii) if the Phase II Parking Parcel Ground Lease and Phase II Parcel Ground Lease are terminated and are not replaced by a long term lease, the owner of the Phase II Parking Parcel and Phase II Parcel.

(vv) "Phase II Parking Parcel Project-Serving Component" means a Project-Serving Component located in the Phase II Parking Parcel.

(ww) "Phase II Parking Development" means the approximately \_\_\_\_\_ (\_\_\_\_\_) square foot parking facility to be constructed within the Phase II Parking Parcel containing thirty-seven (37) parking spaces to be used by \_\_\_\_\_ until development of the Phase II Parcel.

(xx) "Plans and Specifications" means the latest available drawings dated as of \_\_\_\_\_, 2014 prepared by \_\_\_\_\_, as approved by any regulatory body having jurisdiction to approve such drawings, indicating the precise locations of the Project-Serving Components (except as indicated below), Parcel boundaries, residential units, parking areas, utility runs, and other building elements, which drawings have been prepared to show the final locations of such items to the extent they deviate from or were not shown on prior drawings.

(yy) "Project" means, collectively, the Family Parcel, BART Parking Parcel, Phase II Parking Parcel, and all Improvements constructed on such Parcels (unless the context clearly requires exclusion of the Improvements, in which case the term "Project" shall exclude the Improvements).

(zz) "Project Easements" means the easements granted through this Declaration. Whenever possible, the Project Easements will be described by function or location rather than by precise measurement on the Map or the Plans and Specifications.

(aaa) "Project Rules" means the rules that may be adopted by the Lessees from time to time, pursuant to Section 5.13 to address certain issues not fully addressed in this Declaration.

(bbb) "Project-Serving Components" means (i) components of the Improvements that service all Lessee Parcels, such as the foundation and the structural walls, and (ii) components of any system in the Improvements that services more than one Lessee Parcel. Project-Serving Components include (without limitation and as applicable) floors/ceilings which divide Lessee Parcels; expansion joints; internal fire exiting corridors; inter-Parcel life safety systems; security systems; those portions of reservoirs, tanks, pumps, motors, ducts, flues, chutes, conduits, pipes, plumbing, wires, and other utility installations contained within and immediately surrounded by or attached to any structure or space which is part of the Building and passes through more than one Lessee Parcel (as required to provide power, light, telephone, cable television, gas, domestic water, fire sprinkling water, irrigation water, sanitary sewerage, storm sewerage, and drainage services); other usual appurtenances; and any other Building

element which is not located solely within one Parcel and which the Lessees determine to be a Project-Serving Component, except that any utility equipment which is part of a discrete and complete system servicing only one Lessee Parcel, or a part thereof, shall not be included. The Roof of the Building is included in this definition.

(ccc) "Property" means that certain real property described in Exhibit A and as further described in Recital B.

(ddd) "Reimbursement Assessment" has the meaning given in Section 4.6(b).

(eee) "Reimbursement Expense" has the meaning given in Section 4.6(a).

(fff) "Roof" means the waterproof membrane on the uppermost surface of the Building which is exposed to the elements together with the load bearing structure that supports such membrane. The Roof is contained in the Family Parcel and is a Project-Serving Component.

(ggg) "Special Joint Expenses Assessment" has the meaning given in Section 4.5.

(hhh) "Users" means a Lessee's employees, tenants, lessees, guests, licensees, contractors and subcontractors.

1.2 Exhibits. The following exhibits are attached to and incorporated into this Declaration:

- Exhibit A      Legal Description of the Property
- Exhibit B      Parcel Map

ARTICLE 2  
DIVISION OF PROPERTY, GRANT OF EASEMENTS, AND  
MAINTENANCE

2.1 General Description of Property.

(a) General Boundaries. Each of the Parcels has the boundaries shown on the Map.

(b) BART Parking Parcel, Phase II Parking Parcel, Family Parcel, and Parking Garage. The BART Parking Parcel, Phase II Parking Parcel, and Family Parcel will contain the Parking Garage. The initial construction of the Parking Garage on each Lessee Parcel will be accomplished by the BART Parking Parcel Lessee, the Phase II Parking Parcel Lessee, and Family Parcel Lessee pursuant to separate construction contracts pertaining to the portion of the Parking Garage on each Lessee Parcel.

(c) Family Parcel and Family Development. The Family Parcel will contain

the Family Development. Construction of the Family Development will be accomplished by the Family Parcel Lessee.

(d) Phase II Parcel. Upon execution of this Declaration, BART will retain ownership of the Phase II Parcel. It is anticipated that the Phase II Parcel will be developed subsequent to the development of the Project, and BART will enter into the Phase II Parcel Ground Lease with the Phase II Parking Parcel Lessee for the Phase II Parcel. Declarant will amend this Declaration if necessary, to include any additional rights or obligations pertaining to development of the Phase II Parcel and its lease to the Phase II Parking Parcel Lessee.

2.2 No Separate Conveyance of Easements. The ownership of each of the Parcels includes the benefit of, and is encumbered by, and is subject to the Easements. The Project Easements are established through this Declaration and are to be conveyed with the respective Lessee Parcels, and, cannot be modified, terminated or relocated (except as set forth in this Declaration), and shall not be separated or separately conveyed (except as expressly set forth below). Each Easement shall be deemed to be conveyed or encumbered with its respective Parcel, even though the description in the instrument of conveyance or encumbrance may refer only to the fee or leasehold title to one of the Parcels. The easements granted in this Declaration are essential and necessary for the development and ongoing operation of the Improvements.

2.3 Easements for Construction and Maintenance.

(a) Improvements. Through this Declaration, the Declarant hereby establishes easements to each Lessee and their respective Users over, under, and all about each Parcel for (i) construction or installation and Maintenance of the Improvements within each Lessee Parcel, (ii) repair, restoration, or construction following a casualty of the Improvements, (iii) Maintenance of encroachments in which easements are granted through Section 2.6, and (iv) Maintenance of Improvements within any Lessee Parcel to the extent that performance of such Maintenance is the responsibility or right of another Lessee under Section 2.8 or 2.9. The exercise of the easements granted in this Section shall be made with as little inconvenience to each Lessee as practicable. Except in cases of emergency or with respect to areas for which easements are otherwise provided in this Declaration, twenty-four (24) hours' advance notice (by telephonic notice and: (i) facsimile and overnight delivery, (ii) electronic mail and overnight delivery, or (iii) by personal delivery) shall be given to a Lessee prior to exercise of the easements granted in this Section. Any damage to any portion of any of the Parcels as a result of the exercise of the easement granted in this Section shall be promptly restored to as near the original condition as possible by the Lessee using the easement at such Lessee's sole cost and expense. The easements granted in this Section are of a temporary nature and the rights hereunder may only be exercised during the relevant period of repair, restoration, construction, or Maintenance.

(b) Safety Matters; Legal Compliance. Each Lessee shall take, and shall cause its agents and contractors to take, all safety measures necessary to protect the other Lessee and their Users and the property of each from injury or damage caused by or resulting from the construction of the applicable portion of the Improvements. Each Lessee agrees that all construction work performed hereunder by, or on behalf of, a Lessee shall be done in a diligent, good and workmanlike manner, with first-class materials and in accordance with approved drawings and specifications (including the Plans and Specifications as applicable) and all



applicable laws, rules, ordinances, regulations, and code requirements.

(c) Liens. Each Lessee agrees that in the event that any mechanic's lien or other statutory lien arising by reason of labor, services, or materials supplied to or at the request of said Lessee, shall be recorded against any other of the Parcels, then such Lessee shall pay and discharge the same of record within twenty (20) days after the notice of the filing thereof, by either payment, deposit or bond, except to the extent such lien shall be contested in accordance herewith. Each Lessee shall have the right, but not the obligation, to contest the validity, amount or applicability of any such lien by appropriate legal proceedings, provided it furnishes a lien release bond or otherwise causes such lien to be released within such twenty (20) day period. If said Lessee does not, within the time period specified above, contest or cause the same to be released of record by payment or posting of a proper bond, the Lessee of the Lessee Parcel affected by such lien, and BART if the lien pertains to the Phase II Parcel, shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including without limitation by the payment of the claim giving rise to such lien or by the posting of a bond. The paying Lessee or BART, as applicable, shall submit an invoice and supporting documentation to the non-paying Lessee, and the non-paying Lessee shall pay such amount no later than ten (10) days following receipt of such invoice.

2.4 Access Easements. The Declarant hereby establishes and grants the following easements:

(a) Utility Facilities. Declarant hereby establishes and grants to each Lessee non-exclusive easements, appurtenant to such Lessee's Lessee Parcels, in, on, under, over and across those portions of the Lessee Parcels not owned by such Lessee, and the utility rooms identified on the Plans and Specifications, which are reasonably necessary for such Lessee to access, install, operate, maintain, repair, replace and relocate all electrical, gas, water, sewage, drainage, telephone, cable, security and other utilities and similar facilities identified in the Plans and Specifications and servicing such Lessee's Lessee Parcels. The exercise of the easements granted in this Section shall be made with as little inconvenience to each Lessee as practicable. Except in cases of emergency or with respect to areas for which easements are otherwise provided in this Declaration, twenty-four (24) hours' advance notice (by telephonic notice and: (i) facsimile and overnight delivery, (ii) electronic mail and overnight delivery, or (iii) by personal delivery) shall be given to a Lessee prior to exercise of the easements granted in this Section. Any utility work shall be at the sole cost and expense of the Lessee contracting for the performance of the work. Any damage to any portion of any of the Parcels as a result of the exercise of the easement granted in this Section shall be promptly restored to as near the original condition as possible by the Lessee using the easement at such Lessee's sole cost and expense.

(b) Parking. To the extent not granted in the Map Easements, Declarant hereby establishes and grants to the Family Parcel Lessee and the Phase II Parking Parcel Lessee for the benefit of each such Lessee and its respective Users, non-exclusive easements, appurtenant to Family Parcel and the Phase II Parking Parcel, for ingress, egress, access and use of the following portions of the BART Parking Parcel: the stairwells, elevators, walkways, sidewalks, pathways, driveways, ramps, and bicycle storage spaces.

2.5 Structural and Support Easements. Through this Declaration, the Declarant hereby establishes and grants to each Lessee non-exclusive easements and rights in, on, over, under, through and about each Lessee Parcel as reasonably necessary for the structural support and integrity of the Improvements located within each Lessee Parcel, with such easements and rights being appurtenant to each Lessee Parcel. No Lessee shall perform, or shall permit the performance of, any activity that may materially alter the structural support necessary for the Improvements located within a Lessee Parcel owned by another Lessee without the consent of the other Lessee(s), which consent shall not be unreasonably withheld, conditioned or delayed.

2.6 Encroachment Easements.

(a) Through this Declaration, the Declarant hereby establishes and grants to each Lessee Parcel (as the dominant tenement) and its Lessee non-exclusive easements in, on, over, under, through and all about each other Parcel (as the servient tenement) as reasonably necessary to accommodate and maintain any Encroachment that may now or hereafter exist.

(b) Notwithstanding Section 2.6(a), no Lessee shall have the benefit of an easement for an Encroachment as a result of the negligence or willful misconduct of such Lessee or its Users.

(c) If the Improvements are partially or totally destroyed, and then repaired or rebuilt in substantially the same manner as originally constructed, minor encroachments shall be permitted to facilitate repair or reconstruction.

2.7 Hold Harmless.

(a) Each Lessee shall indemnify, defend, and hold the other Lessees ("Indemnified Lessees") harmless from all liability, damage, cost, or expense incurred by the Indemnified Lessees arising out of the use by the Lessee or any of its Users of any of the Easements within such other Lessee Parcel, or arising out of any violation by such Lessee of its obligations under this Declaration, other than any such liability, damage, cost or expense resulting from the negligence or willful misconduct of the Indemnified Lessees.

(b) Each Lessee shall indemnify, defend, and hold the other Lessee harmless from all liability, damage, cost, or expense incurred by such other Lessee arising out of any liens including but not limited to mechanics' and materialmen's liens imposed on such other Lessee Parcel, arising out of work or labor done, supplies furnished, or services rendered at the request of the contracting Lessee or any of its Users.

(c) Subject to obtaining the waiver of subrogation rights required in this subsection, the Lessees release each other, and their respective authorized representatives, from any claims for damage to the personal and real property improvements located in the Lessee Parcels, and/or the Building that are caused by or result from risks insured against under any property insurance policies carried by the Lessees and in force at the time of any such damage. Each Lessee shall use its best efforts to cause each property insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against

the other Lessee in connection with any damage covered by any property insurance policy.

2.8 Maintenance of the Lessee Parcels.

(a) Maintenance of the Family Parcel. Maintenance of the Family Parcel shall be performed as follows:

(i) Maintenance of the Family Parcel including Family Parcel Project-Serving Components shall be performed by the Family Lessee in accordance with this Declaration and the Family Parcel Ground Lease. The Family Lessee shall manage, maintain in good condition, repair, and replace the Family Parcel and parts thereof, except for those items (if any) which another Lessee has been designated to manage, maintain, repair, and replace as described in this Declaration, and under no circumstances may the Family Lessee adversely affect the architectural integrity of the Building or its exterior without the prior written consent of the other Lessees.

(ii) The other Lessees shall have the right and duty to perform Maintenance of the Family Parcel to the extent necessary to mitigate an emergency situation. Before performing Maintenance under this Section 2.8(a)(ii), the other Lessee shall first take all reasonable steps to contact the Family Lessee to permit the Family Lessee to perform the necessary Maintenance.

(iii) Except as provided in Sections 2.8(d) and (e) the cost of Maintenance of the Family Parcel shall be borne by the Family Lessee.

(b) Maintenance of the BART Parking Parcel. Maintenance of the BART Parking Parcel shall be performed as follows:

(i) Maintenance of the BART Parking Parcel including BART Parking Parcel Project-Serving Components shall be performed by the BART Parking Parcel Lessee in accordance with this Declaration and the BART Parking Parcel Ground Lease. The BART Parking Parcel Lessee shall manage, maintain in good condition, repair, and replace the BART Parking Parcel and parts thereof, except for those items (if any) which another Lessee has been designated to manage, maintain, repair, and replace as described in this Declaration, and under no circumstances may the BART Parking Parcel Lessee adversely affect the architectural integrity of the Building or its exterior without the prior written consent of the other Lessees.

(ii) The other Lessees shall have the right and duty to perform Maintenance of the BART Parking Parcel to the extent necessary to mitigate an emergency situation. Before performing Maintenance under this Section 2.8(b)(ii), the other Lessee shall first take all reasonable steps to contact the BART Parking Parcel Lessee to permit the BART Parking Parcel Lessee to perform the necessary Maintenance.

(iii) Except as provided in Sections 2.8(d) and (e) the cost of Maintenance of the BART Parking Parcel shall be borne by the BART Parking Parcel Lessee.

(c) Maintenance of the Phase II Parking Parcel. Maintenance of the Phase II Parking Parcel shall be performed as follows:

(i) Maintenance of the Phase II Parking Parcel including Phase II Parking Parcel Project-Serving Components shall be performed by the Phase II Parking Parcel Lessee in accordance with this Declaration and the Phase II Parking Parcel Ground Lease. The Phase II Parking Parcel Lessee may delegate this obligation to the BART Parking Parcel Lessee. The Phase II Parking Parcel Lessee shall manage, maintain in good condition, repair, and replace the Phase II Parking Parcel and parts thereof, except for those items (if any) which another Lessee has been designated to manage, maintain, repair, and replace as described in this Declaration, and under no circumstances may the Phase II Parking Parcel Lessee adversely affect the architectural integrity of the Building or its exterior without the prior written consent of the other Lessees.

(ii) The other Lessees shall have the right and duty to perform Maintenance of the Phase II Parking Parcel to the extent necessary to mitigate an emergency situation. Before performing Maintenance under this Section 2.8(c)(ii), the other Lessee shall first take all reasonable steps to contact the Parcel II Parking Parcel Lessee to permit the Phase II Parking Parcel Lessee to perform the necessary Maintenance.

(iii) Except as provided in Sections 2.8(d) and (e) the cost of Maintenance of the Phase II Parking Parcel shall be borne by the Phase II Parking Parcel Lessee.

(d) Cost of Maintenance of Project-Serving Components. The cost of Maintenance of the Project-Serving Components shall be borne by the Lessees in their Designated Shares.

(e) Cost for Maintenance Caused by Another Lessee. The cost of any Maintenance of any Parcel required as a result of any act or omission of another Lessee or its Users shall be borne solely by such Lessee.

2.9 Maintenance of Phase II Parcel. Maintenance of the Phase II Parcel shall be performed as follows:

(a) Except as provided in Section 2.9(d), prior to execution of the Phase II Parcel Ground Lease Maintenance of the Phase II Parcel shall be performed by BART. Upon execution of the Phase II Parcel Ground Lease, Maintenance of the Phase II Parcel shall be performed by the Phase II Parking Parcel Lessee. BART or the Phase II Parking Parcel Lessee, as applicable, shall manage, maintain in good condition, repair, and replace the Phase II Parcel and parts thereof, except for those items (if any) which another Lessee has been designated to manage, maintain, repair, and replace as described in this Declaration.

(b) The other Lessees shall have the right and duty to perform Maintenance of the Phase II Parcel to the extent necessary to mitigate an emergency situation. Before performing Maintenance under this Section 2.9(b), the other Lessee shall first take all reasonable steps to contact BART or the Phase II Parking Parcel Lessee, as applicable, to permit BART or

the Phase II Parking Parcel Lessee , as applicable, to perform the necessary Maintenance.

(c) Except as provided in Sections 2.9(d) the cost of Maintenance of the Phase II Parcel shall be borne by BART or the Phase II Parking Parcel Lessee upon execution of the Phase II Parcel Ground Lease.

(d) The BART Parking Parcel Lessee shall Maintain the six (6) foot pedestrian easement and twenty-five (25) foot driveway easement over the Phase Parcel II granted to the Family Parcel Lessee and the BART Parking Parcel Lessee through the Map. The cost of Maintenance of such easements shall be borne by BART Parking Parcel Lessee, Phase II Parking Parcel Lessee, and Family Parcel Lessee in accordance with their Designated Shares.

2.10 Prohibited Alterations; Major Alterations.

(a) Subject to the requirements of the Leases, no Lessee shall, without the prior written consent of the other Lessee construct or alter any Improvements on such Lessee Parcels that will do any of the following:

(i) Unreasonably interfere with the other Lessee's use and enjoyment of its Lessee Parcel;

(ii) Cause the termination or nonrenewal of insurance policies or an increase in insurance premiums for another Lessee; or

(iii) Adversely affect or impair the architectural integrity of the Building or the exterior of the Building.

(b) Prior to performing a "major alteration" to any Improvements owned by it, the Lessee proposing to undertake the major alteration shall:

(i) Provide the other Lessees copies of the plans and specifications for the work to be performed; and

(ii) Request and obtain the written approvals of the other Lessees, which approval shall not be unreasonably withheld, conditioned, or delayed.

For the purposes of this Section 2.10(b) "major alteration" is defined as any alteration to Project Serving Components except for purely cosmetic alterations (such as painting) that are not visible from the exterior of the Project.

ARTICLE 3  
USE RESTRICTIONS

In addition to all of the covenants contained in this Declaration and in the Leases, the use of the Property is subject to the following:

3.1 Family Parcel. The Family Parcel shall be occupied and used for residential and

related purposes, including but not limited to, affordable multi-family housing apartment purposes, parking in the area designated in the Plans and Specifications, play area in the area designated in the Plans and Specifications, and community room. No other trade or business shall be conducted therein, except as follows: (1) secondary use not incompatible with residential use such as an "office in the home," (2) use of residential units for resident manager's units and assistant residential manager's units and management offices, (3) use of residential units, common areas, and offices for the provision of supportive services to the residents of the residential units, (4) a daycare center in the area designated in the Plans and Specifications, and (5) retail uses in the area designated in the Plans and Specifications, excluding any use that is inconsistent with the operation of a first-class, urban retail and office mercantile and residential mixed-use development.

3.2 BART Parking Parcel. The BART Parking Parcel shall be used for residential parking for BART station patrons or other public parking. BART station patrons may not park in any areas of the Parking Garage other than the BART Parking Parcel. The BART Parking Parcel Ground Lease will set forth rules governing use of the BART Parking Parcel.

3.3 Phase II Parking Parcel. The Phase II Parking Parcel shall be used for residential parking for BART station patrons prior to development of the Phase II Parcel by the Phase II Parking Parcel Lessee. Upon development of the Phase II Parcel by the Phase II Parking Parcel Lessee, the Phase II Parking Parcel shall be used for parking for the benefit of the Phase II Parcel as developed by the Phase II Parking Parcel Lessee. The Phase II Parking Parcel Ground Lease and Phase II Parcel Ground Lease will set forth rules governing use of the Phase II Parking Parcel.

3.4 Phase II Parcel. Prior to development of the Phase II Parcel by the Phase II Parking Parcel Lessee, BART shall Maintain the Phase II Parcel as fenced space. Upon development of the Phase II Parcel by the Phase II Parking Parcel Lessee, the Phase II Parking Parcel shall be used for uses consistent with the Phase II Parcel Ground Lease.

3.5 Compliance with Laws; No Nuisances. Each Lessee shall comply with, and shall cause all Users to comply with, at all times, all applicable laws, rules, ordinances, regulations, and code requirements governing the Property. No illegal activities shall be carried on, in, or upon any Lessee Parcel, or any part thereof, nor shall anything be done on any Lessee Parcel which constitutes a nuisance or which interferes with the quiet enjoyment of the other Lessee of its Lessee Parcel or its successors, assigns, or Users, of its Lessee Parcel, or a part thereof, or which will impair the structural integrity of the Building.

3.6 Signs. Signs on each Lessee Parcel shall conform to any applicable City ordinances and shall be subject to any Project Rules. Signs of a reasonable size advertising any residential or retail unit for rent and signs of a reasonable size identifying the retail businesses within the Family Parcel may be displayed to the public view, provided such signs comply with the City ordinances.

3.7 Telecommunications Equipment and Roof Mounted Equipment. Other than what is shown on the Plans and Specifications or otherwise required by law, no telecommunications equipment or roof mounted equipment of any sort may be put on the Roof or the exterior of the

Building without the prior written consent of the Family Parcel Lessee.

3.8 Garbage and Refuse Disposal. All rubbish, trash, and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate. Trash, garbage, and other waste shall be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, garbage cans, or storage piles shall be kept screened and concealed from view of streets, and open spaces in the Lessee Parcels. Each Lessee is responsible for the storage and disposal of the rubbish, trash, and garbage generated from the activities of each such Lessee Parcel.

## ARTICLE 4 JOINT MAINTENANCE EXPENSES AND INSURANCE

4.1 Joint Maintenance Committee. The Joint Maintenance Committee shall consist of three (3) members. Each Lessee shall appoint one representative to serve as a member of the Joint Maintenance Committee. Each member of the Joint Maintenance Committee may be removed from office at any time by his/her appointing Lessee with or without cause. Any member of the Joint Maintenance Committee may resign at any time by giving written notice to the appointing Lessee and the Joint Maintenance Committee.

(a) Meetings. The Joint Maintenance Committee shall meet annually, no later than August 1 of each year, and at such other times as any two members of the Joint Maintenance Committee may determine. A majority of the members of the Joint Maintenance Committee shall constitute a quorum for conducting business and approving actions, provided that the absent member was provided reasonable notice of the meeting and the opportunity to comment on the actions to be taken by the Joint Maintenance Committee.

(b) Compensation. No member of the Joint Maintenance Committee shall receive compensation for any service he or she may render to the Joint Maintenance Committee. However, a member may be reimbursed for his or her actual, reimbursable, and necessary expenses incurred in the performance of his or her duties and such expenses shall be considered a Joint Expense.

(c) Rules. The Lessees may, by agreement, adopt procedural and substantive rules for the operation of the Joint Maintenance Committee.

(d) Duties. The duties of the Joint Maintenance Committee shall include (i) coordination of maintenance to Project-Serving Components, and repair after damage or destruction to the Building (Section 4.2 below); (ii) preparation of Joint Expenses Budget (Section 4.3 below); (iii) establishing, levying and collecting Joint Assessments (Sections 4.4 and 4.5 below); (iv) establishing and monitoring reserves for reasonably anticipated contingencies and repairs or replacements of Project-Serving Components (Section 4.8 below); and (v) oversight of the joint insurance policy for the Project (Section 4.10 below).

(e) Limitation of Liability. The members of the Joint Maintenance Committee shall not be liable to the Lessees, their Users, or other person for any injury, death,

loss or damage due to theft, other breaches of security, failures, or interruption of services, or other circumstances pertaining to activities within the Joint Maintenance Committee's control unless the same is due to the willful misconduct or gross negligence of the Joint Maintenance Committee, or recurring failure by the Joint Maintenance Committee after receipt of written notice with respect to such failure to exercise reasonable care and diligence in the performance of its obligations hereunder. Each member of the Joint Maintenance Committee shall be entitled to indemnification by the Lessees against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of the fact that he was or is a member of the Joint Maintenance Committee, provided such person acted in good faith and in a manner he believed to be in the best interests of the Lessees.

#### 4.2 Coordination of Joint Maintenance and Repair after Damage or Destruction.

(a) Maintenance Coordination. The Joint Maintenance Committee is authorized to provide service to, and assure that, each Project-Serving Component is operated, maintained, repaired, and replaced in a first-class condition, and otherwise in accordance with the standards of this Declaration. Such authorization includes the right to inspect and monitor each Lessee's Maintenance of Project-Serving Components located on their respective Lessee Parcel, coordinate Maintenance among Lessees, and authorize contracts to perform any Maintenance the Committee reasonably determines is not being properly performed.

(b) Damage or Destruction Repair Coordination. The Joint Maintenance Committee is authorized to coordinate the repair or restoration activities necessitated by damage or destruction affecting more than one Lessee Parcel, subject to the rights of the Lessees to not rebuild pursuant to Section 5.5(b) below, and subject to the rights of Mortgagees. The Joint Maintenance Committee shall have the right to authorize contracts to perform any repair or restoration work the Joint Maintenance Committee reasonably determines is not being properly performed.

(c) Contracting. The Family Parcel Lessee, as the agent of the Joint Maintenance Committee, shall have the right to solicit bids, enter into contracts with third parties on behalf of the Joint Maintenance Committee, and take all other steps reasonably necessary or appropriate to perform the duties of the Joint Maintenance Committee (the "Contracting Lessee"). The Lessees which are not the Contracting Lessee (the "Non-Contracting Lessees") shall each indemnify, defend, and hold the Contracting Lessee harmless from all liability, damage, cost, or expense incurred by such Contracting Lessee arising out of such actions except to the extent due to the gross negligence or willful misconduct of the Contracting Lessee. If the activities of the Joint Maintenance Committee are necessitated by a Lessee not performing its required Maintenance, repair or restoration activities, the costs incurred by the Joint Maintenance Committee to perform such activities shall be a Reimbursement Assessment charged pursuant to Section 4.6 below.

#### 4.3 Joint Expenses Budget.

(a) By August 1 of each year, the Joint Maintenance Committee shall meet to discuss the Joint Expenses that the Lessees expect to be incurred in the following calendar year.



By September 1, the Joint Maintenance Committee shall prepare and deliver to the Lessees a written budget describing in reasonable detail the Joint Expenses that the Lessees expect to be incurred in the following calendar year (the "Joint Expenses Budget"). The Joint Expenses Budget shall also specify the contribution that each Lessee must make, during the following calendar year, to its reserve account pursuant to Section 4.8(b).

(b) The Joint Expenses Budget shall account for (i) all expected ordinary and extraordinary Joint Expenses to be incurred in a calendar year, including expenses expected to be incurred by the Joint Maintenance Committee for management, accounting or other services, and (ii) any previously unreconciled past payments of Reimbursement Assessments for Joint Expenses or Joint Expenses Assessments for Reimbursement Expenses. The Joint Expenses Budget shall also describe the following: (1) the current estimated replacement cost, estimated remaining life, and estimated useful life of each major component the Maintenance of which is a Joint Expense; (2) the current estimate of the amount of cash reserves necessary to perform Maintenance on such major components; (3) the current estimate of accumulated cash reserves actually set aside by the Lessees to perform Maintenance on such major components (as further discussed in Section 4.8); and (4) a statement addressing the procedures used for the calculation and establishment of those reserves to defray the Maintenance of major components the Maintenance of which is a Joint Expense.

(c) The Joint Expense Budget shall allocate Joint Expenses to each Lessee in proportion to their Designated Shares subject to the following exceptions:

(i) Costs associated with Project-Serving Components which benefit more than one but not all of the Lessees shall be allocated in an equitable manner solely among the benefited Lessees;

(ii) Costs associated with the Maintenance of all driveways to, from, and inside the Parking Garage shall be allocated to the BART Parking Parcel Lessee, Phase II Parking Parcel Lessee and Family Parcel Lessee in accordance with their Designated Shares.

(d) Unless one or more of the Lessees objects in writing in a timely manner to the Joint Expenses Budget pursuant to Section 4.3(e) below, the Joint Expenses Budget shall be effective as of January 1 of the following year.

(e) If any affected Lessee disputes the Joint Expense Budget and the Lessees are unable to resolve their differences within a reasonable time, then the Parties shall submit the Joint Expenses Budget to an arbitrator jointly selected by the Parties (or if the Lessees cannot agree on an arbitrator, then each Lessee will select an arbitrator and the selected arbitrators will select a third arbitrator and the third arbitrator shall be the arbitrator to resolve the dispute over the Joint Expenses Budget). By December 25, the arbitrator shall confirm or revise the Joint Expenses Budget as the arbitrator determines to be appropriate, and such confirmed or revised Joint Expenses Budget shall be effective as of January 1 of the following year. The fees of the arbitrator or arbitrators shall be a Joint Expense, but any other costs incurred in connection with the arbitration shall be borne by the Lessee incurring such costs.

#### 4.4 Joint Expenses Assessments.

(a) Each Lessee's Designated Share of Joint Expenses, as set forth in the Joint Expenses Budget from time to time, shall be a charge levied against such Lessee and its Lessee Parcel and may be collected as a "Joint Expenses Assessment", enforceable in the manner set forth in Section 4.7.

(b) The BART Parking Parcel Lessee and the Phase II Parking Parcel Lessee shall pay to the Family Lessee as agent of the Joint Maintenance Committee, its annual Joint Expenses Assessment in even monthly installments equal to one twelfth (1/12) of its annual Joint Expenses Assessment, with each monthly installment due on the first day of each month of the year for which the applicable Joint Expenses Budget is effective.

(c) The Joint Maintenance Committee shall oversee the use of the payments received from the Lessees pursuant to Section 4.3(b), to perform the activities whose costs constitute Joint Expenses.

4.5 Special Joint Expenses Assessments. In the event the Joint Maintenance Committee determines, in good faith, that the Joint Expense Budget is or will become inadequate for any reason (including, but not limited to, misinformation or miscalculation, unexpected repair or replacement of any Project-Serving Component, increase in estimates of Joint Expenses, or increase in the cost of the Joint Policy due to the actions or failure to act of one or more, but not all of the Lessees), the Joint Maintenance Committee may, at any time, levy a Special Joint Expenses Assessment to make up such inadequacy, which shall be allocated to the appropriate Lessee(s) in accordance with the Designated Shares (or in the event of an increase in the cost of the Joint Policy, to be divided solely among the Lessees responsible for the increase in insurance as further set forth in Section 4.10 below).

#### 4.6 Reimbursement Assessments.

(a) A "Reimbursement Expense" is any expense actually incurred or expected to be incurred by a Creditor Lessee that

(i) is the financial responsibility of a Debtor Lessee under this Declaration;

(ii) arises out of noncompliance with this Declaration (or any rule or regulation duly adopted pursuant to this Declaration) by the other Debtor Lessee; or

(iii) arises out of inaction by the other Debtor Lessee that does not constitute noncompliance with this Declaration.

(b) Every Reimbursement Expense shall be a charge levied against the Debtor Lessee other than the Creditor Lessee and against the Debtor's Lessee Parcel, as applicable (a "Reimbursement Assessment").

(c) Reimbursement Expenses shall include actual and reasonable financing

costs associated with the Creditor Lessee advancing funds on behalf of the Debtor Lessee from the time funds are advanced until the date on which the applicable Reimbursement Assessment is paid.

(d) Reimbursement Assessments shall be enforced in the manner set forth in Section 4.7.

#### 4.7 Payment and Enforcement of Assessments.

(a) A Creditor Lessee shall provide notice to a Debtor Lessee of the amount and due date of any Assessment. Notice shall be delivered not less than thirty (30) and not more than sixty (60) days prior to the Assessment becoming due.

(b) Each Assessment obligation is a personal obligation of the Debtor Lessee against whom the Assessment is levied. Assessments may be offset against each other unless one Lessee objects in writing to an offset.

(c) Any Assessment shall become delinquent if not paid within fifteen (15) days after the due date, and a Creditor Lessee's reasonable costs in collecting the delinquent Assessment (including reasonable attorneys' fees) may then be added to the Assessment. Any Assessment remaining unpaid as of thirty (30) days after the due date shall also have the following charges added to the Assessment (together with the reasonable costs of collection, the "Additional Charges"): (i) interest at the lesser of twelve percent (12%) per annum and the maximum lawful rate; and (ii) a late charge equal to the greater of Ten Dollars (\$10) and ten percent (10%) of the delinquent Assessment.

(d) If any Assessment is not paid within thirty (30) days after its due date, then the Creditor Lessee shall provide notice to the Debtor Lessee (and shall simultaneously notify any Mortgagee who has requested a copy of the notice) of the following: (i) that the Assessment is delinquent; (ii) the action required to cure the default; (iii) a date, not less than thirty (30) days after the date of the notice, by which the default must be cured; and (iv) that failure to cure the default on or before the date specified in the notice may result in a lawsuit against the Debtor Lessee. If a delinquent Assessment and corresponding Additional Charges are not paid in full on or before the date specified in the notice, then the Creditor Lessee may resort to the remedies set forth in Section 4.7(e) below.

(e) In the event any Debtor Lessee fails to pay any Assessment, or any other amount assessed by the direction of the Joint Maintenance Committee, any Creditor Lessee(s) may, pursuant to Section 5.14 below, commence and maintain an arbitration action, or enforce any other right or remedy available at law or equity, against the Debtor Lessee obligated to pay such Assessment. Any ruling rendered in any action shall include the amount of the delinquent Assessment, Additional Charges, and any other amounts that the ruling body may award.

#### 4.8 Reserve Accounts.

(a) Each Lessee shall establish and contribute to reserve accounts in the amount deemed appropriate by the Joint Maintenance Committee to ensure such Lessee's ability

to pay its share of reasonably anticipated Joint Expenses as may be projected to arise in future years, based on the analysis in the Joint Expenses Budget. On or about January 1 of each year, each Lessee shall deliver to the Joint Maintenance Committee evidence of the amount currently held in the delivering Lessee's reserve account.

(b) Notwithstanding the foregoing, each Lessee shall contribute to its reserve account, by December 31 of each year, the amount designated for such contribution in the Joint Expenses Budget applicable to such year. A Lessee's failure to do so will give rise to a Reimbursement Assessment if any of the other Lessees makes a contribution to its reserve account greater than designated in the Joint Expenses Budget to the extent necessary to compensate for the failing Lessee's failure to contribute to its reserve account.

#### 4.9 Other Reports.

(a) For any year in which the Assessments exceed Fifty Thousand Dollars (\$50,000) (without regard to any offset), a review of the relevant supporting documents and financial statements of each of the Lessees shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy. A Lessee whose relevant supporting documents and financial statements must be reviewed pursuant to this Section 4.9 shall distribute to the other Lessees a copy of such review within one hundred twenty (120) days after the close of each fiscal year for which such a review must be prepared. The dollar amounts in this Section 4.9(a) shall be increased each year by the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), San Francisco-Oakland-San Jose (1982-84=100), as published from time to time by the United States Department of Labor (or by the increase in a similar index if the described index is no longer published).

(b) At least once every five (5) fiscal years the Joint Maintenance Committee shall cause a study of the reserve requirements of the Property (and the Joint Maintenance Committee's cost in causing such study shall be a Joint Expense). The study shall include the following items:

(i) Identification of the major components the Maintenance of which is a Joint Expense and which have, as of the date of the study, a useful life of less than thirty (30) years.

(ii) Identification of the probable remaining useful life of the components identified in Section 4.9(b)(i), as of the date of the study.

(iii) An estimate of the cost of Maintenance of the components identified in Section 4.9(b)(i), both during and at the end of their useful life.

(iv) An estimate of the total annual contribution necessary to defray the cost to Maintain the components identified in Section 4.9(b)(i), both during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

(c) Joint Insurance Policy. The Joint Maintenance Committee shall select a

single insurance carrier and single insurance agent to provide the insurance coverage required under this Section 4.10 for the Project (the "Joint Policy"). Procurement of the Joint Policy is subject to the terms of the Leases. All Lessees shall be named insureds under the Joint Policy. The Family Parcel Lessee shall be designated the "first named insured" to receive all notices under the Joint Policy. The Family Parcel Lessee shall provide copies of such notices and evidence of insurance to the other Lessees within five (5) days of receipt. The Joint Policy shall provide that all insurance proceeds shall be paid to an insurance trustee appointed by the Joint Maintenance Committee pursuant to Section 5.5(c) below for subsequent disbursement to the affected Lessees. To the extent obtainable, the Joint Policy shall provide that any change or cancellation of such policy must be made in writing and sent to the Lessees at their respective principal offices at least thirty (30) days before the effective date of change or cancellation. Costs associated with the Joint Policy shall be a Joint Expense payable by the Lessees according to their Designated Share. If the cost of the Joint Policy is increased due to the actions or failure to act of one or more, but not all of the Lessees, the Joint Maintenance Committee may levy a Special Joint Expenses Assessment pursuant to Section 4.5, to be shared solely among those Lessees responsible for the increase in cost of the Joint Policy.

(d) Property Insurance. The Lessees shall obtain property insurance covering all Lessee Parcels and Improvements, as now or hereafter erected on the Property, and all equipment and fixtures located thereon or used in connection therewith, insuring the Lessees against loss or damage by the perils insured under the standard Causes of Loss -- Special Form. If commercially feasible, coverage shall be in amount or amounts equal to full replacement value with an "agreed amount" endorsement or its equivalent, if available, or an "inflation guard" endorsement. The replacement cost of the Project covered by such policy of insurance shall be redetermined and the amount of coverage adjusted accordingly from time to time as frequently as the Joint Maintenance Committee shall, in good faith, deem necessary to maintain the coverage amounts set forth below, but, in any event, no less frequently than annually. To the extent obtainable, each such policy shall provide for (i) a full waiver of subrogation by the insurer as to any and all claims against the Lessees and their respective officers, directors, partners, agents, employees, and tenants, and (ii) a full amount of all defenses based upon acts of the insured.

(e) Liability Insurance. The Lessees shall obtain a policy or policies of Commercial General Liability insurance, with combined limits not less than Six Million Dollars (\$6,000,000) per occurrence and Seven Million Dollars (\$7,000,000) general aggregate limit of bodily injury and property damage liability, as such limits may be increased by the Project Rules. Such insurance shall name all owners as Named Insureds. Unless modified by the Project Rules, such policies shall include all of the following coverages: products/completed operations, independent contractors, blanket contractual liability, broad form property damage, host liquor liability, non-owned and hired automobile liability, employees as additional insureds, and personal injury liability (libel, slander, false arrest and wrongful eviction). Such policies shall include a Severability of Interest provision, and shall not include a cross-liability exclusion, as respects claims brought by one insured against another. In the event any liability insurance policy required pursuant to this Section 4.10(b) is written on a claims-made basis, the Lessees shall maintain liability insurance coverage for a minimum of three years following the expiration of such policy for claims that arose during the policy term but were reported after policy expiration.

(f) Additional Insurance Consideration. Other than as described in this Declaration, it is the responsibility of each Lessee to insure its personal property, fixtures, and the improvements and betterments added to its Lessee Parcel, together with additional coverage and public liability insurance that the Lessee deems appropriate, or as required by each Lessee's respective Mortgagees.

(g) Insurer Standards. Except as modified by the Project Rules, all such policies of insurance shall be obtained from insurance companies approved to do business in California, and with an A.M. Best rating of Class A:VII or better. In the event A.M. Best should revise its rating system, the Lessees shall select insurance companies with equivalent financial and policyholder's ratings under the rating system then being used by A.M. Best or in the event A.M. Best discontinues its rating system, insurance companies with equivalent financial and policyholder's ratings under such comparable rating system as the Lessees may select through the Project Rules.

(h) Deviation from Insurance Requirements. All insurance required by this Declaration shall be obtained at reasonable premiums in light of the market for such insurance with adequate minimum limits for coverage, endorsements, and deductibles, as determined by the good faith judgment of the Joint Maintenance Committee provided, however, if the Joint Maintenance Committee determines that a type or form of insurance required pursuant to this Declaration, is not of any direct benefit to one or more Lessees, the Joint Maintenance Committee shall reduce the proportionate share of the Joint Expense Budget for the non-benefited Lessee by the amount allocated for that type or form of insurance and shall reallocate that reduced amount among the benefiting Lessees according to their relative Designated Shares; and provided, further, an Lessee may request the Joint Maintenance Committee to purchase coverage for such Lessee (or tenant(s) of such Lessee) (i) to include coverage for furniture, fixtures, equipment and improvements, and (ii) provide casualty and/or public liability insurance in addition to or excess of that required by Section 4.10(a) and (b) for such Lessee, its tenants, guests, invitees. All insurance premiums and costs resulting from such request(s) to the Joint Maintenance Committee shall be charged to and paid by the requesting Lessee as a Special Joint Expenses Assessment. Notwithstanding anything contained herein, in the event all Lessees agree to obtain one or more types of insurance enumerated in this Section 4.10 which are in excess of the minimum limits for coverage, endorsements, and deductible set forth herein, upon obtaining prior written consent of the other Lessees, the Joint Maintenance Committee shall obtain such insurance, and the premiums for such shall be a Joint Expense.

#### 4.10 Rights of Mortgagees.

(a) A Mortgagee shall be protected against Assessments levied prior to foreclosure (or deed-in-lieu) of the lender's deed of trust. In other words, no Assessment levied prior to foreclosure (or deed-in-lieu) of a lender's deed of trust shall result in liability for such lender (or another transferee through foreclosure) after the foreclosure.

(b) After coming into possession of a Lessee Parcel through foreclosure or deed in lieu of foreclosure, a Mortgagee (or any party coming into ownership of the Lessee Parcel through the Mortgagee) shall be subject to all Assessments levied after the foreclosure

sale or transfer in lieu of foreclosure other than Assessments based on obligations accruing, or defaults hereunder arising prior to the date of such foreclosure or transfer in lieu of foreclosure.

## ARTICLE 5 GENERAL PROVISIONS

5.1 Enforcement. Each Lessee, or successor thereto shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, and reservations now or hereafter imposed by the provisions of this Declaration, and in such action shall be entitled to recover reasonable attorneys' fees in such amount as are ordered by the court. Failure of any Lessee to enforce any covenant or restriction in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

5.2 Invalidity of Any Provision. Should any provision or portion of this Declaration be declared invalid or in conflict with any applicable law, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

5.3 Term; Covenants Run with the Land. The easements created by and the covenants and restrictions of this Declaration shall run with and bind the Property in perpetuity, and shall inure to the benefit of and shall be enforceable by the Lessee of any property or interest subject to this Declaration with respect to their regulatory interests, and the Lessee's respective legal representatives, heirs, successors, subtenants and assigns. It is intended that the covenants, easements, agreements, promises and duties of each Lessee set forth in this Declaration shall be construed as covenants and not as conditions, and that, to the fullest extent legally possible, all such covenants shall run with the land or constitute equitable servitudes as between the Parcel of the respective covenantor, as the servient tenement, and the Parcel of the respective covenantee, as the dominant tenement. The provisions of this Section are subject to all of the provisions of Section 5.4.

5.4 Amendments. This Declaration may only be amended in a writing executed by the Lessees. Any amendment must be recorded and shall become effective upon being recorded in the Official Records.

(a) BART Approval Rights. Notwithstanding the above, this Declaration shall not be amended in any way or terminated without the prior written approval of BART.

(b) Mortgagee Approval Rights. Notwithstanding the above, this Declaration shall not be amended or terminated without the prior written approval of each Mortgagee holding a Mortgage on a Lessee Parcel.

(c) Limited Partner Approval Rights. Notwithstanding the above, this Declaration shall not be amended or terminated without the prior written approval of the Family Limited Partner, which approval shall not be withheld unreasonably. Failure of the Family Limited Partner to respond in writing within forty-five (45) business days of receipt of a written request for approval of an amendment to or termination of this Declaration, either by approving the amendment or termination or by stating specific reasons for withholding approval, shall be

deemed to be approval by the Family Limited Partner.

## 5.5 Damage or Destruction.

(a) Lessees to Rebuild. Except as set out in Section 5.5(b) below and subject to the rights of Mortgagee and the terms of the Leases, in the event there is any damage or destruction to any portion of the Building as a result of fire or other casualty, the Building shall be repaired and reconstructed in accordance with the Plans and Specifications, as modified by the Lessees, and the provisions for repair and reconstruction as set forth in this Section 5.5. Subject to the rights of Mortgagees, if all such damage or destruction has occurred within the portion of a Building located entirely within one Lessee Parcel, then any cost of repair or reconstruction above the amount of insurance proceeds received for the loss shall be paid by the Lessee of that Lessee Parcel. If the damage or destruction affects more than one Lessee Parcel, then the Joint Maintenance Committee shall coordinate the repair or reconstruction activities and the cost to repair or reconstruct which are above the amount of insurance proceeds received for the loss shall be divided in an equitable manner (reflecting the amount of repair work needed for each Lessee Parcel) between the Lessee Parcels. The Lessees shall be obligated to pay any such cost within sixty (60) days of the date of the damage or destruction.

(b) Lessees Fail to Rebuild. Subject to the terms of the Leases, if any portion of the Building is materially damaged or destroyed by fire or other casualty ("materially damaged or destroyed" is defined for the purpose of this Section 5.5(b) as any damage for which the cost of repair or reconstruction, as determined by a licensed contractor selected by the Lessees, is equal to or greater than Five Hundred Thousand Dollars (\$500,000), as adjusted by a fraction whose numerator is the Consumer Price Index (1982-84=100) for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-San Jose area, or any successor thereof ("CPI"), last published on the date of damage or destruction, and whose denominator is the CPI last published prior to \_\_\_\_\_, 2014), and if the Lessees agree not to rebuild, then the Family Parcel Lessee, shall use all reasonable efforts to sell the Project; provided, however, any vote by the Lessees regarding whether or not to rebuild in the event the Building is materially damaged or destroyed shall be tallied based on the Lessee's Designated Shares. Subject to the rights of each Lessee's respective Institutional Lenders in regards to each Lessee's respective share of the proceeds, all insurance proceeds received shall be divided among the Lessees in an equitable manner reflecting the amount of damage sustained by each Lessee's Parcel, and the sales proceeds attributable to the Building shall be distributed to the Lessees in proportion to the fair market value of each Lessee Parcel as determined at the time of sale of the Project. The fair market value of each Lessee Parcel shall be determined by an MAI qualified appraiser jointly selected by the Lessees. If the Lessees cannot agree on an appraiser, then each Lessee shall select an appraiser and the selected appraisers will select another appraiser and this appraiser shall be the appraiser to determine the fair market value of each Lessee Parcel.

(c) Insurance Trustee. Subject to the rights of Mortgagees described above, all insurance proceeds and other amounts required to be paid in connection with any work of repair or restoration to be undertaken hereunder shall be paid by, or behalf of, the Lessees to an



insurance trustee for periodic disbursement to the Lessee of the damaged Lessee Parcel, if the damage is confined to one Lessee Parcel, as the work of repair and reconstruction progresses in accordance with prudent construction loan disbursement practices. If the repair work affects more than one Lessee Parcel, such funds shall be periodically disbursed to the Family Parcel Lessee for disbursement to the affected Lessees. The insurance trustee shall be a national bank or a nationally recognized title company reasonably acceptable to the Lessees.

5.6 Condemnation. Any total or partial taking of the Project by eminent domain shall be governed by the Leases.

5.7 Limitation of Restrictions on Lessees. The completion of construction of the Project and development of the Phase II Parcel, and the ability of each Lessee to occupy its Lessee Parcel and use such parcel in accordance with this Declaration is essential to the establishment and welfare of the Project as a combined development. In order that such work may be completed and the Project be established as a fully occupied community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent any Lessee or its contractors or subcontractors from doing on or within any Lessee Parcel whatever is reasonably necessary or advisable in connection with the completion of such work (including construction of, or addition to, any construction that may occur at a date or dates following completion of construction of the remainder of the Building); or

(b) Prevent any Lessee or its representatives from erecting, constructing, or maintaining on any part or parts of the Lessee Parcels such structures as may be reasonable and necessary for the conduct of their business of completing such work and establishing the Project as a combined commercial and residential community; or

(c) Prevent any Lessee from maintaining such sign or signs on any of the Lessee Parcels as may be necessary for the sale, lease, or disposition thereof, to the extent permitted by Section 3.4.

Each Lessee shall make, and shall cause its contractors and subcontractors to make, reasonable efforts to avoid disturbing, while completing any work on the Project and Phase II Parcel, the use and enjoyment of the Lessee Parcels by the other Lessees and their respective Users.

5.8 Lessee's Compliance. Each Lessee shall be liable for performance of, and is bound by and shall comply with, the provisions of this Declaration and the Project Rules.

5.9 Singular and Plural; Gender. The singular and plural number and masculine, feminine and neuter gender shall each include the other where the context requires.

5.10 Notices, Demands and Communications. Except as otherwise provided in this Declaration, formal notices, demands, and communications among the Lessees shall be sufficiently given if, and shall not be deemed given unless, delivered personally, with a delivery receipt; sent by United States Postal Service, certified mail, return receipt requested or sent by

reputable overnight delivery service with a receipt showing date of delivery, or by facsimile transmission with follow-up by one of the previous three methods, to the address of the Declarant and Lessees as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected person may from time to time designate by mail as provided in this Section. Delivery shall be deemed to have occurred at the time indicated on the receipt as the date of delivery, the date of refusal of delivery, or the date the item was returned as undeliverable.

5.11 No Discrimination. No Lessee shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, mortgaging, or occupancy of its Lessee Parcel, or a part thereof, to any person on account of race, color, creed, religion, sex, sexual orientation, marital status, ancestry, national origin, familial status, or handicap.

5.12 Rights of Mortgagees. The rights of a Lessee under this Declaration shall be subject to the rights of a Mortgagee to such Lessee. No breach or violation of the Declaration shall defeat or render invalid the lien of any Mortgage upon a Lessee Parcel made in good faith and for value.

5.13 Project Rules. The Lessees may develop mutually acceptable rules (the "Project Rules") to address: (i) parking within the Parking Garage, and (ii) other issues of Easement usage. If the Lessees cannot develop mutually acceptable Project Rules then the Lessees shall submit the issues in dispute to mediation in accordance with Section 5.14. The Project Rules shall be in writing and copies shall be provided to all Lessees, and all amendments to such Project Rules must be in writing and approved by all Lessees.

5.14 Dispute Resolution. In the event that the Lessees are unable to agree on any aspect of the requirements of this Declaration, or if there is a dispute as to a Lessee's performance, then any Lessee shall be entitled to mediation in accordance with the following procedures:

(a) Formal Mediation of Disputes. Any Lessee may request the dispute be mediated through a mediation before a retired judge or justice from the Judicial Arbitration & Mediation Services, Inc., or its successor-in-interest, or if there is no successor-in-interest, then another alternative dispute resolution service reasonably acceptable to the Lessees, (in each event such entity is referred to herein as "JAMS") pursuant to the mediation process described in this Section 5.14.

(b) Initiating Mediation. The Lessee desiring the mediation (the "Requesting Party") shall send written notice to the other party (the "Receiving Party") in accordance with Section 5.10 requesting mediation. The Receiving Party shall have thirty (30) days from receipt of the written request to submit the matter to mediation. Within ten (10) days after receipt of the

Receiving Party's agreement to submit the matter to mediation, the Requesting Party shall send written demand to the Dispute Resolution Administrator of JAMS (the "Administrator") at the office of JAMS in or closest to the City with the names, addresses, telephone numbers and fax numbers of all parties to this Declaration and a brief synopsis of the claim, controversy, difference, or disputed matters and a proposed solution to the problem, with copies sent to the Receiving Party.

(c) Selection of Mediator. As soon as practicable after the demand is served upon JAMS, the Administrator will contact the Lessees to select a mutually agreeable mediator. If the Lessees have no particular mediator in mind or cannot agree on a mediator, the Administrator will submit a list of mediators, and their resumes, numbering at least one more than there are parties. Each Lessee may then strike one name and the Administrator will designate the mediator from the list of remaining names.

(d) Hearings-Scheduling/Parties Present. After the mediator has been selected, the Lessees shall promptly agree upon a date and time for the initial conference with the mediator, but no later than thirty (30) days after the date the mediator was selected. The Lessees understand and agree that, besides counsel, each Lessee may bring only such additional persons as are needed to respond to questions, contribute information and participate in the negotiations. The number of additional parties may be agreed upon in advance with the assistance and advice of the mediator.

(e) Position Papers. No later than seven (7) days before the first scheduled mediation session, each Lessee shall deliver a concise written summary of its position, together with any appropriate documents, views and a proposed solution to the matters in controversy to the mediator and also serve a copy on all other parties.

(f) Participation by Mediator. Once familiar with the case, the mediator will give recommendations on terms of possible settlement conditions to be imposed upon the Lessees (if appropriate). The mediator's opinion shall be based on the material and information then available to the Lessees, excluding any information given to the mediator in confidence during a separate caucus. The opinions and recommendations of the mediator are not binding on the Lessees.

(g) Confidentiality of Proceedings. The mediation process is to be considered settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from the later discovery or use in evidence. The Lessees agree that the provisions of California Evidence Code Section 1152.5 shall apply to any mediation conducted hereunder. The entire procedure is confidential, and no stenographic or other record shall be made except to memorialize a settlement record. All conduct, statements, promises, offers, views and opinions, oral or written, made during the mediation by any party or a party's agent, employee, or attorney are confidential and, where appropriate, are to be considered work product and privileged. Such conduct, statements, promises, offers, views and opinions shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties; provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission in evidence simply as a

result of it having been used in connection with this settlement process.

(h) Fees and Costs. The fees and costs of the mediation shall conform to the then current fee schedule at JAMS and, in the absence of a written agreement to the contrary, shall be a Joint Expense, but any other costs incurred in connection with the dispute resolution shall be borne by the Lessee incurring such costs.

(i) Termination of Mediation Process. The mediation process shall continue until the matter is resolved, or the mediator makes a good faith finding that all settlement possibilities have been exhausted and there is no possibility of resolution through mediation. To the extent possible, mediation shall be conducted from 9:00 a.m. to 5:00 p.m., with a one (1)-hour break, on consecutive days. In no event shall a Lessee be required to mediate for more than five (5) days.

(j) Condition Precedent to Litigation. The Lessees agree and acknowledge that any dispute arising from this Declaration brought before a court of competent jurisdiction shall first be subject to the mediation process, as set forth in this Section 5.14, as a condition precedent. Any such mediation shall be nonbinding except to the extent otherwise expressly provided herein.

Notwithstanding the foregoing, nothing in this Section 5.14 shall prohibit a Lessee from pursuing the rights set forth in Section 5.17.

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

5.16 Violation a Nuisance. The result of every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy allowed by law or equity against a Lessee for nuisance, either public or private, shall be available to and may be exercised by the other Lessee.

5.17 Right to Enjoin/Specific Performance. In the event of any violation or threatened violation of any of the provisions of this Declaration by a Lessee or User, the other Lessee shall have the right to apply to a court of competent jurisdiction for an injunction against such violation or threatened violation, or for specific performance of the subject provision, but nothing in this Section shall be deemed to affect whether or not injunctive relief or specific performance is available on account of such violation or threatened violation. The dispute resolution process set forth in Section 5.14 shall not apply to this Section 5.17.

5.18 Title of Parts and Sections. Any titles of the sections or subsections of this Declaration are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Declaration's provisions.

5.19 Applicable Law. This Declaration shall be interpreted under and pursuant to the laws of the State of California.

5.20 Severability. If any term of this Declaration is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force unless the rights and obligations of the Lessees have been materially altered by such holding of invalidity.

5.21 Legal Actions. Without limiting Section 5.14 above, if any legal action is commenced to interpret or to enforce the terms of this Declaration or to collect damages as a result of any breach of this Declaration, then the Lessee prevailing in any such action shall be entitled to recover against the Lessee not prevailing all reasonable attorneys' fees and costs incurred in such action (and any subsequent action or proceeding to enforce any judgment entered pursuant to an action on this Declaration).

5.22 No Partnership; Joint Venture or Principal-Agent Relationship. Neither anything in this Declaration nor any acts of the Lessees shall be deemed by any Lessee, or by any third Person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the Lessees.

5.23 Declaration for Exclusive Benefit of the Lessees. Except for provisions expressly stated to be for the benefit of a Mortgagee, the provisions of this Declaration are for the exclusive benefit of the Lessees and successors and assigns, and not for the benefit of, nor give rise to any claim or cause of action by, any third Person.

5.24 Estoppel Certificate. Within ten (10) days after a written request of a Lessee, the other Lessee(s) shall, issue to such requesting Lessee, or to any Mortgagee, or to any prospective purchaser or prospective Mortgagee specified by such requesting Lessee, or to any other Person reasonably designated by the requesting Lessee, an estoppel certificate stating: (a) whether the Lessee to whom the request has been directed knows of any default under this Declaration and, if there are known defaults, specifying the nature thereof; (b) whether to such Lessee's knowledge this Declaration has been modified or amended in any way (or if it has, then stating the nature thereof); and (c) that to the Lessee's knowledge this Declaration as of that date is in full force and effect or, if not, so stating.

5.25 No Dedication. Nothing contained in this Declaration shall be deemed to create or result in a dedication of any portion of the Lessee Parcels for public use or to create any rights in the general public.

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

5.27 Entire Understanding of the Lessees. This Declaration and the Project Rules (if created at a future date) constitute the entire understanding and agreement of the Lessees with respect to the Easements and the rights and responsibilities associated with the Lessee Parcels. To the extent of any conflict between the Leases and this Declaration, the Leases shall control.

5.28 Multiple Originals; Counterparts. This Declaration may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.



DRAFT

EXHIBIT A  
(Property Description)

DRAFT

EXHIBIT B  
(Parcel Map)



# DRAFT

RECORDING REQUESTED BY:  
AND WHEN RECORDED MAIL TO:

Goldfarb & Lipman LLP  
1300 Clay Street, Eleventh Floor  
Oakland, CA 94612  
Attn: Heather Gould

---

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
PROVIDING FOR RECIPROCAL EASEMENTS, JOINT USE AND  
MAINTENANCE FOR CORNERSTONE TRANSIT ORIENTED DEVELOPMENT, SAN  
LEANDRO**

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