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DECLARATION ESTABLISHING

ONEC1TY LOT 8

MASTER CONDOMINIUM

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EFFECTIVE
Date: December 23, 2020

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DECLARATION ESTABLISHING
ONEC1TY LOT 8 MASTER CONDOMINIUM

THIS DECLARATION (hereinafter referred to as this "**Declaration**") is made as of December 23, 2020, by NF IV – VA NASHVILLE, LLC, a Delaware limited liability company ("**Declarant**"), whose address is set forth on its signature page hereto, pursuant to the provisions of the Tennessee Condominium Act of 2008, Tenn. Code Ann. §§ 66-27-201 et seq. (as amended modified or replaced from time to time, the "**Act**"), for the purpose of forming a condominium and establishing certain easements, covenants and restrictions to run with the land.

RECITALS:

WHEREAS, Declarant is the owner of that certain real property located in Nashville, Davidson County, Tennessee, and more particularly described on Exhibit A (the "**Real Property**").

WHEREAS, Declarant intends to construct or cause to be constructed on the Real Property a 134,035 square foot (exclusive of Common Elements as hereinafter defined) mixed-use development to consist of: (a) a 6-story tower structure with (i) 12,571 square feet of space designated for retail use located on the ground floor; and (ii) a hotel expected to include approximately 175 rooms and other amenities; and (b) various Common Elements as further described and defined below.

WHEREAS, it is the desire and intent of the Declarant, by recording this Declaration, to establish a Condominium (as defined in the Act) to be known as ONEC1TY LOT 8 MASTER CONDOMINIUM under the provisions of the Act and to impose upon the Real Property covered hereby mutually beneficial restrictions under a general plan for the benefit of all of the Condominium units contained therein and the owners thereof;

NOW, THEREFORE, Declarant hereby submits the Real Property and all improvements contained thereon, to the provisions of the Act, to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, improved and in any other manner utilized subject to the provisions of the Act and subject to the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the improvement of the Real Property and the division thereof into Condominium ownership and all of which shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the Real Property or any part thereof, and shall be for the benefit of each owner of any portion of the Real Property or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest to the owners thereof.

ARTICLE I
DEFINITIONS

"**75% of the Eligible First Mortgagees**" means Eligible First Mortgagees that hold First Mortgages encumbering Units to which are appurtenant at least 75% of the Allocated Interests that are in fact appurtenant to Units encumbered by First Mortgages held by Eligible First

Mortgagees (that is, ignoring for all purposes any Allocated Interests appurtenant to Units not encumbered by a First Mortgage held by an Eligible First Mortgagee). It is understood that, for purposes of determining the vote of the Eligible Mortgagees on the Retail Unit, the vote of Eligible Mortgagees holding First Mortgages on at least 80% of allocated interests of the Retail Condominium Owners under the Retail Declaration shall be deemed a vote of 100% of the Eligible First Mortgagees on the Retail Unit.

"**75% of the Owners**" means Owners owning, in the aggregate, Units to which are appurtenant at least 75% of the Allocated Interests. It is understood that, for purposes of determining the vote of the Owner of the Retail Unit, the vote of at least 80% of allocated interests of the Retail Condominium Owners under the Retail Declaration shall be deemed the vote of the Owner of the Retail Unit.

"**75% of the Owners and Eligible First Mortgagees**" means, collectively, (a) 75% of the Owners, and (b) 75% of the Eligible First Mortgagees, if any.

"**Act**" shall have the same meaning as more specifically set forth in the Preamble.

"**Allocated Interests**" or "**Allocated Interest**" means, the undivided interest in the Common Elements, the Common Expense liability, and the votes in the Association allocated to each Unit, the percentages for which are set forth in Exhibit E.

"**Applicable Interest Rate**" means the lesser of (a) the United States prime rate of interest as published in the "Money Rates" section of *The Wall Street Journal*, adjusted on a daily basis for any changes in such rate of interest, plus four percent (4%), (b) the maximum rate permitted by law, or (c) such other rate as may be set by the Association from time to time. If *The Wall Street Journal* ceases to publish such prime rate, then the Association shall designate a substitute manner of determining the prime rate.

"**Assessment**" means all amounts levied by the Association against Owners, including Monthly Assessments, Special Assessments, Individual Purpose Assessments and Default Assessments.

"**Association**" means oneC1TY Lot 8 Master Condominium Association, Inc., a Tennessee nonprofit corporation, organized pursuant to the Tennessee Nonprofit Corporation Act, Tenn. Code Ann. §§ 48-51-101 et seq., as amended from time to time.

"**Association Documents**" means this Declaration and all exhibits hereto, the Master Plat, Charter, Bylaws, Rules and Regulations and other documents from time to time governing the Association, and any amendments thereto.

"**Board**" means the Board of Directors of the Association.

"**Building**" means the building located upon the Real Property.

"**Bylaws**" shall mean the set of Bylaws of the Association, a copy of which is attached hereto as Exhibit B, as the same may be amended from time to time.

"Charter" shall mean the Charter of the Association, Inc., a copy of which is attached hereto as Exhibit C, as the same may be amended from time to time.

"**Common Elements**" means the entire Project excepting the Units. Common Elements shall include the following:

(a) All structural components, elements and facilities of the Project, including, without limitation, the curtain wall, the foundation, footings, slabs, caissons, structural beams, girders, columns, pillars, beams, supports, braces, perimeter and supporting walls, interior structural walls (including shear walls and bearing walls), and any replacements, substitutions or modifications thereof;

(b) All exterior wall and glass assembly for the Building and all equipment and apparatus installed on in the Project to enable the outside windows of the Building to be washed;

(c) All hallways, corridors, elevators, stairs, stairways, and "back of house" rooms, to the extent existing for the common use by some or all of the Owners;

(d) All roof structures, decks and rooftops of the Building, specifically including, without limitation, the roof deck and waterproofing components of the amenity pool deck for the Hotel located on the second floor of the Building as shown on the Master Plat, but excluding the finishes above such roof deck and waterproofing components of such amenity deck, which are part of the Hotel Unit as further described below;

(e) Utilities/Mechanical Equipment, to the extent existing for the common use by some or all of the Owners;

(f) An easement of support in every portion of a Unit which contributes to the support of the Building;

(g) The Loading Dock;

(h) Any sidewalks, walkways, paths, grass, shrubbery, trees, signs, landscaping and gardens, if any, located on the Real Property, to the extent existing for the common use by some or all of the Owners, but specifically excluding the amenity pool deck for the Hotel located on the second floor of the Project as shown on the Master Plat, other than the roof deck and waterproofing components underlying said amenity deck as described above; and

(i) In general, all other parts of the Project, including the Limited Common Elements, existing for the common use by all or some of the Owners or necessary or convenient to its existence, maintenance or safety, and all other parts of the Project, including the Limited Common Elements, specifically identified as "Common Elements" or "Limited Common Elements" on the Master Plat.

"**Common Expense Allocation Ratios**" means the ratios for allocating Common Expenses between the Units as set forth in Exhibit H.

"**Common Expenses**" means the following:

(a) Expenses of administration, insurance, and operation and management, including taxes, Fees, management fees, costs, expenses and liabilities incurred by the Board on behalf of the Association or otherwise arising under or by reason of the Association Documents;

(b) The cost of maintenance, management, improvement, replacement, and renovation of, and Repair Work to, the Common Elements, except to the extent the same is the separate responsibility of an Owner or Owners as specifically described herein;

(c) Reimbursement for or payment of any operating deficit, loss or unbudgeted expense incurred by the Association in the furtherance of its duties under this Declaration;

(d) Charges for utilities serving the Common Elements;

(e) The creation of reasonable reserves, working capital or sinking funds, including the Reserve Fund;

(f) Expenses explicitly declared Common Expenses by this Declaration or by the Association in accordance with this Declaration;

(g) The costs of exercising any remedies under this Declaration to collect due but unpaid sums lawfully assessed against the Units by the Board (except for Individual Purpose Assessments or Default Assessments), including the foreclosure of liens provided under this Declaration and the Act;

(h) Any unpaid share of Common Expenses extinguished by foreclosure of a superior security interest;

(i) Any expenses incurred by committees of the Association; and

(h) Any and all other costs and expenses relating to the Common Elements, real or personal property owned by the Association or any other obligations undertaken by the Association in the furtherance of its duties under this Declaration.

For the sake of clarity, expenses incurred with respect to or incident to the use, enjoyment, repair, maintenance or improvement of any Limited Common Element are not Common Expenses, and such expenses shall be borne and paid as provided in Section 7.2.

"Condominium" shall have the meaning set forth in the Act and shall refer to the condominium created by this Declaration and the Master Plat.

"**Declarant**" shall have the same meaning as more specifically set forth in the Preamble, including its successors and assigns.

"**Declaration**" shall have the same meaning as more specifically set forth in the Preamble.

"**Default Assessment**" means an Assessment for enforcement costs, interest, fees or fines, including Assessments relating to defaults, acts, errors or omissions of an Owner or its

Permittees under any of the Association Documents, including any expense of the Association that is the obligation of an Owner or is incurred by the Association on behalf of an Owner, including reimbursement to the Association for the cost of repairing or replacing any Common Element damaged or destroyed by an Owner or its Permittees.

"**Director**" means a voting member of the Board.

"**Elevator Systems**" means all elevator mechanical rooms, elevator shafts, elevator cabs, elevator cables and/or systems and/or equipment used in the operation of elevators, including service elevators. The Elevator Systems will serve only the Hotel Unit and shall be depicted on the Master Plat as part of the Hotel Unit.

"**Eligible First Mortgagee**" means those First Mortgagees or insurers or guarantors of First Mortgages who have made written request to the Association, specifying its name, address and Unit or Retail Condominium Unit subject to the Mortgage, for notification of certain matters and actions.

"**Emergency**" means any situation, condition or event which threatens substantial imminent danger or injury to person or property.

"**Fees**" means all legal, accounting, architectural, engineering, consulting and other professional fees.

"**First Mortgage**" means a Mortgage with a Security Interest in a Unit or Retail Condominium Unit that has priority over all other Security Interests in the Unit or Retail Condominium Unit.

"**First Mortgagee**" means any Mortgagee named as a mortgagee or beneficiary under any First Mortgage.

"**General Common Elements**" means all of the Common Elements except Limited Common Elements. For avoidance of doubt, all equipment and apparatus installed on or in the Project to enable the outside windows of the Building to be washed shall be considered General Common Elements.

"**Governmental Agencies**" means any federal, state, county, city, local or municipal governmental entity or quasi-governmental entity or body (or any department or agency thereof) exercising jurisdiction over a particular subject matter for any portion of the Project.

"**Hotel Management Agreement**" means the agreement, if any, from time to time executed by the Hotel Unit Owner, on the one hand, and the Hotel Manager, on the other hand, providing for the management of the Hotel.

"**Hotel Manager**" means the manager, if any, named in the Hotel Management Agreement from time to time in effect.

"**Hotel Parking Spaces**" means the 181 of the parking spaces available under the Parking Agreement.

"**Hotel Unit**" means the Unit depicted on the Master Plat as the "Hotel Unit".

"**Hotel Unit Owner**" means the Owner of the Hotel Unit, being, as of the date of this Declaration, the Declarant.

"**Individual Purpose Assessment**" means an Assessment against only one Unit, for any matters applicable only to such Unit.

"**Insurable Condominium Property**" shall mean the Common Elements and any personal property owned by the Association from time to time, and the Units (including the Retail Condominium Units), including any buildings, improvements and fixtures installed in the Units (including in the Retail Condominium Units), but excluding any personal property located within a Unit (including within a Retail Condominium Unit).

"**Judicial Proceeding**" means any proceeding at law or in equity.

"**Limited Common Elements**" means those parts of the Common Elements that are limited to and reserved for the exclusive use of the Owner of a particular Unit. If any Utilities/Mechanical Equipment that exclusively serves the Unit or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit located outside of the boundaries of said Unit is a Limited Common Element allocated solely to that Unit. Any portion serving all of the Units or any portion of the Common Elements shall be a General Common Element. The right to use the Hotel Parking Spaces shall be a Limited Common Element allocated to the Hotel Unit. The open-air Breezeway bisecting the Hotel Unit on the first floor of the Building up to the underside of the concrete slab above such Breezeway, and the glass canopy awning from said Breezeway to the Hotel drive-up drop-off area on the Northwest side of the Building, all as shown on the Master Plat, shall be Limited Common Elements allocated to the Hotel Unit. The right to use the Retail Parking Spaces shall be a Limited Common Element allocated to the Retail Unit. The exterior walkways adjacent to the Retail Unit areas on the Northwest and Southwest faces of the Building, extending outward from the façades of such Retail Unit areas to the line of the overhead exterior face of the Hotel Unit above, and up to the underside of the concrete slab of the overhanging portion of the Hotel Unit above, all as shown on the Master Plat, shall be Limited Common Elements allocated to the Retail Unit.

"**Loading Dock**" means the loading dock located in the Project on the ground floor of the Building. The Loading Dock shall be a Common Element.

"**Managing Agent**" means such management agent as the Board may from time to time hire and engage for the purpose of assisting the Association in the management of the Project (which Managing Agent may be the Hotel Manager or an affiliate thereof).

"**Master Plat**" means the plat and plans attached to this Declaration as Exhibit D and made a part hereof for all purposes, as such plat and plans may be amended and supplemented from time to time.

"**Member**" means each member of the Association, being each Owner of a Unit. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit.

There shall be two Members of the Association, being the Hotel Unit Owner and the Retail Association.

"**Monthly Assessment**" means an Assessment paid monthly, provided that, at the option of the Association and notwithstanding its description herein as a monthly assessment, the Monthly Assessment may, at the election of the Board from time to time, be made payable on a quarterly, semi-annual or annual basis.

"**Mortgage**" means any mortgage, deed of trust or other document pledging any Unit or Retail Condominium Unit or interest therein as a Security Interest.

"**Mortgagee**" means any person or entity named as a mortgagee or beneficiary in any Mortgage or any successor to the interest of any such person or entity.

"**Official Records**" means the Register's Office for Davidson County, Tennessee.

"**Owner**" or "**Unit Owner**" means any record owner, whether one or more persons or entities, of a fee simple title interest to any Unit; but the Owner of the Retail Unit shall refer to the Retail Association (and not a Retail Condominium Owner), and excluding any such record owner having such an interest merely as security for the performance of an obligation (unless such person has acquired fee simple title interest therein pursuant to foreclosure or any proceedings in lieu thereof). Without limiting the foregoing, any Owner may designate in writing a Long-Term Tenant of its fee simple title to a Unit hereunder to be deemed the "**Owner**" of such Unit during the term of its lease, and such Long-Term Tenant shall, during the period so designated in writing, have the sole authority to exercise, and the direct personal responsibility to pay and perform, all rights, benefits, privileges, duties, responsibilities, liabilities and obligations of said "**Owner**" with respect to such Unit; provided, however, that (i) such Long-Term Tenant shall expressly accept such designation and assume such responsibility in writing; (ii) the term "**Owner**" will not otherwise mean and refer to any lessee (other than a designated Long-Term Tenant), tenant or licensee of any Owner; and (iii) no such designation shall release the Owner from any liability under this Declaration or otherwise with respect to its Unit notwithstanding any such assumption by the Long Term Tenant and no party shall be obligated to look first to the Long Term Tenant before enforcing the obligations against such Owner or its Unit. A "**Long-Term Tenant**" or "**Long-Term Tenants**" means the Tenant under a lease having an initial term of at least ten (10) years. In addition, a fee owner/lessor may also delegate the rights (and obligations) of the "**Owner**" under this Declaration to its Long-Term Tenant (and said Long-Term Tenant may accept and assume the same) in a recorded short form lease. For the sake of clarity, this Declaration shall in all events continue to be binding upon, and shall run with, the fee simple title to each Unit, and shall not be impaired or affected by the termination of any such lease. In the event a Long-Term Tenant should be deemed the "**Owner**" of a Unit, nothing herein shall be construed as impairing the obligations of such Long-Term Tenant to, or the rights of, any Registered Mortgagee with respect to such Unit, regardless of whether the Mortgage given to such Registered Mortgagee was given by the fee owner of said Unit or was given by the Long-Term Tenant).

"**Parking Agreement**" means that certain Parking Easement Allocation Agreement dated September 27, 2018 between oneC1TY Management, Inc. and Declarant of record as Instrument

No. 20180928-0096286 of record in the Official Records, which provides for the use of up to 204 parking spaces for the use of the Project.

"**Parking Management Agreement**" means the agreement, if any, from time to time executed by the Association on the one hand and the Parking Manager on the other hand providing for the parking services as provided herein and in the Parking Agreement.

"**Parking Manager**" means the manager, if any, named in the Parking Management Agreement from time to time in effect (which Parking Manager Agent may be the Hotel Manager or an affiliate thereof).

"**Parking Services**" means the parking services to be provided by the Association under Section 5.3.

"**Parking Spaces**" means the Hotel Parking Spaces and the Retail Parking Spaces.

"**Permittee**" means an Owner or its family, tenants, subtenants, contractors, subcontractors, agents, employees, licensees, lessees, sublessees, guests and invitees, and their respective officers, directors, contractors, subcontractors, agents, employees, licensees, invitees, customers and visitors, whose presence is approved or is at the request of a particular Owner. Without limiting the generality of the foregoing, Permittees of the Retail Unit shall include Retail Condominium Owners and their Permittees.

"**Plans**" means plans and specifications showing the nature, kind, scope, materials, dimensions, locations and engineering aspects of work to a Unit or any part thereof.

"**Prior Owner**" shall have the same meaning as more specifically set forth in Section 16.7.

"**Project**" means the Real Property and all improvements thereon.

"**Project Standard**" means, at any time, a standard which shall at all times be consistent with and no less than the highest standard at which the hotel operated in the Hotel Unit is then being maintained.

"**REA**" means the Amended and Restated Declaration of Restrictive Covenants and Reciprocal Easements of record as Instrument No. 20160720-0074605 in the Official Records, as amended by First Amendment to Amended and Restated Declaration of Restrictive Covenants and Reciprocal Easements of record as Instrument No. 20180507-0043207 in the Official Records, as further amended by Second Amendment to Amended and Restated Declaration of Restrictive Covenants and Reciprocal Easements of record as Instrument No. 20180924-0094361 in the Official Records, as the same may be further amended from time to time.

"**Real Property**" shall have the same meaning as more specifically set forth in the Recitals.

"**Repair Work**" means all repair, maintenance and replacement work, including costs of plans and specifications, supervision and other related costs.

"**Registered Mortgagee**" shall have the same meaning as more specifically set forth in Section 8.11(a).

"**Reserve Fund**" means a fund that may be established from Assessments for Common Expenses that may be used by the Association for the benefit of the Owners as the Board deems appropriate, including to: (a) provide funds for the major repair or replacement of General Common Elements or those Limited Common Elements designated by the Association; (b) purchase, repair or replace equipment, furniture and other Association property; (c) purchase services; (d) meet contingencies (including the amount of deductibles under the Association's property insurance policy); and (e) meet unforeseen expenditures.

"**Retail Association**" means oneC1TY Lot 8 Retail Condominium Association, Inc., a Tennessee nonprofit corporation.

"**Retail Association Documents**" means the Retail Declaration and the Retail Plat, charter, bylaws, rules and regulations and other documents governing the Retail Association and the Retail Unit.

"**Retail Condominium Owner**" means an owner of a Retail Condominium Unit.

"**Retail Condominium Units**" means the individual retail condominium units created within the Retail Unit pursuant to the Retail Declaration.

"**Retail Declaration**" means the Declaration Establishing oneC1TY Lot 8 Retail Condominium as recorded with in the Official Records concurrently herewith, and as amended and supplemented from time to time.

"**Retail Parking Spaces**" means 23 of the parking spaces available under the Parking Agreement.

"**Retail Plat**" means the plat and plans attached to the Retail Declaration, recorded or to be recorded in the Official Records, as amended and supplemented from time to time.

"**Retail Unit**" means the Unit as depicted on the Master Plat as the "Retail Unit".

"**Retail Unit Owner**" means the Owner of the Retail Unit, which shall be the Retail Association unless the Retail Condominium is terminated.

"**Rules and Regulations**" means rules and regulations adopted by the Board from time to time to govern all or part of the Project as the Association determines necessary or prudent, including the use of Common Elements and any property owned by the Association; provided, with respect to the interior of any Unit such rules and regulations shall be limited to matters affecting the structural integrity of the building or life safety matters and noise regulation.

"**Security Interest**" means an interest in real estate or personal property created by contract or conveyance that secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of

an ownership interest in an association and any other consensual lien or title retention contract intended as security for an obligation.

"**Service Corridor**" means the service corridor located within the Southern portion of the Hotel Unit of the Project, providing access and egress to the exterior sidewalk located along the Northwest boundary of the Project and ultimately to the Loading Dock adjoining said exterior sidewalk, and serving the Hotel Unit and the Retail Unit. The Service Corridor shall be a Common Element and shall be depicted as such on the Master Plat.

"**Special Assessment**" means any Assessment against the Units and Unit Owners for the purpose of defraying, in whole or in part, payments for any operating deficit, loss, unbudgeted expense or unbudgeted costs, Fees and expenses of any construction, reconstruction, demolition, management, administration or Repair Work of the Common Elements, including any fixtures and personal property related thereto.

"**Submittals**" means any Plans, permits, certificates of insurance or other documentation required to be submitted to the Association for review or approval.

"**Unit**" means the physical portion of the Condominium designated for separate ownership or occupancy as defined in Section 66-27-203(23) of the Act, their respective elements and boundaries being shown and described in the Master Plat. The dimensions of a Unit are measured from the unfinished surfaces of the floor, walls and ceiling of each level of the Unit, except as otherwise noted herein. Except as otherwise noted herein, the Unit includes (i) interior walls (except interior structural walls), (ii) the interior surfaces of structural walls and perimeter walls, floors and ceilings, and (iii) fixtures, appliances, cabinets and interior doors servicing solely the Unit. In interpreting deeds and the Master Plat, the existing physical boundaries of a Unit, whether in its original state or as reconstructed in substantial conformance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or Master Plat, regardless of settling or lateral movements of the Building and regardless of minor variance between boundaries shown on the Master Plat or in the deed and those of the Building.

"**Unit Owner**" – see the definition of "Owner".

"**Utilities/Mechanical Equipment**" means (a) private and public utility lines of any type or nature installed in the Project, including wires, pipes, conduits, cables, transformers, fiber optics, ducts, meters and other apparatus used in the delivery of the utility, mechanical, electrical, telephonic, telecommunications, plumbing and other services, including domestic cold and hot water, sanitary sewer, storm sewer, drainage systems, chilled water, condenser water, heating hot water, steam, steam condensate, natural gas, control compressed air, conditioned and non-conditioned air, ventilation and exhaust air, electricity, security systems, fire alarm, fire life safety equipment, emergency communications, systems control and automation, video monitoring, telephone, television, other telecommunications systems, satellite communications systems, and other mechanical, electrical and related life safety systems; (b) heating, ventilating and air conditioning systems installed in the Project, including tanks, pumps, motors, fans, compressors, air handlers, ducts, chillers, water towers and other apparatus used in the delivery of HVAC services to the Project; (c) Elevator Systems installed in the Project; (d) equipment and apparatus installed in the Project to enable the outside windows of the Building to be washed;

and (e) mechanical rooms, maintenance/storage rooms and the mechanical and utility installations of the Building consisting of the equipment and materials described above.

ARTICLE II
GENERAL

Section 2.1 Development of Project.

(a) The Real Property has been developed as a mixed-use condominium community in accordance with the terms and provisions of the Act.

(b) This Declaration is executed in furtherance of a common and general plan for the Project, to (i) create a harmonious and attractive mixed-use development within the Project; (ii) protect and enhance the quality, value, aesthetics, desirability and attractiveness of the Project as a whole, while respecting the separate and distinct interests of the Owners; (iii) further a plan for the improvement, sale and ownership of the Units; (iv) protect the health, comfort, safety, convenience and welfare of the Owners and their Permittees; (v) set forth the responsibilities and authority of the Association to govern and manage the Project; and (vi) define certain duties, powers and rights of the Owners.

Section 2.2 Declaration and Covenants Run With the Land; Binding Nature. The benefits, easements, restrictions, servitudes, burdens, covenants, conditions and all other provisions contained in this Declaration shall run with the Real Property and all improvements thereon and appurtenances thereto, and bind the Real Property and all improvements thereon and appurtenance thereto, in perpetuity, and shall be binding upon and inure to the benefit of the Association, the Retail Association, the Owners (including for the purposes of this Section, Retail Condominium Owners), and their respective heirs, executors, administrators, personal representatives, successors and assigns. By taking title to a Unit or a Retail Condominium Unit, each Owner acknowledges and agrees that such Owner shall perform and shall be bound by the covenants, agreements, burdens and restrictions set forth in this Declaration and the other Association Documents.

ARTICLE III
DIVISION OF THE PROJECT INTO CONDOMINIUM OWNERSHIP

Section 3.1 Division into Condominium Units; Determination of Allocated Interests. The Project is hereby divided into two Units, consisting of the Hotel Unit and the Retail Unit. Appurtenant to each Unit is an undivided interest in the Common Elements of the Project and the use of such Limited Common Elements as are stated herein or in the Master Plat to be appurtenant to such Unit.

Section 3.2 Inseparability. Except as provided in Section 3.4, each Unit and all appurtenances, rights and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered or otherwise disposed of only as a Unit. Every conveyance, transfer, devise, lease, encumbrance or other disposition of a Unit shall be deemed to be a conveyance, transfer, devise, lease, encumbrance or other disposition, as the case may be, of the entire Unit, together with all appurtenant rights, interests, duties and obligations created by law or by this Declaration.

Section 3.3 Non-Partitionability. The Common Elements shall be owned in common by all of the Owners and shall remain undivided. By the acceptance of a deed or other instrument of conveyance or assignment of a Unit, each Owner specifically waives its right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Furthermore, each Owner agrees that this Section may be pleaded as a bar to the maintenance of such an action. Any violation of this Section shall entitle the Association to collect, jointly and severally, from the parties violating the same, the actual Fees, costs, expenses and all damages that the Association incurs in connection therewith. Such amounts shall automatically become a Default Assessment determined and levied against such Owner's Unit and enforced by the Association in accordance with this Declaration. Any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void.

Section 3.4 Right to Combine or Divide Units.

(a) Subdivision of a Unit. Any Owner shall have the right to subdivide its Unit, or a part of its Unit, to create additional Units in accordance with this Section. Upon the subdivision of any Unit in accordance with the terms and conditions contained herein, the Units resulting from such subdivision shall be assigned Allocated Interests in proportion to the resulting size of each Unit in relation to the Allocated Interest of the subdivided Unit prior to its subdivision, which shall be reflected by amendments to Exhibit E and the Master Plat, provided that such reallocation of the Allocated Interests shall become effective only upon the execution and recordation of such amendment, and only after obtaining the approvals required herein. Prior to subdividing any Unit, the requesting Owner must first (i) obtain the prior written approval of each Mortgagee whose Mortgage encumbers the Unit to be subdivided; and (ii) comply with Section 3.4(b). All Fees and any other costs incurred by the Association in connection with any such subdivision of a Unit shall be paid by the Owner requesting such subdivision. The provisions of this Section 3.4(a) shall not apply to the creation by the Retail Owner of Retail Condominium Units within the Retail Unit, which shall not be considered as a subdivision of the Retail Unit.

(b) Subdivision Procedure. All subdivisions must be effectuated in accordance with the Act. To subdivide any Unit(s) as provided herein, the Owner(s) of the affected Unit(s) shall submit a signed application to the Association, which shall include the following: (i) evidence that the proposed subdivision of such Unit(s) complies with all building codes, fire codes, zoning codes and other applicable ordinances or resolutions adopted and enforced by the Association or the Governmental Agencies, and that the proposed subdivision does not violate the terms of any Mortgage encumbering the applicable Units; (ii) the proposed reallocations of the Allocated Interests; (iii) the proposed amendments to this Declaration and the Plat, as is necessary to show the Unit or Units that is or are being created by the subdivision, and the dimensions of such Units, identifying numbers and Allocated Interests; (iv) the Submittals; (v) evidence satisfactory to the Board that the Owner has obtained the requisite insurance in connection with any construction required to effectuate the proposed combination or subdivision; (vi) the Association's standard form indemnity signed by the Owner and indemnifying the Association for any and all matters relating to the proposed action; and (vii) such other information as is reasonably requested by the Board. As a condition precedent to the approval of the Board of any such division of Units, the Owners of

the affected Units shall obtain the written consent of each Mortgagee whose Mortgage encumbers a Unit to be subdivided. In reviewing the Submittals and other materials, the Board may engage the services of architects, attorneys and engineers and the requesting party shall pay reasonable Fees. In connection with any such subdivision, the Owner(s) of the Unit(s) being so combined shall have the right, with the prior written approval of the Association, to re-designate, as part of a Unit or as a Limited Common Element, any portion of the Common Elements appurtenant to or benefitting only the Unit(s) being subdivided, or any walls, floors or other separations between the affected Units, which may be necessary or appropriate to accomplish such subdivision.

(c) Combination and Division of Retail Condominium Units. Notwithstanding anything expressed or implied in this Section to the contrary, the combination and division of any Retail Condominium Unit shall be governed by the Retail Declaration and not this Section.

ARTICLE IV
MASTER PLAT

Section 4.1 Recording. The Master Plat, including any supplements or amendments thereto, shall be recorded in the Official Records. The Master Plat shall be recorded prior to conveyance of the first Unit shown on such Master Plat. The Master Plat shall be attached to this Declaration as Exhibit D.

Section 4.2 Content. The Master Plat is incorporated herein by reference and shall depict and show all items required under the Act. In interpreting the Master Plat, the existing physical boundaries of each Unit, as constructed, shall be conclusively presumed to be its boundaries.

Section 4.3 Amendments. The Association shall have the right, from time to time, without obtaining the consent or approval of any Owner or First Mortgagee, to amend the Master Plat to conform the Master Plat to the actual location of any improvement(s) constructed, installed or erected on the Real Property. The Master Plat may also be amended, from time to time, in accordance with the provisions of this Declaration or the Act.

ARTICLE V
PROPERTY RIGHTS IN COMMON ELEMENTS AND OTHER USE RIGHTS

Section 5.1 Rights of Ingress and Egress. Each Owner (which for the purposes of this Section includes all Retail Condominium Owners) and their Permittees shall have a perpetual, irrevocable, non-exclusive right and easement of enjoyment in and to the General Common Elements, without hindering or encroaching upon the lawful rights of other Owners and in accordance with Rules and Regulations, plus a perpetual, irrevocable non-exclusive easement for ingress and egress to and from its Unit and the street and sidewalks adjacent to the Project, over and across the General Common Elements. Each Owner and their Permittees shall have a perpetual, irrevocable non-exclusive right and easement of enjoyment in and to those Limited Common Elements allocated and appurtenant to such Owner's Unit. Notwithstanding the foregoing, each Owner shall have the right to modify or eliminate ingress and egress through portions of its Unit so long as reasonable ingress and egress is maintained from each Unit to a public street or right of way and in compliance with all applicable building codes and regulations

and applicable permits. These rights and easements shall be appurtenant to and pass with the transfer of title to the Owner's Unit, provided that such rights and easements shall be subject to the following:

(a) The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations, duties and obligations contained in this Declaration and the Master Plat;

(b) Rules and Regulations;

(c) The right of the Association to grant permits, licenses and easements over the Common Elements for Utilities/Mechanical Equipment and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project; and

(d) The right of the Association to restrict access to authorized personnel, as determined by the Association, to certain portions of the General Common Elements, including, without limitation, service areas, loading docks, mechanical equipment and facilities rooms, storage rooms, operations and facilities rooms, boiler and chiller rooms, trash and recycling rooms, and other such service rooms and areas of the Project, which may be set forth in the Rules and Regulations.

(e) The right of an Owner of any Unit to which a Limited Common Element is allocated to designate a reasonable location of any easement across such Limited Common Element.

(f) Each Retail Condominium Owner shall have a perpetual, irrevocable, non-exclusive right and easement for the use and benefit of the Retail Unit (i) through and across the General Common Elements of the Project reasonably necessary to access the Retail Unit and such Retail Condominium Owners' Retail Condominium Unit; (ii) to use and enjoy the Loading Dock, subject to such reasonable requirements and restrictions as the Association may promulgate from time to time; (iii) over, through and across the Service Corridor and the exterior sidewalk along the Northwest Boundary of the Project for ingress and egress to and from the Loading Dock; and (iv) through and across such other portions of the Project for emergency ingress to or egress from the Retail Unit and such Retail Condominium Owner's Retail Condominium Unit if there is not a reasonably direct ingress or egress route then existing in the General Common Elements.

(g) The Retail Unit Owner shall have a perpetual, irrevocable, non-exclusive easement for the use and benefit of the Retail Unit (i) through and across the General Common Elements of the Project reasonably necessary to gain access to the Retail Unit; (ii) to use the Loading Dock; (iii) over, through and across the Service Corridor and the exterior sidewalk along the Northwest Boundary of the Project for ingress and egress to and from the Loading Dock; and (iv) through and across such other portions of the Project for emergency ingress to or egress from the Retail Unit if there is not a reasonably direct ingress or egress route then existing in the General Common Elements.

(h) The Hotel Unit Owner shall have a perpetual, irrevocable, non-exclusive easement for the use and benefit of the Hotel Unit over, through and across such portions of the Project, reasonably necessary to gain access to and from the Hotel Unit, including to access the Elevator Systems. For avoidance of doubt, the easement granted above is intended

to be used only if there is not a reasonably direct access route already existing in the Common Elements.

Section 5.2 Limited Common Elements. Subject to the terms and provisions of this Declaration and to the Rules and Regulations, each Owner shall have the exclusive right to use and enjoy the Limited Common Elements appurtenant to its Unit. The Master Plat shall specify to which Unit or Units each Limited Common Element is allocated to the extent feasible. No Limited Common Elements shall be partitioned from the Unit to which they are allocated, and no reference thereto shall be required to be made in any deed, Mortgage, instrument of conveyance, or other instrument describing the Unit.

Section 5.3 Parking.

(a) The Association shall operate the parking available to the Project in accordance with the Parking Agreement, including without limitation arranging for valet parking services as required by the Parking Agreement

(b) The Association shall make the Hotel Parking Spaces available to the Hotel Unit Owner (including up to ten (10) of the Hotel Parking Spaces for use by Hotel Unit Owner's employees as set forth in the Parking Agreement), and make the Retail Parking Spaces available to the Retail Unit. The Parking Spaces will be off-site, as provided in the Parking Agreement. The use of the Parking Spaces shall be subject to all provisions of this Declaration and the Parking Agreement, including payment for the use of such spaces at the rates to be established by the Association, and to such reasonable requirements and restrictions as the Association may promulgate from time to time, all in accordance with the Parking Agreement.

(c) The Association may contract with a Parking Manager reasonably approved by the Board, such approval not to be unreasonably withheld or delayed, pursuant to a Parking Management Agreement to provide the Parking Services including but not limited to required valet parking and fee collection services. The Parking Management Agreement, if any, shall contain such terms as the Board may consider necessary or desirable for the efficient and proper provision of the Parking Services. Any Parking Management Agreement shall be subject to this Declaration and shall address the following: (A) valet rates and fees for the Parking Spaces, including procedures by which such rates and fees may be increased or decreased during the term of the Parking Management Agreement, subject to the provisions of the Parking Agreement; (B) reasonably appropriate language describing the manner in which the Parking Manager shall address valet parking operation in the Parking Garage; and (C) tracking and billing of fees and charges allocable to the Hotel Unit and the Retail Unit, which shall be allocated as follows: (1) all variable costs (i.e., fees to be paid by the Hotel Unit or Retail Unit based on use) shall be charged to the Hotel Unit and Retail Unit based on the respective use of their Parking Spaces; and (2) general overhead costs and other fees not dependent on use shall be charged 181/204 to the Hotel Unit and 23/204 to the Retail Unit. Such fees shall be deemed Individual Purpose Assessments.

(d) No vehicles may be parked on the Project except for delivery vehicles; it being understood that: (a) all owner, employee and customer parking shall be off-site in the Parking Spaces and/or off-site at other available parking facilities if overflow parking is necessary.

Section 5.4 Utilities/Mechanical Equipment. Utilities/Mechanical Equipment are categorized by this Declaration as General Common Elements, Limited Common Elements or parts of Units. Utilities/Mechanical Equipment that serve all Units are General Common Elements. Utilities/Mechanical Equipment that serve one Unit are Limited Common Elements appurtenant to that Unit when located outside of the Unit served, and part of that Unit when located within the Unit served. Different sections of individual Utilities/Mechanical Equipment may be categorized differently depending upon which Units are served at a particular location on a utility line. By way of illustration, electric trunk lines entering the Project from the outside which serve all Units are General Common Elements, after electricity from such General Common Element lines exits junctions so that the electric lines serve only one Unit, such electric lines are Limited Common Elements when located outside of the Unit served, and are part of the Unit to the extent such electric lines are located in the Unit served.

Section 5.5 Re-designation of Limited and General Common Elements. Any re-designation of the boundaries of the General Common Elements or the Limited Common Elements shall be approved by the Board, and any Mortgagee of the Owner(s) of the affected Unit(s).

Section 5.6 General Common Elements. No General Common Element may be conveyed, abandoned, partitioned, subdivided, encumbered, sold or transferred unless approved in writing by 75% of the Owners and Eligible First Mortgagees and allowable under the Act, provided that the granting of permits, licenses and easements for public utilities or other purposes consistent with the intended use of the Common Elements or reasonably necessary or useful for the proper maintenance or operation of the Project are permitted. The Association may convey or grant a Security Interest in portions of the Common Elements, which Security Interest must be subject and subordinate to this Declaration, and subject to Section 66-27-412 of the Act. The Association may grant easements over General Common Elements for public or private Utilities/Mechanical Equipment, or for other public purposes consistent with the intended use of the General Common Elements, without such approval being required. Except as otherwise expressly provided herein, the operation of and Repair Work for General Common Elements shall be the responsibility of the Association and the cost thereof shall be a Common Expense.

ARTICLE VI
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION; BOARD OF DIRECTORS

Section 6.1 Membership.

(a) **General**. Every Owner of a Unit shall be a Member of the Association and shall remain a Member for the period of its ownership of a Unit. Therefore, there shall be two Members of the Association: (i) the Hotel Unit Owner; and (ii) the Retail Association. The Allocated Interest of the Retail Unit shall be voted by the president of the Retail Association or other officer of the Retail Association authorized by the board of directors of the Retail Association. Notwithstanding any of the voting rights granted above, the Association, the Board and, to the extent applicable, any Owner having the right to appoint the requisite number of members of the Board to take action under the Bylaws, shall not take any actions or vote to amend, supplement or repeal any Association Documents in a manner which materially and adversely affects an Owner without the consent of the affected Owner or Owners, as applicable.

(b) **Membership Appurtenant**. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. Subject to Section 6.4 and the provisions of the Bylaws regarding the election of Directors, each Unit shall be entitled to a vote on all matters in which the Owner of that Unit (regardless of the number of joint Owners or co-Owners of such Unit) is entitled to a vote, which vote shall be equal to that Unit's Allocated Interest. If a Unit is owned by more than one (1) Owner, such Owners shall designate a single representative to cast a vote equal to that Unit's Allocated Interest.

Section 6.2 Voting Rights; Exercise of Retail Unit Voting Rights.

(a) **One Class of Membership**. The Association shall have one class of membership consisting of the Owners of Units.

(b) **Retail Association**. For purposes of exercising its rights under this Declaration, each Retail Condominium Owner shall act through the Retail Association and its board of directors, with the president of the Retail Association or other officer authorized by the board of directors of the Retail Association as the sole spokesperson for the Retail Unit.

Section 6.3 Board of Directors. The affairs of the Association shall be managed by the Board which shall consist of the Directors described in Section 6.4 below.

Section 6.4 Board Structure. The Board shall consist of three (3) persons, two (2) of whom shall be appointed by the Hotel Unit Owner, and one (1) of whom shall be appointed by the board of directors of the Retail Association.

Section 6.5 Retail Association Protections. Notwithstanding anything to the contrary in this Declaration, and in addition to any other consent right afforded Owners herein, without the approval of the Retail Association, nothing herein shall permit the Association or the Board to make physical changes to, or changes to the designation of any portion of the Project that would unreasonably prevent the Retail Condominium Owners from gaining access to their Retail Condominium Units and/or the Common Elements.

Section 6.6 Owner Protection. Except to the extent expressly required by the Act, no action of the Board of the Association which eliminates or modifies any rights then in effect granted to an Owner under this Declaration, which has a material adverse effect on an Owner shall be effective without the prior written consent of such affected Owner.

ARTICLE VII
THE ASSOCIATION; COMMON EXPENSES

Section 7.1 Management and Maintenance Duties. Subject to the rights and obligations of Owners as set forth in this Declaration, the Association shall be responsible for the administration and operation of the Project, excluding the Units, and for the management, control, Repair Work and improvement of the Common Elements, in a manner consistent with the Project Standard. If the Association fails to maintain or perform Repair Work as required herein, then each Owner shall have the right, but not the obligation, upon prior written notice to the Association and the failure of the Association to reasonably and promptly undertake such maintenance or repair within thirty (30) days after receipt of the notice or commence to perform such maintenance in such thirty (30) day period and diligently pursue the same, together with up

to a ten percent (10%) service charge for such Owner's services, to do so at the Association's expense, except that in the case of an Emergency, no prior notice shall be required but the Owner undertaking such action shall give notice thereof to the Association as soon as reasonably practicable under the circumstances.

(a) The Association acting through the Board shall be responsible for the maintenance, repair and replacement of the following, the cost of which shall be charged to all Unit Owners as a Common Expense:

(i) The Common Elements;

(ii) The Utility/Mechanical Equipment serving more than on Unit, and

(iii) Incidental damage caused to a Unit by any work done by the Association that was not the fault of the affected Unit Owner or any other Unit Owner.

(b) The Association shall be responsible for the maintenance, cleaning (except as expressly set forth below), repair and replacement of the exterior surfaces of the Building, including all components of the materials constituting the exterior surfaces and finishes of the Building, including the underside of the horizontal surfaces and the exterior of the vertical surfaces of the balconies and terraces, exterior surfaces of doors and windows, including door frames, exterior window frames, the underside interior and topside exterior surfaces of the roofs and related structures. The cost of such exterior work shall be a Common Expense, except that in the reasonable and good faith judgment of the Board, all or a portion the cost of exterior work can be assessed against or allocated to a particular Unit or Units if and to the extent such Unit or Units disproportionately use or benefit from such exterior work. Notwithstanding the foregoing, the Owner of each Unit shall be solely responsible for and shall conduct on a periodic basis as reasonably deemed necessary by such Unit Owner, all cleaning of the exterior windows of the Building forming a portion of the exterior boundary of such Owner's Unit.

(c) The Association shall inspect the Project at least annually for repair and maintenance requirements, and shall promptly undertake the repair and maintenance thereof.

Section 7.2 Unit Owner Responsibility.

(a) Each Unit Owner shall maintain its Unit, and any portions of the Limited Common Elements which are the responsibility of the Unit Owner and not the Association, in a manner consistent with the Project Standard and shall be responsible for the repair, maintenance, and replacement of the following items:

(i) The maintenance, repair, cleaning and replacement of any portion of Limited Common Element assigned only to such Unit and which is the responsibility of the Unit Owner and not the Association;

(ii) The fixtures and equipment in the Unit, including drains, sinks, plumbing and plumbing fixtures and connections within the Unit and serving only the Unit; electrical panels, wiring, outlets and electric fixtures within the Unit; interior doors, interior surfaces of the window frames, screening and glass; and interior surface of all exterior doors; all wall coverings

including paint, wallpaper and light coverings; all floor coverings, including carpeting, hardwood, vinyl and ceramic tile within a Unit; all interior corridors, stairwells, and hallways within the Unit; all elevators, elevator lobbies and entrance ways serving only the Unit;

(iii) The Utility/Mechanical Equipment serving only its Unit, whether located within or outside of the boundary of that Unit; and

(iv) The cleaning on a periodic basis as reasonably deemed necessary by such Unit Owner of all exterior windows of the Building forming a portion of the exterior boundary of such Owner's Unit.

(b) If an Owner fails to maintain or perform Repair Work as required herein, then the Association shall have the right, but not the obligation, upon prior written notice to the Owner and the failure of the Owner to reasonably and promptly undertake such maintenance or repair within thirty (30) days after receipt of the notice or commence to perform such maintenance in such thirty (30) day period and diligently pursue the same, to do so at the Owner's expense, together with up to a ten percent (10%) service charge for the Association's services, except that in the case of an Emergency, no prior notice shall be required but the Association shall give notice thereof to the Owner as soon as reasonably practicable under the circumstances.

Section 7.3 Common Expenses. Common Expenses shall be part of the Monthly Assessment levied by the Association, provided that the Association may levy the costs and expenses of Repair Work, and replacement of all fixtures, Utilities/Mechanical Equipment and other Limited Common Elements that are exclusively appurtenant to an Owner's Unit or provide exclusive service to an Owner's Unit, as an Individual Purpose Assessment against such Unit . The prior approval of the Owners shall not be required for the Association to pay any Common Expenses. Assessments for Common Expenses shall be allocated among the Units as provided in Section 8.2.

Section 7.4 Management Agreements and Other Contracts. The Association may enter into agreements for the professional management of its business affairs. To the extent set forth in any professional management agreement but only to the extent provided by law, such manager may be authorized to execute documents and agreements (including those described in Section 7.9) on behalf of the Association. Any agreement for professional management of the Association's business or any other contract providing for services shall be terminable as provided in Section 66-27-405 of the Act.

Section 7.5 Cooperation with Retail Association and Other Owners. The Association and the Retail Association may contract or cooperate with each other and the other Owners as convenient or necessary to provide services and privileges, and to allocate costs fairly among the parties utilizing such services, privileges and areas which may be administered by the Association, for the benefit of Owners, Retail Condominium Owners and their respective Permittees, including through the engagement and hiring of a joint Managing Agent. The costs associated with such efforts by the Association shall be a Common Expense allocated among the Units benefitting from such services or privileges in accordance with Exhibit H.

Section 7.6 Acquiring and Disposing of Real and Personal Property. The Association may acquire, lease, own and hold for the use and benefit of all Owners, tangible and intangible

personal property and/or real property for such uses and purposes as the Board may in its discretion deem appropriate from time to time, and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be apportioned among all Units in accordance with the Allocated Interests. Such beneficial interest of an Owner shall not be transferable except with the transfer of that Owner's Unit. Transfer of a Unit, including transfer pursuant to foreclosure, shall transfer to the transferee ownership of the transferor's beneficial interest in such personal and/or real property without any reference thereto. Each Owner may use such personal and/or real property in accordance with the purposes for which such property is intended and in accordance with any Rules and Regulations, and any such conditions, limitations or restrictions placed upon such property by the Board in its sole discretion from time to time, provided that use by any Owner shall not hinder or encroach upon the lawful rights of other Owners.

Section 7.7 Promulgation of Rules and Regulations. The Board may promulgate and amend the Rules and Regulations from time to time. Enforcement may include levying and collecting charges and fines for the violation thereof, after affording an Owner a reasonable opportunity to be heard. The Rules and Regulations shall be consistent with the rights and duties established in this Declaration.

Section 7.8 New Additions to Common Elements**.** Subject to the written consent of 75% of the Owners and Eligible First Mortgagees, the Association shall have the right to construct new additions to the Common Elements. Ownership of any such additions to the Common Elements shall be apportioned among all Units in accordance with the Allocated Interests, and shall be governed by this Declaration. The Common Expenses for any such additions to the Common Elements shall be apportioned among all Units as provided in this Article VII.

Section 7.9 Limitation of Liability of Association. Notwithstanding the duty of the Association to maintain and perform Repair Work on portions of the Project, and except to the extent covered by Association insurance as described in Article IX, the Association shall not be liable to any Owner or its Permittees (a) for injury or damage, other than for the cost of Repair Work caused by any latent condition of those portions of the Project maintained or repaired by the Association, or (b) for injury or damage caused by the elements, any Owner or its Permittees or other persons.

ARTICLE VIII
ASSESSMENTS

Section 8.1 Personal Obligation for Assessments. Each Owner shall be personally obligated to pay to the Association all of the following Assessments: (a) Monthly Assessments imposed by the Association to meet the Common Expenses of the Association; (b) Special Assessments levied pursuant to Section 8.5; (c) Individual Purpose Assessments levied pursuant to Section 8.6; and (d) Default Assessments levied pursuant to Section 8.7. Each Owner of a particular Unit shall be jointly and severally liable to the Association for the payment of Assessments attributable to such Unit. The payment of Assessments is an independent covenant, with all Assessments payable in full, when due, without notice (except as otherwise expressly provided in this Declaration) or demand, and without setoff or deduction. An Owner may not waive or otherwise escape personal liability for the payment of Assessments by nonuse of the Common Elements or the facilities contained therein or by abandonment or leasing of its Unit.

In addition to the foregoing Assessments, each Owner shall have the obligation to pay real property *ad valorem* taxes and special assessments imposed by Governmental Agencies against its Unit, as well as charges for separately metered Utilities/Mechanical Equipment servicing its Unit, if any, which shall be allocated based on actual usage.

Section 8.2 Allocation of Assessments.

(a) **Common Expenses**. Except as otherwise expressly provided in this Declaration, all Assessments for Common Expenses (including Special Assessments but excluding Individual Purpose Assessments and Default Assessments) shall be allocated among the Units in accordance with the Common Expense Allocation Ratios as set forth on Exhibit H. Notwithstanding anything to the contrary expressed or implied herein, the allocations of any Common Expenses applicable to any particular Owners may be re-allocated from time to time as agreed upon by all such affected Owners.

(b) **Retail Unit Assessments**.

(i) The Association shall bill to the Retail Association and collect from the Retail Association the aggregate amount of all Assessments for Common Expenses (including Special Assessments but excluding Individual Purpose Assessments and Default Assessments) allocable to the Retail Unit Owner, and the Retail Association may include the amount of such billings in the assessments to be made against the Retail Condominium Owners in accordance with the budget and assessment procedures set forth in the Retail Declaration.

(ii) Upon the submittal of the Retail Unit to the Retail Declaration, the Association's lien for delinquent assessments and related expenses shall not attach to the Retail Condominium Unit of any Retail Condominium Owner who makes full and timely payment of such Owner's share of the assessments assessed by the Association against the Retail Unit, provided such payment is timely remitted by the Retail Association to the Association with clear delineation of the Retail Condominium Unit to which such payment relates.

Section 8.3 Monthly Assessments; Budgets.

(a) The Owners of Units shall be obligated to pay Monthly Assessments as provided herein. The Board shall determine the amount of the Monthly Assessment based on a budget adopted from time to time by the Association (but no less frequently than annually) in accordance with this Section, which budget shall provide for such expenditures and contributions as are reasonably necessary to maintain the Project in a manner consistent with the Project Standard. The Association shall not be required to include in the budget reserves for repairs and replacements if the provision for such reserves will result in tax liability to the Association for such revenues in excess of expenses. The Association shall have the right to refund any assessments in excess of expenditures to avoid tax liability on such excess amounts.

(b) The Board, with the assistance and advice of any Managing Agent as the Board shall retain for such purpose, shall prepare each proposed budget to provide for the payment of all estimated Common Expenses. The proposed budget will include, at minimum, the following:

(i) the estimated revenue and expenses (including Common Expenses) of the Association for the subject year covered by the budget, in reasonable detail as to the various categories of revenue and expense;

(ii) sufficient funding for an inspection, not less than once every two years, of (A) all roofs, flat or pitched, by a reputable roofing inspector or contractor who is a member of the National Roofing Contractors Association, and (B) of other critical components of the Project by a reputable inspector who is a Certified Inspector of the National Institute of Building Inspectors or equivalent; and

(iii) sufficient funding for a general maintenance program that will pay for regularly scheduled, manufacturer recommended or required maintenance and replacement of the Common Elements.

(c) The Board shall prepare or cause to be prepared an operating budget setting forth the anticipated income and expenses of the Association for the ensuing fiscal year at least twenty-five (25) days before the beginning of each fiscal year, which budget shall (i) be sufficient to satisfy the requirements of this Declaration, (ii) be sufficient to allow the Board to manage the Project to the Project Standard, (iii) include, but not be limited to, all Common Expenses, (iv) indicate the allocation of the costs and expenses among the Units in accordance with the Common Expense Allocation Ratios, (v) include a contingency equal to no more than ten percent (10%) of the total expenditures set forth in the budget, excluding such contingency and any applicable the management fees, and (vi) include any other items required by the Act. Within fifteen (15) days after adoption of any proposed budget, the Board shall deliver, a copy of such budget to all Owners.

Section 8.4 Date of Payment of Monthly Assessments. Monthly Assessments shall be due and payable on the first day of each month, in advance, or on such other dates, and with such frequency (but no less frequently than annually), as may be set by the Board. Any person purchasing a Unit between Monthly Assessment due dates shall pay a *pro rata* share of the last Monthly Assessment due.

Section 8.5 Special Assessments. Subject to the restrictions set forth herein, the Board may at any time and from time to time determine, levy, and assess a Special Assessment, provided that a Special Assessment may not be assessed until the Special Assessment is first approved by 75% of the Owners. Special Assessments shall be based on a budget adopted in accordance with this Section, provided that the Board may adopt a new budget pursuant to Section 8.3 prior to levying a Special Assessment, if necessary. Special Assessment(s) shall be due and payable as determined by the Board, with at least 30 days' prior written notice of the Special Assessment to the Owners.

Section 8.6 Individual Purpose Assessments. The Board may at any time and from time to time determine, levy and assess Individual Purpose Assessments. The Individual Purpose Assessment may be levied to pay or reimburse the Association for any costs, expenses, Fees, reserves and other charges, incurred or reasonably anticipated to be incurred by the Association for management, control, administration, Repair Work and improvement, Parking Services or any other purpose, of or with respect to any matter pertaining solely to the Unit against which the Individual Purpose Assessment is levied. Individual Purpose Assessments shall be due and

payable as determined by the Board with at least 30 days' prior written notice of the Individual Purpose Assessment to the Owner of the affected Unit.

Section 8.7 Default Assessments. The Board may from time to time determine, levy and assess a Default Assessment against a Unit and an Owner for other charges. A Default Assessment shall be levied against the Unit and the Owner of the affected Unit. Default Assessments shall be due and payable as determined by the Board upon written notice of the Default Assessment to the Owner of the affected Unit.

Section 8.8 Lien for Assessments.

(a) In accordance with Section 66-27-415 of the Act, the Association is hereby granted a lien with power of sale under this Declaration against each Unit for any Assessment levied against that Unit, including any Default Assessment. If an Assessment is payable in installments, then the full amount of the Assessment is a lien from the time the first installment thereof becomes due, including the due date set by any valid acceleration of installment obligations by the Association. Such lien shall be superior to all other liens and encumbrances on a Unit except for (i) liens and encumbrances recorded before the recordation of this Declaration, (ii) subject to Section 66-27-415(b)(2) of the Act, a lien of a First Mortgage that was recorded before the date when the Assessment sought to be enforced became delinquent, including any and all advances thereunder notwithstanding that any such advances may have been made subsequent to the date of the attachment of the Association's lien, and (iii) liens for real estate taxes and other governmental assessments or charges against a Unit.

(b) (i) Subject to clause (ii) of Section 8.8(a) above, a sale or other transfer of a Unit or an interest therein shall not affect the Association's lien against such Unit for Assessments, including Default Assessments, due and owing prior to the time such purchaser acquires title and any grantee, transferee or purchaser of a Unit shall be jointly and severally liable for the portion of any Assessments, including Default Assessments, assessed against such Unit as may be due and payable at the time of conveyance and thereafter, but without prejudice to the rights of the grantee, transferee or purchaser to recover from the grantor, transferor or seller the amounts paid by the grantee, transferee or purchaser therefor.

(ii) A sale or other transfer of a Unit or interest therein shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof.

(iii) Notwithstanding the foregoing, in accordance with Section 66-27-415(b)(2)(B) of the Act, the sale or transfer of a Unit pursuant to foreclosure of a First Mortgage or any proceeding in lieu thereof, shall be subject to the Association's lien up to the payment priority amount set forth in Section 66-27-415(b)(2) of the Act. Any amounts due to the Association which are not payable in accordance with the Act may be reallocated and assessed to all Units as a Common Expense. In no event, however, shall any such sale or transfer extinguish the personal obligation of the Owner for the payment of Assessments which became due after the recording of the First Mortgage and prior to any such sale or transfer or foreclosure, and no sale or transfer shall relieve the purchaser or transferee of a Unit (whether it be the former beneficiary of the encumbrance or another person) from liability for, or the Unit from, the lien of any Assessment made after the sale or transfer.

(iv) Notwithstanding that the Association's lien for any Assessments, including Default Assessments, imposed in respect of any particular Unit ("**Unpaid Unit Assessments**") may be extinguished in whole or in part as a result of any foreclosure of a First Mortgage or any proceeding in lieu thereof, the obligation to pay such Unpaid Unit Assessments shall not be affected thereby, shall survive the extinguishment of such lien, and shall remain due and payable as a contractual obligation of the Owner of the Unit at the time of the Assessment.

(c) Recording this Declaration constitutes record notice of the statutory lien. The Association's lien is perfected up to the Association's payment priority described in Section 8.8(b)(iii) above without recording. Any other delinquent amount above the payment priority is perfected by recording notice of such lien in the Official Records. All costs and Fees incurred in connection with the preparation and filing of such claim shall be assessed against the Owner and its Unit as a Default Assessment.

Section 8.9 Effect of Non-Payment of Assessments.

(a) Any Assessments, charges, costs or fees provided for in this Declaration, including any Deposit, Fees or Default Assessment, which are not fully paid within 10 days after the due date therefor, shall bear interest from the due date at the Applicable Interest Rate. In addition, the Association may assess a monthly late charge thereon. The Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, and may proceed to foreclose its lien against such Owner's Unit in the manner of a mortgage in accordance with Section 66-27-415 of the Act. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges, costs or Fees, may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien therefor. Notwithstanding anything expressed or implied herein to the contrary, the Association's remedies hereunder, at law or in equity are cumulative and non-exclusive, and the Association may pursue any one or more of such remedies at any time and from time to time (and shall not be deemed to have made an election of remedies or relinquished alternate remedies) including through the initiation of an action at law or in equity against the subject Owner personally, through foreclosure of any of the liens granted to the Association under Section 8.8, or through foreclosure of any judgment lien obtained against the subject Owner, until full recovery is actually obtained.

(b) If any Assessment, charge, cost or fee is not fully paid when due and the Association commences such an action (or counterclaims or cross-claims for such relief in any action) against an Owner personally obligated to pay the same, or if the Association proceeds to foreclose its lien against the particular Unit, all unpaid Assessments, charges and fees, including any and all late charges and accrued interest under this Section, any and all costs, expenses and reasonable Fees incurred in connection with collection of such amounts, judicial action or the Association's costs of suit, expenses and reasonable Fees incurred for any such action or foreclosure proceedings, and any other costs which may be authorized by a court of competent jurisdiction, shall be awarded to the Association by the court as a part of the costs of any such action or foreclosure proceeding and shall be recoverable from any Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Unit. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or

attempting to foreclose its lien for any subsequent Assessments, charges, costs or fees which are not fully paid when due.

(c) The Association shall have the power and right to bid on or purchase any Unit at a foreclosure or other legal sale and to acquire and hold, lease or mortgage the Unit, vote the Association votes appurtenant to ownership thereof, and convey or otherwise deal with the same. In any action brought by the Association (or counterclaim or cross-claim brought by the Association) to collect Assessments or to foreclose a lien for unpaid Assessments, the Association shall be entitled to have a receiver appointed for the Owner's Unit to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. The receiver shall have the right to collect any rents paid in connection with the use of such Owner's Unit. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Assessments.

Section 8.10 Power of Sale to Enforce Assessment Lien.

(a) For and in consideration of the privileges, protections, mutual enjoyment and use of the Common Elements and the Limited Common Elements, the assumption of the obligations of Owners set forth in this Declaration by Owners, their successors and assigns, the receipt of which is hereby acknowledged, and to secure the payment of assessments for Common Expenses, and other assessments, assessed against an Owner by the Association as provided in this Declaration and Bylaws, interest, late charges and attorney fees as provided herein, hereinafter collectively referred to as the "**Secured Charges**," a lien is expressly retained in favor of the Association on each and every Owner's Unit and pro rata interest in the Common Elements.

(b) For the purpose of better and more effectually securing the Secured Charges, rendering unnecessary court proceedings for the enforcement of said lien in the event of the nonpayment of the Secured Charges, and for the consideration of one dollar paid in cash, receipt of which is acknowledged, the Owners, their heirs, successors, administrators, and assigns, hereinafter referred to as Trustors, hereby transfer and convey unto Ann Peldo Cargile, Trustee, a resident of Davidson County, Tennessee, her successors and assigns, their respective Units with the appurtenances, estate, title and interest thereto belonging upon the uses and trusts set forth in this Section 8.10.

(c) Trustors agree (i) to pay the Secured Charges when due, as provided in this Declaration; (ii) to pay, discharge, or remove, any and all liens (except a First Mortgage) which may be hereafter placed against their Unit and which shall adversely affect the lien of this instrument or enforcement of the terms and provisions hereof; (iii) to keep their respective Units in good repair and preservation, ordinary wear and tear excepted, in accordance with the Project Standard; (iv) to comply with all of the terms and conditions of this Declaration and Bylaws and all rules and regulations of the Association; and (v) to pay upon demand of Trustee or the Association, all the costs and expenses, together with reasonable attorneys' fees, of any court appearance or other proceedings required by Trustee, her successors or the Association to enforce any provision of this Declaration and Bylaws or any rule and regulation of the Association. If any Trustor fails to do any of these things, then Trustee or the Association may do any or all of these things, and the amounts so paid shall bear interest

at the Applicable Interest Rate in effect from time to time from the day of payment and shall become a part of the Secured Charges secured hereby.

(d) If a Trustor shall pay the Secured Charges when due, then this trust conveyance as to such Secured Charges shall be of no further force or effect with respect to such Trustor's Unit. If the Secured Charges with respect to any Unit or any portion thereof are not paid promptly when due, this trust conveyance shall remain in full force and effect, and the said Trustee, or her successor in trust, is hereby authorized and empowered, upon giving notices required by the Act and under Tennessee law and upon twenty days' notice by three publications in any newspaper, daily or weekly, published in Davidson County, Tennessee to sell said Unit, subject to the provisions of Section 8.8 hereof, at the front door of the Court House in said County to the highest bidder for cash, at public outcry, free from the statutory right of redemption, the equity of redemption, homestead, dower and all exemptions and rights of every kind, which are hereby expressly waived; and the said Trustee, or his successor in trust, is authorized and empowered to execute and deliver a deed to the purchaser. The Association may bid at any sale under this trust conveyance. The Association may, at any time after default in the payment of any of the Secured Charges, enter and take possession of said property, and shall only account for the net rents actually received by it. It is further agreed that, in the event the Association fails, before instructing Trustee to sell said Unit, as herein provided, to enter and take possession thereof, the purchaser shall be entitled to immediate possession thereof upon the delivery to the purchaser by the Trustee of a deed for said property. In case of sale hereunder, the proceeds will be applied by the Trustee as follows:

(i) First, to the payment of all costs, charges and expenses of executing this conveyance and enforcing said lien as herein provided, including reasonable attorneys' fees and expenses incurred for instituting or defending any litigation which may arise on account of the execution of this conveyance, or the enforcement of said lien;

(ii) Second, to the payment unpaid Secured Charges up to the amount of the Association's priority lien in accordance with Section 66-27-415(b)(2) of the Act with respect to such Unit;

(iii) Third, to the payment of all unpaid amounts secured by a Mortgage with respect to such Unit;

(iv) Fourth, to the payment of any remaining unpaid Secured Charges with respect to such Unit;

(v) Fifth, the residue, if any, will be paid to the Owner of such Unit, its representatives or assigns;

(e) In its discretion but in accordance with applicable law, the Association is hereby authorized and empowered to name and appoint a successor to the Trustee by an instrument in writing to be recorded in the Register's Office for Davidson County, Tennessee, and the title herein conveyed to the above-named Trustee shall be vested in said successor.

Section 8.11 First Mortgagees May Pay Assessments and Cure Defaults.

(a) The Association will give concurrent written notice of any delinquency in an Owner's payment of any Assessments or any other charges or Fees due hereunder or under any of the other Association Documents, to the Mortgagee under any recorded Mortgage encumbering said Owner's Unit as provided in Section 16.3(b), provided that said Mortgagee has given the Association written notice of its Mortgage and such Mortgagee's address for notices (in which event, such Mortgagee shall be deemed a "**Registered Mortgagee**"). The Association will also give concurrent written notice of any other default by any Owner of any other provision of this Declaration or the other Association Documents as provided in Section 16.3(b), to each Registered Mortgagee of such Owner. Any such Registered Mortgagee may (but shall not be required to) pay the Assessment, together with any other amounts secured by the Association's lien created by this Article VIII, and may (but shall not be required to) cure any such default, within thirty (30) days after receipt of any such written notice, but no remedy may be exercised by the Association for any such delinquency or other default unless the Association has given such written notice to each such Registered Mortgagee, and then until not less than thirty (30) days have elapsed since the Association provided such written notice to each such Registered Mortgagee without such delinquency or other default having been cured by the defaulting Owner or by a Registered Mortgagee.

(b) For the avoidance of doubt, and without limiting the generality of Section 8.11(a) above, any Registered Mortgagee shall have the right, but not the obligation, at any time prior to the termination of the Association Documents, and without payment of any penalty, to do any act or thing required of any Owner or its Permittees of any Unit encumbered by the Mortgage granted to such Registered Mortgagee; and to do any act or thing which may be necessary or proper to be done in the performance and observance of the agreements, covenants and conditions hereof. All payments so made and all things so done and performed by any Registered Mortgagee shall be deemed the same as if would have been made, done and performed by any Owner or Permittee of any Unit encumbered by the Mortgage granted to such Registered Mortgagee hereto instead of by said Registered Mortgagee. Notwithstanding anything contained herein which may be construed to the contrary, in no event shall the Association or any Owner initiate any proceeding to foreclose on any lien arising hereunder on a Unit encumbered by a Mortgage granted to a Registered Mortgagee until thirty (30) days after the later of (i) delivery of written notice to such Registered Mortgagee of the Association's or such Owner's intent to foreclose on such lien and (ii) the expiration of the cure or grace period otherwise afforded to the Owner of such encumbered Unit hereunder, during which period said Registered Mortgagee shall have the right (but not the obligation) to effectuate a cure of the underlying default as provided above or pay or otherwise discharge said lien.

Section 8.12 Statement Regarding Assessments. The Association shall furnish to an Owner, an Owner's designee, a Mortgagee or other holder of a Security Interest or its designee, upon written request, delivered personally or by certified mail, first class postage prepaid, return receipt requested, or by recognized overnight delivery service such as FedEx or UPS, to the Association's registered agent, a statement setting forth the amount of any unpaid Assessments currently levied against the Owner's Unit. The statement shall be furnished within 7 calendar days after receipt of the request and the statement shall be binding upon the Association. If a statement is not furnished as required herein, the Association shall have no right to assert a priority lien upon that Unit for unpaid Assessments which were due as of the date of the request. The Board may establish a reasonable fee to be paid in connection with furnishing the statement,

which fee shall be paid at the time such statement is provided to the party requesting the statement.

ARTICLE IX
INSURANCE

Section 9.1 Responsibility of Owners; Separate Insurance Coverage.

(a) The Owner of each Unit or Retail Condominium Unit shall, at its expense, obtain property insurance coverage for loss of or damage to any moveable furniture, furnishings, personal effects, any modifications, improvements, betterments and additions to the Unit or Retail Condominium Unit of a non-structural nature made by such Owner after the initial transfer of the Unit or Retail Condominium Unit, and other property belonging to such Owner, and shall, at its expense, obtain insurance coverage against personal liability for injury to the person or property of another while within such Owner's Unit or upon the Common Elements or Limited Common Elements in such amount and in such form as shall be deemed appropriate by the Board. The amount of property insurance coverage shall be determined on a replacement cost basis in an amount not less than 100% of the then current estimated replacement cost of such modifications, improvements, betterments and additions to the Unit made by such Owner. Risk of loss of or damage to any furniture, furnishings and personal property belonging to the Owner, or which may be stored in any Unit or Retail Condominium Unit, or in or upon Common Elements or Limited Common Elements, shall be borne by the Owner of each Unit. All furniture, furnishings and personal property constituting a portion of the Common Elements or Limited Common Elements and held for the joint use and benefit of all Owners of Units shall be covered by such property insurance as shall be maintained in force and effect by the Association as hereinafter provided. The Owner of each Unit or Retail Condominium Unit shall also, at its expense, obtain and maintain at all times a commercial general liability policy or policies, or their equivalent with limits of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in the aggregate to protect such Owner, the Association, the Owners of the other Units, and their respective Mortgagees and designated brand franchisors or licensors. Each such policy shall provide coverage for bodily injury and property damage resulting from the operation, maintenance or use of the applicable Owner's Unit or Retail Condominium Unit.

(b) Each Owner shall file a copy of each individual policy or policies with the Association within thirty (30) days after the purchase of such insurance. In the event property insurance maintained by an Owner causes a decrease in the amount of the insurance coverage maintained by the Association for the benefit of all Owners on a casualty loss to the Insurable Condominium Property by reason of proration or otherwise, the Owner so maintaining such insurance shall be deemed to have assigned to the Association the proceeds collected on such policy for loss or damage to the Insurable Condominium Property and such proceeds shall be paid directly to the Association by the insurer. Any such property insurance proceeds shall be applied and distributed by the Association in accordance with this Article IX.

(c) All insurance obtained by the Owner of each Unit or Retail Condominium Unit shall, whenever such provisions shall be available, provide that the insurer waives its right of subrogation as to any claims against other Owners, the Association, and their respective Mortgagees, franchisors and licensors, servants, agents, employees and guests.

Section 9.2 Insurance to be Maintained by the Association.

(a) Property Insurance. The Association shall obtain and maintain at all times a Causes of Loss - Special Form policy or its equivalent covering the Insurable Condominium Property, including insurance for such other risks of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design and use. The amount of insurance coverage shall be determined on a replacement cost basis in an amount not less than 100% of the then current estimated replacement cost of the improvements which constitute the Insurable Condominium Property. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Association or the Insurance Trustee (hereinafter defined), as trustee for the use and benefit of the Retail Association, individual Owners (without naming them), their Mortgagees, and any brand franchisor or licensor designated by any Owner, as their interest may appear. Periodically, prior to the renewal of any such policy or policies of insurance, the Association may obtain an opinion or an appraisal from a qualified appraiser for the purpose of determining the full replacement cost of the Insurable Condominium Property for the amount of insurance to be obtained pursuant hereto. The cost of any such opinion or appraisal shall be a Common Expense. All such policies of insurance shall comply with the provisions of Section 9.3 hereof and shall (i) contain standard mortgagee clause endorsements in favor of the Mortgagee or Mortgagees of each Unit and Retail Condominium Unit, if any, as their respective interest may appear; and (ii) provide that the insurance shall not be invalidated by any act or neglect of any Owner.

Any "Cause of Loss – Special Form" insurance policy obtained by the Association shall contain an agreed amount endorsement without margin clause and/or a coinsurance waiver endorsement and a replacement cost value endorsement without reduction for depreciation and shall contain no deductible in excess of $100,000. "Cause of Loss - Special Form" policies shall cover at least the following perils: building collapse; fire; flood if deemed in a high hazard flood area an NFIP policy shall be procured; back-up of sewers and drains; water damage; windstorm, including Named Storm that has been declared by the National Weather Service; earth movement in all its forms, including earthquake valued no less than the probable maximum loss analysis as set forth in a seismic analysis prepared by a licensed engineer and if coverage is available at reasonable rates, landslide, mudslide, subsidence, or any other sudden and abnormal earth movement inclusive of property damage and soft costs/business interruption with a maximum deductible of 5% of the loss subject to a $500,000 minimum and $10,000,000 maximum; acts of terrorism – as commercially available; impact of vehicles and aircraft; lightning; malicious mischief and vandalism (flood may have a sublimit of such amount).

(b) Commercial General Liability Insurance. The Association shall obtain and maintain at all times a commercial general liability policy or policies, or their equivalent with limits of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in the aggregate in such form as shall be deemed appropriate by the Board of the Association to protect the Association, the Owners of all Units and Retail Condominium Units and their respective Mortgagees and any designated brand franchisor or licensor. Such policy shall provide coverage for bodily injury and property damage resulting from the operation, maintenance or use of the Common Elements.

(c) Umbrella/Excess Liability. The Association shall obtain and maintain at all times an umbrella/excess liability policy or policies with a limit not less than Twenty Five Million Dollars ($25,000,000) covering all occurrences commonly insured against by the commercial general liability insurance policy, employer's liability and director and officers liability. Each umbrella/excess liability policy shall be written as follow form or with a form that provides coverage that is at least as broad as the primary insurance policies.

(d) Workers' Compensation and Employers' Liability Insurance. The Association shall obtain and maintain at all times a policy or policies of workers' compensation insurance with respect to any employees of the Association, if any, to meet the requirements of the laws of the State of Tennessee, including employers' liability insurance with limits of One Million Dollars ($1,000,000) for each coverage part, including a waiver of subrogation in favor of Owner.

(e) Fidelity Bonds or Commercial Crime Insurance. The Association shall obtain and maintain fidelity bonds or commercial crime insurance for any person who either handles or is responsible for funds held or administered by the Association naming the Association as the oblige/insured. The amount of the fidelity bond should cover the maximum funds that will be in the custody of the Association, but not less than the sum of three months' assessments on all Units.

(f) Directors' and Officers' Liability Insurance. The Association shall obtain directors' and officers' liability coverage insuring the directors and officers of the Association, including third-party coverage for discrimination and sexual harassment.

(g) Parking Agreement and REA. All insurance required under the Parking Agreement and the REA.

(h) Other Insurance. The Association shall obtain and maintain such other insurance coverage as the Board, in its sole discretion, may determine from time to time to be in the best interest of the Association and the Owners of all Units.

Section 9.3 Governing Provisions. All insurance obtained and maintained by the Association as provided in Section 9.2 above shall be governed by the following provisions:

(a) All policies shall be written with a company licensed to do business in the State of Tennessee and, to the extent practical and available, holding a financial rating of Class IX or better and a general policyholders rating of "A-VIII" or better by Best's Insurance Reports or other then comparable rating.

(b) Exclusive authority to adjust all claims under the policies hereafter in force on the Project maintained by the Association shall be vested in the Association or its authorized representatives. The Association shall seek approval of Unit Owners and their Mortgagees to any adjustment applicable to their Unit. If the loss relates to only one Unit, the approval of the Unit Owner and its Mortgagee shall be required before the Association settles the insurance claim unless the failure to settle such claim adversely affects other Unit Owners as determined by the Association.

(c) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with the insurance purchased by the individual Owners or their Mortgagees.

(d) The Association shall be required to make every effort to secure insurance policies that will provide for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Association, the Board or the Owners or their respective Mortgagees or franchisors or licensors;

(ii) An agreement by the insurer that the insurance coverage cannot be terminated or materially changed without thirty (30) days prior written notice, ten (10) days prior written notice for nonpayment of premium, to the Association and the Mortgagee of each Unit or Retail Condominium Unit;

(iii) The insurance coverage will be primary, even if a Unit Owner or Retail Condominium Owner has other insurance that covers the same loss; and

(iv) No act or omission by any Unit Owner or Retail Condominium Owner will void the policy or be a condition to recovery under the policy.

Section 9.4 Premiums and Deductibles. Premiums for insurance policies purchased by the Association shall be paid by the Association and the cost of all property insurance shall be allocated to the Units according to the respective cost of obtaining property insurance covering each Unit, as determined by the Association as set forth on Exhibit H. The cost of any other insurance obtained by the Association shall be allocated to the Units on the basis of the respective cost of such insurance to the extent such allocation may be determined by the Association. All other insurance costs shall be assessed as a Common Expense; except that the amount of increase over the usual premium occasioned by the use, misuse, occupancy or abandonment of a Unit or Retail Condominium Unit or its appurtenances or of the Common Elements or Limited Common Elements by an Owner shall be assessed against that Owner. Any deductible incurred by reason of a loss or claim under any insurance policy purchased under this Article IX shall be paid by the Owners of the Unit affected by the loss and if the loss affects more than one Unit, such deductible shall be equitably allocated between such Units, as determined by the Association. All other deductibles shall be paid by the Association, unless such loss or claim was caused by or resulted from the negligent use or misuse, intentional misconduct, or abandonment of a Unit or Retail Condominium Unit or any portion thereof by any Unit Owner or Retail Condominium Owner, lessee or guest or invitee thereof, as determined in good faith by the Association. In such event, such Owner will be responsible for the deductible under the Association's insurance policy.

Section 9.5 Insurance Trustee. The Association may engage the services of a bank or trust company authorized to do trust business in the State of Tennessee and having a capital and surplus of not less than $50,000,000 to act on its behalf as an insurance trustee ("**Insurance Trustee**") and to receive and disburse the insurance proceeds in accordance with the provisions of this Declaration. In the event the lowest of two bids from reputable contractors for making all repairs required by any such loss shall exceed $1,000,000, as increased by the CPI Factor, the Association upon written demand of any Mortgagee or the Owner of any Unit or Retail

Condominium Unit shall engage the services of a bank or trust company to act as Insurance Trustee as aforesaid. The Association, as a Common Expense, shall pay a reasonable fee to said Insurance Trustee for its services rendered hereunder, and shall pay such costs and expenses as said Insurance Trustee may incur in the performance of any duties and obligations imposed upon it hereunder. The Insurance Trustee shall be liable only for its willful misconduct, bad faith or gross negligence, and then for only such money which comes into the possession of the Insurance Trustee. Whenever the Insurance Trustee may be required to make distribution of insurance proceeds to Owners of Units, Retail Condominium Units and their Mortgagees, as their respective interests may appear, or to any other party for repair, replacement or reconstruction of property, the Insurance Trustee may rely upon a certificate of the President and Secretary of the Association, executed under oath, which certificate will be provided to said Insurance Trustee upon request made to the Association. Such certificate is to certify unto said Insurance Trustee the name of the Owner of each such Unit, the name of the Mortgagee who may hold a Mortgage encumbering each such Unit, and the respective percentages of any distribution which may be required to be made to the Owner of any such Unit, and its respective Mortgagee, as their respective interests may appear, or to certify the name of the party to whom payments are to be made for repair, replacement or reconstruction of all or a portion of the Insurable Condominium Property. The rights of the Mortgagee of any such Unit under any standard mortgage clause endorsement to such policy shall, notwithstanding anything to the contrary therein or in any Mortgage contained, at all times be subject to the provisions hereof with respect to the application of insurance proceeds to reconstruction of the damaged portion of the Insurable Condominium Property. No provision hereof, other than those with respect to required application of insurance proceeds to reconstruction of the damaged portion of the Insurable Condominium Property, shall entitle an Owner or any other party to any priority over a Mortgagee with respect to the distribution of any insurance proceeds with respect to any such Unit.

Section 9.6 Loss to Common Elements Only. Subject to Section 14.2, in the event of the loss of or damage to only Common Elements, real or personal, by reason of fire or other casualties, which loss or damage is covered by fire and casualty insurance, the proceeds paid to the Association or the Insurance Trustee, as the case may be, to cover such loss or damage shall be applied to the repair, replacement or reconstruction of such loss or damage. Subject to Section 14.2, if the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of such Common Elements, then such excess insurance proceeds shall be paid to the Owners of all Units, the distribution to be separately made to the Owner of each Unit and its respective Mortgagee, as their interests may appear, in the proportion that the undivided interest in the Common Elements appurtenant to each Unit bears to the total undivided interest in the Common Elements appurtenant to all Units. Subject to Section 14.2, if there is no insurance coverage for such loss or damage, or if it appears that the insurance proceeds covering the fire or casualty loss or damage payable to the Association or the Insurance Trustee are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be so sufficient, then the Association shall pay, or shall deposit with the Insurance Trustee, as the case may be, a sum, which together with the insurance proceeds received or to be received, if any, will enable payment for the repair, replacement or reconstruction of any loss or damage, as the case may be. The Association may levy and collect an assessment against the Owners of all Units in an amount which shall provide the funds required to pay for said repair, replacement or reconstruction, which assessment shall be allocated in proportion to the undivided interest of each Unit in the Common Elements.

Section 9.7 Loss to Limited Common Elements and/or Units. Subject to Section 14.2, in the event of loss of or damage to Limited Common Elements or any Unit by reason of fire or other casualty, which loss or damage is covered by fire and casualty insurance carried by the Association, any proceeds paid to the Association or Insurance Trustee, as the case may be, to cover such loss or damage, shall be first applied to the repair, replacement or reconstruction of any Unit which may have sustained any loss or damage so covered, and any remaining insurance proceeds shall be applied to the repair, replacement or reconstruction of the Limited Common Elements. Subject to Section 14.2, if the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of the Limited Common Elements and any Units sustaining any loss or damage, then such excess insurance proceeds shall be paid and distributed by the Insurance Trustee to the Owners of the affected Units, and to their Mortgagees, as their respective interests may appear, in the proportion that the loss or damage to each Owner's affected Unit and its Limited Common Elements bears to the total loss or damage to all Owners' affected Units and their respective Limited Common Elements, as determined in good faith by the Association. Subject to Section 14.2, if there is no insurance coverage for such loss or damage, or if it appears that the insurance proceeds covering the fire and casualty loss or damage payable to the Association or the Insurance Trustee, as the case may be, are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be sufficient, then the cost of repair, replacement or reconstruction of each Unit or Limited Common Element appurtenant to such Unit sustaining loss or damage shall then be levied and collected by assessment against the Owners of the Units or Limited Common Elements appurtenant to such Units sustaining the loss or damage in the same manner as is above provided in this Section for the apportionment of excess insurance proceeds between the Owners of the Units or Limited Common Elements appurtenant to such Units sustaining loss or damage.

Section 9.8 Estimates of Repair; Plans and Specifications; Payment of Assessments. In the event of loss or damage to the Insurable Condominium Property, the Association shall, within sixty (60) days after any such occurrence or as soon thereafter as is practicable through the exercise of all commercially reasonable diligence, obtain reliable and detailed estimates of the cost of restoring damaged property to a condition as good as that which prevailed before such loss or damage. The estimate of repair shall be based upon the plans and specifications of the original buildings, as the same may from time to time be amended, or such other plans and specifications as may be approved by the Board, by all of the Owners of the damaged Units and their respective Mortgagees, and by not less than seventy-five percent (75%) of the Owners of all Units including the Owners of damaged Units. The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing the Unit Owners in any proceeding, negotiation, settlement, or agreement arising from any loss or damage to the Insurable Condominium Property. Such estimates are to contain and include the cost of any professional fees and premiums for such bonds as the Board may deem to be in the best interest of the membership of said Association. Whenever it shall appear that the insurance proceeds payable for such loss or damage will not be sufficient to defray the cost of repair, replacement or reconstruction thereof, the additional money required to completely pay for such repair, replacement or reconstruction of said loss or damage whether to be paid by all of the Owners of Units or only by the Owners of Units sustaining loss or damage, or both, as herein provided, shall be paid to the Association and deposited with the Insurance Trustee, if any, not later than thirty (30) days from the date on which the Association or the Insurance Trustee, as the case may be, shall receive the monies payable from the policies of fire and casualty insurance. A Unit Owner shall have the right to advance funds for the restoration of its Unit and its appurtenant

Limited Common Elements and shall be reimbursed from the insurance proceeds to the extent of insurance proceeds allocated for the restoration of its Unit and Limited Common Elements.

Section 9.9 General Provisions of Insurance Policies.

(a) **Blanket Policies.** All insurance coverages and policies described in Sections 9.1 and 9.2 may be obtained and maintained through the use of master or blanket insurance policies that also insure properties other than the Project or condominium associations other than the Association, provided that such coverages and policies conform to the requirements applicable thereto as set forth herein.

(b) **Waiver of Subrogation**. Where applicable, the Association and each Owner hereby waives any right of recovery against (i) each other, (ii) the Retail Association, (iii) any Managing Agent, (iv) each of the Construction and Design Professionals, and (v) their respective owners, members, managers, partners, shareholders, directors, officers, employees, agents, contractors, subcontractors, vendors, affiliates, successors and assigns, for any loss or damage that is covered by any policy of insurance maintained (or required by this Declaration to be maintained) by the Association with respect to the Project or any component or element thereof or any operation therein, regardless of cause, including negligence (whether active or passive), professional errors or omissions, willful misconduct, strict liability, breach of contract or breach of warranty (express or implied) of the party benefiting from the waiver, to the extent of the loss or damage covered thereby. If any such policy of insurance does not permit the foregoing waiver or if the coverage under any such policy would be invalidated as a result of such waiver, the policy of insurance carried by the Association shall contain a waiver by the insurer of any right to claim by way of subrogation against each of the entities and persons listed in clauses (i) through (v) inclusive, in the preceding sentence.

Section 9.10 Association, Insurance Trustee and Managing Agent. The Association shall have exclusive authority as agent and attorney-in-fact for the Owners to: (a) purchase and maintain all insurance required to be maintained by the Association under this Article; (b) itself, and/or through any Insurance Trustee designated by the Board, (i) negotiate, settle and compromise any claims under such insurance, (ii) collect and receive all proceeds from such insurance, hold such proceeds in trust for the Owners and their respective Mortgagees as their interests may appear, and apply them as provided in this Declaration (including, without limitation, in this Article IX and Article XIV) and in the Act, (iii) execute releases of liability in connection with the negotiation and settlement of claims, and (iv) execute all documents and perform all acts that may be necessary or desirable to carry out the Association's and such Insurance Trustee's rights and duties under this Declaration. The Board shall have authority to authorize the Managing Agent to assist and consult with it or to act as its agent and attorney-in-fact for one or more of the foregoing purposes.

Section 9.11 Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner, and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by the Association's policy, the Association's policy shall be primary and non-contributory with any such other insurance.

Section 9.12 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board to ascertain that the coverage provided by such policies adequately covers those risks required to be insured by the Association. Prior to obtaining any policy of fire insurance or renewal thereof, the Board or the Managing Agent of the Association may, but shall not be obligated to, obtain a written appraisal from a duly qualified real estate or insurance appraiser, or other person knowledgeable as to replacement costs, which appraiser shall reasonably estimate the full replacement value of the improvements for the purpose of determining the amount of insurance required pursuant to the provisions of this Article.

Section 9.13 Notice of Cancellation. If any of the coverages or minimum coverage limits provided for in this Section cease to be reasonably available, or if any policy is cancelled or not renewed without a replacement policy having been obtained, the Association shall promptly notify all Owners and Eligible First Mortgagees in accordance with the provisions of Section 17.7, and in such event the requirements for insurance shall be varied, or other provisions shall be made for protection against such risks, upon the approval of 75% of the Owners and Eligible First Mortgagees.

Section 9.14 Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Unit, in or on the Common Elements, or any part thereof, that would result in the cancellation of any insurance on the Project, or any part thereof, or in an increase in the rate of any insurance on the Project, or any part thereof, over such rates that the Association, but for such activity, would pay, without the prior written approval of the Association. Each Owner shall indemnify, defend and hold the Association and the other Owners harmless from and against all loss and damage resulting from any such action or activity committed by the Owner or its Permittees which is in violation of this Section. At its own initiative or upon the written request of any Owner, if the Association determines that further action by it is proper, after affording an Owner a reasonable opportunity to be heard, the Association shall enforce the resulting indemnified amount as a Default Assessment determined and levied against the Owner and the Unit.

ARTICLE X
CONVEYANCES AND TAXATION OF CONDOMINIUM UNITS

Section 10.1 Contracts. Every contract, deed, lease, Mortgage, will and other instruments affecting title to a Unit shall legally describe a Unit by its identifying Unit name, followed by the name of the Project, with reference to this Declaration. An illustrative description is as follows:

> "The Hotel Unit of oneC1TY Lot 8 Master Condominium described in the Declaration Establishing oneC1TY Lot 8 Master Condominium of record as Instrument No. _____, Register's Office for Davidson County, Tennessee (the "Declaration"), together with the undivided percentage interest in the Common Elements appurtenant to the Hotel Unit as set forth in Exhibit E of the Declaration. Reference is hereby made to the Master Plat of oneC1TY Lot 8 Master Condominium of record as Exhibit D to the Declaration for a more complete identification and description of the Hotel Unit."

Reference to the Declaration, the Master Plat, or any plat in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration, the Master Plat or any plat without specific reference therein. No reference to General Common Elements shall be required to be made in any deed, Mortgage, instrument of conveyance or other instrument describing a Unit.

Section 10.2 Legal Effect of Description. Every contract, deed, lease, Mortgage, will and every other instrument affecting title to a Unit which legally describes the Unit substantially in the manner set forth in Section 10.1 shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect the Unit, including the undivided interest in the Common Elements appurtenant thereto, and all other appurtenant properties and property rights, and to incorporate all of the rights, limitations and burdens incident to ownership of a Unit as described in this Declaration and the Master Plat. Each such description shall be construed to include a nonexclusive easement over the Common Elements for ingress and egress to and from each Unit.

Section 10.3 Taxation. Each Unit shall be assessed separately for all taxes, assessments and other charges by the applicable Governmental Agencies, including any special improvement district, and any other taxing or assessing authority, in accordance with the Act. For the purpose of such assessments, the valuation of the General Common Elements shall not be separately assessed, but shall be apportioned among the Units in accordance with the Allocated Interests and, to the extent feasible, the valuation of the Limited Common Elements shall be apportioned to the individual Unit to which such Limited Common Elements are allocated. The Common Elements and other property owned by the Association, if any, shall be appraised and valued pursuant to applicable law. The Association shall furnish to the tax assessor of Davidson County, Tennessee, and to all other appropriate persons and authorities, all necessary information with respect to such apportionment.

ARTICLE XI
MECHANIC'S LIENS

Section 11.1 Mechanic's Liens. No labor performed or materials furnished for use and incorporated in any Unit with the consent or at the request of the Owner thereof or its Permittees shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements, except as to the undivided interest in the Common Elements appurtenant to the Unit of the Owner for whom such labor shall have been performed or such materials furnished. Each Owner shall indemnify, defend and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Unit of any other Owner, the Common Elements or any part thereof, for labor performed or for materials furnished on behalf of the first Owner and its Unit.

Section 11.2 Enforcement by the Association. At its own initiative or upon the written request of any Owner, if the Association determines that further action by it is proper and the mechanic's lien(s) are not disputed claims with a reasonable basis for such dispute, the Association shall enforce the indemnity provided by Section 11.1 by collecting from the Owner of the Unit on which the labor was performed or materials furnished, the amount necessary to discharge the mechanic's lien(s), including all costs and reasonable Fees, and the Association shall obtain a discharge of the lien(s). The Owner of the Unit on which the labor was performed may record a

bond to remove such lien pursuant to Tennessee law in lieu of paying to the Association the amount necessary to discharge such lien. If the Owner of the Unit on which the labor was performed or materials furnished refuses or fails to so indemnify within 10 days after written notice to the Owner of the amount, then the failure to indemnify shall be a default under this Declaration and the Association shall enforce the indemnified amount as a Default Assessment determined and levied against the Owner and its Unit.

ARTICLE XII
EASEMENTS

Section 12.1 Recorded Easements. In addition to easements and rights-of-way of record at or before the recording of this Declaration, the Real Property, and all portions thereof, shall be subject to the easements as shown on any recorded plat of the Real Property, or any portion thereof, and as shown on the recorded Master Plat.

Section 12.2 Encroachments. If any portion of the Common Elements encroaches upon any Unit(s), or if any portion of a Unit encroaches upon any other Unit or upon any portion of the Common Elements, or if any encroachment occurs in the future as a result of: (a) shifting, settling or other movement of any part of the Building; (b) alteration, reconstruction or Repair Work to the Common Elements; or (c) Repair Work or restoration of part of the Building or Unit(s) after damage by fire or other casualty or condemnation or eminent domain proceedings, provided that such alteration, reconstruction or Repair Work is substantially in the same location, then a perpetual, irrevocable, non-exclusive easement is hereby created and does exist for the encroachment and for the Repair Work of the same so long as the encroachment exists, provided that the physical boundaries of the Units after the construction, reconstruction, rebuilding, alteration or Repair Work shall be in substantial accord with the description of those boundaries that appears in this Declaration. Such encroachments and easements shall not be considered to be encumbrances either on the Common Elements or the Units with respect to marketability of title or other purposes. In interpreting any and all provisions of this Declaration and for subsequent Mortgages relating to Units, the actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations from the location of such Unit as indicated on the Master Plat.

Section 12.3 Emergency Easement. A perpetual, irrevocable, non-exclusive general easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or persons to enter upon the Common Elements in the proper performance of their duties. Easements are reserved in favor of all Unit Owners, including Retail Condominium Owners, and their Permittees for emergency ingress and egress over, through and across all stairways in the Project.

Section 12.4 Utilities/Mechanical Equipment. There is hereby created a perpetual, irrevocable, non-exclusive blanket easement for the benefit of the Owners upon, across and through the Common Elements for the installation, replacement and Repair Work of Utilities/Mechanical Equipment, including water, sewer, gas, telephone, electricity, computer, cable and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain any facilities, equipment and appurtenances upon the Common Elements necessary to repair and maintain the Utilities/Mechanical Equipment, except that if any such improvements will have an adverse

effect upon the Common Elements or a Unit then such improvements must first be approved by the Association or the Owner of such Unit, respectively. If any utility or quasi-utility company furnishing a service covered by this general easement requests a specific easement in a separate recordable document, the Association is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Elements without violating the terms hereof. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Elements. Each Unit and the Common Elements shall be benefited by a non-exclusive easement for the use of all Utilities/Mechanical Equipment serving such Unit and the Common Elements that run through any other Unit(s) or Common Element(s), and such other Unit(s) and the Common Element(s) shall be burdened by such easement.

Section 12.5 Repair Work Easement.

(a) **Association's Easement to Perform Repair Work**. A perpetual, irrevocable, non-exclusive easement is hereby granted to the Association, its officers, directors, Permittees and assigns upon, across, over, in and under the Common Elements, and a right to use the Common Elements as may be necessary or appropriate to perform the Repair Work required pursuant to this Declaration. In addition, some of the Common Elements are or may be located within a Unit or Units, or may be conveniently accessible only through a Unit or Units. Each Owner hereby grants to the Association a perpetual, irrevocable, non-exclusive easement for access through its Unit reasonably necessary to perform Repair Work of the Common Elements and the Utilities/Mechanical Equipment located therein or accessible therefrom, and to perform required Repair Work that is not performed by the applicable Owner in accordance with this Declaration. Non-Emergency Repair Work shall be performed only during regular business hours on business days and only after 24 hours' prior written notice to the Owner of the affected Unit or Units. For Emergency Repair Work, the Owner of the affected Unit shall be given prior notice to the extent possible and if not possible, as soon after entry as is reasonably practicable under the circumstances.

(b) **Owner's Easement to Perform Repair Work**. Each Owner shall have a perpetual, irrevocable, non-exclusive easement in, upon, under and across the Common Elements for the construction and installation of any duct work, additional plumbing or other additional services or Utilities/Mechanical Equipment in the Common Elements in connection with the improvement, alteration or Repair Work of its Unit. Each Owner shall further have an easement and right to perform Repair Work on any Utilities/Mechanical Equipment serving only such Owner's Unit (and therefore not a Common Element) that is located within another Owner's Unit. Prior to performing Repair Work on any Utilities/Mechanical Equipment, the Owner in whose Unit the Utilities/Mechanical Equipment is located shall be given at least 10 days' prior written notice of the Repair Work (except in the case of an Emergency, as provided herein).

(c) **Damage from Repair Work.** Subject to the provisions of this Declaration, if damage is inflicted, or a strong likelihood exists that damage shall be inflicted, upon the Common Elements or any Unit through which access is taken, resulting from Repair Work, then the Owner responsible for the damage, or expense to avoid damage, or the Association if it is responsible, shall be liable for the cost of prompt repair. Damage to the interior of any part of a Unit resulting from Repair Work of any Utilities/Mechanical Equipment not

servicing more than one Unit shall be the expense of the Owner whose Unit is served by such Utilities/Mechanical Equipment, which expense may be reimbursed to the Association through an Individual Purpose Assessment.

Section 12.6 Support Easement. Each Unit and any structure or improvement now or hereafter constructed on the Real Property, shall have a perpetual, irrevocable, non-exclusive easement for horizontal, vertical and lateral support, including a perpetual, non-exclusive easement in and to all structural members, columns, beams, foundations, load bearing walls and other structural components located in or constituting part of the Common Elements or another Owner's Unit, and shall be subject to a similar perpetual, non-exclusive easement of support in favor of all other Units, including the Common Elements and any other improvements constructed upon the Real Property as contemplated by this Declaration.

Section 12.7 Drainage Easement. A perpetual, irrevocable, non-exclusive easement is hereby granted to the Association, its officers, agents, Permittees and assigns to enter upon, across, over, in and under any portion of the Real Property for the purpose of changing, correcting or otherwise modifying the grade or drainage improvements on the Real Property to improve the drainage of water on the Real Property.

Section 12.8 Trash Removal Easement. Each Owner shall have a perpetual, irrevocable, non-exclusive easement over and through all trash rooms, trash chutes and any and all trash collection or disposal systems located within the Common Elements of the Project for trash removal from its Unit, including but not limited to shared use (for purposes as may be allowed by applicable law) of any trash compactor located near the Loading Dock; it being understood that the trash compactor shall be a General Common Element. Each Owner is responsible for its own trash removal.

Section 12.9 Easements Deemed Created. All conveyances of Units hereafter made shall be construed to grant and reserve the easements contained in this Declaration, even though no specific reference to such easements or to this Declaration appears in the instrument for such conveyance.

ARTICLE XIII
AFFIRMATIVE AND RESTRICTIVE COVENANTS

Section 13.1 Use.

(a) **Hotel Use**. The Hotel Unit shall be used for hotel purposes, which may include uses ancillary thereto, including, without limitation, conferences, weddings and other similar events, food and beverage outlets, gift or sundry shops, fitness center, spa, and other uses that are customarily incident thereto. The Hotel Unit may be used for other uses permitted by applicable law and zoning ordinances without any consent or approval required from the Association or any other Owner.

(b) **Retail Use**. The Retail Unit shall be used for retail purposes only, including restaurants and bars, fitness studios and spas and other uses that are customarily incident thereto, notwithstanding the fact that the same may be duplicative of similar uses in the Hotel Unit.

(c) **Change in Use**. An Owner may request a change in use or business for its Unit. The Board may require an Owner who requests a change to: (i) deliver Submittals to the Board for approval, including evidence that the applicable zoning ordinances permit such use; and (ii) obtain any additional insurance as required by the Board. Prior to any use change, the Owner must obtain the prior written approval of 75% of the Owners and Eligible First Mortgagees as well as the prior written approval of each First Mortgagee whose Mortgage encumbers the applicable Unit and the written approval of an Owner to which the change would have an adverse effect. Any approval of a change in use or business shall not be deemed a warranty by the Association of the compliance of the Unit's use with zoning ordinances and other applicable land use restrictions.

Section 13.2 Owner Repair Work and Improvements.

(a) **Owner Repair Work Duties**. Subject to the rights and obligations of the Association as set forth in this Declaration, each Owner shall be responsible for the Repair Work of its Unit, all fixtures, equipment and Utilities/Mechanical Equipment installed or located within its Unit, commencing at a point where the Utilities/Mechanical Equipment enter the Unit, all of which Repair Work shall be performed to the Project Standard. Each Owner shall maintain, repair and replace all other equipment providing exclusive service to its Unit and any service lines from such Utilities/Mechanical Equipment to the Unit, including all utility, heating, plumbing, air conditioning and domestic hot water equipment and appurtenances to the extent such Utilities/Mechanical Equipment is not a Common Element. If any Repair Work or decoration of any wall within a Unit that forms an exterior boundary of such Unit shall alter the drywall attached to such wall, the Owner performing such Repair Work shall restore said wall to its previous structural condition, which specifically includes the previous sound transmission coefficient and fire rating. Each Owner shall also maintain and keep in good repair the interiors of all windows and other glass items related to its Unit, and any entry door or doors serving its Unit. An Owner shall not permit any action or work that shall impair the structural soundness of the improvements, the proper functioning of the Utilities/Mechanical Equipment, the integrity of the Building or the viability of any easement.

(b) **Owner's Failure to Maintain**. If an Owner fails to perform any Repair Work or any other cleaning and maintenance that is such Owner's responsibility under this Declaration, then the Association may perform such work in accordance with Section 7.2(b).

(c) **Owner's Negligence**. Notwithstanding anything to the contrary contained in this Declaration, if Repair Work of the Common Elements is necessary and is caused through or by the negligent or willful act or omission of an Owner or its Permittees, or as a result of any improvement constructed by or on behalf of an Owner in or upon the Common Elements, then the expenses, costs and fees incurred by the Association for such Repair Work shall be the personal obligation of such Owner. If such expenses are not paid to the Association within 10 days after written notice to such Owner of the total amount of such expenses, then the failure to pay the expenses shall automatically become a Default Assessment determined and levied against the Unit of such Owner.

Section 13.3 Prohibition of Certain Activities. Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, which would violate any statute, rule, ordinance, regulation, permit or other imposed requirement of any Governmental Agency. No

damage to, or waste of, the Common Elements, or any part thereof, shall be committed by an Owner or its Permittees. An Owner shall do no act or any Repair Work that shall affect the Common Elements or impair the structural boundaries or integrity of the Common Elements or impair any easement. Each Owner shall indemnify, defend and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by it or its Permittees, which violates this Section. At the Board's own initiative or upon the written request of any Owner (if the Association determines that further action is necessary), after affording an Owner a reasonable opportunity to be heard by the Board, the amounts to be indemnified under this Section shall constitute a Default Assessment determined and levied against the Owner and the Owner's Unit.

Section 13.4 Animals. Subject to further restriction in the Rules and Regulations, no animals, livestock, poultry, reptiles, lizards, snakes, spiders, scorpions or insects, of any kind, shall be raised, bred, kept or boarded in or on the Project. The foregoing shall not be deemed to prohibit (a) the operation of a retail pet store in the Retail Unit where customer pets may be brought onto the premises, (b) the allowing of service or support animals within the Project, or (c) the allowing of domesticated pets of Permittees of the Hotel Unit during their stays at or use of the Hotel Unit.

Section 13.5 Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association. Except as provided in Section 3.4 and Article XII, nothing shall be altered on, constructed in or removed from the Common Elements without the prior written approval of the Board. The Board may require an Owner who requests approval to: (a) provide Submittals to the Board for approval; and (b) obtain insurance as required by the Board. In reviewing the Submittals, the Board may engage the services of architects, attorneys and engineers, and any reasonable Fees shall be paid by the requesting party. Notwithstanding the foregoing, any approval granted by the Board shall not be deemed to be a warranty by the Board of the Plans and other Submittals, including warranty of fitness for the intended purpose.

Section 13.6 Unlawful and Destructive Acts. Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, that would be in violation of any statute, rule, ordinance, regulation, permit or other imposed requirement of any Governmental Agency having jurisdiction over the same. No damage to, or waste of, the Common Elements or any part thereof, shall be committed by any Owner or its Permittees. Each Owner shall indemnify, defend and hold the Association and the other Owners harmless from and against any and all loss and damage resulting from any action or activity committed by the Owner or its Permittees in violation of this Section. At its own initiative or upon the written request of any Owner, and if the Association determines that further action by it is proper, after affording an Owner a reasonable opportunity to be heard by the Board, the amounts to be indemnified shall constitute a Default Assessment determined and levied against the Owner and his Unit.

Section 13.7 Signs and Advertising.

(a) Except as hereinafter provided, no signs, including for sale or for rent signs, advertisements, billboards or unsightly objects shall be placed, erected or permitted to remain in or on any Unit, nor shall any sign(s) be permitted in or on the Common Elements, without the prior written approval of the Association. Notwithstanding the foregoing, (a) signs whose

location, size, color and visual presentation have been approved in advance by the Board shall be permitted; (b) signs identifying the retail operations in the Retail Unit; and (c) signs identifying the Hotel Operations and other signs, advertising or billboards used by the Hotel Unit Owner shall be permissible without any further approval of the Association, provided that any such permitted signage shall not materially interfere with any Owner's ingress and egress from any public way to the Common Elements or its Unit or with the visibility of any Owner's visibility from any public way.

(b) The sign shown on the Master Plat and located further to the west along City Boulevard shall be a Limited Common Element reserved for the Hotel Unit.

Section 13.8 Nuisances.

(a) No nuisance shall be allowed at the Project, nor any use or practice which is the source of annoyance to Owners and their Permittees or which interferes with the peaceful enjoyment or possession and proper use of the Project by the Owners and their Permittees. A variety of commercial activities conducted in and adjacent to the Project (the "**Commercial Activities**") are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances. The Commercial Activities may include: (i) retail sales and rentals; (ii) Hotel Operations; (iii) business and office uses; (iv) restaurant and bar operations (including sales of food and alcoholic and non-alcoholic beverages for consumption on and immediately adjacent to the Property on patio and outdoor seating areas) and catering operations; (v) sales of services, including spa services; (vi) parking activities, including activities relating to valet parking; (vii) the installation, operation and maintenance of illuminated signage, except as approved in accordance with Section 13.7; (viii) live music or other live entertainment; and (ix) any other uses or activities permitted by law. The Commercial Activities may occur during daytime and nighttime. Notwithstanding the foregoing, each Owner, by taking title to a Unit (including each Retail Condominium Owner) agrees that all equipment incident to its Unit, including, without limitation, mechanical, electrical, ventilation and sound generation or reproduction equipment, shall be so designed, installed, maintained, and used by such Owner and/or occupants of such Unit, at such Owner's expense, so as to minimize, insofar as possible, the transmission of noise, vibration, odors, or other objectionable transmissions or effects from such Unit to any other area of the Project.

(b) Each Owner, by taking title to a Unit (including each Retail Condominium Owner) acknowledges that the Commercial Activities, and the impacts and disturbances generated by them, may occur in and around the Project. No Owner (including any Retail Condominium Owner) may assert or claim any violation of this Declaration merely based upon the existence or occurrence of the Commercial Activities, or the reasonable and customary impacts and disturbances generated by them. Each Owner (including each Retail Condominium Owner) by taking title to a Unit forever waives and releases any actions or claims the Owner, its Permittees and their successors and assigns may have against the other Owners and their Permittees, the Hotel Manager, and their respective successors and assigns, that in any way arise out of the reasonable and customary impacts and disturbances generated from the Commercial Activities except any such activities, impacts or disturbances that are, or result from, in whole or in part, a violation of applicable law by, the gross negligence or willful misconduct of, or the willful or intentional failure to comply with or disregard of the

nuisance limitation provisions of Section 13.8(a) by, the applicable Owners or their respective Permittees, successors and assigns. Notwithstanding the foregoing, the Owners and the Association shall have the right to protest visible, audible and odorous impacts and disturbances from the Unit which cause disturbances to or complaints from any Permittees. The Board shall have the right to terminate or cause to be terminated any nuisance or other offensive activity carried on by an Owner in violation of the provisions hereof, and an Owner shall also have the right to terminate or cause to be terminated any nuisance or other activity carried on within another Unit or by another Unit Owner or a Retail Condominium Owner or their Permittees in violation of the provisions hereof or which otherwise is responsible for generating multiple disturbance complaints from any Permittees.

Section 13.9 Intentionally Omitted.

Section 13.10 Hazardous Activities. No activity shall be conducted on, and no improvement shall be constructed on, any property within the Project, which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged within the Project and no open fires shall be lighted or permitted within the Project, except within fireplaces and/or barbeque grills properly operated if allowed by applicable law. No explosives, gasoline, combustible material or other volatile or incendiary materials or devices shall be stored within the Project, including in a Unit, provided that materials of such nature that are necessary for the maintenance and operation of the Project (including cleaning fluids) may be stored in the Project by a Unit Owner in accordance with applicable safety codes and instructions.

Section 13.11 Specific Use Restrictions. The uses set forth on Exhibit G are prohibited unless the Board in its sole discretion waives such use restrictions.

ARTICLE XIV
DAMAGE, DESTRUCTION, TERMINATION, OBSOLESCENCE, OR CONDEMNATION

Section 14.1 Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of the Association as attorney-in-fact to deal with the Project (or any portion thereof) in the event of its destruction or damage, obsolescence, termination or condemnation, including any Repair Work, replacement and improvement of the Building, Units, Common Elements or other portions of the Project which have been destroyed, damaged, condemned or become obsolete. Title to each Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from Declarant, an Owner or a grantor shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably appoint the Association as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the Project (or any portion thereof) upon its damage or destruction, obsolescence, termination or condemnation, as is hereinafter provided. As attorney-in-fact, the Association by duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner or Retail Association which is necessary and appropriate to exercise the powers herein granted. If the Association is dissolved or becomes defunct, then a meeting of the Owners shall be held within

30 days after such event, and a new attorney-in-fact shall be appointed. Such appointment must be approved by 75% of the Owners and Eligible First Mortgagees.

Section 14.2 Damage or Destruction.

(a) (i) Except as provided in the Act, with the proceeds of any insurance proceeds received on account thereof and/or additional necessary funds to be provided by the Association and assessed against the Owners as described in Sections 9.6 and 9.7, any portion of the Project which is damaged or destroyed must be repaired and reconstructed promptly by the Association unless and to the extent (A) the Project is terminated in accordance with Section 14.5, in which case the provisions of that Section shall apply; or (B) repair and reconstruction would be illegal under any state or local statute or ordinance governing health or safety and would not be "grandfathered" as a prior legal use, unless 75% of the Owners elect to seek and obtain a variance or other approval to allow such repair and reconstruction to proceed.

(ii) For the purposes of this Article, "**repair and reconstruction**" means restoring the Project and all portions thereof to substantially the same condition in which they existed prior to damage or destruction, having substantially the same vertical and horizontal boundaries as before, and all improvements being reconstructed or repaired in substantial conformance with the Project's original architectural plan and scheme, to the extent then reasonably and economically feasible. The proceeds of any insurance collected shall be available to the Association for the purpose of repair and reconstruction in accordance with this Article.

(iii) The Association shall have full authority, right and power as attorney-in-fact to cause the repair and reconstruction of the Project, and shall promptly repair and reconstruct such damage using the proceeds of insurance and the proceeds of a Special Assessment, if necessary. The Association shall have authority to assess any negligent Owners and their Permittees causing any loss by their negligent use or misuse, intentional misconduct, or abandonment of its Unit or Retail Condominium Unit or any portion thereof, for the amount of all deductibles paid by the Association and any amount by which the insurance proceeds are insufficient to pay the costs of repair and reconstruction as a Default Assessment.

(b) If the insurance proceeds, and amounts available in the Reserve Fund if 75% of the Owners vote to make any amounts in the Reserve Fund available for the repair and reconstruction, are insufficient to repair and reconstruct the improvements, then the cost in excess shall be levied and assessed by the Association as set forth in Sections 9.6 and 9.7.

(c) In connection with such repair and restoration, then the insurance proceeds attributable to the damaged areas of the Project must be used to restore the damaged areas to a condition compatible with the remainder of the Project as a whole. Any loss covered by the property insurance policy maintained by the Association must be adjusted with the Association, and the insurance proceeds shall be paid to the Association or to the Insurance Trustee designated for that purpose and not to any Mortgagee. The insurance trustee or the Association shall hold the insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 14.2(d), the proceeds must be disbursed first, for the repair and reconstruction of the damaged property, and the Association, Owners and Mortgagees shall not be entitled to receive payment of any portion of the

proceeds unless there is a surplus of proceeds after repair and reconstruction is complete, or unless the Project is terminated in accordance with Section 14.5. If more than one Unit is damaged, then the Association, in its reasonable discretion, may assess each Owner a portion of any deductible paid by the Association in accordance with the Allocated Interest associated with the Unit owned by that Owner. Assessments shall not be abated during the period of insurance adjustment and repair and reconstruction.

(d) Except to the extent that other persons shall be distributees, in the event the Project is terminated in accordance with Section 14.5, the insurance proceeds attributable to each Unit and those Limited Common Elements allocated to such Unit shall be distributed to the Owner of such Unit, or to such Owner's Mortgagees of such Unit, as their interests may appear. The remainder of the proceeds, if any, shall be distributed to all Owners or their respective Mortgagees, as their interests may appear, in proportion to each Unit's Allocated Interest. Any such proceeds payable with respect to the Retail Condominium Units shall be paid to the Retail Association, which shall distribute such proceeds in accordance with the Retail Association Documents.

Section 14.3 Obsolescence. If 75% of the Owners (it being understood that the Retail Association shall vote in accordance with the vote of 80% of the allocated interest of the Retail Condominium Owners under the Retail Declaration and their Eligible Mortgagees) agree that the Common Elements are obsolete, they may either (a) terminate the Project in accordance with Section 14.5, or (b) adopt a plan for the renewal and reconstruction thereof. If a plan for renewal or reconstruction is adopted, then notice of such plan shall be recorded in the Official Records, and the expenses of renewal and reconstruction shall be payable by the Owners as a Special Assessment, whether or not they have previously consented to the plan of renewal and reconstruction.

Section 14.4 Condemnation.

(a) All compensation, damages or other proceeds from a condemnation, a taking or disposal in lieu or in avoidance thereof, the sum of which is hereafter called the "**Condemnation Award**," shall be payable to the Association, as attorney-in-fact for the Owners as provided in Section 14.1 above. The Association shall have the right to appear in any condemnation proceeding on behalf of the Owners.

(b) If the entire Project is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof ("**Taken**"), then the ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned by the Board as if there had been a termination of the Project under Section 14.5, provided that if a standard different from the value of the Project as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then, in apportioning the Condemnation Award, the same standard shall be employed to the extent that the Association reasonably determines such standard is relevant and applicable.

(c) If less than the entire Project is Taken, then the ownership pursuant to this Declaration shall not terminate. The Association shall, as soon as practicable, reasonably and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds and shall apportion the amounts so allocated among the Owners, as follows: (i) the

amount allocated to taking of or injury to the Common Elements shall be apportioned among the Owners in accordance with the Allocated Interests; (ii) the amount allocated to severance damages shall be apportioned among those Units which were not Taken; (iii) the amount allocated to the taking of or damage to a particular Unit, including the Limited Common Elements appurtenant thereto, and to the improvements an Owner has made within its Unit, shall be apportioned to that particular Unit, and (iv) the amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances, or as determined by judicial decree. Any proceeds payable with respect to the Retail Condominium Units shall be paid to the Retail Association, which shall distribute such proceeds in accordance with the Retail Association Documents. Notwithstanding anything to the contrary contained in this Declaration, the allocation of the Condemnation Award to each affected Unit shall be based on the comparative values of the affected Units as they existed immediately prior to the condemnation, using such evidence of the appraised values as is then available, including recent MAI appraisals of the affected property or comparable property. If the allocation of the Condemnation Award is already established in negotiations, judicial decree or otherwise, then the Association shall employ such allocation to the extent it is relevant and applicable when it allocates the Condemnation Award.

(d) If all of a Unit is Taken, or if part of a Unit is Taken leaving the Owner of such Unit with a remnant which such Owner elects not to use for, or which may not practically or lawfully be used for, any purpose permitted by this Declaration, then the Owner will give the Association prompt written notice upon the making of such determination, and the Condemnation Award shall include compensation to the Owner for that Unit and its Allocated Interest, whether or not any Common Elements are acquired. Upon acquisition and the payment of such compensation to the affected Owner, the Owner shall automatically cease to be a Member of the Association, shall cease to hold any right, title or interest in the remaining Common Elements, and shall execute any and all documents necessary to accomplish the same. Upon acquisition, unless the decree otherwise provides, that Unit's Allocated Interest shall be automatically reallocated to the remaining Units in proportion to their respective Allocated Interests prior to the taking and this Declaration shall be amended in accordance with Article XV. Any remnant of such a partially taken Unit remaining after such a taking shall thereafter be a Common Element.

(e) Except as provided in Section 14.4(d) above, if part of a Unit is Taken, then the Condemnation Award must compensate the Owner for the reduction in value of the Unit and its Allocated Interest, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, (i) that Unit's Allocated Interest shall be reduced in proportion to the reduction in the size of the Unit; and (ii) the portion of the Allocated Interests divested from that Unit shall be automatically reallocated to that Unit and the remaining Units in proportion to their respective Allocated Interests prior to the taking, with the partially Taken Unit participating in the reallocation based on its reduced Allocated Interest. If part of the Common Elements is Taken, then the Condemnation Award attributable to such taking shall be paid to the Association. If part or all of any Limited Common Element is Taken, then the Condemnation Award attributable to the taking of the Limited Common Element shall be apportioned equally among the Owners of the Units to which that Limited Common Element was allocated at the time of the taking. For purposes of acquisition of a part

of the Common Elements other than a Limited Common Element, service of process on the Association shall constitute sufficient notice to the Owners.

(f) Any repair and reconstruction necessitated by condemnation shall be governed by the procedures specified in Section 14.2.

(g) The provisions of this Section 14.4 shall be subject to Article XVI to the extent applicable.

Section 14.5 Termination of Project. The termination of the Condominium regime otherwise created hereby shall be evidenced by the execution of a written agreement of the Owners and First Mortgagees to terminate the Project (a "**Termination Agreement**") (or a ratification thereof) in the same manner as a deed by 80% of the Owners and Eligible First Mortgagees (it being understood that the Retail Association shall vote in accordance with the vote of 80% of the allocated interest of the Retail Condominium Owners under the Retail Declaration and their Eligible First Mortgagees). The Termination Agreement must specify a date after which the Termination Agreement shall be void unless it is recorded before that date, and otherwise satisfy the requirements of Section 66-27-318 of the Act. The Termination Agreement may provide that either all of the Common Elements and Units must be sold following termination, that the Retail Unit (together with any Limited Common Elements allocated thereto and the undivided interest in the General Common Elements appurtenant thereto) must be sold to the Owner of the Hotel Unit or an affiliate or designee thereof, or that the Hotel Unit (together with any Limited Common Elements allocated thereto and the undivided interest in the General Common Elements appurtenant thereto) must be sold to the Owner of the Retail Unit or to the Retail Association or an affiliate or designee of the applicable party, and may specify the minimum terms of sale. If any of the Real Property is to be sold following termination, upon termination, title to that Real Property shall vest in the Association as trustee for the holders of the interests in the Units. The Termination Agreement, and all ratifications thereof, must be recorded in the Official Records, and shall be effective only upon recordation. After recording the Termination Agreement, the Association may contract for the sale of the Project or the portion thereof to be sold pursuant to the Termination Agreement, provided that a contract for the sale of the entire Project is not binding on the Owners unless approved by 80% of the Owners and Eligible First Mortgagees (it being understood that the Retail Association shall vote in accordance with the vote of 80% of the allocated interest of the Retail Condominium Owners under the Retail Declaration and their Eligible First Mortgagees), and provided further that a contract for sale of only one of the Units is not binding on the Owners unless approved by the Owners of both Units and their Eligible First Mortgagees (it being understood that the Retail Association shall also vote in this instance in accordance with the vote of 80% of the allocated interest of the Retail Condominium Owners under the Retail Declaration and their Eligible First Mortgagees). After approval of the sale, the Association has all power necessary and appropriate to effectuate the sale, free and clear of the provisions contained in the Association Documents and the Master Plat and, until the sale has concluded and the proceeds have been distributed, the Association shall continue to exist with all the powers it had before termination. Proceeds of the sale of the entire Project, together with any insurance proceeds (if the termination occurs in connection with damage or destruction) and the assets of the Association, shall be distributed to the Owners and their respective Mortgagees as their interests may appear, in accordance with the provisions set forth in this Section 14.5. Unless otherwise specified in the Termination Agreement, so long as title to the Real Property has not been transferred pursuant to a sale, each Owner and its

successors in interest shall retain an exclusive right to occupy the portion of the Real Property that formerly constituted their Unit. During the period of that occupancy, each Owner and the Owner's successors in interest shall remain liable for all Assessments and other obligations imposed upon the Owners by the Act or this Declaration. Following termination of the Project, the proceeds of any sale of only one of the Units, together with any insurance proceeds allocable to such Unit (if the termination occurs in connection with damage or destruction) and the undivided interest in the assets of the Association appurtenant to that Unit, shall be distributed to the selling Owner and its Mortgagees as their interests may appear. Notwithstanding anything to the contrary contained herein, any proceeds payable with respect to the Retail Condominium Units shall be paid to the Retail Association and the Retail Association shall distribute such proceeds in accordance with the Retail Association Documents.

Section 14.6 Interests after Damage or Destruction, Obsolescence, Condemnation or Termination.

(a) The respective interests of the Owners shall be equal to the combined fair market values of their respective Units, Allocated Interests and associated Limited Common Elements prior to termination, damage or destruction or obsolescence, as determined by one or more independent MAI appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the Owners and shall become final unless disapproved within 30 days after distribution by either Owner. The proportion of any Owner's interest to that of all Owners is determined by dividing the fair market value of that Owner's Unit plus its Allocated Interest by the total fair market value of all Units plus all of the Allocated Interests.

(b) If any Unit or Limited Common Element is destroyed to the extent that an appraisal of the fair market value of the Unit or Limited Common Element prior to destruction cannot be made, the interest of the Owner shall be equal to its respective Allocated Interest immediately before termination.

(c) The proceeds available for distribution to the holders of interests in the Units after a termination shall be allocated to each Unit in accordance with its proportionate interest as provided above and each Unit's share of the proceeds shall be deposited into a separate account identified by the Unit designation and the name of the Owner and First Mortgagee thereof. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of such account, without contribution from one account to another, toward payment of any liens encumbering the Unit represented by each such separate account, in the following order: (i) to pay taxes and special assessment liens in favor of any Governmental Agencies; (ii) to pay any Assessments which take priority over the lien of a First Mortgage pursuant to Section 8.8 and the Act; (iii) to pay the lien of any First Mortgage; (iv) to pay unpaid Assessments, charges and Fees, and all costs, expenses and Fees incurred by the Association, including customary expenses of sale; (v) for payment of junior liens and encumbrances in the order of and to the extent of their priority; and (vi) the balance remaining, if any, shall be paid to the Owner(s) of the Unit(s). Notwithstanding anything to the contrary contained herein, any proceeds payable with respect to the Retail Condominium Units shall be paid to the Retail Association and the Retail Association shall distribute such proceeds in accordance with the Retail Association Documents.

ARTICLE XV
AMENDMENT OF DECLARATION

Section 15.1 Amendment.

(a) Except for amendments that may be executed solely by the Association under the provisions of this Declaration or the Act, the provisions of this Declaration or the Master Plat may be amended, in whole or in part, at any time and from time to time, only by a vote of 75% of the Owners.

(b) Except to the extent expressly required by the Act, no amendment may change the boundaries of any Unit, or the Allocated Interests of a Unit, or prohibit the leasing of any Unit in the absence of the consent of all affected Unit Owners.

(c) Except to the extent expressly required by the Act, no amendment which eliminates or modifies any rights granted to an Owner or which has a material adverse effect on an Owner shall be effective without the prior written consent of such affected Owner.

Section 15.2 Technical Amendment. Except to the extent prohibited by the Act, the Association is granted the right and power to record, without the approval or consent of any Owner, First Mortgagee or any other person or entity, technical amendments to any of the Association Documents or the Master Plat. Technical amendments shall be limited to correcting spelling, grammar, dates, typographical errors or as may otherwise be necessary to clarify the meaning of any provisions of this Declaration.

Section 15.3 Recording of Amendments. Amendments to this Declaration required by this Article to be recorded by the Association shall be prepared, executed, recorded and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of such designation, by the President of the Association. To be effective, all amendments to, revocations or terminations of this Declaration or the Master Plat must be recorded in the Official Records, and must contain evidence of the required approval thereof. The recordation of a certificate of the Secretary of the Association, certifying that the required Owners have given written consent to the amendment, shall satisfy the requirement of evidence of the required approval. The Secretary must further certify that copies of such written consents by Owners, along with the recorded amendment, are in the corporate records of the Association and available for inspection.

ARTICLE XVI
MORTGAGEES

Section 16.1 Notices. Notices sent to a Registered Mortgagee shall be sent by certified mail or recognized overnight delivery service to the last known address provided to the Association by the Registered Mortgagee.

Section 16.2 Assessments. Where a Mortgagee obtains title to a Unit pursuant to judicial or nonjudicial foreclosure of the Mortgage or by deed in lieu thereof, it shall not be liable for the share of the Common Expenses or Assessments by the Association chargeable to such Unit that became due prior to such acquisition of title except as provided in Section 66-27-415(b)(2) of the Act. Such unpaid share of Common Expenses or Assessments (to the extent not recovered from

the prior Owner of said Unit after the exercise of commercially reasonable remedies) shall thereafter be deemed to be Common Expenses collectible from Owners of all the Units, including such Mortgagee, and their respective successors and assigns, on the basis of their relative Allocated Interests. Additionally, such Mortgagee shall be responsible for all charges accruing subsequent to the date it acquired title.

Section 16.3 Notices. Any Registered Mortgagee shall receive timely written notice of the following:

(a) any condemnation loss or any casualty loss which affects a material portion of the Real Property or any Unit on which there is a Mortgage held by such Registered Mortgagee;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to a Mortgage held by such Registered Mortgagee which remains unsatisfied for a period of thirty (30) days and any default in the performance by an individual Owner of any other obligation under the Association Documents which is not cured either (i) promptly, in the case of an emergency, or (ii) otherwise within thirty (30) days of notice;

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

(d) any proposed action that would require the consent of a Mortgagee, as specified herein;

(e) any proposed amendment of the Association Documents except for a permitted subdivision of a Unit not subject to the lien of the Registered Mortgage; or

(f) any proposed termination of the Condominium.

Section 16.4 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner, the Association or other party priority over any rights of the Eligible First Mortgagee of any Unit, including, without limitation, in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

Section 16.5 No Invalidity of Mortgage Lien. No violation of the Association Documents, by, or enforcement of the Association Documents against, any party shall impair, defeat or render invalid the lien and/or security title of any Mortgage.

Section 16.6 Mortgagee Requirements. Each Owner and the Association agrees to cooperate reasonably with any requesting party in regard to the satisfaction of requests or requirements by a Mortgagee; provided, however, such cooperation shall be at the sole cost and expense of the requesting party, and provided, further, that no party shall be deemed obligated to accede to any request or requirement that materially and adversely affects its rights under the Association Documents.

Section 16.7 Mortgagee Liability. Notwithstanding anything in this Declaration to the contrary (but subject to Section 16.2 above), in the event a Mortgagee (or its assignee, designee or nominees) succeeds to the interest and title of an Owner under this Declaration and the other

Association Documents (as applicable, the "**Prior Owner**"), any liability of such Mortgagee (or its assignees, designee or nominee) under this Declaration or the other Association Documents shall be limited only to (i) such claims, events and matters arising after the date such Mortgagee (or its assignee, designee or nominee) succeeds to such interest and title; (ii) the reasonable out-of-pocket costs and expenses otherwise actually incurred by the Association which the Association was not able to recoup from said Prior Owner after exercising all commercially reasonable remedies with respect thereto, all of which such reasonable costs and expenses shall be an Individual Purpose Assessment against the Unit acquired by such Mortgagee (or its assignee, designee or nominee) and not assessed against the other Unit; and (iii) any Association lien to the extent permitted in Section 66-27-415(b)(2) of the Act.

ARTICLE XVII
MISCELLANEOUS

Section 17.1 Period of Ownership. The ownership created by this Declaration and the Master Plat shall continue until this Declaration is terminated in any manner provided by this Declaration or by law.

Section 17.2 Supplemental to the Act. The provisions of this Declaration shall be in addition and supplemental to the Act, as it may be amended from time to time, and to all other applicable provisions of law.

Section 17.3 Conveyance of Units Subject to Declaration and Existing Matters. All Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way and all other terms and provisions contained in this Declaration, as it may be amended from time to time. All Units, Common Elements and Limited Common Elements are subject to the restrictions, easements, conditions and limitations now of record affecting the Real Property which easements and restrictions are described on Exhibit F attached hereto.

Section 17.4 Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration may be by any Judicial Proceeding against any person(s) or the Association violating or attempting to violate any such provision. The Association or any aggrieved Owner shall have the right to institute, maintain or prosecute any such Judicial Proceeding in any court of competent jurisdiction, or if all parties to a dispute agree, by binding arbitration. In any Judicial Proceeding, the prevailing party shall be awarded its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the court or arbitrator.

Section 17.5 Waiver of Jury Trial. EACH OWNER HEREBY WAIVES, TO THE FULLEST EXTENT NOW OR HEREAFTER PERMITTED BY LAW, THE RIGHT TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING.

Section 17.6 Association Books and Records; Financial Statements; Audits.

(a) **Availability, In General.** The Association shall:

(i) comply with the requirements of Section 66-27-502 of the Act to provide the information specified in Section 503 of the Act; and

(ii) maintain the records described in Section 66-27-417 of the Act and make the same available for inspection and copying as set forth therein.

(b) **Audit Requirements**. The books and records of the Association shall be subject to audit or review, as the case may be, as determined by the Board.

Section 17.7 Notices. All notices or deliveries to an Owner shall be hand-delivered or given by electronic mail transmittal, regular mail or overnight courier directed to the e-mail address or address of the Owner (if one is provided), as last provided to the Association by such Owner for the purposes hereof. All notices so given shall be considered given, received and otherwise effective for the purposes hereof as follows: (a) if hand-delivered, when received; (b) if delivered by overnight courier, one business day after timely deposit with the courier service, charges prepaid; and (c) if mailed, three days after deposit, first class postage prepaid, with the United States Postal Service. Notices and other communications sent by e-mail shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "request a read receipt" function, as available, return e-mail, or other written acknowledgement), provided that, if such notice or other communication is not sent during the normal business hours of the recipient, then such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient. An Owner may change the address or e-mail address to which future notices shall be sent by notice given in accordance with this Section. If an Owner consists of more than one person, then the Association shall be required to give notice to only one of those persons, as the Association shall determine.

Section 17.8 Non-Waiver. Failure by the Association, any Owner, First Mortgagee (subject to Section 16.1(a)) or any other person or entity to enforce any covenant, condition, restriction, easement, reservation, right-of-way or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 17.9 Severability. The provisions of this Declaration, including the exhibits hereto, shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions hereof, or any portion thereof, by judgment or court order or decree or by arbitral decision shall in no way affect the validity or enforceability of any of the other provisions, which other provisions shall remain in full force and effect. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provision hereof. It is not the intention of Declarant to include in this Declaration any provision that is invalid under applicable law, including any provision that is void against public policy in Tennessee; accordingly, if any such provision is contained in this Declaration it shall be deemed null and void *ab initio* as if such provision had never been contained in this Declaration. In lieu of each provision of this Declaration that is invalid, there shall be added automatically as a part of this Declaration a provision as similar in terms to such invalid provision as may be possible and be valid.

Section 17.10 Certain References and Rules of Construction. The captions set forth in this Declaration are for convenience of reference only, do not form a substantive part of this Declaration, and shall not be interpreted as to restrict or enlarge any substantive provision of this Declaration. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words "hereof," "herein" and

"hereunder" and words of similar import when used in this Declaration shall refer to this Declaration as a whole and not to any particular provision of this Declaration. All Article, Section and Exhibit references are to this Declaration unless otherwise specified. All Recitals and Exhibits hereto are incorporated herein and made a substantive part hereof. The words "include," "includes" and "including" shall be deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import. The word "will" has the same meaning and effect as the word "shall". The word "or" shall not be deemed to be disjunctive but shall have the same meaning as "and/or". All references to "dollars" or "$" shall be deemed references to the lawful money of the United States of America.

Section 17.11 Conflicts in Documents. In case of any conflict between this Declaration, the Charter or the Bylaws, this Declaration shall control. In case of any conflict between the Charter and the Bylaws, the Charter shall control. In case of any conflict between this Declaration and the Retail Declaration, this Declaration shall control. Notwithstanding anything to the contrary contained herein, if there is any inconsistency between this Declaration, the Retail Declaration, the Charter or the Bylaws, on the one hand, and the Act, on the other, the provisions of the Act shall control unless and to the extent such provision allows for a declaration, Charter or Bylaws to provide a rule or procedure that differs from those set forth in the Act.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, being the Declarant hereunder, has hereunto set its hand and seal this 23 day of December, 2020.

EFFECTIVE

DECLARANT:

NF IV – VA NASHVILLE, LLC, a Delaware limited liability company

By: _____
Name: James E. Conley, Jr.
Title: Vice President

Address:
NF IV – VA Nashville, LLC
3424 Peachtree Road NE, Suite 2000
Atlanta, Georgia 30326
Attention: Adi Bhoopathy

STATE OF GEORGIA)
)
COUNTY OF FULTON)

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared James E. Conley, Jr., with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Vice President of **NF IV – VA Nashville, LLC**, a Delaware limited liability company, the within named bargainor, and that he as such Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the bargainor by himself as such Vice President.

WITNESS my hand and seal at office in Fulton County, Georgia, on this the 17th day of December, 2020.

Cynthia M. Jordan
Notary Public



Exhibit A

LEGAL DESCRIPTION OF THE REAL PROPERTY

Land in Davidson County, Tennessee, being Lot 8, on the Plan of Final Plat, Resubdivision of Lot 8, Resubdivision of Lots 1 through 5, oneC1TY Nashville, as shown on plat of record as Instrument No. 20180515-0046180, in the Register's Office for Davidson County, Tennessee, to which plat reference is hereby made for a more particular property description.

The above property being conveyed to Declarant by Special Warranty Deed of record as Instrument No. 20180928-0096285, said Register's Office.

Together with all right, title and interest of Declarant under that certain Parking Easement Allocation Agreement dated September 27, 2018 between oneC1TY Management, Inc. and Declarant of record as Instrument No. 20180928-0096286 of record in the Official Records.

Exhibit B

BYLAWS
OF
ONEC1TY LOT 8 MASTER CONDOMINIUM ASSOCIATION, INC.

ARTICLE I

Members
(Unit Owners)

Section 1. Eligibility. The Members of oneC1TY Lot 8 Master Condominium Association, Inc., a Tennessee not-for-profit corporation (the "Association"), shall consist of the respective Unit Owners (collectively, the "Owners") of the Property known as oneC1TY Lot 8 Master Condominium, located at 4 C1TY Boulevard, Nashville, Tennessee 37209 (the "Property"), in accordance with the respective percentages of ownership interest in the Common Elements of the Property owned by the respective Unit Owners (these and other terms are used in these Bylaws as they are defined in the Declaration establishing oneC1TY Lot 8 Master Condominium, which Declaration is recorded in the Register's Office for Davidson County, Tennessee (the "Declaration"). The words "member" or "members" as used in these Bylaws means and shall refer to each "Owner" or "Unit Owner", as defined in the Declaration). If an Owner is a trust, then the member shall be a beneficiary of such trust, and if an Owner or such a beneficiary is a corporation, partnership or limited liability company, the member may be an officer, partner, manager or employee of such Owner or beneficiary.

Section 2. Succession. The membership of each Owner shall terminate when it ceases to be a Unit Owner, and upon the sale, transfer or other disposition of its ownership interest in the Property, its membership in the Association shall automatically be transferred to the new Owner succeeding to such ownership interest.

Section 3. Regular Meetings. The first regular annual meeting of Owners (the "First Meeting") may be held, subject to the terms hereof, on any date, at the option of the Board. All such meetings of Owners shall be held at such place in Davidson County, Tennessee, or at such other place as all Owners may mutually agree, and at such time as specified in the written notice of such meeting which shall be delivered to all Owners at least ten (10) days prior to the date of such meeting.

Section 4. Special Meetings. Special Meetings of the Owners may be called by the President or by a majority of the directors of the Board, or by Owners having at least fifty percent (50%) of the votes entitled to be at such meeting. Said Special Meetings shall be called by delivering written notice to all Owners not less than ten (10) days prior to the date of said meeting, stating the date, time and place of said Special Meeting and the matters to be considered.

Section 5. Delivery of Notice of Meetings. Notices of meetings may be delivered either (i) personally, (ii) by mail to an Owner at the address given to the Board by such Owner for such purpose, or to the Owner's Unit, if no address for such purpose has been given to the Board, (iii) by email to an email address given to the Board by such Owner for such purpose, or

(iv) by overnight courier to an Owner at the address given to the Board by such Owner for such purpose. Any Owner may waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action proposed to be taken by the Association without a meeting. An Owner's attendance at a meeting shall constitute said Owner's waiver of notice of said meeting.

Section 6. Voting.

(a) The aggregate number of votes for all Owners of a Unit shall be equal to each Unit's respective percentage of ownership interests in the Common Elements as shown on Exhibit E to the Declaration. If a Unit is owned by more than one (1) Owner, such Owners shall designate a single representative to cast a vote equal to that Unit's Allocated Interest, except that the voting rights of all of the Retail Condominium Units comprising the Retail Unit shall be exercised by the Retail Association.

(b) No Owner of a Unit in default in the payment of its assessments hereunder shall be entitled to exercise its right to vote hereunder until it has cured such default. A Unit Owner shall be deemed to be in default if it has not paid its assessments to the Board, or their agent, within fifteen (15) days after receipt of notice of non-payment of an assessment. A Unit Owner may protest the amount of the assessment, but it still must be paid during the pendency of the protest to the Board.

Section 7. Quorum. The presence of Hotel Unit Owner and Retail Association shall constitute a quorum of the Association; provided, however, if ta Unit Owner fails or refuses to attend a properly noticed meeting, followed by its failure or refusal to attend an adjournment of said meeting which is noticed to the Unit Owner not less than ten (10) days prior to the date of such adjourned meeting, shall be deemed the Unit Owner's presence at such adjourned meeting and a quorum shall be deemed present at such adjourned meeting.

ARTICLE II

Board of Directors

Section 1. Number, Election and Term of Office. The Board of Directors of the Association (the "Board") shall be as set forth in Section 6.5 of the Declaration. Every director shall hold office until his successor shall be selected as provided in this Article II.

Section 2. Qualification. Members of the Board are not required to be Owners of Units or Retail Condominium Units.

Section 3. Vacancies. Any vacancy occurring in the Board shall be filled by the Owner of the Unit authorized to select such director.

Section 4. Meetings. A regular annual meeting of the Board shall be held within seven (7) days following the regular annual meeting of Unit Owners. Special Meetings of the Board shall be held upon a call by the President or by a majority of the Board on not less than forty-eight (48) hours' notice in writing to each director, delivered personally or by mail or email. Any director may waive notice of a meeting, or consent to the holding of a meeting

without notice, or consent to any action proposed to be taken by the Board without a meeting. A director's attendance at a meeting shall constitute his waiver of notice of said meeting.

Section 5. Removal. Any director may be removed from office and replaced at any time by the Owner of the Unit authorized to select such director.

Section 6. Compensation. Directors shall receive no compensation for their services as directors, unless expressly provided for in resolutions duly adopted by the Owners.

Section 7. Quorum. A majority of the directors including at least one (1) director appointed by Hotel Unit Owner and at least one (1) director appointed by Retail Association shall constitute a quorum of the Board; provided, however, if no director appointed by a Unit Owner attends a properly noticed meeting of directors, and if no director appointed by a Unit Owner attends an adjournment of said meeting which is noticed to each director, delivered personally or by mail or by email, on not less than forty-eight (48) hours' notice prior to the date of such adjourned meeting, shall be deemed the presence of a director appointed by the Unit Owner at such adjourned meeting and a quorum shall be deemed present at such adjourned meeting.

Section 8. Powers and Duties. The Board shall have the following powers and duties:

(a) to elect and remove the officers of the Association as hereinafter provided;

(b) to administer the affairs of the Association as hereinafter provided;

(c) to engage the services of an agent (hereinafter sometimes called the "Managing Agent") to maintain, repair, replace, administer and operate the Property or any part thereof for all of the Owners, upon such terms and for such compensation and with such authority as the Board may approve;

(d) to formulate policies for the administration, management and operation of the Property and the Common Elements thereof;

(e) to adopt rules and regulations, with written notice thereof to all Owners, governing the administration, management, operation and use of the Property and the Common Elements, and to amend such rules and regulations from time to time;

(f) to provide for maintenance, repair and replacement of the Common Elements and other portions of the Property to be maintained by the Association, and to approve payment vouchers or to delegate such approval to the officers or the manager or Managing Agent;

(g) to provide for the designation, hiring and removal of employees and other personnel, including accountants and attorneys, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Property and the Common Elements, and to delegate any such powers to the Managing Agent (and any such employees or other personnel who may be the employees of a Managing Agent);

(h) to appoint committees of the Board and to delegate to such committees the Board's authority to carry out certain duties of the Board;

(i) to determine the fiscal year of the Association and to change said fiscal year from time to time as the Board deems advisable;

(j) to estimate the amount of the annual budget, and to provide the manner of assessing and collecting from the Unit Owners their respective shares of such estimated expenses, as hereinafter provided;

(k) to enter into any lease agreement for lease of any Unit owned or leased by the Association upon such terms as the Board may approve;

(l) unless otherwise provided herein or in the Declaration, to comply with the instructions of a majority of the Unit Owners as expressed in a resolution duly adopted at any annual or Special Meeting of the Unit Owners;

(m) to exercise all other powers and duties of the Association or Unit Owners as a group referred to in the Act, and all powers and duties of the Board referred to in the Declaration or these Bylaws.

Section 9. Non-Delegation. Nothing in this Article or elsewhere in these Bylaws shall be considered to grant to the Board, the Association or to the officers of the Association any powers or duties which, by law, have been delegated to the Unit Owners or the Retail Association.

ARTICLE III

Officers

Section 1. Designation. At each regular annual meeting, the directors present at said meeting shall elect the following officers of the Association by a majority vote:

(a) a President, who shall be a director and who shall preside over the meetings of the Board and of the Unit Owners, and who shall be the chief executive officer of the Association;

(b) a Secretary, who shall keep the minutes of all meetings of the Board and of the Owners, and who shall, in general, perform all the duties incident to the office of Secretary, and who may be a representative of the Managing Agent;

(c) a Treasurer, who shall be responsible for financial records and books of account and the manner in which such records and books are kept and reported; the office of Secretary and Treasurer may be held by one person;

(d) such additional officers as the Board shall see fit to elect.

Section 2. Powers. The respective officers shall have the general powers usually vested in such officers; provided that the Board may delegate any specific powers to any other

officer or impose such limitations or restrictions upon the powers of any officer as the Board may see fit.

Section 3. Term of Office. Each officer shall hold office for the term of one (1) year and until his successor shall have been appointed or elected and qualified.

Section 4. Vacancies. Vacancies in any office shall be filled by the Board by a majority vote of the remaining members thereof at a Special Meeting of said Board. Any officer so elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer he succeeds. Any officer may be removed for cause at any time by vote of two-thirds (2/3) of the total membership of the Board at a Special Meeting thereof.

Section 5. Compensation. The officers shall receive no compensation for their services as officers, unless expressly provided for in a resolution duly adopted by the Unit Owners.

ARTICLE IV

Assessments

Section 1. Annual Budget. The Board shall cause to be prepared an estimated annual budget for each fiscal year of the Association in accordance with the Declaration. To the extent that the assessments and other cash income collected from the Unit Owners during the preceding year shall be more or less than the expenditures for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account. The annual budget shall provide for a reserve for contingencies for the year in reasonable amounts as determined by the Board. The Association shall not be required to include reserves for repairs and replacement if the provision for such reserves will result in tax liability to the Association for such revenues in excess of expenses. The Association shall also have the right to refund any assessments in excess of actual expenditures to avoid tax liability on such excess amounts.

Section 2. Assessments. The estimated annual budget for each fiscal year shall be approved by the Board, and copies thereof shall be furnished by the Board to each Unit Owner in accordance with the Declaration.

Section 3. Partial Year or Month. For the first fiscal year, the annual budget shall be as approved by the First Board. If such first fiscal year, or any succeeding fiscal year, shall be less than a full year, then the monthly assessments for each Unit Owner shall be proportionate to the number of months and days in such period covered by such budget. Commencing with the date of recording the deed to a Unit or any additional declaration, each Unit Owner or the Retail Condominium Owner, as applicable, shall pay the assessment for the following month or fraction of a month, which assessment shall be in proportion to its respective ownership interest in the Common Elements and the number of months and days remaining of the period covered by the current annual budget, and which assessment shall be as computed by the Board.

Section 4. Annual Report. Within forty-five (45) days after the end of each fiscal year covered by an annual budget, or as soon thereafter as shall be practicable, the Board shall cause to be furnished to each Unit Owner and the Retail Association a statement for such year so

ended, showing the receipts and expenditures and such other information as the Board may deem desirable.

Section 5. Records and Statement of Account.

(c) The Board shall cause to be kept detailed and accurate records in chronological order of the receipts and expenditures affecting the Common Elements and Limited Common Elements, specifying and itemizing the Common Expenses incurred. Payment vouchers may be approved in such manner as the Board may determine

(d) The Board shall, upon receipt of ten (10) days written notice to it or the Association and upon payment of a reasonable fee, furnish to any Unit Owner, the Retail Association or any Retail Condominium Owner a statement of account setting forth the amount of any unpaid assessments or other charges due and owing from such party.

Section 6. Discharge of Liens. The Board may cause the Association to discharge any mechanic's lien or other encumbrance which in the opinion of the Board may constitute a lien against the Property or the Common Elements, rather than a lien against only a particular Unit. When less than all the Unit Owners are responsible for the existence of any such lien, the Unit Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorneys' fees, incurred by reason of such lien.

Section 7. Holding of Funds. All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Unit Owners in the ownership percentages of the Unit Owners in the Common Elements from time to time existing.

ARTICLE V

Contractual Powers

No contract or other transaction between this corporation and one or more of its Directors or between this Association and any corporation, firm or association in which one or more of the Directors of the Association are directors, or are financially interested, is void or voidable because such Director or Directors are present at the meeting of the Board or a committee thereof which authorizes or approves the contract or transaction or because his or their votes are counted, if the circumstances specified in either of the following subparagraphs exists:

(a) the fact of the common directorship or financial interest is disclosed or known to the Board or committee and noted in the minutes and the Board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such Director or Directors; or

(b) the contract or transaction is just and reasonable as to the Association at the time it is authorized or approved.

Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof which authorizes, approves or ratifies a contract or transaction.

ARTICLE VI

Amendments

These Bylaws may be amended or modified from time to time by action or approval of Unit Owners holding seventy-five percent (75%) of the total Allocated Interests . Notwithstanding the foregoing, no amendment to the Bylaws shall change the right of a Unit Owner to appoint directors as provided in Article II, Section 1 of the Bylaws without the consent of such Unit Owner. The Board of Directors of the Retail Association shall have the authority to approve amendments to these Bylaws on behalf of all owners of the Retail Unit (it being understood that the Retail Association shall vote in accordance with the vote of 80% of the allocated interest of the Retail Condominium Owners under the Retail Declaration). Such amendments shall be recorded in the Register's Office for Davidson County, Tennessee.

ARTICLE VII

Indemnification

Section 1. General. The Association shall indemnify, defend and hold harmless (i) each of its directors and officers, (ii) each member of any committee appointed pursuant to the Bylaws of the Association, and (iii) the Board, against all contractual and other liabilities to others arising out of contracts made by or other acts of such directors, Board, officers, committee members, on behalf of the Unit Owners, or arising out of their status as directors, Board, officers, committee members, unless any such contract or act shall have been made fraudulently or with gross negligence or criminal intent. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such director, officer, Board or committee member may be involved by virtue of such persons being or having been such director, officer, Board or committee member; provided, however, that such indemnity shall not be operative with respect to:

(a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of duties as such director, officer, Board or committee member, or

(b) any matter settled or compromised in which such director, officer, Board or committee member affirmatively admits its own gross negligence or fraud in the performance of its duties as such director, officer, Board or committee member, unless, in the opinion of independent counsel selected by or in a manner determined by the Board,

there is not reasonable ground for such persons being adjudged liable for gross negligence or fraud in the performance of duties as such director, officer, Board or committee member.

Section 2. Advance Payment. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board, on behalf of the person or entity seeking such indemnification or payment in advance, if such person or entity agrees to repay such amount if it shall ultimately be determined that such person engaged in gross negligence or fraud in the performance of duties as such director, officer, Board or committee member and is therefore not entitled to be indemnified by the Association as authorized in this Article VII.

Section 3. Miscellaneous. The Association and the Board shall have the power to raise and the responsibility for raising, by special assessment or otherwise, any sums required to discharge its obligations under this Article as a Common Expense. Every agreement made by the directors, Board, officers, members of such committees or by the Managing Agent on behalf of the Unit Owners shall provide, and by these Bylaws shall be deemed to provide even if not set forth therein, that the directors, Board, officers, members of such committees or the Managing Agent, as the case may be, are acting only as agents for the Unit Owners' and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as its percentage of interest in the Common Elements bears to the total percentage interest of all Unit Owners in the Common Elements. The indemnification provided by this Article VII shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Association or disinterested members of the Board or otherwise, both as to action in official capacity and as to action in another capacity while holding such office. Such right to indemnification shall continue as to a person or entity who has ceased to be a member of the Board, officer of the Association or a member of such committee, and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of such person or entity.

Mortgages

Section 1. Notice to Board. A Unit Owner who mortgages a Unit shall notify the Board of the name and address of the mortgagee and shall file a conformed copy of the deed of trust or mortgage with the Board; the Board shall maintain such information in a book entitled "Mortgages of Units".

Section 2. Notice of Unpaid Common Charges. The Board whenever so requested in writing by a mortgagee of a Unit shall promptly report any then unpaid common charges due from, or any other default by the owner of the mortgaged Unit.

Section 3. Notice of Default. The Board, when giving notice to a Unit Owner of a default in paying common charges or other default, shall send a copy of such notice to each holder of a mortgage covering such Unit whose name and address has theretofore been furnished to the Board.

Section 4. Examination of Books. Each Unit Owner and each mortgagee of a Unit shall be permitted to examine the books of account of the Condominium at reasonable times, on business days, but not more often than one time in any 30 consecutive day period.

ARTICLE IX

Definition of Terms

The terms used in these Bylaws, to the extent they are defined therein, shall have the same definition as set forth in the Declaration.

ARTICLE X

Conflicts

These Bylaws are set forth to comply with the requirements of the Act, and to allow the Bylaws to control in specific situations where such law allows. In case any of the Bylaws conflict with the provisions of the Act or of the Declaration, the provisions of the Act or of the Declaration, as the case may be, shall control.

Exhibit C

(See Charter attached)

CHARTER
OF
ONEC1TY LOT 8 MASTER CONDOMINIUM ASSOCIATION, INC.

The undersigned, acting as incorporator of a nonprofit corporation under the Tennessee Nonprofit Corporation Act, Tennessee Code Annotated, §§ 48-51-101, et seq. (as amended, modified or replaced from time to time, the "Act") adopts the following Charter for the ONEc1ty Lot 8 Master Condominium Association, Inc.:

FIRST: The name of the corporation shall be **ONEC1TY LOT 8 MASTER CONDOMINIUM ASSOCIATION, INC.**, hereinafter referred to as the "Association."

SECOND: This Association is a mutual benefit corporation.

THIRD: The period of its duration is perpetual, unless and until the Condominium (as hereinafter defined) shall be terminated in accordance with the terms of the Declaration (as hereinafter defined) establishing the Condominium.

FOURTH: This Association is not organized for profit and the purpose for which the Association is organized is to provide an entity pursuant to the Tennessee Condominium Act of 2008, Tennessee Code Annotated §§ 66-27-201, et seq. for the operation, management, maintenance, control and administration of **ONEC1TY LOT 8 MASTER CONDOMINIUM**, located in Nashville, Davidson County, Tennessee (the "Condominium").

FIFTH: The powers of the Association shall include and be governed by the following provisions:

A. The Association shall have all the common law and statutory powers of a nonprofit corporation and the powers designated under the Tennessee Condominium Act of 2008 which are not in conflict with the terms of this Charter or the Declaration Establishing oneC1TY Lot 8 Master Condominium (the "Declaration"), as they may be amended from time to time, including but not limited to the following (capitalized terms not defined herein shall have the meaning as set forth in the Declaration):

1. To acquire, hold, lease, manage, mortgage or convey real, personal or mixed property wherever situated, including without limitation, Units in the Condominium.

2. To make and collect assessments against the members as provided in the Declaration to defray the costs, expenses and losses of the Condominium or any other business enterprise, venture or property interest of the Association, and to use the proceeds of the assessments in the exercise of the powers and duties herein provided.

3. To borrow funds to pay for such expenditures as may be authorized by the provisions of the Declaration and to assign as security for said loan rights to future income of the Association through assessments.

4. To maintain, repair, replace, clean, sanitize and operate the property of the Condominium or the property of the Association.

5. To purchase insurance for the protection of the Condominium and the Association and its members.

6. To make and amend reasonable Rules and Regulations respecting the use of the property of the Condominium or the property of the Association.

7. To lease or grant easements or licenses for use of the Common Elements of the Condominium in a manner not inconsistent with the rights of owners of Units in the Condominium.

8. To enforce by legal means the provisions of the Tennessee Condominium Act of 2008, the Declaration, the Charter and Bylaws of the Association, and the Rules and Regulations for the use of the property of the Condominium or the Association.

9. To contract for the management of the Condominium and to delegate to such contractor all powers and duties of the Association except such as are specifically required to be performed by the Association.

10. The objects and purposes set forth in this Article Fifth of this Charter shall be construed as powers as well as objects and purposes, and the Association shall have and may exercise such powers as if such powers were set forth in full herein.

11. The Association shall have and may exercise all powers as shall enable it to do everything necessary, suitable, convenient, expedient or proper for the accomplishment of any or all purposes and the attainment of any or all objects set forth in this Article Fifth.

12. The Association shall have and may exercise all powers set forth in any other Article of this Charter, the Act or the Tennessee Condominium Act of 2008

B. All funds and title of properties acquired by the Association and the proceeds therefrom shall be held in trust for the members in accordance with the provisions of the Declaration and the Bylaws of the Association.

SIXTH: The Association shall have members. The members of the Association shall consist of all of the record owners of Units in the Condominium and after termination of the Condominium shall consist of those who are members at the time of such termination and their heirs, successors and assigns. Membership in the Association shall be evidenced by a deed or other instrument establishing a record title to a Unit in the Condominium recorded in the Register's Office for Davidson County, Tennessee. Upon such recordation, the Owner of the Unit designated by such instrument shall become a member of the Association and the membership of the prior Owner shall be terminated. The share of a member in the funds or assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to the Unit. The exact number of votes to be cast by Owner(s) of a Unit and the manner of exercising voting rights shall be determined by the Declaration and the Bylaws of the Association.

SEVENTH: The affairs of the Association shall be managed by a Board of Directors consisting of the number of directors as shall be determined by the Declaration and the Bylaws. Directors of the Association shall be elected at the annual meeting of the members in the manner

determined by the Bylaws. Vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

The initial Board of Directors shall have three (3) Directors. The names and addresses of the members of the Board of Directors who shall hold office until their successors are elected and have qualified, or until such Directors are removed, are as follows:

NAME	ADDRESS
[Hotel Unit Director]	3424 Peachtree Rd NE #2000, Atlanta, GA 30326
[Hotel Unit Director]	3424 Peachtree Rd NE #2000, Atlanta, GA 30326
[Retail Unit Director]	8383 Preston Center Plaza Dr, 5th Floor, Dallas, TX 75225

Any director may be removed, either with or without cause, at any time, by the Unit Owner or, if applicable, the Board of the Retail Association authorized to select such director.

EIGHTH: The address of the Association's initial principal and registered office is 3424 Peachtree Rd NE #2000, Atlanta, GA 30326, and the name of its initial registered agent is CT Corporation System, , whose address is [CT Tennessee Address].

NINTH: The Association shall have the right to indemnify each person who shall serve as a director, officer, employee, or agent of the Association, or shall serve at the request of the Association in a similar capacity with another association, joint venture, trust, or other enterprise, to the extent to which this Association is granted the power to so indemnify such persons by any and every statute of the State of Tennessee or act of the Legislature of the State of Tennessee and by the Bylaws.

TENTH: No contract or other transaction between the Association and any person, firm, association or association and no other act of the Association shall, in the absence of fraud, be invalidated or in any way affected by the fact that any of the directors of the Association are directly or indirectly, pecuniarily or otherwise interested in such contract, transaction or other act, or related to or interested in (either as director, stockholder, officer, employee, member or otherwise) such person, firm, association or association. Any director of the Association individually, or any firm or association of which any director may be a member of, may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Association, provided that the fact that such person, individually, or such firm or association, is so interested, shall be disclosed or known to the Board of Directors or a majority of the members thereof as shall be present at any meeting of the Board of Directors, or of any committee of directors having the powers of the full Board, at which action upon any such contract, transaction or other act is taken; and if such fact shall be so disclosed or known, any director of the Association so related or otherwise interested may be counted in determining the presence of a quorum at any meeting of the Board of Directors, or of such committee, at which action upon any such contract, transaction or act shall be taken, and may vote with respect to such action with like force and effect as if such person were not so related or interested. Any director of the Association may vote upon any contract or other transaction between the Association and any

affiliated association without regard to the fact that such person is also a director of such affiliated association.

ELEVENTH: Upon the dissolution of the Association, the assets of the Association shall be distributed to the members in the same manner as provided in the Declaration for the distribution of the property subject thereto upon termination of the Condominium to the extent that such dissolution is not inconsistent with the provisions of the Act.

TWELFTH: The Association reserves the right to amend, alter, change or repeal any provision contained in this Charter in the manner now or hereafter provided by law, and all rights conferred upon officers and directors herein are granted subject to this reservation.

THIRTEENTH: The name and address of the incorporator are:

Ann Peldo Cargile
Bradley Arant Boult Cummings LLP
1600 Division Street, Suite 700
Nashville, Tennessee 37203

WHEREFORE, this incorporator files this Charter and tenders to the Secretary of State of Tennessee the lawful fees and charges, and prays that this Charter may be examined and approved, and that the Association may be deemed to be incorporated for the purposes herein set out on this _____ day of _____, 2020.

_____
Ann Peldo Cargile

Exhibit D

PLAT
OF
ONEC1TY LOT 8 MASTER CONDOMINIUM

(See Plat Attached.)

Exhibit E

PERCENTAGE OF EACH UNIT'S UNDIVIDED OWNERSHIP INTEREST IN THE COMMON ELEMENTS AND VOTING PERCENTAGE

Unit	Approximate area in Sq. Ft.	Ownership and Voting Percentage
Hotel Unit	**121,464**	**90.62%**
Retail Unit	**12,571**	**9.38%**
Total	**134,035**	**100.00%**

The percentage interest of Units is based upon the approximate area in square feet of such Units. The square footages described above are determined by measuring from the unfinished surfaces of the floor, perimeter walls and ceiling of each level of the Unit, including all interior walls and columns, whether load bearing or not, located within the perimeter of the Unit. For purposes of this Declaration, the square footages set forth above are intended only for the purpose of this exhibit and determining certain Common Expense Allocation Ratios, and for no other purpose.

Exhibit F

EASEMENTS AND RESTRICTIONS OF RECORD

1. Taxes and assessments for the year 2020 and subsequent years, not yet due and payable.

2. Easements retained in Metropolitan Council Ordinance BL2013-440 of the Metropolitan Government of Nashville and Davidson County.

3. Declaration of Restrictions and Covenants for Stormwater Facilities and Systems of record in Instrument No. 20131022-0109927, Register's Office for Davidson County, Tennessee.

4. Terms, provisions, covenants, conditions, restrictions, easements, charges, assessments and liens provided in the Amended and Restated Declaration of Restrictive Covenants and Reciprocal Easements of record as Instrument No. 20160720-0074605 in the Register's Office for Davidson County, Tennessee, as amended by First Amendment to Amended and Restated Declaration of Restrictive Covenants and Reciprocal Easements of record as Instrument No. 20180507-0043207 in the Register's Office for Davidson County, Tennessee. as further amended by Second Amendment to Amended and Restated Declaration of Restrictive Covenants and Reciprocal Easements of record as Instrument No. 20180924-0094361 in the Register's Office for Davidson County, Tennessee.

5. Declaration of Restrictions and Covenants for Stormwater Facilities and Systems record in Instrument No. 20171114-0116662, Register's Office for Davidson County, Tennessee.

6. Notice of Industrial or railroad use as set forth in Instrument No. 201806190058851, Register's Office for Davidson County, Tennessee.

7. The following matters shown on the Plan of record as Instrument No. 201805150046180, Register's Office of Davidson County, Tennessee:

a. 10' maintenance and P.U.D.E.

b. 20 x 20 NES Switch Easement

c. Drainage Easement

d. Public Utility Drainage & Access Easement

8. Parking Easement Agreement of record in Instrument No. 20180529-0051067, Register's Office for Davidson County, Tennessee.

Exhibit G

PROHIBITED USES

1. Fire sale, bankruptcy or going out of business sale (unless pursuant to a court order with proper permits issued by an appropriate governmental authority);

2. Establishment selling pornographic materials or drug-related paraphernalia;

3. Live performance theater exhibiting nude or lewd performers or performances or lascivious behavior or other adult entertainment activities;

4. Flea market, so-called "dollar store" or similar discount store;

5. Casino or off-track betting store or parlor, or other type of gaming activities;

6. Pawn shop, currency exchange or check cashing establishment;

7. Automobile sale, rental or repair/maintenance facility;

8. Hospital, medical center, medical emergency facility, medical clinic or laboratory with regular visiting patients (including abortion clinics), but excluding physical therapy, which shall be permitted;

9. Public health clinic;

10. Manufacturing or industrial uses, or storage of hazardous materials other than in customary quantities ordinarily incident to another use permitted hereunder which are stored and used in accordance with applicable environmental laws;

11. Massage parlor (except for first class retail operations such as Massage Envy or hotel spa operations);

12. Mortuary, crematorium or funeral services;

13. Recycling center or collection facility unless collection bins are required by law, and then only to the extent required by law;

14. Social services or related offices or facilities, whether governmental or nongovernmental in nature, with regular visiting clients or customers. No on-site service to clients or guests, or training facilities shall be permitted. Administrative offices without regular visiting clients, guests or customers shall be permitted;

15. Foreign or domestic embassy, consulate or other governmental or quasi-governmental agency or office;

16. Laundry, dry cleaning establishment or laundromat;

17. Smoke shop;

18. Drug or substance abuse treatment center, clinic or facility;

19. Needle exchange services;

20. Medical marijuana dispensary, growing facility or other facility involved in the legal or illegal growth, sale or distribution of marijuana;

21. Tattoo parlor;

22. Soup kitchen, food bank or similar establishment; or

23. Thrift shop, second hand store, consignment store or any store or facility similar to a "Salvation Army" or "Goodwill" store;

24. Store that primarily sells used, damaged, discontinued, or surplus merchandise;

25. Fast-food restaurant, provided fast casual restaurants shall be permitted, along with a food-hall shared by multiple vendors that include grab and go conveniences and treats.

26. Convenience store; or

27. For advertising hotels, vacation or timeshare facilities or any similar product sold on a periodic basis, but the foregoing shall not prohibit a travel agency.

Exhibit H

ALLOCATION OF COMMON EXPENSES

Common Expense Allocation Ratio: Other than as specifically enumerated below, all Common Expenses, including, without limitation, for the provision of and/or operating, maintaining, repairing, and replacing, as applicable, security for the Common Elements, the Loading Dock, Insurance to be obtained and maintained by the Association, non-separately metered and/or common Utilities/Mechanical Equipment, and all other Common Elements, shall be allocated among the Hotel Unit and the Retail Unit in accordance with each Unit's Allocated Interest; i.e.: Hotel Unit: 90.62%; and Retail Unit: 9.38%.

Trash Facilities, Handling and Disposal:
Hotel Unit: 90.62%
Retail Unit: 9.38%
To be adjusted from time to time by the Hotel Unit Owner and Retail Unit Owner in good faith based on the actual volume of trash generated by the Hotel Unit and the Retail Unit, respectively.

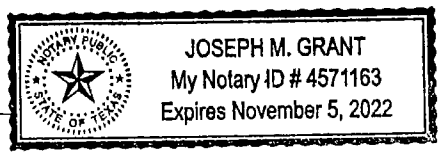
Exterior Window Cleaning:
Hotel Unit: 100% for all windows on the exterior boundary of the Hotel Unit.
Retail Unit: 100% for all windows on the exterior boundary of the Retail Unit.

Certificate of Authenticity

I, **Nereida F. Mendoza** , do hereby make an oath that I am a licensed attorney and/or the custodian of the electronic version of the attached document tendered for registration herewith and that this is a true and correct copy of the original document executed and authenticated according to law.

Name: **Nereida F. Mendoza**
Title: **Authorized Agent**

STATE OF Texas
COUNTY OF **Dallas**



Witness my hand and official seal.
Notary Public: Joseph Grant
My Commission Expires: