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Copy to:

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Attn: Real Estate and Finance Team
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[The undersigned hereby declares this instrument to be exempt from Recording Fees (CA Govt. Code § 27383) and Documentary Transfer Tax (S.F. Bus. & Tax Reg. Code § 1105)]

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DECLARATION OF EASEMENTS

WITH COVENANTS, CONDITIONS AND RESTRICTIONS

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DECLARATION OF EASEMENTS WITH COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS WITH COVENANTS, CONDITIONS AND RESTRICTIONS (this "**Declaration**") is made and entered into on _____ 2021, by the City and County of San Francisco, a municipal corporation ("**City Declarant**" or "**City**") and EQX JACKSON SQ HOLDCO LLC, a Delaware limited liability company ("**Developer Declarant**" or "**Developer**"). The City Declarant and the Developer Declarant may be collectively referred to as the "**Declarants**" or individually as a Declarant.

RECITALS

A. City and Developer have entered into that certain Conditional Property Exchange Agreement (the "**CPEA**") dated July 30, 2020, pursuant to the terms of which, among other things, City and Developer agreed to enter into a "Tower Easement Agreement" and a "Reciprocal Easement Agreement." This Declaration satisfies the requirement for both agreements.

B. Developer holds title to certain real property located on Washington Street between Sansome and Battery Streets, as more particularly described in Exhibit A-1, which under the CPEA, Developer intends to transfer to the City (the "**City Parcel**"). Pursuant to the CPEA, the City now does, or intends to, ground lease then will transfer to Developer fee title to a legal parcel at the corner of Washington and Sansome Streets as more particularly described in Exhibit A-2 (the "**Developer Parcel**"). The Developer Parcel and the City Parcel may be collectively referred to as the "**Parcels**" or individually as a "**Parcel**."

C. The Developer will construct: (i) a five-story building that is a fire station with integrated fire truck and service vehicular parking on the City Parcel and one level of a three-level subterranean parking garage (the "**Parking Garage**") within the City Parcel (the "**Station Project**") for the City Declarant; and (ii) a twenty-one story tower building consisting of a hotel, fitness facilities, office space and remaining two levels of the Parking Garage within the Developer Parcel (the "**Tower Project**," and together with the Station Project, the "**Project**").

D. The parties desire to grant to each other Easements for access and support over Easement Areas and to establish Assessments and cost-sharing provisions with respect to Shared Elements and to establish certain covenants, conditions and restrictions with respect to the Parcels, for the mutual and reciprocal benefit of the Parcel, present and future Parcel Owners and occupants, on the terms and conditions set forth in this Declaration.

NOW, THEREFORE, the Declarants hereby make this Declaration for the establishment of a general scheme of ownership for the City Parcel and the Developer Parcel. All real property within the Parcels shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved subject to the Easements, restrictions, reservations, rights, covenants, and conditions contained in this Declaration. All such Easements, restrictions, reservations, rights, covenants and conditions shall be enforceable as equitable servitudes, shall run with the Parcels and shall inure to the benefit of and be binding upon all Owners and all other parties having or acquiring any right, title or interest in any part of the Project or the Parcels:

AGREEMENT

1. Definitions. The following terms (singular or plural, as the context requires) shall have the meanings set forth in this Section below:

1.1 "**Allowed Rate**" means the lesser of ten percent (10%) and the maximum interest rate permitted under California law.

1.2 "**Applicable Laws**" means all present and future federal, state and local laws, statutes, ordinances, resolutions, codes, rules, regulations, orders, decrees, decisions, determinations and other actions having the force of law that are applicable to the ownership, development, improvement, use or operation of the Project or any Parcel or portion thereof.

1.3 "**Assessment**" means each assessment levied by the Managing Owner on each of the Owners of Parcels and Developer Subdivision Parcels in the Project, and that is to be paid by each such Owner for such Owner's Percentage Share of Shared Expenses, as determined by the Managing Owner and approved of by the Owners pursuant to this Declaration. The term "Assessment" includes Regular Assessments and Special Assessments.

1.4 "**City**" or "**City Declarant**" means the City and County of San Francisco, a municipal corporation and charter city and county existing under the laws of the State of California, its successors and assigns.

1.5 "**City Parcel**" means the legal parcel more particularly described in Exhibit A-1.

1.6 "**City Parcel Owner**" means the fee owner of the City Parcel during its period of ownership.

1.7 "**Claims**" means all claims, demands, lawsuits, actions, legal proceedings, causes of action, suits, penalties, fines, liabilities, damages, losses, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs).

1.8 "**Clean-Up Work**" has the meaning in Section 7.3(a).

1.9 "**Construction Manager**" means a construction manager retained by the Managing Owner to coordinate and supervise the Restoration Contractor and other professionals as reasonably necessary to complete the Restoration Work.

1.10 "**Common Structural Elements**" means the following structural building components located within the City Parcel: foundations, footings, columns, girders, structural floor slabs and ceilings, beams and supports, and the supporting structure of load bearing walls supporting the Tower Project and the support structure components of the Parking Garage as shown on the final, City approved plans and specifications for the Station Project.

1.11 "**Common Systems**" means

(a) electrical rooms serving more than one Parcel, including any common meters, and such other associated equipment and machinery, if any;

(b) fire pump and protection systems serving more than one Parcel; and

(c) Water Drainage Facilities, if any.

1.12 "**Covered Improvements**" means the Shared Elements.

1.13 "**CPEA**" means that certain Conditional Property Exchange Agreement, dated as of July 30, 2020, by and between the Developer and the City.

1.14 "**CPI**" means 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-Hayward area, or any successor index thereto.

1.15 "**Default**" has the meaning set forth in Section 13.3.

1.16 "**Developer**" or "**Developer Declarant**" means EQX JACKSON SQ HOLDCO LLC, a Delaware limited liability company, and any successor or assign that expressly assumes all of the rights and duties of the Developer Declarant hereunder from time to time in accordance with the requirements of Section 16.8.

1.17 "**Developer Parcel**" means the legal parcel as more particularly described in Exhibit A-2.

1.18 "**Developer Parcel Owner**" means the fee owner of the Developer Parcel during its period of ownership. If the Developer Parcel is legally subdivided, then Developer Parcel Owner shall mean the Developer Subdivision Parcel Owner(s) of the Developer Subdivision Parcel(s) that is obligated, benefited or burdened, as the context indicates.

1.19 "**Developer Subdivision Parcel**" means a legal parcel resulting from the subdivision of the Developer Parcel.

1.20 "**Developer Subdivision Parcel Owner**" means a person or entity holding title to a Developer Subdivision Parcel, but excluding those persons or entities having an interest merely as security for the performance of an obligation.

1.21 "**Easements**" means the easements granted in Section 2.1 of this Declaration.

1.22 "**Easement Areas**" means the easement area identified for each Easement as set forth in Section 2.1 of this Declaration, and Exhibit B, Exhibit C and Exhibit D.

1.23 "**Force Majeure**" means any failure of or delay in the availability of any public utility; any City-wide strikes or labor disputes; any unusual delays or shortages encountered in transportation, fuel, material or labor supplies; casualties; earthquake, hurricane, flood, tidal wave or other severe weather events and other acts of God; acts of a public enemy or of war or terrorism; governmental orders or restrictions; injunctions; other acts or occurrences beyond the reasonable control of a party, including but not limited to an epidemic, a pandemic, or public health emergency; provided, however, that (i) any of the foregoing events or occurrences shall not be a Force Majeure event if caused by the party claiming Force Majeure or its affiliate, and (ii) the

foregoing event or circumstances shall not be a Force Majeure event if caused by the party or its affiliates' financial inability to perform.

1.24 "**Indemnify**" means to indemnify, defend, reimburse, and hold the other Owner harmless from and against Claims.

1.25 "**Insurance Trustee**" means any California licensed branch of a foreign banking corporation, a national banking association, federal or state-chartered depository institution or trust company, or nationally recognized title company designated to hold and disburse insurance proceeds and/or condemnation awards in accordance with this Declaration.

1.26 "**Long-Term Lease**" a lease for all of a Parcel or all of a Developer Subdivision Parcel with a term of more than thirty-five (35) years inclusive of extension options.

1.27 "**Managing Owner**" means the Owner who is appointed as the Managing Owner, or any successor of such Owner, as provided in Section 16.8 of this Declaration.

1.28 "**Owner**" or "**Owners**" means as follows

(a) the record owner, whether one (1) or more persons or entities, of fee simple title to a Parcel, but excluding those persons or entities having an interest merely as security for the performance of an obligation;

(b) if the Developer Parcel has been further legally subdivided, then, as to the Developer Parcel, "Owner" means a Developer Subdivision Parcel Owner, except that if a Developer Subdivision Parcel is further subdivided into condominiums or other form of community ownership, represented by separate unit or interest titles, then the title holder of each such unit or interest (i) shall be subject to this Declaration and (ii) shall be represented under this Declaration by a community interest owner's association, which shall act on behalf of all such unit and interest owners as their sole and exclusive legal representative for all purposes of this Declaration as the "Developer Subdivision Parcel Owner" (namely, enforcing all rights and performing all obligations such unit or interest owners under this Declaration, including but not limited to, sending notices of deficiency, approving budgets and assessments, asserting any defaults under this Declaration) acting with full authority and in all capacities as may be provided in its governing documents; and (iii) such community interest owner's association shall vote or otherwise make all decisions under this Declaration for such unit or interest titleholders;

(c) if a person or entity is the lessee under a Long -Term Lease, then that lessee shall, in accordance with the terms and conditions of such Long-Term Lease, be considered an "Owner" within the meaning of this Declaration. If a Parcel or Developer Subdivision Parcel is sold under an installment contract of sale and the installment contract is recorded, the purchaser, rather than the fee holder, shall be considered the "Owner" of such Parcel or Developer Subdivision Parcel from and after the date the Managing Owner receives written notice of the recorded installment contract. For the avoidance of doubt, a lessee under a lease for any residential or other subdivided unit, if any, shall not be considered an "Owner" within the meaning of this Declaration.

1.29 "**Parcel**" means the City Parcel or the Developer Parcel, which may be referred to collectively as the "**Parcels**."

1.30 "**Parcel Improvements**" is defined in Section 6.2(b).

1.31 "**Parking Garage**" has the meaning set forth in Recital C.

1.32 "**Parking Garage Access Ramp**" is defined in Section 2.1(a)(i).

1.33 "**Parking Garage Internal Ramp**" is defined in Section 2.1(b)(i).

1.34 "**Parking Garage Reciprocal Easement**" is defined in Section 2.1(c)(i).

1.35 "**Parking Garage Shared Expenses**" is defined in Section 2.1(c)(i).

1.36 "**Parking Management Plan**" is defined in Section 2.4(a).

1.37 "**Percentage Share**" means each Owner's percentage share of Shared Expenses, as applicable. The Developer Parcel Owner's Percentage Share of the Shared Expenses shall be ninety percent (90%) and the City Parcel Owner's Percentage Share of the of the Shared Expenses shall be ten percent(10%); if the Developer Parcel is legally subdivided, then each Developer Subdivision Parcel Owner's percentage share will be its percentage share of the Developer Parcel as provided in the Developer Parcel subdivision governing documents, and if not so provided, then that percentage share will be determined by each Developer Subdivision Parcel's square footage as compared to the entire Developer Parcel square footage.

1.38 "**Permitted Mortgage**" means any mortgage, mezzanine loan, pledge, deed of trust or other instrument encumbering the entire fee or Long-Term Leasehold interest of an Owner, or all of the borrower's equity interest in Owner provided to a lender as collateral for a loan, in whole or in part, and any interests or rights appurtenant to such fee, leasehold interest or equity interest provided to a lender as collateral for a loan.

1.39 "**Permitted Mortgagee**" means the holder or beneficiary of a Permitted Mortgage.

1.40 "**Permittees**" means the Owners and their respective occupants or tenants within the fire station, hotel, office space, residential units, or other owned parcels and facilities, as the case may be, and, in each case, their respective contractors, subcontractors, employees, guests, agents, customers, invitees, family members, and licensees, as applicable.

1.41 "**Prime Rate**" means the "reference rate" announced by Wells Fargo Bank, or the successor to Wells Fargo Bank, by merger or acquisition, at its main San Francisco branch (whether or not such rate has actually been charged by Wells Fargo Bank). If Wells Fargo Bank should cease to exist or discontinues the practice of announcing a "reference rate," then the term "Prime Rate" shall mean the "reference rate" announced by Citibank, or the successor to Citibank by merger or acquisition, at its main San Francisco branch, (whether or not such rate has actually been charged by Citibank). If both Wells Fargo Bank and Citibank should cease to exist or discontinue the practice of announcing a "reference rate," then the term prime rate (or base rate) reported in the Money Rates column or section of The Wall Street Journal as being the base rate

on corporate loans at large U.S. money center commercial banks (whether or not such rate has actually been charged by any such bank). If the Wall Street Journal (a) publishes more than one prime rate or base rate, the higher or highest of such rates shall apply, or (b) publishes a retraction or correction of any such rate, the rate reported in such retraction or correction shall apply.

1.42 "**Proceeds**" means insurance proceeds payable under policies insuring against damage to the Project by fire or other casualty (but excluding any business or rental interruption insurance).

1.43 "**Project**" is defined in the Recitals.

1.44 "**Project Reserves**" is defined in Section 5.3.

1.45 "**Project Standards**" means, (a) with regard to the Developer Parcel, the first-class quality standard of development, construction, operation, maintenance, appearance, branding, and service of the Tower Project, generally consistent with those of comparable first-class hotel mixed-use real estate projects situated in San Francisco, California; and (b) with regard to the City Parcel, a well-maintained and orderly appearance of the Station Project exterior.

1.46 "**Property Insurance**" is defined in Section 6.1.

1.47 "**Public Areas**" means all areas of the Project located on the street level of the Project outside of the exterior walls of the improvements including, without limitation, walkways, landscaped areas, raised street level terrace, sidewalks, curbing, paving, and other similar exterior site improvements.

1.48 "**Reciprocal Easements**" means those easements granted in Section 2.1(b).

1.49 "**Recorded**" or "**Recordation**" means recorded or recordation in the Office of the San Francisco County Recorder.

1.50 "**Regular Assessment**" means the Assessment established in the approved Shared Expense Budget and payable by each Owner pursuant to Section 5.3 for payment of regular budgeted Shared Expenses during each year.

1.51 "**Reimbursement Assessment**" is defined in Section 5.5.

1.52 "**Repair**" means any repair, restoration, reconstruction, or replacement of the improvements and any other portions of the Project required to be insured hereunder.

1.53 "**Restoration**" means the repair, restoration, replacement, or rebuilding of damaged or destroyed improvements, including, without limitation, any temporary repairs or other work necessary to secure the affected Covered Improvements and protect the safety of other property and persons, and including, without limitation, any alterations, additions, or improvements required by Applicable Laws and approved by the City.

1.54 "**Restoration Contractor**" means general contractors, architects, and engineers selected by the Managing Owner to perform the Restoration Work.

1.55 "**Restoration Work**" refers to restoration or Repair of the Covered Improvements upon the occurrence of a Casualty.

1.56 "**Shared Elements**" means the Common Structural Elements and the Common Systems.

1.57 "**Shared Elements Insurance Proceeds**" means the amounts payable under property insurance policies for Shared Elements, including structural support applicable to both Parcels in the Project, maintained by the Managing Owner as compensation for damage on account of a casualty or condemnation (including insurance proceeds and interest thereon), less the reasonable costs and expenses actually incurred in collecting such amount (including reasonable fees of attorneys, appraisers and expert witnesses).

1.58 "**Shared Expense Budget**" is defined in Section 5.3.

1.59 "**Shared Expenses**" means expenses to be shared between the Owners as provided in this Declaration, as follows:

(a) the cost of operating, administering, inspecting, managing, maintaining, repairing and replacing the Shared Elements, including reasonable reserves for repair and replacement of major components thereof;

(b) common utility charges and expenses, including power, water and sewer charges, personal property taxes, and other similar governmental charges (other than real property taxes, which shall be assessed to and paid by each individual Owner separately) levied on the Project or portions thereof that are not individually metered or charged to a particular Parcel, if any;

(c) the cost of equipment and supplies used to maintain or operate the Shared Elements, if any;

(d) the cost of any capital improvement, repair or replacement made to the Shared Elements approved by the Owners in writing and in their sole and absolute discretion pursuant to this Declaration (which costs may, at the request of an Owner be broken out separately in the Shared Expense Budget as may be required for accounting purposes or to accommodate methods by which the any Owner may pass the cost of capital improvements through to tenants);

(e) the cost of insurance required to be carried by the Managing Owner under Article 6;

(f) the cost of any Clean-up Work, Restoration Work, Restoration of the Improvements, or any other Repair obligations of the Managing Owner pursuant to Article 7; and

(g) the cost of providing ancillary administrative services such as legal, accounting and financial, and communication services for issues related to the Shared Elements or Easement Areas.

1.60 "**Special Assessment**" means a charge against Owners, adjusted for Percentage Share for the costs incurred in connection with any extraordinary expense.

1.61 "**Station Parking Garage**" means that portion of the Parking Garage that is part of the City Parcel, as described in Exhibit A-1.

1.62 "**Station Project**" means a five-story building containing a fire station and the Station Parking Garage, including an exclusive elevator and stairwell connecting the station and Station Parking Garage.

1.63 "**Subsequent Construction**" means further improvements, alterations, modifications, or additions within a Parcel pursuant to Section 4.8.

1.64 "**Total Casualty**" means destruction of all or a portion of either the Tower Project or the Station Project to such a degree that the remaining portion of the Tower Project or Station Project (as applicable) cannot reasonably be used in the manner and for the purposes originally intended and/or cannot be repaired or restored to such condition in a reasonable time as reasonably determined by the Owner of the affected Parcel; provided, however, that if the improvements on only one of the Parcels suffers such destruction and any such destruction materially and adversely impacts or includes Easement Areas (described in this Declaration) for easements of support, access, or Shared Elements granted by this Declaration, then any such casualty shall not be considered a Total Casualty.

1.65 "**Tower Parking Garage**" means that portion of the Parking Garage that is part of the Developer Parcel, as described in Exhibit A-2.

1.66 "**Tower Project**" means a twenty-one-story tower building consisting of a hotel, fitness facilities, office space, and the Tower Parking Garage.

1.67 "**Utility Facilities**" means water mains, storm drains, sewers, water sprinkler system lines, telephone or electrical conduits or systems, cable, gas mains, utility shafts, ducts, chases, risers, mechanical rooms, circuit boxes, and other utility facilities necessary for the operation of the Parcels and all improvements located on or within the Parcels as shown on the final, City approved plans and specifications for the Project.

1.68 "**Water Drainage Facilities**" means all lines, conduits, pipes, and other apparatus for water drainage, storm water collection, retention, detention, and all storage systems necessary in connection therewith, serving the Parcels as shown on the final, City approved plans and specifications for the Project.

2. Easements.

2.1 Grant of Easements.

(a) Easements for the Benefit of Developer Parcel. Subject to the terms and conditions of this Declaration, the City Declarant grants and establishes the following nonexclusive, perpetual, unilateral easements for the benefit of the Developer Parcel, as more specifically depicted in Exhibit B:

(i) Parking Garage Access Ramp. A perpetual, nonexclusive easement over the access ramp to the Parking Garage ("**Parking Garage Access Ramp**") located on the southwest corner of the City Parcel at the back of the Station Project accessible through and by Merchant Street. The Parking Garage Access Ramp is a Shared Element, and each Owner will pay its Percentage Share of the cost of maintaining of the Parking Garage Access Ramp.

(ii) Tower Extension. The Developer Parcel includes the three-dimensional vertical space that extends over the City Parcel and the height from the lowest outer surface of the top of the Station Project building located directly below the Tower Project building to a point equal to the height of the Developer Parcel; therefore, a perpetual, non-exclusive unilateral easement over the portion of the roof of the Station Project building directly below the Tower Project building to allow for maintenance, repair, and replacement of the Tower Project building. The Developer Parcel Owner shall be solely responsible for maintaining, repairing, and replacing all Developer Parcel improvements.

(iii) Tower Structural Support. A perpetual, non-exclusive unilateral easement of support over all structural elements of the Tower Project building located in the City Parcel and necessary for the support of the Tower Project building, including access to the Station Project building roof and the space between the roof and bottom of the closest structural element above the Station Project roof.

(b) Easements for the Benefit of City Parcel. Subject to the terms and conditions of this Declaration, the Developer Declarant grants and establishes the following nonexclusive, perpetual, unilateral easements for the benefit of the City Parcel, as more specifically depicted in Exhibit C:

(i) Parking Garage Internal Ramp. A perpetual, nonexclusive easement over the access ramp in the Tower Parking Garage ("**Parking Garage Internal Ramp**") for access to and from the Parking Garage Access Ramp and the Station Parking Garage. The Parking Garage Internal Ramp is a Shared Element, and each Owner will pay its Percentage Share of the cost of maintaining of the Parking Garage Internal Ramp.

(ii) Station Maintenance. A perpetual, non-exclusive unilateral easement over the portion of the Developer Parcel that is the Tower Project building directly above the roof of the Station Project building to allow for maintenance, repair and replacement of the Station Project building roof. The Owner of the Station Project shall be solely responsible for maintaining, repairing, and replacing the Station Project building roof improvements.

(c) Reciprocal Easements. Subject to the terms and conditions of this Declaration, the Declarants grant and establish the following nonexclusive, perpetual and reciprocal easements, such reciprocal Easement Areas being more specifically depicted in Exhibit D:

(i) Parking Garage. The Parking Garage is a three-dimensional subterranean space consisting of the Tower Parking Garage and the and the Station Parking Garage. In addition to the Parking Garage Access Ramp Easement granted by the City Declarant in Section 2.1(a)(i) and the Parking Garage Internal Ramp Easement granted by Developer

Declarant in Section 2.1(b)(i), there is hereby reserved and granted to each Parcel Owner a reciprocal easement over and across those portions of the Parcels incidental to access to the Tower Parking Garage and Station Parking Garage such as lobbies, elevators, and stairs, but only in an emergency or as otherwise expressly permitted by the Owner of the burdened Parcel (such as during certain repairs or other temporary disruption) to the extent that there are no alternate reasonable ways of ingress or egress ("**Parking Garage Reciprocal Easement**"). Because the Parking Garage Reciprocal Easement contemplates only occasional or emergency use by the other Owner and their Permittees, the expenses of the Parking Garage relating to the maintenance, cleaning, repair, or replacement of the Parking Garage Reciprocal Easement are not Shared Expenses and each Owner shall be solely responsible for maintenance, cleaning, repair, or replacement of the Parking Garage Reciprocal Easement area located on the Owner's Parcel. If, for any reason use of the Parking Garage Reciprocal Easement area becomes more than occasional or emergency use by the other Owner and their Permittees, then the Owners may elect to include the maintenance, cleaning, repair, or replacement of the Parking Garage Reciprocal Easement as a Shared Expense. If there is a dispute between or among Owners regarding the use of the Parking Garage Reciprocal Easement, or with respect to the sharing of the cost thereof, then, upon written request of an Owner addressed to another Owner, the matter shall be submitted to dispute resolution under Section 13.5 below. Any written request from a Developer Subdivision Parcel Owner to the City Parcel Owner must be made through the Managing Owner.

(ii) Shared Elements. There is hereby reserved and granted to each Owner for maintenance, repair, or replacement of Shared Elements, as applicable, an easement over and across the Parcels for the purpose of management, maintenance, cleaning, repair, and replacement of the improvements within the Shared Elements.

(iii) Utility Facilities. There is hereby reserved and granted, in favor of each Owner, a non-exclusive easement, appurtenant to each Parcel, upon, under, over, above and across each other Parcel as reasonably necessary for the maintenance, repair and replacement of Utility Facilities that serve such Parcel, including all telecommunications, mechanical and electrical rooms, risers, or chases.

(iv) Water Drainage. There is hereby reserved and granted (a) to each Owner a non-exclusive easement, appurtenant to each Parcel, upon, under, over, above and across each other Parcel as reasonably necessary for the discharge, drainage, and use of storm water runoff within and through existing Water Drainage Facilities, and (b) to the Managing Owner for purposes of maintaining, repairing, and replacing Water Drainage Facilities.

(v) General Maintenance. There is hereby granted and reserved to each Owner a non-exclusive easement, appurtenant to each Parcel as dominant tenement, upon, under, over, above and across the other Parcel, as servient tenement, as reasonably necessary to permit the Owners to perform the obligations imposed upon them, and to exercise rights granted to them, by Section 4.3 of this Declaration.

(vi) Structural Support. There is hereby reserved and granted to each Owner, appurtenant to each Parcel, a perpetual, non-exclusive easement and right in and to all structural members, columns, beams and other supporting elements within and upon the Project for structural support of the improvements situated within such Parcel. No Owner nor the

Managing Owner may take any action that would adversely affect the structural integrity or safety of the improvements situated within the Project, including those improvements situated within either Parcel of the Project.

2.2 Use of Easements.

(a) The following is applicable to each of the Easements granted or reserved in Section 2.1:

(i) Each of the Easements set forth in Section 2.1 shall at all times be used in such a manner as not to unreasonably interfere with the normal use and operation of the burdened Parcel.

(ii) Except in the event of an emergency, the right of an Owner to enter upon the Parcel of another Owner for maintenance, repair and replacement activities or any other right granted by the easement shall be conditioned upon reasonably prior written notice to the other Owner and the other Owner's approval of the time and manner of entry and egress, and of the work plan and schedule.

(iii) All activities on the Parcels shall be conducted in accordance with Applicable Laws.

(iv) If an Owner or its contractors enter upon any Parcel that it does not own for purposes of maintenance, repair, or replacement, such Owner or contractor shall maintain adequate insurance and shall name the Owner of such Parcel as an additional insured on such insurance policy(-ies) (subject to City's right to self-insure).

(v) Each Easement includes the right of reasonable ingress and egress as may be required to maintain, repair, operate and replace the facilities located in the Easement Areas and used in connection with the Easements subject to the restrictions on entry onto the City Parcel as provided in Section 2.2(d) below.

(vi) Each Owner shall be responsible for defects or dangerous conditions upon their property which cause injury to persons in the Easement Area while performing activities permitted under the Easement, except for any defects or dangerous conditions caused by another Owner or its contractors while on such Owner's Parcel.

(vii) The Common Systems and Common Structural Elements shall not be modified in a manner that will materially adversely affect any other Owner without the prior written consent of that other Owner, which may be withheld or conditioned in such other Owner's sole and absolute discretion.

(viii) Each Owner reserves the right to alter, repair, reconfigure, relocate and/or remove improvements within the Easement Areas on its Parcel so long as such action does not materially adversely affect the beneficial use of the Easements by any other Owner. A temporary interference that cannot reasonably be avoided despite commercially reasonable efforts and that is undertaken in such a manner as to minimize to the extent practicable any interference with the use and enjoyment of the Easement Area shall be permitted with prior written notice to

the other Owner; provided however, that any entry into or interference with the City Parcel is subject to the requirements of Section 2.2(d) below.

(b) Each Owner may permit its Permittees to use the Easements as needed or as appropriate, provided, however, that no such permission shall authorize a use contrary to the uses specified in Section 2.1, no unauthorized use shall act to extinguish the Easements, and no such permission shall relieve an Owner from responsibility for its duties under this Declaration. No building, structures, obstacles, or other improvements inconsistent with the use and enjoyment of the Easements may be placed or permitted within the Easement Areas. Each Owner and its Permittees shall comply with all Applicable Laws in connection with its use of the Easements.

(c) The Managing Owner shall have rights of ingress and egress over and across all Easement Areas (and over each Parcel to and from such Easement Area) for access by the Managing Owner to repair, to replace, and generally maintain the Shared Elements, as provided in this Declaration and subject to Section 2.2(d) below.

(d) Notwithstanding anything in this Section 2 or elsewhere in this Declaration, Developer acknowledges for itself, its successors and assigns, that the Station Project will be an operating fire station, whose operation is essential for the health and safety of the public, and that any interference with the operation of the fire station at certain times and under certain conditions may endanger public health and safety. Accordingly, the right of entry to the City Parcel and the performance of any activity under any Easement over the City Parcel is subject to the following rules: (i) except in an emergency, an Owner or the Managing Owner must provide City Parcel Owner and the Station Project contact reasonable, but not less than twenty-four (24) hours, advance written notice and a reasonable opportunity to confer given by the concerning the time and conditions of entry based on the purpose and urgency of the need for entry; or (ii) in the event of an emergency, if the Owner's or Managing Owner needs to enter the City Parcel in order to prevent or mitigate potential harm to persons, property, or the Project, then the Owner or Managing Owner is required to only provide a verbal notice by telephone to a Station Project contact number answered twenty-four (24) hours every day provided by the City Parcel Owner. If there is no answer or communication with a person of authority immediately available on the first call, then entry during a bona fide emergency without further notice is permitted and the Owner or Managing Owner will provide written and verbal notice to City Parcel Owner and the Station Project contact as soon as practicable.

(e) In the event of a dispute between or among Owners with respect to the Easements, any use of any of the Easements, or the sharing of any costs associated with the Easements, including, but not limited to, the repair or rebuilding of any Utility Facilities, then, upon written request of an Owner addressed to another Owner, the matter shall be submitted to dispute resolution under Section 13.5 below. Any written request from a Developer Subdivision Parcel Owner to the City Parcel Owner must be made through the Managing Owner.

2.3 Indemnification. Each Owner shall Indemnify the other Owner against Claims resulting from its use of the Easements. If an Owner or any Permittee of an Owner damages or destroys any portion of the Parcel or improvements of the other Owner (each, a "**Responsible Owner**"), the Responsible Owner shall Indemnify the other Owner for the full cost of repair or replacement less any amounts actually paid through applicable third-party policies of insurance.

The Owners agree to satisfy any payment of Claims by first applying any property and liability insurance proceeds to such Claims and if an Owner fails to hold property and liability insurance as required under this Declaration to the extent permitted under this Declaration, the Owners shall deduct the amount of the coverage available for the Claims under the policy required if the insurance were held by such Owner. Except as provided in the following sentence, payments shall be made by the Responsible Owner to the other Owner within ninety (90) days after receipt of written demand for payment from the other Owner, which demand shall include (a) a description of the Claim and the circumstance or occurrence giving rise to such Claim and (b) written evidence of the amount of such Claim (i.e., an invoice from an unaffiliated third party). If City is the Responsible Owner under this Section 2.3, then any demand for reimbursement must be sent to the Managing Owner, who will send the demand for reimbursement to the City Parcel Owner for payment to the Managing Owner (on behalf of the demanding Owner), and the Managing Owner will then remit the amounts paid to the demanding Owner.

2.4 Parking Garage Operation.

(a) Tower Parking Garage Parking Management Plan; Parking Licenses. City Declarant acknowledges that the Developer Parcel Owner (or its successor Developer Subdivision Parcel Owner to the Tower Parking Garage) may manage the parking spaces and develop a parking management plan for the Tower Parking Garage ("**Parking Management Plan**"). The Parking Management Plan will include terms to ensure ingress and egress to the Station Parking Garage is not materially impeded and may otherwise manage the Tower Parking Garage as Developer Parcel Owner elects, including setting forth the rights and privileges with respect to use and operation of the Tower Parking Garage and parking spaces therein. Under the Parking Management Plan, Developer Parcel Owner may license, assign, and transfer parking rights and privileges, over and across the Tower Parking Garage (including the Easements providing access thereto), including the designation, allocation, licensing, and assigning non-exclusive and/or exclusive parking rights or parking spaces (in each case, a "**Parking License**"), on such market terms set forth in the Parking Management Plan.

(b) Parking Management Plan Costs; Disputes. The Parking Management Plan and any Parking Licenses are not Shared Elements and any income or costs thereof shall be for the sole benefit of or borne solely by the Developer Parcel Owner. If there is a dispute between Owner of the Tower Parking Garage and the Owner of the Station Parking Garage regarding the Parking Garage, the Parking Management Plan, any Parking License, or any associated costs (including, but not limited to, operational issues or any increased costs of maintenance or operation of any Shared Element allegedly due to the Parking Management Plan and/or the Parking Licenses), then, upon written request of an Owner addressed to the other Owner, the matter shall be submitted to dispute resolution under Section 13.5 below.

3. Rules. The Managing Owner may circulate rules for the Easement Areas in the Project, subject to the approval of the City Parcel Owner. The rules may include hours of operation for vehicular access to the Parking Garage Ramp on the City Parcel, and hours of operation for freight loading at the Tower Project. No rules may interfere with the operation of the Station Project as needed to respond to public safety obligations or emergency response, as determined by City. The rules shall not conflict with this Declaration and shall be implemented by the Managing Owner in a fair, reasonable and non-discriminatory manner.

4. Maintenance and Alterations.

4.1 Managing Owner Obligations.

(a) The Managing Owner shall be solely responsible for the maintenance, repair and replacement of the Shared Elements, which the Managing Owner shall perform in accordance with the Project Standards. The Managing Owner shall duly and completely undertake such maintenance, repair, and replacement in a timely and prudent manner; provided, however, that the Managing Owner shall not be obligated to maintain, repair or replace any Shared Element located within a Parcel until the Managing Owner has been afforded a reasonable time and access to commence such work, which shall not be unreasonably withheld or delayed by any Owner, except as provided in Section 2.2(d) above. Maintenance of Shared Elements shall include, without limitation, maintaining and repairing all Shared Elements, and performing any and all such other duties as are necessary to maintain all Shared Elements in a clean, safe and orderly condition and in compliance with Section 4.9 below.

(b) The Managing Owner shall provide reasonable advance written notice to the Owners prior to the exercise of Easement rights for repair, maintenance, or replacement, as provided in Section 2 above. Any maintenance, repair, or replacement by or at the request of the Managing Owner shall be performed in accordance with and subject to Section 2 and as expeditiously as reasonably possible and in a manner that will minimize any interruption to the operation and use of an Owner's Parcel.

(c) If the Developer Parcel is further legally subdivided, then the Managing Owner shall manage all notices and other communications between City Parcel Owner and any Developer Subdivision Parcel Owner(s) and timely transmit the same to the addressee, and, where it is within the Managing Owner's rights or obligations under the Declaration, take such steps to assist with resolving any disputes between the City Parcel Owner and the Developer Subdivision Parcel Owner(s). Nothing in this Section obligates the Managing Owner to mediate or be the arbiter of any disputes.

(d) Developer acknowledges City cannot make any payments to any party unless the party is qualified as an approved vendor in City's financial and payment system. Accordingly, Managing Owner must become qualified as and remain an approved vendor in the City system and the parties intend that any payments to be made by City under this Agreement to any Owner will be made to or through the Managing Owner. City will not be in default of any monetary obligation under this Agreement, and no interest or late charge will apply, if Managing Owner is not an approved vendor with City. More information about being an approved vendor with City is available at https://sfcitypartner.sfgov.org/Vendor/BecomeSupplier. All amounts that have become payable under this Agreement while Managing Owner was not an approved vendor will be payable within twenty (20) days after City receives Managing Owner's written notice that it has been approved and the City Contract Monitoring Division confirms to the Fire Department (or other department that is responsible for payments under this Agreement) that Managing Owner has been qualified as an approved City vendor.

4.2 Powers of the Managing Owner. The Managing Owner is authorized to, and shall perform, without limitation, the following duties:

(a) to impose Assessments for Shared Expenses in accordance with the Shared Expense Budget and this Declaration;

(b) to pay from Assessments the Shared Expenses in accordance with the Shared Expense Budget and this Declaration;

(c) to establish a separate operating account or accounts for the deposit of Assessments, Reserves, City Operating Reserve, and City Deductible and Extraordinary Expense Reserve and other funds collected and to appoint a signatory or signatories on such account or accounts;

(d) to prepare Shared Expense Budgets to be reasonably approved by the Owners and financial statements as required in this Declaration;

(e) after obtaining consent of the City Parcel Owner, to hire to a professional property or association manager to perform its obligations under this Declaration, who may be an employee, officer or affiliate of any Owner, the cost of which performance of the Managing Owner's obligations under this Declaration shall be a Shared Expense, provided that the property manager's compensation shall be consistent with market fees for all such services provided by similar third party managers for similar buildings in the City; and

(f) to contract for goods and/or services to carry out its duties and responsibilities hereunder, the costs of which shall be a Shared Expense.

4.3 Owners' Obligations.

(a) Each Owner shall operate and maintain, repair, and replace in accordance with the Project Standards subject to reasonable wear and tear and casualty, at its expense:

(i) all improvements within its Parcel or Developer Subdivision Parcel other than Shared Elements;

(ii) Shared Elements damaged as a result of the gross negligence or willful misconduct of the Owner or its Permittees (provided, however, that in lieu of the foregoing, the Managing Owner shall have the right (but not the obligation) to repair such damage and charge the costs thereof as a Reimbursement Assessment to the Owner required to undertake such maintenance or repair);

(iii) Other components of the real or personal property damaged as a result of the gross negligence or willful misconduct of the Owner or its Permittees, including but not limited to damaged or broken exterior windows or Project façade or improvements;

(iv) any Utility Facility, wherever located, that serves exclusively such Owner's Parcel or Developer Subdivision Parcel.

(b) Each Owner shall be responsible for repair, maintenance, upkeep, and cleaning its own street-level windows and exterior façade, if any.

4.4 Failure to Maintain. If any Owner ("**Deficient Party**") permits any material adverse condition on any portion of its Parcel or fails to maintain all or any portion of its Parcel in accordance with the Project Standards, and such condition or failure has a material and adverse impact on any other Owner's ability to finance, develop, maintain, lease, operate, use, and/or market all or any portion of the parcel owned by such Owner, such Owner ("**Noticing Party**") may provide written notice to the Deficient Party of such condition or failure to maintain, which notice must include a reasonably detailed description of the condition or failure to maintain ("**Deficiency Notice**"); provided, however, that if the Deficient Party is the City Parcel Owner and the Noticing Party is a Developer Subdivision Parcel Owner, then the Noticing Party must send the notice through the Managing Owner. A Deficiency Notice is not a notice of default under Section 13.4 below.

(a) If the Deficient Party is the Developer Parcel Owner or a Developer Subdivision Parcel Owner, then this Subsection (a) shall apply. If the Deficient Party is the Developer Parcel Owner or a Developer Subdivision Parcel Owner and it fails to remedy the deficiency within thirty (30) days after receipt of the Deficiency Notice (or with respect to deficiencies that cannot reasonably be remedied within such thirty (30) day period, if the Deficient Party fails to commence to remedy such deficiency within the thirty (30) day period or fails to diligently pursue such remedy to completion no later than forty-five (45) days following receipt of the Deficiency Notice), then the Noticing Party, may, without waiving any other legal or equitable remedies it may have, enter the Developer Parcel or Developer Subdivision Parcel, as applicable and remedy such deficiency. Notwithstanding the foregoing, if the deficiency impairs the use of the Noticing Party's Parcel or Developer Subdivision Parcel such that in Noticing Party's reasonable judgment, the deficiency must be remedied immediately for health and safety reasons, the Noticing Party may cure the deficiency and will not be required to give the Deficiency Notice or wait any period of time but will use reasonable efforts to notify Deficient Party of the deficiency and of the Noticing Party's cure. Upon remedying such deficiency, the Noticing Party shall be entitled to provide written demand to the Deficient Party that it reimburse the Noticing Party for one hundred percent (100%) of the actual and reasonable costs and expenses it incurred in connection with remedying the deficiency. Any such demand shall include invoices or other reasonable written evidence of such costs and expenses incurred by the Noticing Party. The Deficient Party shall reimburse such amounts to the Noticing Party within sixty (60) days of receipt of such demand. Any amounts not reimbursed within such sixty (60) day period shall accrue interest at the Allowed Rate from the date due until paid. The Noticing Party shall not be liable to the Deficient Party for any loss, damage, or liability resulting from or arising in connection with activities of the Noticing Party (or its contractors, representatives and/or agents) on the Developer Parcel or Developer Subdivision Parcel, as applicable, except to the extent such loss, damage or liability results from the gross negligence or willful misconduct of the Noticing Party (or its contractors, representatives, and/or agents).

(b) If the Deficient Party is the City Parcel Owner, then this Subsection (b) shall apply. If the Deficient Party is the City Parcel Owner and it fails to remedy the deficiency within thirty (30) days after receipt of the Deficiency Notice (or with respect to deficiencies that cannot reasonably be remedied within such thirty (30) day period, if the City Parcel Owner fails to

commence to remedy such deficiency within the thirty (30) day period or fails to diligently pursue such remedy to completion), then the Noticing Party, may, after written notice to the City Parcel as provided in Section 2.2(d), reasonably enter the City Parcel to remedy the deficiency. Upon remedying such deficiency, the Noticing Party shall be entitled to provide a written demand for reimbursement to the Managing Owner, who will send the demand for reimbursement to City Parcel Owner for one hundred percent (100%) of the actual and reasonable costs and expenses it incurred in connection with remedying the deficiency. Any such demand shall include invoices or other reasonable written evidence of such costs and expenses incurred by the Noticing Party. The City Parcel Owner shall reimburse such amounts to the Managing Owner within sixty (60) days of receipt of such demand, and the Managing Owner shall remit the amounts paid to the Noticing Party. Any amounts not reimbursed within such sixty (60) day period shall accrue interest at the Allowed Rate from the date due until paid. The Noticing Party shall not be liable to the City Parcel Owner for any loss, damage, or liability resulting from or arising in connection with activities of the Noticing Party (or its contractors, representatives and/or agents) on the City Parcel, except to the extent such loss, damage or liability results from the gross negligence or willful misconduct of the Noticing Party (or its contractors, representatives, and/or agents).

4.5 Complete Work with Diligence; Repair Damage. Once commenced, any maintenance, repair, or replacement work undertaken in an Easement Area shall be diligently prosecuted to completion, so as to minimize any interference with the business or intended use of the other Parcel or Developer Subdivision Parcel. The Owner undertaking work shall repair, at its sole cost and expense, any damage caused by such work and restore the affected portion of the Easement Area to a condition that is equal to or better than the condition that existed before the start of work, but in no case below the Project Standards.

4.6 Limits on Exterior Improvements or Alterations. The exterior of the improvements and configuration of the Tower Project or Station Project, including, without limitation, the color, exterior design, and any increase in the height or bulk of the Project shall not be altered without the approval of the other Owner(s), in its reasonable discretion. Notwithstanding the foregoing, any routine repairs and re-painting that is consistent with the original construction of the Project or construction that has been approved pursuant to this Declaration. or any alteration of the exterior of the Tower Project or Station Project required by Applicable Laws, or, in the case of the Station Project, any alteration of the exterior as required by or resulting from any City or equipment requirements, are not subject to the approval of the other Owner(s).

4.7 Improvements to Interior of Project Areas. After the initial Tower Project and Station Projects have been completed, each Owner shall have the right to perform interior improvements, alterations, modifications, or additions to its Parcel which are not visible by the public from the exterior ("**Subsequent Construction**") in accordance with the Project Standards, without any prior written consent of the Managing Owner or other Owner(s) provided that such Subsequent Construction does not (i) alter or in any way adversely impact the structural components of the Project, (ii) alter or in any way adversely impact any of the Shared Elements, or (iii) materially and adversely impact or encroach upon any Easements. This Section shall not govern the original construction of the Project pursuant to the CPEA.

4.8 Approval of Capital Improvements to Shared Elements. Any capital improvement proposed by the Managing Owner to a Shared Element to maintain a Shared Element in the

condition required in this Declaration shall be included in the Shared Expense Budget and shall be subject to the prior written approval of the Owners, which approval shall not be unreasonably withheld or delayed. Any capital improvement to a Shared Element approved by the Owners shall be executed in accordance with the Project Standards.

4.9 Integrated Pest Management Applicable to City Parcel Only. The following provisions are applicable to the City Parcel: Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. In performing its duties under this Declaration, Managing Owner may not use or apply or allow the use or application of any pesticides on the City Parcel or contract with any party to provide pest abatement or control services to the City Parcel without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that may be needed to apply to the City Parcel, (ii) describes the steps that will be taken to meet City's IPM Policy described in Section 300 of the IPM Ordinance, and (iii) identifies, by name, title, address, and telephone number, an individual to act as the Managing Owner's primary IPM contact person with City. Managing Owner will comply, and will require all of its contractors to comply, with the IPM plan approved by City and will comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Managing Owner were a City department. Among other matters, the provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b prohibit the use or application of pesticides on City property, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (iv) require Managing Owner to keep certain records and to report to City all pesticide use at the City Parcel by Managing Owner's staff or contractors. If Managing Owner or Managing Owner's contractor would apply pesticides to outdoor areas at the City Parcel, Managing Owner will first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("**CDPR**") and the pesticide application will be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, http://sfenvironment.org/ipm.

4.10 Construction Contracting and Requirements.

(a) All construction at the Project following completion, delivery and acceptance of the Fire Station to City, whether performed by Managing Owner or any Owner, must be performed by licensed contractors; provided, however, that City may use City employees to perform work on the City Parcel so long as such employees are qualified to perform the work. All construction activities performed or authorized by an Owner within the Project will be performed in compliance with all Applicable Laws, shall utilize new materials or reused materials as is commonly found in commercial construction, and shall be performed in a good, safe, worker-like manner. Upon completion of such work, the constructing Owner shall, at its expense, restore any damage to any portion of the Project as a result of such work to a condition equal to or better than that existing prior to commencement of such work. All construction or service contracts for such work must include requirements for commercially reasonable insurance coverages, and such

contractor's insurance must name all Owners as additional insured and/or loss payee, as each Owner's interest may appear, except that City shall not be obligated to provide insurance coverage for work performed by City employees. For any construction of a capital nature or other substantial improvements to a Parcel, the contract must include performance and payment bonds, or comparable security arrangements, in a commercially reasonable amount to be determined by the Managing Owner, and a minimum one-year warranty period. With respect to work to be performed upon Shared Elements: (i) City's Risk Manager shall review and reasonably approve insurance arrangements and terms proposed by the Managing Owner; (ii) City shall review and reasonably approve any performance and payment bond or comparable security arrangements proposed by the Managing Owner; and (iii) Managing Owner will consult with City to ensure that all contracting requirements are met; in particular, all construction work to be performed upon the Shared Elements shall require the payment of prevailing wage amounts and all provisions of California Labor Code Section 1770 et seq. shall be incorporated into every construction contract at every tier.

(b) Each Owner further agrees that any construction activities performed or authorized by it shall not: (i) unreasonably interfere with construction work on any other part of the Project; (ii) unreasonably interfere with the use, occupancy, or enjoyment of any part of the remainder of the Project by any other Owner or its Permittees; or (iii) cause any portion of the Project to be in violation of any Applicable Laws. Except as otherwise provided in this Declaration, each Owner will Indemnify the other Owners from and against all Claims arising out of or resulting from any construction activities performed or authorized by such indemnifying Owners; provided, however, that the foregoing shall not be applicable to either events or circumstances caused by the gross negligence or willful act or omission of such indemnified Owner or its Permittees or anyone claiming by, through, or under any of them.

(c) If any mechanic's lien is recorded against the Parcel or Developer Subdivision Parcel of an Owner, or a claim filed against an Owner is made in lieu of a lien (as City property is not subject to lien), as a result of services performed or materials furnished for the use of another Owner, then the Owner permitting or causing such lien to be so recorded or claim to be made agrees to cause such lien to be discharged within fifteen (15) days after the entry of a final judgment (after all appeals) for the foreclosure of such lien or such claim to be satisfied or withdrawn within fifteen (15) days after such claim is tendered to the Owner permitting or causing the claim to be made. Notwithstanding the foregoing, upon request of the Owner whose Parcel or Developer Subdivision Parcel is subject to such lien or claim, the Owner permitting or causing such lien to be recorded or such claim to be made agrees to promptly cause such lien to be released and discharged of record, or such claim to be withdrawn or satisfied, either by paying the indebtedness which gave rise to such lien or claim or by posting bond or other security as shall be required by law to obtain such release and discharge. Nothing in this Section prevents the Owner permitting or causing such lien to be recorded or the claim to be made from contesting the validity thereof in any manner such Owner chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Owner shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien of record or cause such claim to be satisfied, as applicable. The Owner permitting or causing such lien or claim agrees to Indemnify the other Owner and its Parcel from and against all Claims arising out of or resulting from such lien or claim.

5. Assessments.

5.1 Creation of Assessments. The Managing Owner shall prepare the Shared Expense Budget as provided in Section 5.3 below for approval by the Owners. Assessments for the payment of Shared Expenses shall be established based on the approved Shared Expense Budget. Managing Owner shall impose and collect Assessments for the payment of Shared Expenses incurred by the Managing Owner, the fulfillment of the duties and obligations of the Managing Owner set forth in this Declaration, the exercise of the Managing Owner's powers under this Declaration and for reimbursement to the Managing Owner, all as provided in this Declaration. Any Assessment, together with such interest thereon and costs of collection thereof as provided in this Section 5, shall be a charge on each respective Parcel or Developer Subdivision Parcel to which an Assessment relates and shall be secured by a continuing lien on the Parcel or Developer Subdivision Parcel against which each such Assessment is made and shall also be the continuing personal or corporate obligation of the then existing Owner of such Parcel or Developer Subdivision Parcel at the time the Assessment is due; provided, however, that Declarants acknowledge that property owned by governmental entities cannot be subject to a lien, therefore for so long as the City Parcel Owner is the City or other governmental entity, there will be no lien or right to obtain a lien on the City Parcel for the payment of any Assessment..

5.2 Covenant to Pay Assessments. Each Owner covenants and agrees: (a) to pay to the Managing Owner when due all Assessments levied against such Owner or such Owner's Parcel or Developer Subdivision Parcel by the Managing Owner in accordance with the Shared Expense Budget; and (b) to allow the Managing Owner to enforce the payment of the Assessments to the Managing Owner by any means authorized by this Declaration or by Applicable Law.

5.3 Assessments.

(a) Shared Expense Budget.

(i) Each year the Managing Owner shall develop an annual budget that estimates the Shared Expenses ("**Shared Expense Budget**") for the next fiscal year. The Shared Expense Budget shall show, among other things, on a line-item basis, in reasonable detail, all Shared Expenses, any expected surplus or deficit from the prior year, and any existing surplus held by the Managing Owner. The Shared Expense Budget may include amounts for contingencies and amounts deemed necessary or desirable to create, replenish, or add to the Managing Owners funds and Reserves for capital expenditures related to the Shared Expenses, and such other Managing Owner's expenditures as provided in Section 5.3(c) below. For so long as the City is the owner of the City Parcel, the Shared Expense Budget will include the City Operating Reserve and City Deductible and Extraordinary Expense Reserve, as set forth in Section 5.3(e) below.

(ii) The Managing Owner shall deliver the initial draft Shared Expense Budget to each of the Owners on or before seventy-five (75) days prior to Final Closing, as set forth in the CPEA. Each Owner will have forty-five (45) days from the date of receipt to review and approve or disapprove the initial draft Shared Expense Budget. Each Owner is entitled to approve or disapprove a particular Shared Expense within the Shared Expense Budget. If an Owner disapproves the particular Shared Expense, that Owner shall specify the particular Shared

Expense to which the Owner objects, subject to the requirements of this Section. The Owner will work in good faith to resolve any objections to the draft initial Shared Expense Budget.

(iii) Thereafter, the Managing Owner shall deliver the draft Shared Expense Budget for each successive operating year on or before October 15 of each year for review and approval by the Owners and the review procedure set forth in Section 5.3(a)(ii) above shall be followed. If the Owners cannot reach agreement on any draft Shared Expense Budget following the initial operating year, the previous year's Shared Expense Budget shall remain in effect, plus an increase for inflation based on CPI, until the applicable Shared Expense Budget is approved. Unless the Owners fail to approve the Shared Expense Budget, the Managing Owner shall deliver the approved Shared Expense Budget to each of the Owners on or before November 30 of each year. The Managing Owner shall deliver to each Owner written notice of the amount of the Regular Assessment against each such Owner's Parcel or Developer Subdivision Parcel by November 30 of each year. The failure of the Managing Owner to timely deliver a Shared Expense Budget or estimate of the Managing Owner's Regular Assessments shall not affect the validity of any Assessment levied by the Managing Owner, but no Assessments will be due or payable until a new Shared Expense Budget has been approved by the Owners in accordance with this Section 5.3. Whenever a Shared Expense Budget is delivered to the Owners for their approval, the Owners shall not unreasonably withhold, condition, or delay such approval.

(b) Payment of Regular and Special Assessments. Unless otherwise specified in the approved Shared Expense Budget, budgeted Regular Assessments shall be due and payable in monthly installments within thirty (30) days after receipt of an invoice from Managing Owner during any portion of the term of this Declaration during which Assessments are imposed. Regular Assessments, in the reasonable judgment of the Managing Owner, may be made payable in less frequent installments, but no less frequent than annually. Special Assessments shall be due and payable within thirty (30) days of receiving notice thereof and supporting documentation, subject to Section 5.3(e) below. Notwithstanding anything to the contrary contained in this Declaration, there will be no obligation for the payment or expenditure of money by City under this Declaration, and City will not be in default under this Declaration, unless the Controller of the City and County of San Francisco first certifies, under Section 3.105 of City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure.

(c) Project Reserves. The Regular Assessment may include a portion for reserve funds ("**Project Reserves**"), in such amounts as set forth on the approved Shared Expense Budget to meet the anticipated future costs of maintaining, replacing and repairing major components of the improvements that are a part of the Shared Elements. Any Project Reserves that are collected by the Managing Owner shall be deposited into a separate account by the Managing Owner in trust for all Owners from whom such Project Reserves are collected.

(d) Allocation of Regular and Special Assessments Regular Assessments and Special Assessments shall be allocated based on each Owner's or Developer Subdivision Parcel Owner's respective Percentage Share, unless provided otherwise within this Declaration.

(e) City Reserve Funds. While the City is the Owner of the City Parcel, the Shared Expense Budget shall contain line items for City Operating Reserve and City Deductible

and Extraordinary Expense Reserve. The City reserve funds that are collected by the Managing Owner shall be deposited into a separate account by the Managing Owner in trust for City Parcel Owner.

(i) The "**City Operating Reserve**" is a reserve fund used to fund necessary but unanticipated adjustments to the Regular Assessment, as approved by the City Parcel Owner, and to fund any Reimbursement Assessments (defined below). The City will fund the City Operating Reserve in an amount that is not more than ten percent (10%) of budgeted Regular Assessments under the approved Shared Expense Budget.

(ii) The "**City Deductible and Extraordinary Expense Reserve**" is a reserve fund that may be used to fund necessary Special Assessments or other extraordinary expenses under this Agreement, including, but not limited to City's Percentage Share of any insurance deductible in the event of a casualty. The City contemplates funding the City Deductible and Extraordinary Expense Reserve in an amount that is not more than one hundred ten percent (110%) of City's Percentage Share of the deductible under the Property Insurance obtained by Managing Owner under Section 6.1; provided however, that City may elect at any time and from time to time to self-insure its deductible contribution, and will notify the Managing Owner of such election.

(iii) Managing Owner must seek and receive City's prior written approval before applying any funds in the City Operating Reserve or City Deductible and Extraordinary Expense Reserve to Assessments or other costs. If there are not adequate funds in the applicable City reserve fund for the Assessment or other expense, and City is unable to provide such funds to Managing Owner outside of its regular budgeting process, then the unpaid portion of the Assessment or other expense will not be considered overdue or be subject to interest or penalties, and City will not be considered delinquent or in default under this Agreement, but such amount will be included in the upcoming Shared Expense Budget as a City expense.

5.4 Reimbursement Assessments.

(a) The Managing Owner may impose an Assessment individually against any Owner to reimburse the Managing Owner for costs incurred: (a) to repair damage to the Project that the Managing Owner is obligated, or has the discretion, to maintain and repair, to the extent caused by gross negligence or knowing misconduct of the assessed Owner or the assessed Owner's Permittees; or (b) to enforce the Managing Owner's rights under this Declaration against a defaulting Owner (a "**Reimbursement Assessment**"). Reimbursement Assessments shall be due and payable when levied by written notice (with supporting documentation) to the assessed Owner and shall be delinquent if not paid within ninety (90) days after being levied. All costs and expenses incurred by the Managing Owner which are part of a Reimbursement Assessment shall bear interest at the Allowed Rate, from the date delinquent until the date the cost is paid in full by the assessed Owner. Before the Managing Owner undertakes an action that will result in a Reimbursement Assessment being levied against an Owner, the Managing Owner shall provide thirty (30) days' prior written notice (with supporting documentation) to such Owner. If any Owner disputes such action or the imposition of a Reimbursement Assessment within ten (10) business days of receipt of such notice, the disputed matter shall be submitted to mediation pursuant to Section 13.5 of this Declaration. If the Reimbursement Assessment is imposed and

paid before all or a portion of the costs have been incurred by the Managing Owner and the amount paid exceeds the costs incurred, the Managing Owner shall promptly refund the excess to the Owner or credit the amount against any future Assessments, at the Owner's election. If the costs exceed the amounts imposed by the Managing Owner as a Reimbursement Assessment, the Owner shall reimburse the Managing Owner within ninety (90) days after the date of the Managing Owner's notice to the Owner of the amount of the excess costs (with supporting documentation). If payment is not made when due, the payment shall be considered a delinquent assessment and the Managing Owner may enforce it rights for delinquent assessments as set forth in this Declaration.

(b) Notwithstanding anything to the contrary in the foregoing Subsection (a). while City is the owner of the City Parcel, City may authorize any Reimbursement Assessment due from City to be withdrawn from the City Operating Reserve or City Deductible and Extraordinary Expense Reserve, as applicable. If there are not adequate funds in the applicable City reserve fund for the Reimbursement Assessment, and City is unable to provide such funds to Managing Owner outside of its regular budgeting process, then the unpaid portion of the Reimbursement Assessment will not be considered overdue or be subject to interest or penalties, and City will not be considered delinquent or in default under this Agreement, but such amount will be included in the upcoming Shared Expense Budget as a City expense.

5.5 Personal Obligation for Assessments. The Assessments imposed against a Parcel or Developer Subdivision Parcel, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall be the obligation of each Owner of the Parcel or Developer Subdivision Parcel when the Assessment was assessed. The obligation for delinquent Assessments shall pass to such Owner's successors in title whether or not expressly assumed by them; provided, however, that no Assessment shall be construed as a lien against City property, and the foregoing shall not apply to the City or the City Parcel. Except as otherwise set forth in this Declaration, no Owner shall be relieved of its personal obligation to pay such Assessment until such obligation is paid in full; provided, further no Permitted Mortgagee shall be obligated for any such assessments fees or assessments unless and until such Permitted Mortgagee becomes an Owner, and then only during such time as the Permitted Mortgagee is an Owner. No Owner shall be exempt from liability for payment of the Assessments levied against its Parcel by waiver of the use or enjoyment of any the Public Areas or other portions of the Project, or by the abandonment of such Owner's Parcel.

5.6 Enforcement and Remedies. Except as otherwise provided in this Section 5, any installment of an Assessment is delinquent if not paid within thirty (30) days after the Owner's receipt of an invoice therefor. Except as otherwise provided in this Section 5, any delinquent Assessment shall incur additional charges, as set forth in this Section 5, which shall commence and accrue from the date of the delinquency until paid. The Managing Owner has the right and power to bring all actions at law and in equity and exercise such other remedies provided in this Declaration against each Owner that is delinquent in the payment of its Assessments ("**Delinquent Owner**") for the collection of delinquent Assessments and additional charges. The Managing Owner may enforce the obligations of the Delinquent Owner to pay Assessments in any manner provided by law or in equity, and, without any limitation of the foregoing, by commencement and maintenance of a suit at law or equity against any Delinquent Owner, such suit is to be maintained by the Managing Owner. Any judgment rendered in any such action may include the amount of

the delinquency, plus interest at the Allowed Rate, court costs and reasonable attorneys' fees in such amount as the court may adjudge against the Delinquent Owner.

5.7 Payment of Delinquent Assessments Under Protest. An Owner may dispute a delinquent Assessment by paying in full to the Managing Owner the amount of Assessment in dispute, late charges, interest, and all fees and costs claimed due by Managing Owner, and by providing written notice to the Managing Owner that the amount is being paid under protest. Such notice shall be mailed by certified mail not more than thirty (30) days from the notice of delinquent Assessment received from the Managing Owner. Following receipt of such payment and notice, the Managing Owner shall inform the Owner that the Owner may resolve the dispute through mediation in accordance with Section 13.5 of this Declaration, by civil action, or by other dispute resolution procedure available to the Managing Owner.

5.8 Certificate as to Payment. The Managing Owner shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Managing Owner setting forth whether the Assessments on a specified Parcel have been paid. Such certificate shall be deemed to be conclusive evidence of the payment of such Assessments.

5.9 Audit. Any Owner may, upon advance written notice to Managing Owner and during reasonable business hours, cause an audit of Managing Owner's books and records with respect to the then current calendar year and up to the seven (7) immediately preceding calendar years only to determine the accuracy of its applicable Assessments. Managing Owner shall make all pertinent records available for audit that are necessary for such Owner to conduct its review. If an Owner retains an agent, at such Owner's sole cost and expense, to audit Managing Owner's records, the agent shall be an independent accountant of national standing is not compensated on a contingency basis. Within a reasonable period of time after the records are made available to the Owner, such Owner shall have the right to give Managing Owner written notice (an "**Objection Notice**") stating in reasonable detail any objection to its Assessments. If Managing Owner and the Owner determine that the Shared Expenses for the fiscal year are less than estimated or reported, Managing Owner shall provide the Owners with a refund in the amount of the overpayment by each Owner, and if applicable, adjust the Shared Expense Budget accordingly. Likewise, if Managing Owner and such Owner determine that the Shared Expenses for the calendar year are greater than estimated or reported, the Owners shall pay Managing Owner the amount of any underpayment within thirty (30) days after an invoice reflecting such determination, and if applicable, adjust the Shared Expenses Budget accordingly. Furthermore, if Managing Owner and such Owner determine that the total Assessments paid by such Owner for any full calendar year exceeded the total amount actually owed by such Owner for such calendar year by three percent (3%) or more, Managing Owner shall reimburse such Owner for such Owner's reasonable expenses and fees incurred in conducting the audit of Managing Owner's records. The records obtained by any Owner shall be treated as confidential, except as otherwise required by Applicable Laws.

6. Insurance.

6.1 Managing Owner Insurance. No later than substantial completion of the Fire Station the Managing Owner shall obtain, on behalf of all Owners, commercial general liability insurance and insurance for property damage and other casualty losses ("**Property Insurance**")

covering the Covered Improvements, but not including Parcel Improvements, such as a Parcel's non-structural walls, ceilings, floor coverings, non-structural subfloors, fixtures, and finishes within individual Parcels. The cost of Property Insurance for the Covered Improvements shall constitute a Shared Expense, and the cost of the insurance premium shall be paid by the Owners in their Percentage Shares. Under no circumstances may there be a gap in coverage between the insurance provided during the construction of the Project and the placement of the Property Insurance.

(a) Requirements for Managing Owner's Insurance. All insurance carried by the Managing Owner shall comply with the following requirements and standards:

(i) The Property Insurance carried by the Managing Owner shall be Special Causes of Loss form property insurance, including, earthquake insurance, with reasonable limits as commercially available, on a Replacement Cost (as defined below) basis in an amount equal to the full cost of repairing, rebuilding, and replacing the Covered Improvements, insuring against, loss or damage by theft, fire, windstorm, hail, terrorism (if commercially available, at reasonable rates), explosion, damage from aircraft and vehicles, smoke damage, extended coverage, debris removal, vandalism and malicious mischief, and sprinkler leakage. The amount of coverage for such Property Insurance shall be in the full amount of the full replacement cost (without deduction for depreciation) of the Covered Improvements ("**Replacement Cost**"), except that catastrophic perils may be reasonably sub-limited, and with a deductible not exceeding two hundred fifty thousand Dollars ($250,000) per occurrence except for the peril of earthquake which can be no greater than five percent (5%%) of Total Insured Values such policy deductible amounts being reassessed, if economically feasible as reasonably determined by the Managing Owner and approved by the City Parcel Owner. The amount of coverage must meet any co-insurance requirements of the policy or policies or a waiver of any co-insurance provisions shall be obtained. Such Property Insurance shall include coverage or endorsements for increased construction costs due to changes in building codes, regulations, and similar laws and demolition costs, including, without limitation, an ordinance or law coverage endorsement providing coverages A, B, and C (as defined below) and an ordinance or law — increased period of restoration endorsement. The phrase "**coverages A, B, and C**" as used in this paragraph has the meaning customarily given to the three types of coverage customarily provided under ordinance and law endorsements (i.e., loss to the undamaged portion of the Project, increased demolition cost, and increased cost of construction) provided by insurance companies with a Best's rating of A-VIII or equivalent in their general course of business.

(ii) The Managing Owner shall procure and maintain throughout the term of this Declaration commercial general liability insurance to protect against liability for damages because of bodily injury (including, without limitation, death therefrom) or property damage arising out of or in connection with the use, operation, maintenance, and repair of the Covered Improvements. Such policy of commercial general liability insurance shall be provided on occurrence type forms with per occurrence and annual aggregate limits of not less than twenty-five million Dollars ($25,000,000) per occurrence and deductible or self-insured retention of not more than two hundred fifty thousand Dollars ($250,000) per occurrence (such policy limit and retention amounts being reassessed, if economically feasible as reasonably determined by the Managing Owner. Such policies shall (i) be primary and non-contributing with respect to other insurance, if any, maintained by the insureds thereunder; (ii) provide for the duty to defend (with

defense costs outside policy limits if available at a commercially reasonable cost); (iii) provide a separate limit of twenty-five million Dollars ($25,000,000) for completed operations coverage for at least the duration of all statutory limits on actions for property damage (including without limitation Section 337.15 of the California Code of Civil Procedure); and (iv) not exclude coverage for residential construction. The coverage required hereunder may be provided under a combination of primary, excess, master, or portfolio policies, provided that all such policies satisfy the requirements of this subparagraph.

(iii) The insurance may contain reasonable deductibles or self-insured retentions that conform to the insurance standards reasonably established by the Managing Owner, except as otherwise set forth in this Section 6.1.

(iv) All policies of insurance, to the extent possible, shall provide or be endorsed to provide that such policies may not be cancelled or substantially modified without at least thirty (30) days' prior written, notice to loss payees, including all Owners and Permitted Mortgagees, except that in the event of non-payment of premium, ten (10) days' prior written notice shall be provided.

(v) The Property Insurance policy shall contain, to the extent available on commercially reasonable terms as may be determined by the Managing Owner, the following endorsements or their equivalents: equipment breakdown (to the extent applicable), ordinance or law, replacement cost, and such other endorsements-as may customarily be obtained with respect to properties similar in construction, location and use, as may be determined by the Managing Owner.

6.2 Owner's Insurance.

(a) Required Insurance Policies. Each Owner shall maintain insurance coverage as set forth in this Section as well as property insurance for the portion of the Easement Areas owned by each Owner. Each Owner shall maintain commercial general liability insurance with respect to its activities in the Project and its respective Parcel or Developer Subdivision Parcel, as applicable. Nothing stated in this Section is intended to modify the indemnity or liability allocations of this Declaration.

(b) Property Insurance. Each Owner shall carry Property Insurance for non-structural improvements, fixtures and finishes installed within its respective Parcel or Developer Subdivision Parcel (as applicable), including but not limited to non-structural walls and ceilings, doors, drywall, floor coverings, non-structural subfloors, elevators, fixtures and finishes within its Parcel, and Utility Facilities within or serving the Parcel or Developer Subdivision Parcel (as applicable) ("**Parcel Improvements**"), with coverages in such Owners sole and absolute discretion. Any such commercial property insurance policies shall provide waivers of subrogation in favor of the other Owners and all Permitted Mortgagees.

(c) Environmental Liability Insurance. Each Owner shall carry Environmental Liability Insurance with limits of no less than $5,000,000, including coverage for first party clean up costs as well as third-party liability resulting from the actual or alleged release of pollutants.

(d) City Self-Insurance. Notwithstanding the foregoing, City may elect to self-insure in accordance with its self-insurance program in lieu of the commercial insurance coverages set forth in this Section 6.2.

6.3 General Insurance Requirements.

(a) All insurance policies required under this Declaration shall be written by companies authorized to do business in California which are governed by the rate-setting regulatory agency having jurisdiction in San Francisco County and which have a "*General Policyholders Rating*" of at least A-VIII as set forth in the most current issue of the Best's Insurance Guide (or have an equivalent rating from another industry-accepted rating agency).

(b) Annually, the Managing Owner shall deliver to it a certificate of insurance, signed by a broker or agent having authority to bind coverage, reflecting the maintenance of the required coverages, the issuing insurers, policy types, policy numbers, policy periods, and amounts of coverage, annotated, if commercially reasonable, to reflect a modified cancellation provision prohibiting cancellation by the insurer after the policy has been in effect for thirty (30) days except for nonpayment of premium, fraud or material increase in risk. Upon request of an Owner, Managing Owner will provide the requesting Owner will a full and complete copy of the insurance policies carried by Managing Owner.

(c) For all insurance required under Section 6.2, the Owners shall have the right, every five (5) years commencing after the Effective Date, to review the types and limits of insurance coverage required under this Declaration for the Tower Project and for the Station Project and to make reasonable adjustments, provided that such types and limits shall not exceed that typically carried by the owner and operator of a comparable project meeting the Project Standards.

(d) For all insurance required under Section 6.1, the Managing Owner and the other Owners shall have the right, every five (5) years commencing after the Effective Date, to review the types and limits of insurance coverage required under this Declaration for the Covered Improvements and to make reasonable adjustments, provided that such types and limits shall be commercially reasonable for comparable projects in San Francisco.

7. Casualty; Restoration; Allocation of Insurance Proceeds.

7.1 Casualty Insured by Owner. Subject to Section 7.4, in the event any of the improvements within a Parcel are damaged by an insured Casualty under an Owner's Property Insurance, subject to the requirements of any Permitted Mortgagee having a lien on such Parcel or Developer Subdivision Parcel under Section 16.17 below, the Owner of such Parcel or Developer Subdivision Parcel shall promptly obtain any required regulatory permits or approvals and remove the debris resulting from such event, and within a reasonable time, not to exceed ninety (90) days from date of receipt of any required regulatory permits or approvals, shall restore its Parcel or Developer Subdivision Parcel to a clean, safe and sightly condition such that the damage does not have a material adverse effect (other than in de minimis ways) on any other Parcel or Developer Subdivision Parcel and in accordance with the Project Standards. Notwithstanding the foregoing, if a restoration cannot reasonably be completed within ninety (90) days, then it shall not be

considered a default if the restoration is commenced within the ninety (90) day period and diligently prosecuted to completion.

7.2 Casualty Insured by Managing Owner.

(a) Subject to Section 7.4, upon the occurrence of a Casualty affecting the Covered Improvements as insured by the Managing Owner pursuant to Section 6.1, the Managing Owner shall coordinate with City for the filing and adjustment of all claims arising under the existing insurance policies. City may permit Managing Owner to represent the interests of all Owners in such proceedings, or City may represent its interest jointly with Managing Owner, as City may elect. Subject to the availability of Managing Owner funds and/or Shared Elements Insurance Proceeds, the Managing Owner shall take such actions as are necessary to complete demolition of any remaining portions of damaged improvements (if necessary), remove all debris from the Property as a result of the casualty, erect necessary structures to preclude unauthorized access to the damaged portions of the Project, remove all safety hazards at the Property as a result of the casualty, cause the Project to be reasonably safe and attractive (and as reasonably practicable, in accordance with Project Standards, where applicable), and continue commercial general liability insurance in accordance with Article 6 to protect the interests of the Owners for such period of time as the Managing Owner reasonably deems necessary (collectively, the "**Clean-Up Work**"). All costs and expenses actually incurred by the Managing Owner in connection with the Clean-Up Work shall be paid from funds collected by the Managing Owner through Assessments or from Shared Elements Insurance Proceeds collected in connection with such Casualty.

(b) The Managing Owner shall retain a Construction Manager and direct the Construction Manager and any Restoration Contractors in connection with the Restoration Work in accordance with Project Standards. Any Restoration Work that occurs or is required on the City Parcel must conform to the standards required by the City Parcel Owner for the restoration of the Station Parcel and City must approve all Restoration Contractors, which must comply with all requirements applicable to work done on City property. Notwithstanding the first sentence of this paragraph, the Owners shall have the right to approve the plans and specifications for the Restoration Work solely for purposes of ensuring that the Restoration Work will result in the Project being restored to a condition at least equal to, and with the same general appearance as, that existing immediately prior to the Casualty, or to such other condition and appearance as the affected Owner(s) may agree is consistent with Project Standards and that the City Parcel Owner may confirm is consistent with its restoration requirements. Subject to Section 7.4 and Section 16.17, all Shared Elements Insurance Proceeds that are disbursed to Managing Owner shall be applied by the Managing Owner to the Restoration of the damaged or destroyed Covered Improvements.

(c) Subject to Section 16.17, if the Shared Elements Insurance Proceeds exceed the amount actually required for Restoration of the Covered Improvements, then the excess Shared Elements Insurance Proceeds shall be paid to or retained by the Managing Owner as Project Reserves as provided in Section 5.3(c). In the event of any dispute between the Owners that the Restoration has been completed, the excess Shared Elements Insurance Proceeds shall be held in trust for Restoration purposes until the dispute has been resolved according to the dispute resolution provisions of this Declaration.

7.3 Repair Where Funds Not Sufficient. If the Shared Elements Insurance Proceeds and other funds available to the Managing Owner for effectuating the required Restoration of the Covered Improvements or the other portions of the Project that the Managing Owner is obligated to Repair under this Declaration are not adequate to complete such Restoration and Repair in accordance with Project Standards and City Parel requirements, the Managing Owner shall issue a Special Assessment for the costs of such Restoration and Repair that are not so covered by Shared Elements Insurance Proceeds.

7.4 Total Casualty. Notwithstanding anything to the contrary contained in this Declaration, in the event of a Total Casualty, the Owner(s) of the Parcel (including, if the Developer Parcel is legally subdivided, all Developer Subdivision Parcel Owners) affected by the casualty may elect not to perform the Restoration Work or rebuild the improvements located on the affected Parcel. If the Owner(s) of the Parcel elect not to rebuild the affected improvements, then this Declaration shall terminate, and all Shared Elements Insurance Proceeds representing the cost of reconstruction of the affected Covered Improvements on each of the Parcels as a percentage of the total cost of reconstruction of the Covered Improvements for each Parcel as reasonably determined by the Managing Owner shall be paid to each Owner. If the Developer Parcel is affected by the Total Casualty and has been legally subdivided, at the time of election to perform the Restoration Work, then the decision whether to proceed with such Restoration Work shall be made by the Developer Subdivision Parcel Owners who own a majority of the total improved and covered area of the Developer Parcel.

7.5 Selection of Insurance Trustee.

(a) Within ten (10) business days following the occurrence of a casualty for which Shared Elements Insurance Proceeds are payable, any Owner may elect, but is not obligated to do so, by sending written notice to the other Owner(s) to appoint an Insurance Trustee. Within five (5) business days after such election, Owners shall jointly and unanimously select an Insurance Trustee to receive and disburse such proceeds subject to and in accordance with the further provisions of this Article 7. If the Owners are unable to agree on an Insurance Trustee within such ten (10) business day period, then the Insurance Trustee shall be selected by a mediator in accordance with the application provisions of Section 13.5. If no Owner elects to appoint an Insurance Trustee, then the Managing Owner will act as Insurance Trustee for purposes of this Section 7.

(b) To the extent the Managing Owner or any Owner (or its designee, if other than the Insurance Trustee) receives any Shared Elements Insurance Proceeds for the Restoration of Covered Improvements, such Shared Elements Insurance Proceeds shall promptly be paid over to and held in trust by the appointed Insurance Trustee, for disbursement as allowed under this Section 7.

(c) All Shared Elements Insurance Proceeds shall then be paid out by the Insurance Trustee for Restoration Work, as applicable, as stages of the Clean-Up Work or the Restoration Work are completed. Until required to disburse any Shared Elements Insurance Proceeds pursuant hereto, the Insurance Trustee shall hold all Shared Elements Insurance Proceeds received by it in a separately held FDIC-insured interest-bearing account. If interest is earned or

accrued on such funds, then such interest shall be considered part of the Shared Elements Insurance Proceeds.

(d) The Insurance Trustee shall have authority to perform the following services:

(i) establishment of an escrow and disbursement account for disbursement of Shared Elements Insurance Proceeds for the Restoration Work.

(ii) disbursement of Shared Elements Insurance Proceeds to the Construction Manager or Restoration Contractors for the Restoration Work to perform in accordance with Project Standards and City requirements, as applicable; provided, that, prior to any such disbursement, the Insurance Trustee shall have received (A) from the Restoration Contractor, a written disbursement request, and a written authorization from the Construction Manager to release the requested disbursement; (B) unconditional lien waivers, or if the invoices have not been paid, conditional lien waivers; all lien waivers must meet the requirements of California Civil Code Section 8124 and be in the form prescribed by California Civil Code Sections 8132, 8134, 8136, and 8138, as applicable, and be executed by each subcontractor and material supplier; and (C) such other written authorizations as the Managing Owner or City determines are required.

(iii) disbursement of Shared Elements Insurance Proceeds to itself to reimburse itself for reasonable fees and costs for the services authorized by this Section 7.5; provided, that, upon seventy-two (72) hours' notice and a written request of the Managing Owner, or any Owner, shall provide the requesting party with complete access to any and all accounting and other records related to the Insurance Trustee's services that such person or entity may reasonably request.

7.6 Condemnation.

(a) If all or substantially all of the Project encompassing or adversely affecting material parts or use of the Developer Parcel (or the Developer Subdivision Parcels, if applicable) and the City Parcel is taken by condemnation, pursuant to the power of eminent domain, or sold in avoidance of such condemnation or other proceedings (each, a "**Taking**") and any remaining portion of the Project cannot reasonably be used in the manner and for the purposes originally intended and/or cannot be repaired or restored to such condition in a reasonable time to be so used as a result of such Taking, as reasonably determined by the Managing Owner after reasonable consultation with all other Owners in the Project at the time of determination solely about the material effect of the Taking on such Parcels (each, a "**Total Taking**"), then this Declaration shall terminate on the date of such Total Taking. If a Total Taking occurs, the total amount of the award or awards for the Total Taking, less the cost of the determination of the amount thereof (the "**Condemnation Proceeds**"), shall be paid to the Owners based on the extent the Parcel is affected by the Total Taking as determined by appraisal of each of the Parcels by a licensed and qualified appraiser selected by the Managing Owner and approved by the owner of the City Parcel or by the condemnation court or condemnation commissioner or other body authorized to make such award (collectively, the "**Condemnation Authority**"). If the Managing Owner and the City as City Parcel Owner disagree whether the City Parcel may be used in the manner and for the purposes

originally intended and/or cannot be repaired or restored to such condition in a reasonable time to be so used as a result of such Taking, then the determination of the City will govern.

(b) If a portion of the Project is Taken but, it is less than a Total Taking, then this Declaration shall not terminate or be affected in any way, the affected Owner(s) shall, at their sole cost and expense, repair, alter, and restore the remaining portion of the Project to their former condition to the extent that the same may be feasible. The Condemnation Proceeds shall be paid to the affected Owner(s) in amounts determined in the same manner as provided in the case of Total Taking in Section 7.6(a) above. If a Taking of the character referred to in this Section 7.6(b) occurs, this Declaration shall terminate as to the portion of the Project so Taken only if the portion so Taken is not burdened by or benefitted from any easements of support, access, or Shared Elements granted by this Declaration, in which case this Declaration shall not terminate as to such portion and will continue to run with the land acquired by any successor to the extent not prohibited by law.

(c) If the whole or any part of the Project, or of any Owner's interest in the same, is Taken for temporary use or occupancy, then Section 7.6(a) and (b) shall not apply, and the Owners shall perform and observe all of the terms, covenants, conditions, and obligations upon the part of the Owner to be performed and observed under this Declaration, as though such taking had not occurred, except only to the extent that the Owner may be prevented from so doing pursuant to the terms of the order of the condemning authority. If some, but not all, of the Owners are affected by the temporary Taking, then the affected Owners will be entitled to receive and retain the entire amount of the Condemnation Proceeds for the Taking, whether paid by damages, rent, or otherwise. If all Owners are equally affected by the temporary Taking, then each Owner shall be entitled to receive (and retain) the entire amount of its Percentage Share of the Condemnation Proceeds for the Taking, however paid. If all Owners are affected by the Taking, but not equally, then the Owners will equitably apportion the Condemnation Proceeds in proportion to the effect of the Taking on each Owner's Parcel or Developer Subdivision Parcel, as applicable. If the Owners are unable to agree on an equitable apportionment, then the matter will be referred to dispute resolution as provided under Section 13.5 below.

(d) Each Owner and its Permitted Mortgagee shall have the right to participate in any condemnation proceeding for the purpose of protecting their rights under this Section 7.6 to the extent the documents relating to any such Permitted Mortgage grant to the holder of the same the right to so participate.

(e) If an Owner assigns to any Permitted Mortgagee any of its rights to Condemnation Proceeds under Section 7.6(a), then the other Owners shall recognize such assignment and consents to the payment of such Condemnation Proceeds to such Permitted Mortgagee.

8. Signage. Other than signs as otherwise provided in this Declaration, no signs shall be displayed to the public view on any building or on any portion of the Project. Signs shall conform to all Applicable Laws, including applicable City ordinances. Each Owner shall be permitted to signage which is consistent with any applicable entitlements; permitted signage shall be in accordance with Project Standards and approved by the Managing Owner, such approval not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing or anything to the

contrary contained in this Declaration, (a) the Owner of the Tower Project may install such signage and displays on the Project other than on the Station Project in substance and style that is in keeping with the nature of the Tower Project, in accordance with the Project Standards and in compliance with the requirements of the City, and without impairing the use, visibility, or operation of the Station Project; and (b) the Owner of the Station Project may install signage and displays on the Station Project as desired by City, in accordance with the Project Standards.

9. Taxes and Assessments; Compliance. Subject to any available real property tax exemptions, each Owner shall pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency with respect to its Parcel or Developer Subdivision Parcel and its use of the Easement Areas. Developer acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make under this Declaration is withheld, then City will not be considered delinquent or in breach or default under this Declaration, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph, without interest, late fees, penalties, or other charges, upon the payee coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

10. No Rights in Public; No Implied Easements. This Declaration is for the exclusive benefit of the Declarants and the Owners of the Parcels, and not for the benefit of any other person nor shall it give rise to any claim or cause of action by any other person, and this Declaration shall not be deemed to have conferred any rights upon any person except the Declarants and the Owners. Nothing in this Declaration shall be deemed a dedication of any portion of the Easement Areas to or for the benefit of the general public. No easements, except those expressly set forth in Section 2.1, shall be implied or granted by this Declaration. There are no third-party beneficiaries to this Declaration except for Permitted Mortgagees.

11. Security. Each Owner shall be responsible, to the extent it elects to provide same, for the provision and maintenance of security for its Parcel or Developer Subdivision Parcel; provided, however, that if (a) an Owner elects to provide security to its Parcel or Developer Subdivision Parcel, such security may not interfere in any way with the security provided at the City Parcel or any operations of the City Parcel; and (b) City Parcel Owner elects to provide security to its Parcel, such security may not unreasonably interfere with any security being provided to the Developer Parcel or Developer Subdivision Parcel.

12. General Cooperation. Declarants and each Owner agree to cooperate with one another in good faith to expeditiously implement this Declaration and the Easements, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the Easements remain operational as intended by this Declaration.

13. Remedies and Enforcement.

13.1 Enforcement. In the event of a breach or threatened breach by the Developer Parcel Owner, any or Developer Subdivision Parcel Owner, or its Permittees of any of the terms, covenants, restrictions, or conditions of this Declaration, the City Parcel Owner shall be entitled

to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including, without limitation, payment of any amounts due and/or specific performance. In the event of a breach or threatened breach City Parcel Owner (or any portion thereof) or its Permittees of any of the terms, covenants, restrictions, or conditions of this Declaration, the Developer Parcel Owner or Developer Subdivision Parcel shall not be entitled to injunctive relief if it would impede, impair, reduce, or materially and adversely impact the ongoing full operation of the Station Project, but will be entitled such other available legal and equitable remedies from the consequences of such breach, including, without limitation, payment of any amounts due and/or specific performance. The only parties to this Declaration are City and Developer (and any successor Owners). This Declaration is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity other than Permitted Mortgagees as set forth in Section 16.17.

13.2 Meet and Confer Process. Before sending a notice of default in accordance with Section 13.3 the Declarants or Owner that asserts that another Owner has failed to perform or fulfill its obligations under this Declaration shall first attempt to meet and confer with the defaulting Owner to discuss the alleged failure and shall permit such defaulting Owner a reasonable period, but not less than twenty (20) days, to respond to or cure such alleged failure; provided the meet and confer process shall not be required if a delay in sending a notice under Section 13.3 would impair, prejudice or otherwise adversely affect Declarants or an Owner under this Declaration.

13.3 Default. Except as otherwise expressly provided in this Declaration, the following shall constitute a "**Default**" under this Declaration: (i) the failure to make any payment within sixty (60) days following notice that such payment was not made when due and demand for compliance; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Declaration and the continuation of such failure for a period of sixty (60) days following notice and demand for compliance. Notwithstanding the foregoing, if a failure cannot reasonably be completed within sixty (60) days, then it shall not be considered a Default if a cure is commenced within said sixty (60-) day period and diligently prosecuted to completion thereafter. Further, any failure hereunder shall not be considered a Default if such failure occurs as the result of a Force Majeure event. Any notice of default given pursuant to this Section 13.3 shall specify the nature of the alleged failure and the manner in which the failure may be cured.

13.4 Remedies. Following a Default, the remedies available shall include specific performance of this Declaration in addition to any other remedy available at law or in equity, and all remedies shall be cumulative, but (i) shall not include termination of this Declaration, (ii) any damages remedy shall be limited to actual damages only (and not consequential, punitive, or special damages, each of which are hereby expressly waived), and (iii) (A) subject to (C) of this subclause (iii), the City Parcel Owner may initiate a self-help cure if it determines that the self-help is required for its continued use of the Easements, (B) subject to (C) of this subclause (iii), the Developer Parcel Owner or Developer Subdivision Parcel Owner may initiate a self-help cure if it determines that the self-help is required for its continued use of the Easements, particularly including any easement of support; and (C) as a condition to exercising any self-help remedy, each Owner shall follow the prior notice procedures and other conditions to entry in the absence of an emergency and the same applicable to conditions of emergency set forth in Section 2.2(d) above; and (D) the defaulting Owner under (A) or (B) of this subclause (iii) will reimburse the other

Owner the actual costs of such self-help cure immediately upon demand accompanied by reasonable supporting documentation. If City is the defaulting Owner, then any demand for reimbursement must be made through the Managing Owner in the manner and subject to the timing set forth in Section 4.4(b) above. If the amount of the reimbursement is disputed, then the parties may proceed to dispute resolution under Section 13.5 below.

13.5 Resolution of Disputes. If a dispute arises, at any time before the date that is ten (10) days following delivery of a default notice under Section 13.3, any Owner may initiate non-binding mediation, or proceed directly to judicial remedy. The Owner may request the non-binding mediation by delivering a written request for mediation ("**Mediation Request**") to the other Owner(s). The Mediation Request must include a summary of the issue in dispute and the reasons why the requesting party believes that the other party(ies) is in default, together with any backup information or documentation it elects to provide. Within fifteen (15) days after receipt of the Mediation Request, if the dispute has not been resolved, any party may submit the matter for mediation to Judicial Arbitration and Mediation Services ("**JAMS**") in San Francisco. The parties will cooperate with JAMS and with one another in selecting a mediator from a JAMS panel of neutrals and in scheduling the mediation proceedings as quickly as feasible. The parties agree to participate in the mediation in good faith. No party may commence or if commenced, continue, a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session. The parties will each pay their own costs and expenses in connection with the mediation, and the party that requested mediation will pay all costs and fees of the mediator. Without limiting the foregoing, the provisions sections 1115 through 1128 of the California Evidence Code, inclusive, will apply in connection with any mediation. Any statute of limitations for bringing or maintaining a cause of action shall be tolled during any mediation under this Section. If JAMS does not exist, the parties may use AAA or a similar mediation service in San Francisco.

13.6 No Termination. Notwithstanding any provision of this Declaration to the contrary, no breach under this Declaration shall (a) entitle an Owner to cancel, rescind, or otherwise terminate this Declaration, or (a) defeat or render invalid the lien of any Permitted Mortgage, and the easements, covenants, conditions and restrictions of this Declaration shall be binding upon and effective against each Owner, including those who acquire title by foreclosure, trustee's sale, or otherwise.

13.7 Litigation Expenses.

(a) General. If Declarants or any Owner brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) by reason of a default, or otherwise arising out of this Declaration, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this Section 13.7 shall include without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

(b) Appeal. Attorneys' fees under this Section shall include reasonable attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

(c) Fee Award for City's Attorneys. For purposes of this Declaration, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of hours of professional experience in the subject matter area of the law for which City's counsel's services were rendered who practice in the City and County of San Francisco, State of California, in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

13.8 No Personal Liability. Notwithstanding anything to the contrary in this Declaration, no individual person, including any investor, member, equity holder, board member, director, commissioner, officer, employee, official or agent of an Owner, shall be personally liable in the event of any default under this Declaration.

14. Tropical Hardwood and Virgin Redwood Restrictions; Project Maintenance. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. Owners shall not import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. Managing Owner shall use commercially reasonable efforts to maintain the Project in compliance with Applicable Laws.

15. Term. The easements, covenants, conditions, and restrictions contained in this Declaration shall become effective on the date of Recordation of this Declaration and shall remain in full force and effect thereafter in perpetuity (unless terminated pursuant to Section 7.4 or by agreement of all then record Owners and all Permitted Mortgagees).

16. Miscellaneous.

16.1 Noise Reduction. Acoustical privacy is in the mutual interest and benefit of all Owners and Permittees. The Managing Owner and City Parcel Owner shall have the right, but not the obligation, to prepare reasonable rules and regulations regarding sound and noise reduction use requirements for the Parcels, for approval by all Owners. It shall be the responsibility of each Owner to cause its Permittees to abide by the sound and noise reduction requirements set forth in this Declaration, and/or otherwise established by the approved rules. The Owners and the Managing Owner acknowledge that a fire station will be operated on the Project and that common and usual sounds and noise necessary to such operations (including, but not limited to, fire trucks, training, events, and alarms incident to an emergency or drill) may be detectable at the Project and are expected and permitted under this Declaration. Unusual noise not associated with the normal course of operation as a fire station shall be subject to any applicable Project rules.

16.2 Assessments and Improvement Districts. Without written consent of the Owners, Managing Owner shall not cause or consent to the formation of any assessment district,

improvement district, community facilities district, special district, special improvement district, governmental district, or other similar district (any of the foregoing, a "**District**") not in effect on the date of this Declaration; nor shall Managing Owner cause or otherwise consent to the levying of special taxes or assessments against the Parcels (including any or Developer Subdivision Parcels) and Project by any such District not in existence on the date hereof or the future implementation of which has not been disclosed to and approved in writing by the Owners.

16.3 Amendment. The Owners agree that, subject to any other provision of this Declaration requiring the written consent of Permitted Mortgagees, the provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by unanimous consent of the Owners, evidenced by a Recorded document that has been fully executed and acknowledged by the Owners. The City's agreement to a material amendment, as determined by the Director of Property (i.e., any amendment that materially increases the City's obligations or reduces its benefits), shall require the prior approval of the City's Board of Supervisors; all other amendments may be approved and executed by the Director of Property.

16.4 Consents. Wherever in this Declaration the consent or approval of an Owner is required, unless expressly provided otherwise, such consent or approval shall not be unreasonably withheld, conditioned, or delayed; provided, however, that withholding of consent or approval shall not be considered unreasonable in the case of the City Parcel where use or operation of the Station Project or public health and safety would be materially and adversely affected. Whenever this Agreement requires or permits the giving by the City of its consent or approval, the Director of Property shall be authorized to provide such approval, except as otherwise provided by Applicable Laws. Any request for consent or approval shall: (a) be in writing; (b) specify the section of this Declaration that requires that the notice be given or that the consent or approval be obtained; and (c) be accompanied by such background information as is reasonably necessary to make an informed decision. The consent of an Owner under this Declaration, to be effective, must be in writing.

16.5 No Waiver. No waiver of any default or any failure to perform shall be implied from any omission by the other party to take any action with respect to such default or failure. Any waiver must be express, in writing, and signed by the party making the waiver.

16.6 No Agency. Nothing in this Declaration shall be deemed or construed by any party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

16.7 Covenants to Run with Land. It is intended that each of the Easements, covenants, conditions, restrictions, rights and obligations set forth in this Declaration shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any interest therein, and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

16.8 Grantee's Acceptance; Managing Owner Appointment and Succession; Recording.

(a) Any grantee, assignee, tenant, permittee, licensee or other person or entity accepting any interest in any Parcel or any portion thereof, will take such interest subject and

subordinate to this Declaration and each and all of the Easements, covenants, conditions, restrictions, and obligations contained in this Declaration. By acquiring an interest in a Parcel or portion thereof, each such grantee, assignee, tenant, permittee, licensee or other person or entity shall for itself and its successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth in this Declaration with respect to the property so acquired.

(b) The initial Managing Owner shall be the Developer Parcel Owner or the Owner of the Developer Subdivision Parcel with the largest in total improved and covered area, as applicable. The initial Managing Owner shall continue to serve as the Managing Owner until it, directly or indirectly through an affiliate, no longer owns any interest in the Project. At such time, the successor owner of the Developer Parcel, or of the largest of the Developer Subdivision Parcel in total improved area, shall become the successor Managing Owner as provided in a written agreement as provided in Subsection (d) below.

(c) Upon the written request of any Owner, the current Managing Owner shall provide within thirty (30) days of receipt a written notice to the requesting Owner, a list of then-current Owners and their respective Percentage Shares, and a designation of the Owners who are then eligible for appointment as the Managing Owner. In the absence of objection to the notice from the current Managing Owner or election of the eligible Owner not to become the successor Managing Owner, within fifteen (15) days from receipt of the notice by the Owners, the current managing Owner shall announce in writing the name and contact information for the Owner that shall become the successor Managing Owner as provided in this Declaration.

(d) Any successor Managing Owner must execute a written assumption agreement with the current Managing Owner under which the successor Managing Owner assumes all obligations of the office of Managing Owner under this Declaration. The current Managing Owner will not be relieved of its duties and obligations under this Declaration until and unless such assumption agreement has been executed. In the event that an Owner eligible to become a Managing Owner declines to serve, the right to serve as a successor Managing Owner shall pass to the next Owner who meets the Managing Owner eligibility requirements to be determined without consideration of the ownership percentage of the declining Owner. Unless and until a new Managing Owner is appointed and an assumption agreement is executed, the then current Managing Owner will continue to serve as the Managing Owner. Any such assignment and assumption agreement must be recorded in order to be valid.

16.9 Severability. Each provision of this Declaration and the application thereof to the Parcels (and subdivision thereof) are independent of and severable from the remainder of this Declaration. If any provision of this Declaration is held to be invalid or unenforceable or to not run with the land, such determination shall not affect the validity or enforceability of the remainder of this Declaration. Ownership of all of the Parcels by the same person or entity shall not terminate this Declaration nor in any manner affect or impair the validity or enforceability of this Declaration.

16.10 Conflicts. If there is conflict or inconsistency between the provisions of this Declaration and any other documents created in connection with the creation of the Project, this Declaration shall control.

16.11 Time of Essence. Time is of the essence for all terms and provisions of this Agreement.

16.12 Entire Agreement. This Declaration contains the complete understanding and agreement of the Declarants with respect to all matters referred to in this Declaration, and all prior representations, negotiations, and understandings are superseded by this Declaration.

16.13 Governing Law; Venue; Interpretation. The laws of the State of California shall govern the interpretation, validity, performance, and enforcement of this Declaration. All rights and obligations of the parties under this Declaration are to be performed in the City and County of San Francisco, and the City and County of San Francisco shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Declaration. The parties have mutually negotiated the terms and conditions of this Declaration and its terms and provisions have been reviewed and revised by legal counsel for both parties. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Declaration. The captions of the paragraphs and subparagraphs of this Declaration are for convenience only and shall not be considered or referred to in resolving questions of construction.

16.14 Notices. Notices or other communication under this Declaration shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. A notice or communication shall be deemed given upon receipt or refusal to accept delivery. Declarants may change from time to time their respective addresses for notice by giving notice to the other Owners. Subject to the paragraphs below, the notice addresses of the Declarants are:

If to Developer: EQX JACKSON SQ HOLDCO LLC
c/o The Related Companies, L.P.
60 Columbus Circle
New York, NY 10023
Attention: General Counsel

With a copy to: The Related Companies, L.P.
44 Montgomery
San Francisco, CA 94104
Attention: Gino Canori
Email: gcanori@related.com

With a copy to: Greenberg Traurig, LLP
18565 Jamboree Road, Suite 500
Irvine, California 92612
Attention: Bruce Fischer, Esq.
Email: fischerb@gtlaw.com

If to City:	Real Estate Division City and County of San Francisco 25 Van Ness Avenue, Suite 400 San Francisco, California 94102 Attn: Director of Property Re: Washington & Sansome Fire Station
With a copy to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4682 Attn: Real Estate & Finance Team Re: Washington & Sansome Fire Station

If notice is returned or not deliverable at the last address given by either Declarant, then the sending party may send a notice to the latest address on record in the San Francisco Tax Assessor's Office for tax bills to that Declarant.

If the Developer Parcel is further subdivided, then any and all notices or communications from a Developer Subdivision Parcel Owner to the City Parcel Owner, or vice versa, must be made through the Managing Owner, and notices or communication so given will be deemed received when actually received or refused by the City Parcel Owner or Developer Subdivision Owner, as applicable.

16.15 Estoppel Certificates. The Managing Owner, within twenty (20) days following its receipt of a written request from any Owner or any Permitted Mortgagee, shall from time to time provide the requesting Owner, or Permitted Mortgagee, a certificate stating: (a) to the best of Managing Owner's knowledge, whether the requesting Owner is in default or violation of this Declaration and if so identifying such default or violation; (b) that this Declaration is in full force and effect and identifying any amendments to the Declaration as of the date of such certificate; and (c) the amount of Assessments, if any, to which the Owner's Parcel is subject. The other Owners will reasonably cooperate with Managing Owner to provide any information Managing Owner may require to complete the certificate.

16.16 Bankruptcy. Each Owner's obligations under this Declaration are not dischargeable in bankruptcy. In the event of any bankruptcy affecting any Owner, the parties agree that this Declaration shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

16.17 Permitted Mortgagee Protections.

(a) Right to Encumber. Each Owner shall have the right to encumber its interest in its respective Parcel by any Permitted Mortgage, provided that such Permitted Mortgage is subject to and subordinate to this Declaration.

(b) Breach Will Not Defeat Lien. The breach of any of the provisions of this Declaration shall not defeat or render invalid the lien of any Permitted Mortgage of a Parcel or any portion thereof; provided that all provisions of this Declaration shall be binding and effective

against any third party who acquires a Parcel or any portion thereof by foreclosure, deed in lieu of foreclosure, trustee's sale, or otherwise.

(c) Prior Claims and Obligations. No Permitted Mortgagee shall have any liability beyond its interest in a Parcel or a portion thereof acquired by it through enforcement of its Permitted Mortgage for the performance or payment of any covenant, liability, warranty, or obligation under this Declaration and each Owner agrees that it shall look solely to the interests of such Permitted Mortgagee in such Parcel for payment or discharge of any such covenant, liability, warranty, or obligation.

(d) Notice to Permitted Mortgagees. The Permitted Mortgagee under any Permitted Mortgage encumbering the entire Developer Parcel, or the entire City Parcel shall be entitled to receive notice of any default by any Owner hereunder if such Permitted Mortgagee delivers a written notice to each Owner specifying the Permitted Mortgagee's name and address and requesting such notices. Failure of an Owner to deliver a copy of such notice of default to the Permitted Mortgagee whose Permitted Mortgage encumbers the entire Developer Parcel or the entire City Parcel shall in no way affect the validity of the notice of default as it respects the defaulting Owner but shall make the same invalid as it respects the interest of the Permitted Mortgagee and its lien upon the affected entire Developer Parcel or entire City Parcel. If the Developer Parcel or City Parcel is subdivided into more than one legal parcel, an Owner will have no obligation to send a notice of default to the Permitted Mortgagee of a Permitted Mortgage encumbering of any subdivision of the Developer Parcel or City Parcel. The Developer or City (or successor in interest) shall be solely responsible for sending any notices of default from the other Owner to the Permitted Mortgagees of Permitted Mortgages encumbering any such subdivision of the Developer Parcel or City Parcel. Any such notice to a Permitted Mortgagee shall be given in the same manner as provided in Section 13.3. The giving of any notice of default or the failure to deliver a copy to any Permitted Mortgagee shall in no event create any liability on the part of the Owner declaring a default.

(e) Right to Cure. If an Owner receives a notice that it is in default under this Declaration and the Owner fails to cure the default, then, the other Owner shall send a notice of such defaulting Owner's failure to cure or to commence to cure such default as provided in this Declaration to the Owner's Permitted Mortgagee, if required under Subsection (d) above. While the defaulting Owner remains in default its Permitted Mortgagee under a Permitted Mortgage affecting the Parcel of the defaulting Owner and such Permitted Mortgagee is entitled to notice as provided under Subsection (d) above, such Permitted Mortgagee shall have sixty (60) days after the receipt of such notice to cure any such default, or, if such default cannot be cured within sixty (60) days, to diligently commence curing within such time and diligently cure within a reasonable time thereafter. Permitted Mortgagees may jointly or singly pay any sum or take any other action reasonably necessary to cure any default of their mortgagors under this Declaration with the same effect as cure by the Owner itself. If any such default or event cannot be cured or remedied by the Permitted Mortgagee without the Permitted Mortgagee obtaining possession of the Parcel by appropriate proceedings and/or title to the Owner's Parcel by judicial or non-judicial foreclosure proceedings or by deed in lieu thereof, then any such default shall be remedied or deemed remedied if the Permitted Mortgagee shall have complied with the following provisions: (i) within thirty (30) days after receiving the notice, the Permitted Mortgagee (or its nominee) shall have acquired Owner's estate or shall have commenced judicial or non-judicial foreclosure proceedings or

appropriate proceedings to obtain possession of the Parcel; (ii) the Permitted Mortgagee shall diligently prosecute any such proceedings to completion; and (iii) after gaining possession of the Parcel, the Permitted Mortgagee (or its nominee) shall perform all other obligations of the Owner as and when the same are due in accordance with the terms of this Declaration. Nothing in this Section will prohibit a non-defaulting Owner from exercising its rights to self-help if the default affects health and safety of the Parcel occupants, the use or operation of the Station Project (or any replacement thereof) or is required in the non-defaulting Owner's reasonable determination to be performed to protect the improvements or personal property on the non-defaulting Owner's Parcel.

(f) Amendment. This Declaration shall not, without the prior written consent of a Permitted Mortgagee entitled to notice under Subsection (d) above, be amended so as to (i) materially modify the location of any Easements; (ii) materially modify the right to restore, rebuild, or replace any Covered Improvements upon a Casualty or Taking; (iii) terminate this Declaration; (iv) change the provisions applicable to insurance so as to reduce the required coverages or change the interest of any Owner in the allocation, adjustment, or distribution of Proceeds; or (v) otherwise change any provision of this Section 16.17 or any other provision of this Declaration which, by its terms is specifically for the benefit of Permitted Mortgagees or specifically confers rights on Permitted Mortgagees.

(g) Condemnation or Insurance Proceeds. Nothing in this Declaration shall impair the rights of any Permitted Mortgagee pursuant to its Permitted Mortgage to receive proceeds that are otherwise payable to the Owner granting such Permitted Mortgage.

(h) Title by Foreclosure. Except as otherwise set forth in this Declaration, all of the provisions contained in this Declaration shall be binding on and for the benefit of any person who acquires title to a Parcel by foreclosure, trustee's sale, deed in lieu of foreclosure, or other involuntary transfer under a Permitted Mortgage.

(i) Modification of Article; Conflicts. Each Owner hereby agrees to cooperate in including in this Declaration by suitable amendment from time to time any reasonable provision that is requested by a Permitted Mortgagee whose lien and security interest encumbers the entire Developer Parcel or the entire City Parcel to implement the mortgagee protection provisions contained in this Declaration and to protect or preserve the lien and security interest of the Permitted Mortgage. The Owners each agree to consider, and if approved, execute and deliver (and to acknowledge, if necessary, for recording purposes), any such amendment; provided, however, that any such amendment shall not in any way materially adversely affect any rights or materially increase any obligations of any Owner under this Declaration.

(j) Delegation to Mortgagee. An Owner may delegate irrevocably to any of its Permitted Mortgagees the non-exclusive authority to exercise any or all of such Owner's rights under this Declaration, but no such delegation shall be binding upon the other Owner unless and until either the delegating Owner or its Permitted Mortgagee gives to the Managing Owner and the other Owners a true copy of a written instrument effecting such delegation. Such delegation of authority may be created by the terms of the Permitted Mortgage itself, in which case service upon Managing Owner and the other Owners of an executed counterpart or conformed copy of said Permitted Mortgage in accordance with this Section 16.17 together with written notice specifying the provisions of the Permitted Mortgage that delegates such authority to said Permitted

Mortgagee, shall be sufficient to give the Managing Owner and the other Owners notice of such delegation.

(k) No Obligation to Cure. Nothing in this Declaration shall require any Permitted Mortgagee to cure any default of an Owner before its acquisition of title to a Parcel by foreclosure, trustee sale, or deed in lieu thereof. Upon acquisition of title to a Parcel, but only during such time as the Permitted Mortgagee holds title, such Permitted Mortgagee or the purchaser or grantee, as applicable, shall be liable and responsible for all continuing obligations and defaults existing on its Parcel from and after the date of such acquisition, including defaults and other conditions arising prior to the date of such acquisition.

(l) Separate Agreement. If a Permitted Mortgagee requests that the Owners acknowledge this Declaration and that the Owners have rights and obligations of the Owners under this Declaration, then at the sole cost and expense of the Owner whose Permitted Mortgagee requested it, the Owners will execute and deliver to the requesting Permitted Mortgagee such acknowledgement in form reasonably satisfactory to such Permitted Mortgagee and the Owners.

(m) Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code Section 250 et seq.), this Declaration and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. Developer shall not be required to provide any information to City that is trade secret or that constitute proprietary confidential information. To the extent that Developer in good faith believes that any materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other laws, the parties shall meet and confer. If the City obtains information from Developer that Developer has marked as trade secret or confidential proprietary information, and City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date, not sooner than fifteen (15) days, in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

(n) Nondiscrimination. In the performance of this Declaration, each Owner agrees not to discriminate against any employee of an Owner or any applicant for employment, any City employee working on or under this Declaration, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(o) MacBride Principles — Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City and County of San Francisco

also urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

(Signature page follows.)

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

DEVELOPER DECLARANT:

EQX JACKSON SQ HOLDCO LLC,
a Delaware limited liability company

_____
By:
Its:

CITY DECLARANT:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Andrico Q. Penick
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____

Deputy City Attorney

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ before me, _____ [Name and Title of Officer], personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ before me, _____ [Name and Title of Officer], personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit A-1

LEGAL DESCRIPTION OF CITY PARCEL

Exhibit A-2

LEGAL DESCRIPTION OF DEVELOPER PARCEL

Exhibit B

DEPICTION OF EASEMENTS FOR THE BENEFIT OF THE DEVELOPER PARCEL

Exhibit C

DEPICTION OF EASEMENTS FOR THE BENEFIT OF THE CITY PARCEL

Exhibit D

DEPICTION OF RECIPROCAL EASEMENTS