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DECLARATION ESTABLISHING

151 FIRST AVENUE MASTER CONDOMINIUM

This instrument prepared by:
Stephen C. Baker, Esq.
Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville, TN 37219

Date: December 22, 2021

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DECLARATION ESTABLISHING
151 FIRST AVENUE MASTER CONDOMINIUM

THIS DECLARATION (hereinafter referred to as this "**Declaration**") is made as of December 22, 2021, by 151 Nashville Project LP, a Delaware limited partnership ("**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 mixed-use development to consist of: (i) a 40-story tower structure housing a hotel and expected to include approximately 220 – 250 rooms and other amenities, (ii) approximately 143 for-sale residential units, (iii) certain areas designated for retail use, (iv) a parking garage including parking spaces and other facilities, and (v) 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 151 FIRST AVENUE 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

"**51% of the Eligible First Mortgagees**" means Eligible First Mortgagees that hold First Mortgages encumbering Units to which are appurtenant at least 51% 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).

"**67% of the Owners**" means, subject to Section 6.2(b), Owners owning, in the aggregate, Units to which are appurtenant at least 67% of the Allocated Interests.

"**75% of the Owners**" means, subject to Section 6.2(b), Owners owning, in the aggregate, Units to which are appurtenant at least 75% of the Allocated Interests.

"**75% of the Owners and Eligible First Mortgagees**" means (a) subject to Section 6.2(b), Owners owning, in the aggregate, Units to which are appurtenant at least 75% of the Allocated Interests, and (b) Eligible First Mortgagees, if any, 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).

"**80% of the Owners and Eligible First Mortgagees**" means (a) subject to Section 6.2(b), Owners owning, in the aggregate, Units to which are appurtenant at least 80% of the Allocated Interests, and (b) Eligible First Mortgagees, if any, that hold First Mortgages encumbering Units to which are appurtenant at least 80% 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).

"**Act**" is defined 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.

"**Amenity Facilities**" means, individually or collectively, as the context may require, the Hotel Amenity Facilities or the Residential Amenity Facilities.

"**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 151 First Avenue 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.

"Available" is defined in Section 18.7(c).

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

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

"**Bylaws**" means 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.

"Capital Project Funds" is defined in Section 8.3(b)(iii)

"Charter" means 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.

"Commercial Activities" is defined in Section 13.8(a).

"**Commercial Parking Spaces**" means the specific areas for vehicular parking located in the Parking Garage as depicted on the Master Plat (for avoidance of doubt, excluding the Residential Parking Floors and Public Parking Spaces).

"Commercial Parking Unit" means the Unit depicted on the Master Plat as the "Commercial Parking Unit".

"**Commercial Parking Unit Owner**" means the Owner of the Commercial Parking Unit.

"**Common Elements**" means the entire Project excepting the Units. Unless otherwise indicated in the Master Plat, which shall control, 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 or in the Project to enable the outside windows of the Building to be washed;

(c) All hallways, corridors, roofs (portions of which are General Common Elements and portions of which are Limited Common Elements), elevators, stairs, stairways, green roofs, "back of house" rooms to the extent existing for the common use by some or all of the Owners;

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

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

(f) The Loading Dock (which is a Limited Common Element);

(g) Any sidewalks, walkways, paths, grass, shrubbery, trees, signs, landscaping and gardens, if any, located on the Real Property existing for the common use by some or all of the Owners; and

(h) 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.

"**Common Expense Allocation Ratios**" means the ratios for allocating Common Expenses among 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 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 and the Working Capital Fund;

(f) Expenses 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

(j) 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 that is appurtenant solely to one but not more than one of the Hotel Unit, the Residential Unit, the Retail Unit and/or the Garage Unit, as the case may be, are not Common Expenses, and such expenses shall be borne and paid as provided in Section 7.2.

"Communications Easement" is defined in Section 12.10.

"Communications Easement Area" shall collectively refer to the rooftop above the Residential Unit, the airspace to a height of twenty feet (20') above such rooftop area, and such areas in the elevator machine rooms to be located by the Board, the communications rooms located within the Units, the vertical and horizontal chase space between such areas in the Common Elements, and such other portions of the Common Elements that Declarant and its successors, assigns, and Permittees need in order to install, operate, maintain and connect Communications Equipment and to utilize the Communications Easement.

"Communications Equipment" is defined in Section 12.10.

"Condemnation Award" is defined in Section 14.3(a).

"Condominium" is defined in the Act and shall refer to the condominium created by this Declaration and the Master Plat.

"**CPI Factor**" means the cumulative percentage increase, from the date of recording this Declaration, in *The Consumer Price Index* published by the Bureau of Labor Statistics of the United States Department of Labor, US City Average, All Urban Consumers, All Items, using the years 1982-84 as a base of 100 or, if such index is not available, the index published by the Bureau of Labor Statistics of the U.S. Department of Labor in substitution for that consumer price index or, in the absence of any such substituted index, a comparable index selected by the Board (acting reasonably).

"**Declarant**" is defined in the Preamble, including its successors and assigns.

"**Declarant Control Period**" means the period of time during which the Declarant may appoint and remove the officers and members of the Board. The Declarant Control Period shall commence on the date hereof and terminate the earlier of (i) one hundred twenty (120) days after conveyance of three (3) of the four (4) Units to Owners other than Declarant, or (ii) five (5) years after the conveyance of a Unit to a purchaser other than Declarant.

"**Declaration**" is defined 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.

"**Deposit**" means an amount, reasonably estimated by the Board, to be applied toward Fees and any other costs incurred or to be incurred by the Association in connection with the review or approval of Submittals.

"**Development Rights**" means the development rights described in Section 17.1.

"**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. Certain of the Elevator Systems will serve only the Hotel Unit and shall be depicted on the Master Plat as part of the Hotel Unit. Certain of the Elevator Systems will serve only the Residential Condominium Units, the use of which Elevator Systems shall be limited to Residential Condominium Owners and their Permittees; and together with any Residential Unit lobby on the ground floor of the Building adjacent to such Elevator Systems that is physically separated from adjoining areas by demising walls, such Elevator Systems shall be depicted on the Master Plat as a part of the Residential Unit. Elevator Systems serving only the Commercial Parking Unit shall be depicted on the Master Plat as part of the Commercial Parking Unit. Elevator Systems serving all Units shall be Common Elements.

"**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 subject to the Mortgage, for notification of certain matters and actions in accordance with the provisions of Section 16.2.

"**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 that has priority over all other Security Interests in the 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 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 Amenity Facilities**" means the hotel swimming pool, spa and fitness center located within the Hotel Unit from time to time.

"**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 Operations.

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

"**Hotel Operations**" means the day-to-day business of running the hotel from time to time located in the Hotel Unit, including the operations of the Hotel Amenity Facilities.

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

"**Hotel Unit Owner**" means the Owner of the Hotel Unit.

"**Individual Purpose Assessment**" means an Assessment against any one or more, but fewer than all, of the Units, for any matters applicable only to such Units.

"**Initial Hotel Management Agreement**" means the Hotel Management Agreement to which the Initial Hotel Manager is a party, as the same may be amended, restated or otherwise modified.

"**Initial Hotel Manager**" means the Hotel Manager at the time the Hotel Unit is first opened for business.

"**Initial PRMA**" means the Private Residences Management Agreement between the Residential Association and the Initial Hotel Manager, or an affiliate thereof, as the same may be amended, restated or otherwise modified.

"**Insurable Condominium Property**" means the Common Elements and any personal property owned by the Association from time to time, and the Units (including the Residential Condominium Units), including any improvements and betterments originally installed in the Units (including in the Residential Condominium Units) by Declarant until such time as any such improvement or betterment is modified or replaced by the Owners or the Residential Condominium Owners (with respect to Residential Condominium Units) and excluding any improvement or betterment installed by the Owners or the Residential Condominium Owners (with respect to Residential Condominium Units) and excluding any personal property located within the Unit (including within a Residential Condominium Unit).

"Insurance Trustee" is defined in Section 9.5.

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

"**LCE (condo, hotel and parking)**" means a Limited Common Element reserved for the exclusive use of the Residential Unit Owner, Hotel Unit Owner and Commercial Parking Unit Owner and their Permittees as identified as "LCE (condo, hotel and parking)" on the Master Plat.

"**LCE (condo, hotel and retail)**" means a Limited Common Element reserved for the exclusive use of the Residential Unit Owner, Hotel Unit Owner and Retail Unit Owner and their Permittees as identified as "LCE (condo, hotel and retail)" on the Master Plat.

"**LCE (hotel and condo)**" means a Limited Common Element reserved for the exclusive use of the Hotel Unit Owner and Residential Condominium Owners and their Permittees as identified as "LCE (hotel and condo)" on the Master Plat.

"**LCE (hotel and parking)**" means a Limited Common Element reserved for the exclusive use of the Hotel Unit Owner and Commercial Parking Unit Owner and their Permittees as identified as "LCE (hotel and parking)" on the Master Plat.

"**Limited Common Elements**" means those parts of the Common Elements that are either limited to and reserved for the exclusive use of the Owner of a particular Unit, or are limited to and reserved for the common use of the Owners of more than one, but fewer than all, of the Units. 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 is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit is a Limited Common Element allocated solely to such Units. Any portion serving all of the Units or any portion of the Common Elements shall be a General Common Element.

"**Loading Dock**" means the loading dock located in the Project on the ground floor of the Building. The Loading Dock is a LCE (condo, hotel and retail) as depicted on the Master Plat.

"**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 four Members of the Association, being the Hotel Unit Owner, the Residential Unit Owner (which membership shall be represented by the Residential Association if the Residential Unit has been subdivided into Residential Condominium Units), the Commercial Parking Unit Owner, and the Retail Unit Owner.

"**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 basis.

"**Mortgage**" means any mortgage, deed of trust or other document pledging any 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.

"**Occupancy Plan**" is defined in Section 13.1(a)(iii).

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

"**Owner**" means any record owner (including Declarant), whether one or more persons or entities, of a fee simple title interest in or to any Unit; but 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); and, with respect to the Residential Unit Owner, subject to the qualifications set forth in the definition of "Residential Unit Owner".

"**Parking Garage**" means the three-level above-grade parking garage, a portion of which is located in the Residential Unit (such area defined and referred to herein as the Residential Parking Floors) and the remainder of which is located in the Commercial Parking Unit, all as depicted on the Master Plat.

"**Parking Garage Expenses**" means expenses and capital expenditures incurred with respect to the operations, repair, maintenance, improvement, replacement and renovation of the Parking Garage and its structural elements, including Repair Work and operations of driveways, ramps, vents, ducts and associated ventilation, sidewalks, signage and expenses, including Residential Parking Expenses and Shared Parking Expenses.

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

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

"**Parking Rules**" is defined in Section 5.3(a)(vii).

"**Permittee**" means an Owner or its family, tenants, subtenants, contractors, subcontractors, agents, employees, licensees, lessees, sublessees, guests 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 Residential Unit shall include Residential 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.

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

"**Project Standard**" means, at any time, the luxury class standard of development, construction, operation, service and maintenance of other mixed-use projects managed by any third-party manager (or any of its affiliates) engaged by the Master Association to manage the Master Condominium.

"**Public Parking Spaces**" is defined in Section 5.3(a)(ii).

"**Real Property**" is defined in the Recitals.

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

"**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.

"**Residential Amenity Facilities**" means any fitness center, outdoor deck, residential lounge, media room, dog spa, catering kitchen, outdoor bar, outdoor barbeque areas and/or any other amenities now or hereafter constructed within the Residential Unit.

"**Residential Association**" means 151 First Avenue Private Residences Condominium Association, Inc., a Tennessee nonprofit corporation.

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

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

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

"**Residential Declaration**" means the Declaration Establishing 151 First Avenue Private Residences Condominium as recorded with in the Official Records concurrently herewith, and as amended and supplemented from time to time.

"**Residential Parking Floors**" means the portion of the Residential Unit which is located within the Parking Garage, as depicted on the Master Plat.

"**Residential Parking Expenses**" is defined in Section 5.3(a)(viii).

"**Residential Parking Gate**" means that certain automatic parking gate that regulates access to the Residential Parking Floors from other areas of the Parking Garage.

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

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

"**Residential Unit Owner**" means the Owner of the Residential Unit or, if the Residential Unit has been subdivided into Residential Condominium Units, the Owners of the Residential Condominium Units, and in accordance with Section 6.2(b), for purposes of exercising all voting rights and approval rights associated with or attributable to the Residential Unit under this Declaration and for purposes of taking actions on behalf of the Residential Unit, the Residential Association (rather than the Residential Condominium Owners) shall be deemed the Residential Unit Owner.

"**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.

"**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.

"**Secured Charges**" is defined in Section 8.10(a).

"**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.

"**Shared Parking Expenses**" is defined in Section 5.3(a)(viii).

"**Special Assessment**" means any Assessment against the Units and 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.

"**Special Declarant Rights**" means all rights described in Section 66-27-203(22) of the Act and more fully described herein.

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

"**Taken**" is defined in Section 14.3(b).

"**Telecommunications Facilities**" is defined in Section 7.9.

"**Termination Agreement**" is defined in Section 14.4(a).

"**Unit**" means the physical portion of the Condominium Property designated for separate ownership or occupancy as defined in Section 66-27-203(23) of the Act. The Units are identified on the Master Plat and shall consist of the volumes or cubicles of space which lie between the lower, upper and lateral or perimetrical boundaries described as follows:

(i) Upper and Lower Boundaries: The upper and lower boundaries extended to their planer intersections with the perimetrical boundaries as follows:

a) The upper boundary shall be the plane of the lower, interior, surface of the material that constitutes the ceiling;

b) The lower boundary shall be the plane of the upper, interior, surface of the subflooring material that serves as the Unit's floor. Any floor covering such as carpeting, vinyl, hardwood or ceramic tile or any finished surface of such floor is part of the Unit.

(ii) Perimetrical Boundaries: The perimetrical boundaries shall be: the vertical planes of the interior surfaces of the exterior windows and exterior doors and the interior unfinished surfaces of exterior walls and the interior unfinished surfaces of structural walls and columns located within the boundaries of a Unit. For all other non-structural boundary walls the perimetrical boundaries shall be as follows: (1) for boundaries between Units, the boundary line shall be the centerline of the non-structural walls between the Units, (2) for boundaries between a Unit and a Limited Common Element, the non-structural wall bordering a Unit and a Limited Common Element shall be included in the Unit (i.e., the boundary is the exterior unfinished surface from the perspective of the Unit), (3) notwithstanding the preceding clause (2), for boundaries between a Unit and a Limited Common Element that comprises an elevator or stairwell enclosure, the wall bordering the Unit and such Limited Common Element shall be included in such Limited Common Element (i.e., the boundary is the interior unfinished surface from the perspective of the Unit), and (4) for any other interior non-structural boundary that is not included within the preceding clauses (1) – (3) (e.g., the boundary between two Limited Common Elements), the boundary shall be as shown on the Master Plat.

Each Unit shall include all non-structural interior partition walls located within the boundaries of the Unit except such part as may comprise part of the Common Elements; the decorated interior surfaces of all boundary structural columns, walls, ceilings and floors, including wallpaper, paint, interior surface, lathe, wallboard, plaster, carpeting, flooring and other finishing materials; all immediately visible fixtures, appliances, cabinets, and water and sewer pipes located within the boundaries of the Unit and serving only the Unit; and the mechanical systems and installations providing utility services exclusively to the Unit, if any, even though such equipment may be located outside the boundaries of the Unit, provided that no pipes, wires, conduits, ducts, flues, shafts, riser enclosures and other facilities situated within such Unit and forming a part of any system serving one or more other Units or the Common Elements shall be deemed to be a part of such Unit; and provided further that no bearing wall providing structural support and located within the boundaries of the Unit shall be deemed part of the Unit. If any chute, flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries

of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

"**Unpaid Unit Assessments**" shall have the same meaning as more specifically set forth in Section 8.8(b)(iv).

"**Utilities/Mechanical Equipment**" means (a) private and public utility lines of any type or nature, 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, including tanks, pumps, motors, fans, compressors, air handlers, ducts, chillers, water towers and other apparatus used in the delivery of HVAC services; (c) Elevator Systems; (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.

"**Working Capital Fund**" means the fund described in Section 8.13.

ARTICLE II
GENERAL

Section 2.1 Development of Project.

(a) Declarant intends to develop the Real Property primarily 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 development of 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 and of Declarant.

Section 2.2 Declaration and Covenants Run with the Land; Binding Nature; Declarant's Right to Assign. 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 Declarant, the Association, the Residential Association, the Owners (including all

Residential Condominium Owners), and their respective heirs, executors, administrators, personal representatives, successors and assigns. By taking title to a 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.

Section 2.3 Assignment of Declarant's Rights. Any right or any interest reserved or contained in this Declaration to or for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more of such rights or interests, to any person, corporation, partnership, association or other entity, in accordance with the provisions of the Act if such successors and assigns are designated by the then-Declarant to serve as Declarant for any specified purposes or for all purposes under this Declaration, in written instrument duly executed by the then-Declarant and the designated successor or assignee and recorded in the Official Records.

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 four Units, consisting of the Hotel Unit, the Residential Unit, the Retail Unit and the Commercial Parking 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 3.3 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) Combination of Units. The Owner(s) of two or more Units shall have the right to (i) physically combine the entire space within one Unit with the entire space within one or more adjoining Units, or (ii) combine a part of or combination of parts of the space within one or more

adjoining Units in accordance with this Section. Upon the combination of any Units, the Unit resulting from such combination shall be allocated the combined Allocated Interests of the predecessor Units, which shall be reflected by an amendment to Exhibit E, 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 combining any Units, the Owners proposing such combination must comply with Section 3.4(c). As a condition precedent to the approval by the Board of any such combination or division of Units, the Owners of the affected Units shall obtain the written consent of each First Mortgagee whose First Mortgage encumbers a Unit to be combined or the Unit to be subdivided. All Fees and any other costs incurred by the Association in connection with any such combination of Units shall be paid by the Owners requesting such combination.

(b) 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 3.4. In addition, the Owner of the Residential Unit shall have the right to submit the Residential Unit to the Residential Declaration to create the Residential Condominium Units. 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 First Mortgagee whose Mortgage encumbers a Unit to be subdivided; and (ii) comply with Section 3.4(c). 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(b) shall not apply to the creation by Declarant of Residential Condominium Units within the Residential Unit, which shall not be considered as a subdivision of the Residential Unit.

(c) Combination and Subdivision Procedure. All combinations or subdivisions must be effectuated in accordance with the Act. To combine or subdivide any Units as provided herein, the Owner(s) of the Units (except Declarant as provided herein) shall submit a signed application to the Association, which shall include the following: (i) evidence that the proposed combination or subdivision of Units 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 combination or 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 Master Plat, as is necessary to show the Unit or Units that is or are being created by the combination or subdivision, and the dimensions of such Units, identifying numbers and Allocated Interests; (iv) the Deposit and Submittals; (v) evidence satisfactory to the Board that the Owner(s) have 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(s) 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 combination or division of Units, the Owners of the affected Units shall obtain the written consent of each First Mortgagee whose First Mortgage encumbers a Unit to be combined or the 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 combination or subdivision, the Owners of the Units being so combined or subdivided 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 or any walls, floors or other separations between the affected Units, which may be necessary or appropriate to accomplish such combination or subdivision and the hallway located between two Units being combined which is a Limited Common Element appurtenant only to such Units may be incorporated within such combined Units, provided that the Allocated Interests associated with such combined Units shall not be increased by the area of such hallway.

(d) Special Rights of Declarant. Notwithstanding anything to the contrary stated herein, Declarant shall have, as part of its Development Rights in the creation of Units, the unilateral right, exercisable in its sole and absolute discretion, to combine and divide Units owned by Declarant in the manner described in this Section 3.4, without the need to seek or obtain the consent or approval of the Association, the Board or any other person for Declarant to exercise such rights, and any amendment to this Declaration or the Master Plat that is required to implement such combination or division may be executed and recorded solely by Declarant.

(e) Combination and Division of Residential Condominium Units. Notwithstanding anything expressed or implied in this Section 3.4 to the contrary, the combination and division of any Residential Condominium Unit shall be governed by the Residential Declaration and not this Section 3.4.

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. Subject to the limitations in Section 66-27-308(a)(2) of the Act, Declarant hereby reserves unto itself 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, or to establish and designate any General Common Elements as Limited Common Elements or Limited Common Elements as General Common Elements. The rights accorded to Declarant in this Section 4.3 shall expire on the earlier of conveyance by Declarant of the Hotel Unit, or 50 years following the date this Declaration is recorded in the Official Records, provided that Declarant may surrender such rights earlier in accordance with the Act. 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**. Declarant, each Owner (including all Residential 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 each Owner's 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 and Declarant 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 limit the persons who may access certain portions of the General Common Elements, including, without limitation, service areas, the Loading Dock, 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 certain similar areas of the Project, to authorized personnel, as reasonably determined by the Association and which limitations may be set forth in the Rules and Regulations; provided, however, all Hotel Unit personnel shall have access to the Loading Dock.

(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 Residential Condominium Owner shall have a perpetual, irrevocable, non-exclusive right and easement for the use and benefit of the Residential Unit (i) to use and enjoy the LCE (condo, hotel and parking), LCE (condo, hotel and retail) and LCE (hotel and condo); and (ii) to use and enjoy the Loading Dock, subject to such reasonable requirements and restrictions as the Association may promulgate from time to time.

(g) The Commercial Parking Unit Owner shall have a perpetual, irrevocable, non-exclusive easement for the use and benefit of the Commercial Parking Unit (i) to use and enjoy the LCE (condo, hotel and parking) and LCE (hotel and parking); and (ii) to utilize the Common Elements for the purpose of providing electrical and other utility services to the Commercial Parking Unit at the sole expense of the Commercial Parking Unit Owner.

(h) The Retail Unit Owner shall have a perpetual, irrevocable, non-exclusive easement for the use and benefit of the Retail Unit (i) to use and enjoy the LCE (condo, hotel and retail); (ii) to use and enjoy the Loading Dock, subject to such reasonable requirements and restrictions as the Association may promulgate from time to time; and (iii) to utilize the Common Elements for the purpose of providing electrical and other utility services to the Retail Unit at the sole expense of the Retail Unit Owner.

(i) The Hotel Unit Owner shall have a perpetual, irrevocable, non-exclusive easement for the use and benefit of the Hotel Unit (i) to use and enjoy the LCE (condo, hotel and parking), LCE (condo, hotel and retail), LCE (hotel and condo) and LCE (hotel and parking); (ii) to use and enjoy the Loading Dock, subject to such reasonable requirements and restrictions as the Association may promulgate from time to time (and which do not unreasonably interfere with the use and/or operations of the Hotel Unit); and (iii) to utilize the Common Elements for the purpose of providing electrical and other utility services to the Hotel Unit at the sole expense of the Hotel Unit Owner.

Section 5.2 Additional Provisions Applicable to Limited Common Elements. When a Limited Common Element is appurtenant to more than one Unit, each Owner of a Unit to which such Limited Common Element is appurtenant shall share the non-exclusive right to use and enjoy such Limited Common Element together with each other Owner of a Unit to which such Limited Common Element is appurtenant. A Limited Common Element may be reallocated between or among Units if an Owner submits an application for approval of the proposed reallocation to the Board. Such application must be signed by the affected Owners and shall include (a) the proposed amendment reallocating the Limited Common Elements, (b) the Deposit and Submittals, and (c) such other information reasonably requested by the Board. No reallocation shall be effective without Board approval. Limited Common Elements are hereby made appurtenant to and shall not 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 Use Rights. The following use rights are subject to the Rules and Regulations and to any fees for such use charged by the Association, Declarant or Commercial Parking Unit Owner from time to time, as applicable.

(a) **Parking**.

(i) *Parking Easement and Residential Rights.* The Commercial Parking Unit Owner shall have a perpetual, irrevocable, non-exclusive easement for the use and benefit of the Commercial Parking Unit to maintain and repair the Residential Parking Floors. The Residential Condominium Owners shall only have rights to use the Parking Garage, including the Residential Parking Floors, to the extent of any licenses granted to them by Declarant in accordance with Section 5.3(a)(iii), and to the extent of the use of any other spaces or access rights contracted for with the Commercial Parking Unit Owner, subject to and in accordance with the provisions of this Section 5.3(a).

(ii) *Public Parking.* The Commercial Parking Unit Owner shall clearly mark at least forty-one (41) parking spaces for public use ("**Public Parking Spaces**"). Such spaces shall be accessible to the public for self-parking at market parking rates at all hours the Commercial

Parking Unit is open. This restriction shall run with the Commercial Parking Unit and shall remain in effect for the lifetime of the Building. This requirement may not be amended without the written consent of the Metropolitan Government of Nashville and Davidson County.

(iii) *Residential Parking.* Declarant shall, so long as Declarant owns any Residential Condominium Units, have the sole right to assign (or delegate the right to assign) to Residential Condominium Owners a non-exclusive irrevocable license to park one (1) or more vehicles on the Residential Parking Floors exclusively through a valet parking service operated by the Residential Association or a third party engaged by the Residential Association, subject to the restrictions and limitations set forth herein and in the Parking Rules. A perpetual, irrevocable, non-exclusive easement is hereby granted and conveyed for the benefit and use of each Residential Condominium Owner, for use by each Residential Condominium Owner and its Permittees, over, across and through such portions of the Parking Garage and such other portions of the Project (including ramps and entryways providing vehicular ingress and egress to and from the Parking Garage and all driveways within the Parking Garage) reasonably necessary for the purposes of accessing the entrance to the Residential Parking Floors and for pedestrian access to and from the entrance to the Residential Parking Floors. If the Hotel Unit Owner elects to allow Residential Condominium Owners to utilize the Hotel Unit's valet operation, Hotel Unit Owner shall direct its valet operator to transport such vehicles to the Residential Parking Floors and shall allocate a proportionate share of its valet parking expense to be reimbursed by the Residential Association. The licenses described above shall be subject to the provisions and restrictions of this Declaration and the Residential Declaration. The licenses described above are appurtenant to each Residential Condominium Unit to which such licenses are assigned and shall not terminate upon the conveyance of a Residential Condominium Unit but shall automatically be assigned upon the conveyance of a Residential Condominium Unit to the purchaser of such Residential Condominium Unit. No Residential Condominium Owner shall be entitled to sever his or her Residential Condominium Unit, or any portion thereof, from such Residential Condominium Owner's interest in and to the licenses to use the Parking Garage, and neither may such licenses or any right to the Parking Garage be severally sold, conveyed, leased, rented, encumbered, hypothecated or otherwise dealt with, and any such attempt to do so is a violation of this provision and shall be void and of no effect. The number of licenses assigned to each Residential Condominium Unit shall be assigned in connection with the initial purchase of each Residential Condominium Unit (after which such license shall be appurtenant to the Residential Condominium Unit as described above) and shall be maintained in the records of the Association. Declarant (or its designee) shall have the right to use the parking licenses associated with all unsold Residential Condominium Units.

(iv) *Hotel Parking.* The Commercial Parking Unit Owner shall at all times make available to the Hotel Unit accommodations for up to seventy (70) cars, on demand, on a non-reserved, first-come, first-served basis, on- or off-site, at market rates payable by the Hotel Unit Owner to the Commercial Parking Unit Owner, and subject to any such reasonable Parking Rules as the Commercial Parking Unit Owner may promulgate from time to time with respect thereto.

(v) *Commercial Parking.* Subject to any restrictions set forth in this Declaration and so long as the requirements of Sections 5.3(a)(ii) and (iv) are satisfied, the Commercial Parking Unit Owner may offer to any third party self-park or valet use of the Commercial Parking Spaces. The Commercial Parking Unit Owner (or the Commercial Parking Unit Owner's designee) shall have the exclusive right to use all or a portion of the Commercial

Parking Spaces to provide valet parking services, and shall have the right to establish a valet drop off location for such valet services. The location of the valet drop off area for any such valet parking service operated by Commercial Parking Unit Owner or its agent shall be subject to the reasonable consent of Hotel Unit Owner and the Residential Association. Such valet parking services shall not materially impede or delay Residential Owners' or Hotel Unit Owner's (including Hotel Unit Owner's guests') access to or use of the Parking Garage in accordance with this Section 5.3(a).

(vi) *Parking Manager.* The Commercial Parking Unit Owner 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 maintain and operate the Parking Garage, including any valet parking services under Section 5.3(a)(v). The Parking Management Agreement, if any, shall contain such terms as such parties may consider necessary or desirable for the efficient and proper operation of the Parking Garage. Any Parking Management Agreement shall be subject to this Declaration and shall address the following: (A) parking lease rates and fees, including procedures by which such rates and fees may be increased or decreased during the term of the Parking Management Agreement; (B) the manner of physically identifying the Public Parking Spaces; (C) the plans and procedures for satisfying the parking requirements set forth in Sections 5.3(a)(ii) and (iv) including access to the Parking Garage, location of valet drop off locations, if any (excluding the drop off location for the Residential Parking Floors), and the manner in which the Parking Manager shall address valet parking operations in the Parking Garage (excluding the Residential Parking Floors); and (D) the maintenance of the Parking Garage.

(vii) *Parking Rules.* The Commercial Parking Unit Owner shall have the right to promulgate reasonable rules and regulations governing the use of the Parking Garage ("**Parking Rules**"), including those relating to remote entry, parking cards, stickers, other identification, fines, security measures and tracking Hotel Unit usage. Except to the extent specifically provided in the Parking Rules, no vehicles may be parked on the Project except in the Parking Garage and then only in designated areas, and nothing shall be placed or stored on the paved area providing access to the Parking Garage. The Parking Garage shall be used solely for parking motor vehicles and other uses incident thereto, and shall not be used in such a manner that would preclude the use of the Parking Garage for the accommodation of a motor vehicle. The Commercial Parking Unit Owner shall have the right to install devices and signage to restrict and control access to the Parking Garage and to otherwise regulate the use of the Parking Garage, except beyond the Residential Parking Gate on the Residential Parking Floors. Any expenses of such devices and regulation of the Parking Garage shall be Parking Garage Expenses. Notwithstanding the foregoing, unless otherwise approved in writing by the Association, the following shall not be kept or parked within the Project: (A) except for the purpose of short term parking in designated areas for deliveries, commercial vans, trucks or other commercial vehicles of any type, (B) any vehicle heavier than three tons, (C) boats, off-road motorcycles, campers, camper shells, trailers of any kind, motor homes or recreational vehicles of any type, including snow mobiles and trailers, or (D) any other materials (and in particular, the Parking Garage is not to be used for general storage purposes). Further notwithstanding the foregoing, a Residential Condominium Owner may apply to the Residential Association for permission to store a vehicle on the Residential Parking Floors by utilizing its Parking Garage license, which shall be determined by the Residential Association. In addition, no unlicensed, wrecked, abandoned or inoperable vehicle of any kind shall be stored or parked within the Project except in an Emergency and then only for the time period necessary

to resolve the Emergency. An "abandoned or inoperable vehicle" means any vehicle that has not been driven under its own propulsion for a period of two months or longer, or which does not have installed within it an operable propulsion system, provided that a vehicle belonging to an Owner or a Residential Condominium Owner, or their respective Permittees, shall not be deemed abandoned while the Owner, Residential Condominium Owner or Permittee, as applicable, is in the hospital or out of town. The Residential Association shall have the right to remove and store a vehicle kept on the Residential Parking Floors in violation of this Section, and the expenses shall be levied against the applicable Owner or Residential Condominium Owner in accordance with this Declaration and the Residential Declaration. No vehicle maintenance shall be allowed within the Project.

(viii) *Parking Garage Expenses.* The Commercial Parking Unit Owner shall maintain and repair the Parking Garage (including the Residential Parking Floors) and pay all Parking Garage Expenses. The Commercial Parking Unit Owner shall prepare an annual budget for the costs of such maintenance and repair and shall submit such budget to the Residential Association for its approval. The Commercial Parking Unit Owner shall bill the Residential Association for Shared Parking Expenses in an amount equal to a fraction of the Parking Garage Expenses, with the numerator of such fraction being the square footage of the floor plates of the Residential Parking Floors and the denominator of such fraction being the aggregate square footage of all floor plates within the Parking Garage (including the Residential Parking Floors), as each such amounts are determined at the beginning of each billing period (which billing period shall be no more frequently than monthly). All expenses related to Residential Parking Expenses shall be 100% allocated and billed directly to the Residential Association. "**Shared Parking Expenses**" shall mean Parking Garage Expenses that are not empirically allocable to the Residential Unit (e.g., overhead and Parking Garage utilities). "**Residential Parking Expenses**" shall mean Parking Garage Expenses that are empirically allocable to the Residential Unit (e.g., maintenance of the Residential Parking Gate). All Parking Garage Expenses may be billed monthly. The Hotel Unit shall not be allocated any of the Parking Garage Expenses.

(b) **Hotel Amenity Facilities**. Except as permitted in this Section 5.3(b), Membership in the Association or the Residential Association does not give any vested right in or easement to use the Hotel Amenity Facilities, and does not grant any ownership or membership interest in the Hotel Amenity Facilities.

(i) The Hotel Amenity Facilities shall be part of the Hotel Unit, and shall be owned and operated by the Hotel Unit Owner or, at the Hotel Unit Owner's discretion, may be operated by the Hotel Manager or by another third-party manager. Any such third-party manager shall enter into a contract with the Hotel Unit Owner upon such terms and conditions as agreed to by the Hotel Unit Owner, and any such agreement shall not be subject to approval by the Owners, but shall be subject to this Declaration.

(ii) After the date on which the hotel in the Hotel Unit is opened for business to the general public, the Hotel Amenity Facilities shall be made available to the Residential Condominium Owners subject to and in accordance with Section 5.3(b)(iii), provided that if the Initial PRMA is terminated for any reason (other than (a) a termination by the Residential Association for default of Initial Hotel Manager (in its capacity of Managing Agent under the Initial PRMA) after any applicable notice and cure periods under the Initial PRMA, or (b) failure of Initial Hotel Manager to extend the Private Residences Management Agreement for any

extension term following the expiration of the initial term or following the expiration of either of the first two extension terms (but not the third extension term)) (each as described in the Initial PRMA as of the date hereof), then for so long as the Initial Hotel Management Agreement remains in effect, the Residential Association (or such Residential Condominium Owners) will be required to pay an access fee to maintain access to the Hotel Amenities Facilities in accordance with the terms hereof. Such access fee shall reflect an equitable sharing in the operating cost of the Hotel Amenity Facilities, which fee shall be determined considering all relevant factors including without limitation (i) the costs of operating, maintaining, repairing and replacing such facilities, (ii) the proportionate usage of the Residential Condominium Owners relative to usage by users of the Hotel Unit, and (iii) prior contributions by the initial Residential Unit Owner to the construction cost of the Hotel Amenity Facilities. The continued provision of Hotel Amenity Facilities may be conditioned upon receipt by the Hotel Manager of a fully-executed agreement from the Residential Association (or such Residential Condominium Owners) that confirms that the Residential Association (or such Residential Condominium Owners) shall pay the agreed-upon access fee in order to access such Hotel Amenity Facilities. For avoidance of doubt, upon a termination of the Initial PRMA for any reason identified in clauses (a) or (b) above in this Section 5.3(b)(ii), the Residential Condominium Owners shall continue to have access to the Hotel Amenity Facilities subject to and in accordance with Section 5.3(b)(iii), without the payment of such access fee more particularly described in this Section 5.3(b)(ii).

(iii) all Residential Condominium Owners and their respective Permittees shall have the right to use the Hotel Amenity Facilities during the hours such facilities are open for use by hotel guests, subject to reasonable rules and regulations of the Hotel Unit Owner applicable to all users of the Hotel Amenity Facilities. Except as set forth in this Section 5.3(b), the Hotel Amenity Facilities are exclusively reserved for use by the Hotel Unit Owner, its Permittees and hotel guests. The Hotel Unit Owner shall have the right to (A) approve users so long as the approval criteria does not discriminate against Residential Condominium Owners as compared to hotel guests, (B) determine eligibility for use so long as the eligibility criteria does not discriminate against Residential Condominium Owners as compared to hotel guests, (C) allow or restrict use of the Hotel Amenity Facilities by persons other than its guests or Permittees so long as the allowance or restrictions do not discriminate against Residential Condominium Owners as compared to hotel guests, (D) terminate any or all use rights so long as the termination of any use rights does not discriminate against Residential Condominium Owners as compared to hotel guests, (E) change, eliminate or cease operation of the Hotel Amenity Facilities, provided that the hotel swimming pool, spa and fitness center continue to be offered to the Residential Condominium Owners, (F) limit the availability of use privileges, so long as such limitations do not discriminate against Residential Condominium Owners as compared to hotel guests, (G) suspend the use of the Hotel Amenity Facilities by a Residential Condominium Owner and its Permittees for failure of the Residential Condominium Owner to pay Assessments or for the Residential Condominium Owner or its Permittees to comply with the provisions of this Declaration or any applicable Rules and Regulations, and (H) close the Hotel Amenity Facilities at Hotel Owner's discretion to complete maintenance, repairs, renovation and replacement of such Hotel Amenity Facilities.

(iv) The Hotel Unit Owner may charge separate fees for a la carte services in any spa facility or similar facility operated by the Hotel Unit Owner within the Hotel Unit, but not for the use of the hotel pool or fitness center. Such fees shall be retained by the Hotel Unit Owner. A separate agreement may be entered into between the Hotel Unit and the Residential Association with respect to the billing of the fees for spa services. Subject to the restrictions in Section

5.3(b)(iii) above, restaurants, bars and similar public facilities operated by the Hotel Unit Owner within the Hotel Unit shall be available for use by Residential Condominium Owners and their Permittees on the same basis as members of the general public.

(c) **Residential Amenity Facilities**. Membership in the Association does not give any vested right in or easement to use the Residential Amenity Facilities, and does not grant any ownership or membership interest in the Residential Amenity Facilities.

(i) The Residential Amenity Facilities shall be part of the Residential Unit and depicted as such on the Master Plat, and shall be owned and operated by the Residential Association or, at the Residential Association's discretion, may be operated by a third-party manager. Any such third-party manager shall enter into a contract with the Residential Association upon such terms and conditions as agreed to by the Residential Association and any such agreement shall not be subject to approval by the Owners, but shall be subject to this Declaration.

(ii) Pursuant to the Residential Declaration, the Residential Association shall have the right to promulgate reasonable rules and regulations governing the use of the Residential Amenity Facilities. The Residential Amenity Facilities are exclusively reserved for use by the Residential Association, the Residential Condominium Owners and their respective Permittees, and use of the Residential Amenity Facilities shall be governed by the Residential Association Documents.

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 more than one, but less than all, Units are Limited Common Elements appurtenant to the Units served. 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 that serve all Units are General Common Elements; after electricity from such outside trunk lines exits junctions so that the electric lines serve more than one but less than all Units, the electric lines are Limited Common Elements appurtenant to the Units served; after electricity from such Limited 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, unless effectuated by Declarant pursuant to Article XVII under circumstances not requiring any such approval. Notwithstanding the foregoing, any re-designation of the boundaries that affect a Unit or Limited Common Elements is subject to the approval of the applicable Owner.

Section 5.6 **Repair of Limited Common Elements**. Repair Work of the Limited Common Elements shall be performed by the Association (and the cost thereof shall be a Common Expense

allocated among those Owners benefitting from each of the respective Limited Common Element in accordance with Exhibit H), unless the Association elects not to perform such Repair Work, in which case, subject to Section 7.2(b), such Repair Work shall be performed by the Owners of the Units sharing the Limited Common Elements, at the sole expense of those Owners.

Section 5.7 General Common Elements. Unless effectuated by Declarant pursuant to Article XVII under circumstances not requiring approval, no General Common Element may be conveyed, abandoned, partitioned, subdivided, encumbered, sold or transferred unless approved in writing by 67% of the Owners 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, subject to Section 66-27-412 of the Act and Section 16.3(a)(iv). Declarant or 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 four Members of the Association: (i) the Hotel Unit Owner (or, if there is more than one Owner, such Owners collectively); (ii) the Commercial Parking Unit Owner (or, if there is more than one Owner, such Owners collectively); (iii) the Retail Unit Owner (or, if there is more than one Owner, such Owners collectively); and (iv) the Residential Unit Owner (or, if there is more than one Owner, such Owners collectively). The Allocated Interest of the Residential Unit shall be voted by the president of the Residential Association or other officer of the Residential Association authorized by the board of directors of the Residential Association.

(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 Residential Unit Voting Rights.

(a) **One Class of Membership.** The Association shall have one class of membership consisting of the Owners of Units. 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 adversely affects an Owner without the consent of the affected Owner or Owners, as applicable.

(b) **Residential Association**. If the Residential Unit has been subdivided into Residential Condominium Units, for the sole and limited purpose of membership in the Association and exercising all voting rights and approval rights associated with or attributable to the Residential Unit under this Declaration, the Residential Association (rather than the Residential Condominium Owners) shall be deemed the Residential Unit Owner. For purposes of exercising its rights under this Declaration, each Residential Condominium Owner shall act through the Residential Association and its board of directors, with the president of the Residential Association or other officer authorized by the board of directors of the Residential Association as the sole spokesperson for the Residential 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 6.5 below.

Section 6.4 Declarant's Right to Appoint Directors and Officers. From the date of formation of the Association through the end of Declarant Control Period, Declarant shall have the right as part of Declarant's Special Declarant Rights to appoint and remove all members of the Board and all officers of the Association. Declarant may, prior to expiration of the Declarant Control Period, voluntarily surrender the right to appoint and remove the members of the Board and the officers of the Association, but in that event, Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

Section 6.5 Board Structure. During the Declarant Control Period, the Board shall consist of three persons appointed by the Declarant. After expiration of the Declarant Control Period, the Board shall consist of eight (8) persons, three (3) of whom shall be appointed by the Hotel Unit Owner, three (3) of whom shall be appointed by the Residential Unit Owner in the Residential Unit (acting through and as designated by the board of directors of the Residential Association), one (1) of whom shall be appointed by the Retail Unit Owner, and one (1) of whom shall be appointed by the Commercial Parking Unit Owner.

Section 6.6 Board Tie Vote. Any vote of the Board resulting in a tie shall be resolved in accordance with the Charter.

Section 6.7 Residential 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 Residential Association, nothing herein shall permit the Association or the Board to make physical changes to, or changes to the designation of and portion of the Project that would prevent the Residential Condominium Owners from gaining access to their Residential Condominium Units. Hotel Unit Owner shall have the right to temporarily restrict access to the Hotel Amenity Facilities for private hotel functions or events, maintenance and repairs, Commercial Parking Unit Owner shall have the right to temporarily restrict access to the Parking Garage for maintenance and repairs, and the Association shall have the right to temporarily restrict access to the Common Elements for maintenance, repairs, renovations and replacements, in each

case so long as such restrictions do not have an adverse effect on the Residential Condominium Owners' use and occupancy of their Residential Condominium Units (other than with respect to access of the Hotel Amenity Facilities) and do not prevent the Residential Condominium Owners from gaining access to their Residential Condominium Units.

Section 6.8 Owner Protection. Except to the extent expressly required by the Act, no action of the Board or Declarant 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.

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, to do so at the Association's expense, except that in the case of an Emergency, no notice shall be required.

(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 Owners as a Common Expense:

(i) The Common Elements;

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

(iii) Any repair, replacement or other work required to be performed on a Unit or Limited Common Element resulting from any work performed by the Master Association to Common Elements (e.g., if a portion of a Limited Common Element must be removed in order to repair a structural component of the roof, the Master Association shall be responsible for the repair and replacement of such portion of the Limited Common Elements).

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

(b) The Association shall be responsible for the maintenance, cleaning, 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 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. If an Owner requests additional window cleaning, the Association shall arrange for such window cleaning and charge such expense to the requesting Owner. For avoidance of doubt, the cost to maintain and repair the improvements located on the Hotel amenity deck shall be the responsibility of Hotel Unit Owner.

(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 Owner Responsibility.

(a) Subject to Sections 5.3(a)(i), (vii) and (viii) (providing Commercial Parking Unit Owner with certain rights with respect to the Residential Parking Floors), each Owner shall maintain its Unit, and any portions of the Limited Common Elements which are the responsibility of the 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 Owner and not the Association;

(ii) The fixtures and equipment in the Unit, including the refrigerators, stoves and all other appliances within the Unit; 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 topside of the horizontal surfaces and the interior of the vertical surfaces of the balconies and terraces appurtenant to each Residential Condominium Unit and any permitted items located thereon (i.e., to keep such areas in a clean, attractive and sanitary condition and keep free from rubbish and litter and keep clear and operable any drainage systems located thereon); and

(iv) The Utility/Mechanical Equipment serving only its Unit, whether located within or outside of the boundary of that 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 notice shall be required.

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 appurtenant to an Owner's Unit or provide exclusive service to an Owner's Unit, as an Individual Purpose Assessment. 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 Residential Association and Other Owners. The Association and the Residential Association may contract or cooperate with each other and the other Owners as convenient or necessary to provide services and privileges (*e.g.*, Repair Work of Limited Common Elements), 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, including Residential 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 Telecommunications Facilities. The Association may enter into contracts and licenses for the installation, operation, repair, maintenance, replacement, or improvement of Telecommunications Facilities. For the purposes hereof, "**Telecommunications Facilities**" means community satellite dishes, cable television equipment, telephone or other communications lines, broadband or other internet facilities and equipment, other equipment and facilities serving similar or dissimilar telecommunications functions using technology from time to time developed subsequent to the date of this Declaration, and related equipment and facilities.

Section 7.10 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.

(i) Common Expenses applicable to Limited Common Elements shall be allocated among the Units in accordance with the respective ratios set forth on Exhibit H.

(ii) Common Expenses applicable to costs benefitting fewer than all the Units, or benefitting one or more Units in a manner disproportionate to the Common Expense Allocation Ratios, shall be based on actual usage and assessed against the Units benefitted as set forth on Exhibit H.

(iii) Common Expenses applicable to insurance shall be allocated among the Units in proportion to risk as set forth on Exhibit H.

(iv) Common Expenses applicable to utilities which are not separately metered shall be assessed based on usage 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) **Residential Unit Assessments**.

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

(ii) Upon the submittal of the Residential Unit to the Residential Declaration, the Association's lien for delinquent assessments and related expenses shall not attach to the Residential Condominium Unit of any Residential Condominium Owner who makes timely payment of such Residential Condominium Owner's share of the assessments assessed by the Association against the Residential Unit.

Section 8.3 Monthly Assessments; Budgets.

(a) Until the Association first levies a Monthly Assessment against the Owners, Declarant shall pay all Common Expenses. The Monthly Assessments against all the Units (including Units owned by Declarant) shall commence to be levied upon the sale of (*i.e.*, transfer of fee simple title to) any Unit or Residential Condominium Unit. Thereafter, the Owners of such 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 Board (but no less frequently than annually) in accordance with this Section 8.3, which budget shall provide for such expenditures and contributions as are reasonably necessary to maintain the Residential Unit in a manner consistent with the Project Standard. The Association shall make commercially reasonable efforts to ensure that any funds from Monthly Assessments, Special Assessments and Individual Purpose Assessments collected in any year and not used in such year are not subject to U.S. federal income tax, including providing for a vote of the Owners on whether to refund any such excess or to apply such excess against the Monthly Assessments, Special Assessments and Individual Purpose Assessments (as the case may be) for the following year.

(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, 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; provided, that any portion of the Common Expenses that are for expenditures set forth in subsections (a) or (b) of the definition of the Reserve Fund or are otherwise to be accumulated over more than one year for identified capital projects ("Capital Project Funds") shall be separately stated in the Monthly Assessment along with an adequate description of the purpose thereof, and the Association shall maintain such Capital Project Funds in separate segregated accounts for the exclusive purpose of funding the stated capital projects.

(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 thirty (30) days' prior written notice of the Special Assessment to the Owners. Notwithstanding anything expressed or implied in this Section 8.5 to the contrary, Special

Assessments made solely by the Residential Association shall be governed by the Residential Declaration.

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, or any other purpose, of or with respect to any matter pertaining to the Unit(s) against which the Individual Purpose Assessment is levied. Individual Purpose Assessments shall be due and payable as determined by the Board with at least thirty (30) days' prior written notice of the Individual Purpose Assessment to the Owners of the affected Units.

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 the Declaration, (ii) 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) 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, 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 ten (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 Stephen C. Baker, Trustee (in such capacity, "**Trustee**"), a resident of Davidson County, Tennessee, his 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 or deed of trust) 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; (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, his 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 highest rate allowed under applicable laws 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 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 his successor in trust, is hereby authorized and empowered, upon giving notices required by the Act and under Tennessee law and upon twenty (20) days' notice by three (3) publications in any newspaper, daily or weekly, published in Davidson County, Tennessee to sell said Unit, subject to the provisions of Section 8.2(c)(iii) 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 him by the Trustee of a deed for said property. In case of sale hereunder, the proceeds will be applied by the Trustee, subject to the provisions of the Act, 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 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, his order, 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. If any Owner fails to pay an Assessment on its Unit within thirty (30) days after the same is due, or if a default by any Owner of any provision of the Association Documents is not cured within thirty (30) days after written notice thereof, a First 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.

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, 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 seven (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.

Section 8.13 Working Capital Fund. The Association may require the first Owner of any Unit (other than Declarant or a successor Declarant) who purchases that Unit from Declarant to make a non-refundable contribution to the Association's Working Capital Fund, in an amount equal to two months' Monthly Assessments allocated to that Unit, at the time of sale (regardless of whether or not Assessments have commenced as provided herein). The contribution shall be collected and transferred to the Association at the time of the closing of the sale of the Unit, and shall be held in the Working Capital Fund to be used by and for the benefit of the Association, as the Board deems appropriate, including for Repair Work, the payment of insurance deductibles, to meet unforeseen expenditures or to purchase additional equipment, property or services. The contribution to the Working Capital Fund shall not relieve an Owner of making its regular or other payments of Assessments (including Special Assessments) as the same become due. Upon transfer of a Unit, an Owner shall be entitled to obtain a credit from the transferee but in no event from the Association, in an amount equal to the Owner's contribution to the Working Capital Fund. No later than the expiration of the Declarant Control Period, Declarant shall transfer control of the Working Capital Fund to the Association, and Declarant shall pay the Association an amount equal to two times the then-Monthly Assessment against all Units then owned by it (unless such payment has previously been made with respect to any such Units). Notwithstanding the foregoing, no First Mortgagee who becomes an Owner through foreclosure or acceptance of a deed in lieu thereof shall be required to make a payment to the Association for the Working Capital Fund, and no Owner whose Unit has been foreclosed upon or transferred to a First Mortgagee by a deed in lieu of foreclosure shall be entitled to a credit from the First Mortgagee for any unused portion of the Working Capital Fund. Declarant shall not use any of the Working Capital Fund to defray its expenses, contributions to reserve funds, or construction costs, or to make up any budget deficits.

ARTICLE IX
INSURANCE

Section 9.1 Responsibility of Owners; Separate Insurance Coverage.

(a) The Owner of each Unit or Residential Condominium Unit shall, at its expense, obtain property insurance coverage for loss of or damage to any furniture, furnishings, personal effects, any modifications, improvements, betterments and additions to the Unit or Residential Condominium Unit made by such Owner after the initial transfer of the Unit or Residential 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 Residential 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. All insurance obtained by the Owner of each Unit or Residential 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 or Declarant, and their respective servants, agents, employees and guests.

(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 insurance proceeds shall be applied and distributed by the Association in accordance with this Article IX.

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 that 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 Residential Association, individual Owners (without naming them), and their Mortgagees, 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 Residential 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 $250,000. "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 Residential Condominium Units and Mortgagees. 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 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 obligee/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) 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 shall be vested in the Association or its authorized representatives. The Association shall seek approval of Owners and their Mortgagees to any adjustment applicable to their Unit. If the loss relates to only one Unit, the approval of the Owner and its Mortgagee shall be required before the Association settles the insurance claim unless the failure to settle such claim adversely affects other 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, the Declarant or the Owners;

(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 Residential Condominium Unit;

(iii) The insurance coverage will be primary, even if an Owner has other insurance that covers the same loss; and

(iv) No act or omission by any Owner, unless acting within the scope of its authority on behalf of the Association, 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 hazard insurance shall be allocated to the Units according to the respective cost of obtaining hazard 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 Residential 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 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 any Owner, lessee or guest or invitee thereof or resulted from the use, misuse, occupancy, negligence or abandonment of a Unit or Residential Condominium Unit or any portion thereof as determined by the Association. In such event the Owner from whose Unit the cause originated, 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 the Mortgagee or the Owner of any 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, Residential 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 his 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 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 14.1, 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 14.1, 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 14.1, 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 14.1, 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 the Limited Common Elements, and any remaining insurance proceeds shall be applied to the repair, replacement or reconstruction of any Unit which may have sustained any loss or damage so covered. Subject to Section 14.1, 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 all Units, and to their Mortgagees, as their respective interests may appear. Such distributions are to be made in the manner and in the proportions as are provided for the distribution of insurance proceeds under Section 9.6 above. Subject to Section 14.1, 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 proportion to the cost of repair, replacement or reconstruction of each Unit or Limited Common Element appurtenant to such Unit bears to the cost applicable to all Units and Limited Common Elements applicable 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, 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, 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 Owner for the purpose of representing the 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. An 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 Section 9.1 may be obtained and maintained through the use of master or blanket insurance policies that also insure properties other than the Project and 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 Residential Association, (iii) any person or entity who is Declarant under this Declaration or the Residential Declaration, (iv) any Managing Agent, 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 Managing Agent. 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 following purposes: (a) to purchase and maintain the insurance required under this Declaration; (b) to negotiate and compromise settlement of losses under any insurance; and (c) to collect the

proceeds from any insurance, hold such proceeds in trust for the Owners and their First Mortgagees as their interest may appear, and dispose of such proceeds as provided in Article XIV and in the Act. The Association and any insurance trustee designated by the Board shall have exclusive authority as agent and attorney-in-fact for the Owners to purchase and maintain all insurance required under this Article IX, to negotiate, settle and compromise any claims under such insurance, to receive all proceeds from such insurance and apply them as provided under this Declaration, to execute releases of liability in connection with the negotiation and settlement of claims and to execute all documents and perform all acts that may be necessary or desirable to carry out the Association's and insurance trustee's rights and duties under this Declaration.

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 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 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 IX. Each Eligible First Mortgagee shall be furnished with a copy of such appraisal. 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 by hand delivery or by United States mail, postage prepaid, 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 9.13 Notice of Cancellation. If any insurance that the Association is required to maintain under this Article IX is not reasonably available, is canceled or is not renewed without a replacement policy having been obtained, the Association shall immediately send written notice to the Owners in accordance with the provisions of Section 18.8.

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 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 Entered into Prior to Recording of Master Plat and Declaration**. A contract or other agreement for the sale of a Unit entered into prior to the recording of the Master Plat or this Declaration in the Official Records, may, but need not, legally describe the Unit in the manner set forth in Section 10.2, and may indicate that the Master Plat or this Declaration are to be recorded. Upon recordation of the Master Plat and this Declaration, the legal description shall be conclusively presumed to describe the corresponding Unit shown on the Master Plat and such Unit shall be subject in all respects to this Declaration.

Section 10.2 **Contracts Entered into Subsequent to Recording of Master Plat and Declaration.** Subsequent to the recording of the Master Plat and this Declaration, 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 151 First Avenue Master Condominium described in the Declaration Establishing 151 First Avenue Master Condominium of record as Instrument No. _____, Register's Office for Davidson County, Tennessee, together with the undivided percentage interest in the Common Elements appurtenant to the Hotel Unit as set forth in Exhibit E of the Declaration Establishing 151 First Avenue Master Condominium. Reference is hereby made to the Master Plat of 151 First Avenue Master Condominium of record as Exhibit D to the Declaration Establishing 151 First Avenue Master Condominium, 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 10.3 **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 10.2 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 10.4 **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 or Units 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 the 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 ten (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(s) 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 Owners, including Residential 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, Declarant reserves and is hereby given the right and authority (which right and authority is for the sake of clarification declared to be a Development Right reserved by and granted to Declarant) 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 12.4 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 granted by Declarant 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 twenty four (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 ten (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 in the Project, for trash removal from its Unit. Each Owner is responsible for its own trash removal.

Section 12.9 Declarant's Rights Incident to Completion of the Project. Declarant, for itself and its successors and assigns, shall have and hereby retains and is granted a perpetual, irrevocable, non-exclusive right and easement of ingress and egress over, in, upon, under and across the Common Elements, and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to the completion of the Project, the sale of the Units, and the exercise of Declarant's Development Rights and Special Declarant Rights hereunder, provided that no such rights shall be exercised in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access by an Owner and its Permittees to or of its Unit or the Common Elements. For the sake of clarification, the rights of Declarant under this Section 12.9 are declared to be Development Rights reserved by and granted to Declarant.

Section 12.10 Communications Equipment Easement. Declarant hereby reserves an exclusive (excepting only the rights of the Association and the Residential Association as set forth in the final sentence of this Section 12.10) perpetual and irrevocable easement, right and license for itself and its successors, assigns and Permittees to use, sell, lease or assign all or any portion of the Communications Easement Area, for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of communications equipment, including without limitation, broadcast antennae and related equipment, cell tower equipment, or other wireless communication antennae and related equipment, cable or satellite television equipment and equipment for high-speed internet access (hereinafter collectively referred to as the "**Communications Equipment**" (the foregoing easement is referred to herein as the "**Communications Easement**"). Declarant, for itself and its successors, assigns and Permittees, also reserves a non-exclusive, perpetual and irrevocable easement right and license over the Communications Easement Area to exercise its rights set forth above. Without limitation, this easement, right and license shall include the right by Declarant and its successors, assigns and Permittees to construct, install, use, maintain, repair, replace, improve, remove and operate any type of Communications Equipment on the Communications Easement Area. In addition, Declarant, for itself and its successors, assigns and Permittees, reserves a non-exclusive, perpetual and irrevocable easement over other portions of the Residential Unit for access to and from the Communications Easement Area and to construct, install, use, maintain, repair, replace, improve, remove, operate and license or allow others to do the same, any utility lines servicing the Communications Equipment, including the right to utilize electrical power from any Common Element, but subject to the right of the Association or the Residential Association to charge for the actual costs of such electrical power and any submetering costs associated with determining such costs and provided that such electrical usage shall not cause the Association's or the Residential Association's electrical capacity to be limited for its own use, and in such event, Declarant and its successors, assigns and Permittees shall cease such use of electrical power or provide additional capacity to the Association's electrical system, at the sole expense of the party exercising the rights set forth in this subparagraph. Declarant and the Association hereby agree to indemnify each other for any damage or destruction caused to the property of the other in the exercise of any easement rights granted under this subparagraph. Declarant, its successors, assigns and Permittees shall share all net income received from or in connection with the rights described in this subparagraph equally with the Association. The rights reserved to Declarant under this subparagraph shall benefit only Declarant and its successors, assigns and Permittees, and no Owner or successor-in-title to any portion of the Project shall have any rights with respect to the Communications Easement Area or to any income derived from or in connection with the easements granted in this subparagraph, except as expressly provided in the last sentence of this subparagraph. Declarant's rights pursuant to this Section are declared to be Special Declarant Rights. Notwithstanding

anything to the contrary stated herein, the Association and the Residential Association shall have a non-exclusive easement, right and license for itself, its agents, successors and assigns to use those portions of the Communications Easement Area that are necessary for the provision of communications services to the Owners and occupants.

Section 12.11 Easements Deemed Created. All conveyances of Units hereafter made, whether by Declarant or otherwise, 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) **Residential Use.**

(i) The Residential Unit shall be used for residential purposes only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes, except as are inherent in the types of residential uses described above, provided that a Residential Condominium Owner may use its Residential Condominium Unit for a professional or home occupation, as long as the residential unit is also being used as a residence, the applicable zoning ordinances permit such use, there is no external evidence thereof, and no unreasonable inconvenience to other residents of Residential Condominium Units or Owners is created thereby.

(ii) A Residential Condominium Owner shall be entitled to rent the Residential Condominium Unit subject to any restrictions contained in the Residential Declaration; provided, however, any rental or lease agreement shall be in writing, shall be for a term of no less than six (6) months, shall provide that the lease is subject to the Association Documents and shall provide that any failure to comply with any provisions of the Association Documents, shall be a default under the terms of the rental or lease agreement. For avoidance of doubt, the rental restrictions above shall not apply to Declarant or to any Residential Condominium Unit used as "corporate housing" and such use shall be deemed to be used for "residential purposes" hereunder. Declarant shall not rent or lease any Residential Condominium Units owned by Declarant without the prior consent of the Hotel Manager, for so long as the Initial Hotel Manager is the Hotel Manager. The term "corporate housing" shall refer to use of a Residential Condominium Unit, on a short or long term basis, by employees of the Residential Condominium Owner or affiliates thereof or, if the Residential Condominium Owner is an individual, by the employees of the company by which the Residential Condominium Owner is employed, so long as such occupancy is primarily concerning business involving the Residential Condominium Owner or his or her company and the occupant is not charged a fee for such transient occupancy use.

(iii) Residential Condominium Units may not be used under a timeshare, fractional ownership, interval exchange (whether the program is based on exchange of occupancy rights, cash payments, reward programs or other point or accrual systems) or other membership plans or arrangements (collectively, "**Occupancy Plan**") through which a participant in the plan or arrangement acquires, directly or indirectly, an ownership interest in a Residential

Condominium Unit with attendant rights of periodic use and occupancy or acquires contract rights to such periodic use and occupancy of a Residential Condominium Unit or a portfolio of accommodations including a Residential Condominium Unit other than an Occupancy Plan established by Declarant and, for so long as the Initial Hotel Manager is the manager of the Hotel, operated and approved by the Hotel Manager.

(b) **Hotel Use**. The Hotel Unit shall be used for hotel purposes only (and shall include guest rooms and suites), and may include the following facilities and typical uses appurtenant thereto: restaurants, bars, banquet, meeting and other public rooms, spa, pool, fitness center, retail shops, gift shop, vitrines, storage and service areas, and all systems, facilities and equipment necessary for the operation of a hotel (including safety, heating, lighting, plumbing, sanitation, air conditioning, ventilation, laundry and dry cleaning and kitchen systems and facilities, elevators, escalators and all furniture, furnishings, fixtures and equipment required for the operation of a hotel room in accordance with the Project Standard) and other uses that are customarily incident thereto.

(c) **Retail Use**. Subject to Section 13.12(a), the Retail Unit shall be used for retail purposes only, including "fine dining" restaurants, bars and/or establishments, and other uses that are customarily incident thereto. For the avoidance of doubt, any restaurants, bars and/or dining establishments other than "fine dining" restaurants and bars shall be subject to the prior approval of the Hotel Manager, for so long as the Initial Hotel Manager is the Hotel Manager.

(d) **Parking Garage Use**. The Commercial Parking Unit shall be used only for the purposes of a parking garage and civic use in accordance with that certain Declaration of Restrictive Covenants Bonus Heights Program dated June 10, 2019 and recorded as Document #20190617-0058068 in the official records of Davidson County.

(e) **Declarant's Use**. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant and its Permittees to perform such reasonable activities, and to maintain upon portions of the Project, such facilities as Declarant deems reasonably necessary or incidental to the completion and sale of the Units and the exercise of Declarant's Development Rights and Special Declarant Rights, including maintaining business offices, storage spaces, signs, model units, sales offices, parking areas, construction offices and lighting facilities. Declarant reserves the right to relocate any sales office, model or management office to any other Unit then owned by Declarant. For the sake of clarification, the rights of Declarant under this Section 13.1 are declared to be Development Rights reserved by and granted to Declarant.

(f) **Change in Use**. An Owner may request a change in use 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; (ii) obtain any additional insurance as required by the Board; and (iii) deliver the Deposit. 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 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, Owner 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. Repair Work specific to any Limited Common Elements shall be performed and paid for in accordance with Section 5.6. Notwithstanding the foregoing in this Section, the obligations set forth above with respect to the Residential Unit are subject to Sections 5.3(a)(i), (vii) and (viii), providing Commercial Parking Unit Owner with certain rights with respect to the Residential Parking Floors.

(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 the Owner. If such expenses are not paid to the Association within 10 days after written notice to the 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.

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, provided, that (a) domesticated dogs, excepting dogs bred for fighting (which for these purposes shall include so-called pit bulls); (b) nonpoisonous snakes with a length not greater than six feet; (c) domesticated cats; (d) domestic chinchillas, ferrets, gerbils, guinea pigs, hamsters, mice and rabbits; (e) household aquarium fish; and (f) caged birds may be kept in a unit in the Residential Unit or the Hotel Unit, subject to the requirements and prohibitions of all governmental ordinances, laws and regulations and subject to the Residential Declaration or Declaration (as the case may be) and any rules and regulations that may be adopted by the Board from time to time with regard to pets (which may include restrictions on the number, size, nature and breed thereof), and provided that no pets may be kept for commercial purposes or be permitted to become a nuisance, as determined by the Board. The Association shall have and is hereby given, the right and authority to determine in its sole discretion, that dogs, cats or other household pets permitted herein are being kept in such manner so as to be unreasonable or to create a nuisance to Residential Condominium Owners, other Owners or their Permittees. The Board may determine that a Residential Condominium Owner or its Permittees is in violation of this Section 13.4, and take such actions as it deems reasonably necessary to correct the same, including prohibiting the pet(s) from being kept in the Residential Unit. An owner's license to keep household pets granted under this Section is revocable by the Board for violation of the terms hereof and shall be coupled with the responsibility to pay for any damage caused by such pet(s), as well as any costs incurred by the Association as a result of such pet(s), which amounts shall constitute a Default Assessment. The Residential Condominium Owner is responsible to clean up all pet waste of any Residential Condominium Owner or its Permittee from the Common Elements and adjacent public ways and to comply at all times with applicable ordinances, laws and regulations governing pets. No animals shall be allowed to be tied or chained to any balconies or other parts of the Residential Unit or the Project, and any animals so tied or chained may be removed by the Association.

Section 13.5 Use of Common Elements. Subject to the rights of Declarant as provided in this Declaration, 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 for those improvements erected or installed by Declarant in its completion of the Project, and 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; (b) obtain insurance as required by the Board; and (c) deliver the Deposit. 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 the Limited 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 the Limited 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. 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) Project or Residential Unit identification signs and other signs, advertising or billboards used by Declarant in connection with its sale of Units shall be permissible; (c) signs identifying the retail operations in the Retail Unit; and (d) signs identifying the Hotel Operations and other signs, advertising or billboards used by the Hotel Unit Owner shall be permissible, provided that any such permitted signage shall not materially interfere with any Owners use and enjoyment of the Common Elements, their Units, or its ingress and egress from a public way to the Common Elements or its 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 unreasonably interferes with the peaceful enjoyment or possession and proper use of the Project by the Owners and their Permittees. As used herein, the term "nuisance" shall not include any activities of Declarant in regard to the completion of the Project, the exercise of Declarant's Development Rights and Special Declarant Rights or any uses of Units permitted in this Declaration. 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: (a) retail sales and rentals; (b) Hotel Operations; (c) business and office uses; (d) 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; (e) sales of services, including spa services; (f) parking activities, including activities relating to valet parking; (g) the installation, operation and maintenance of illuminated signage, except as approved in accordance with Section 13.7; (h) live music or other live entertainment; and (i) any other uses or activities permitted by law. The Commercial Activities may occur during daytime and nighttime.

(b) Each Owner, by taking title to a Unit (including each Residential 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 Residential Condominium Owner) may assert or claim any violation of this Declaration based upon the existence or occurrence of the Commercial Activities, or impacts and disturbances generated by them. Each Owner (including each Residential 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 Declarant, the other Owners and their Permittees, the Hotel Manager, and their respective successors and assigns, that in any way arise out of the 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 or gross negligence or willful misconduct of 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 Residential Unit. The Board shall have the right to terminate any nuisance or other offensive activity carried on by an Owner in violation of the provisions hereof.

Section 13.9 Weight and Sound Restriction. No hard or heavy surface floor coverings, such as tile, marble, wood, terrazzo and the like shall be permitted unless (a) installed by, or at the direction of, Declarant, or (b) first approved in writing by the Association. No improvements (including hot tubs or spas) may be installed on any balcony or terrace above the seventh floor of the Building. Each Owner (including each Residential Condominium Owner), by acceptance of a deed or other conveyance of its Unit or Residential Condominium Unit, as applicable, hereby acknowledges that sound transmission in a high-rise building such as the Project is very difficult to control, and that noises from adjoining or nearby Units, the Hotel Unit, the Retail Unit, the Commercial Parking Unit, the Residential Unit and Utilities/Mechanical Equipment can often be heard in a Unit or Residential Condominium Unit, as applicable. Declarant does not make any representation or warranty regarding the level of sound transmission between and among Units and other portions of the Project, and each Owner (including each Residential Condominium Owner) hereby waives and expressly releases any such warranty and claim for loss or damages resulting from sound transmission.

Section 13.10 Garbage Collection. Each Owner shall dispose of the garbage collected within its Unit into Trash Collection Systems as the Association shall from time to time designate pursuant to Rules and Regulations.

Section 13.11 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, the Parking Garage or in any of the Amenity Facilities, 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 an Owner in accordance with applicable safety codes and instructions.

Section 13.12 Restaurant Restrictions.

(a) **Use Restrictions**. Until termination of this Declaration, and except as prohibited by applicable laws, each of the Residential Unit Owner, the Retail Unit Owner and the Commercial Parking Unit Owner, for itself, covenants and agrees for the benefit of the Hotel Unit Owner that it shall not permit any sit-down restaurant in its Unit that would directly compete with the then-planned or the then-existing restaurant at the Hotel Unit; provided, for avoidance of doubt, that no

such restriction shall be applied retroactively and so long as such Owner notifies Hotel Unit Owner of its intended use that at the time of the giving of such notice would not be prohibited hereunder, nothing herein shall be construed as requiring any such Unit Owner to change its plans or modify its restaurant offering in the event that Hotel Unit Owner subsequently plans or opens a directly competitive restaurant. For purposes of this Section 13.12(a), "directly compete" shall mean any such restaurant serving the same type of cuisine at a substantially similar price point.

(b) **Enforcement**. In the event of any violation of the restrictions set forth in Section 13.12(a) above, an appropriate action in law or in equity to enforce specific compliance by the violating Owner of the applicable restriction and the provisions herein contained, or to recover damages, may be brought against the violating Owner by any one or more of the Association, Declarant or the Owner for whose benefit such use restriction is granted.

Section 13.13 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 Damage or Destruction.

(a) (i) Except as provided in the Act and subject to the sufficiency of insurance proceeds, any portion of the Common Elements which is damaged or destroyed must be repaired and reconstructed promptly by the Association unless (A) the Project is terminated in accordance with Section 14.4, in which case the provisions of that Section shall apply; (B) repair and reconstruction would be illegal under any state or local statute or ordinance governing health or safety; or (C) 80% of the Owners and Eligible First Mortgagees, together with 80% of the Owner of Units that are appurtenant to Limited Common Elements that will not be rebuilt, vote not to rebuild.

(ii) For the purposes of this Article XIV, "**repair and reconstruction**" means restoring the Common Elements 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 XIV.

(iii) Notwithstanding anything to the contrary contained herein, any determination about whether to repair and reconstruct the improvements shall be the decision of the Owners.

(iv) The Association shall have full authority, right and power provided under the Act to cause the repair and reconstruction of the improvements, 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 negligent Owners and their Permittees causing any loss or benefiting from repair and reconstruction 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 Reserve Fund are insufficient to repair and reconstruct the improvements, then the cost in excess shall be a Common Expense.

(c) If the entire Project is not repaired and reconstructed, then the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area 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 an 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 14.1(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 14.4. 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, the insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt shall be distributed to the Owners of those Units, and the Owners of the Units to which those Limited Common Elements were allocated, or to Mortgagees of those Units or Limited Common Elements, as their interests may appear. The remainder of the proceeds, if any, shall be distributed to the Owners or Mortgagees, as their interests may appear, in proportion to each Unit's Allocated Interest.

Section 14.2 Obsolescence. If 80% of the Owners and Eligible First Mortgagees agree that the Common Elements are obsolete, they may either (a) terminate the Project in accordance with Section 14.4, 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 14.3 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 Owners in accordance with the Act. The Association shall have the right provided under the Act to appear in any condemnation proceeding on behalf of the Owners and to carry out the provisions of this Section 14.3. To the extent any of the provisions of this Section 14.3 is inconsistent with the Act, the provisions of the Act shall prevail.

(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 14.4, 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 Residential Condominium Units shall be paid to the Residential Unit Owner in accordance with the Act. 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 with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, then the Condemnation Award shall include compensation to the Owner for that Unit and its Allocated Interest, whether or not any Common Elements are acquired. The Owner thereof 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 a Unit remaining after such a taking shall thereafter be a Common Element.

(e) Except as provided in Section 14.3(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 14.1.

(g) The provisions of this Section 14.3 shall be subject to Article XVI to the extent applicable.

Section 14.4 Termination of Project.

(a) 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. 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 all of the Common Elements and Units must be sold following termination 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, provided that a contract is not binding on the Owners unless approved by 80% of the Owners and 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 shall be distributed to the Owners and lienholders as their interests may appear, in accordance with the provisions set forth in this Section 14.4, taking into account the value of property owned or distributed that is not sold so as to preserve the Allocated Interests of each Owner with respect to all property cumulatively. 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 any part of the Real Property, together with any insurance proceeds (if the termination occurs in connection with damage or destruction) and the assets of the Association shall be held by the Association as trustee for the Owners and the holders of liens on the Units as their interests may appear. Notwithstanding anything to the contrary contained herein, any proceeds payable with respect to the Residential Condominium Units shall be paid to the Residential Condominium Owners in accordance with the Act.

(b) Title to any Units not to be sold following termination shall vest in the Owners upon termination as tenants-in-common in fractional interests that maintain, after taking into account the fair market value of the property owned and the proceeds of property sold, their respective Allocated Interests as provided in Section 14.5 with respect to all property appraised under that Section, and liens on the Units shall shift accordingly. While the tenancy-in-common exists, each Owner and its successors in interest shall have the exclusive right to occupy of the portion of the Real Property that formerly constituted such Owner's Unit prior to termination.

Section 14.5 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 thirty (30) days after distribution by Owners holding at least twenty-five percent (25%) of the Allocated Interests. If the Owners disapprove the appraisers' determination, then the valuation shall be re-submitted to the MAI appraisers together with the objections and other comments of the Owners and the MIA appraisers shall reconsider the fair market values. The reconsidered decision of the independent appraisers shall be distributed to the Owners and shall become final unless disapproved within thirty (30) days after distribution by Owners holding at least fifty-one percent (51%) of the Allocated Interests, in which case the Owners shall meet and confer to determine the fair market values or initiate appropriate judicial resolution. 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, in accordance with the Act, shall forthwith use and disburse the total amount of such account to Owners and lienholders as their interests may appear, in accordance with the Act.

ARTICLE XV
AMENDMENT OF DECLARATION

Section 15.1 Amendment.

(a) Except for amendments that may be executed solely by Declarant or by the Association under the provisions of this Declaration or the Act, and subject to the applicable requirements of Article XVI with respect to approval by Eligible First Mortgagees, 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 67% of the Owners.

(b) Except to the extent expressly permitted by this Declaration, no amendment may create or increase any Special Declarant Rights, increase the number of Units in the Project, or change the uses to which any Unit is restricted unless approved in writing by 67% of the Owners, including 67% of the Allocated Interests allocated to Units not owned by Declarant.

(c) 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 Owners.

(d) 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, Declarant hereby reserves and 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, at any time prior to fifty (50) years following the date this Declaration is recorded in the Official Records. 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 Amendments Requiring Hotel Unit Owner Consent. In addition to any other consents required under this Declaration, the prior written consent of the Hotel Unit Owner is required to amend either this Declaration or the Master Plat regarding any one or more of the following items:

(a) Permit the creation or operation of a hotel, motel or similar short-term daily room rental establishment other than that conducted within the Hotel Unit;

(b) Close or materially alter vehicular access to the Hotel Unit, except for limited periods reasonably required to permit repair or maintenance of the affected streets or to permit construction on the site of the Project (although alternative access must be provided to the Hotel Unit during periods of construction); or

(c) Modify or terminate any easement for the provision of Utilities/Mechanical Equipment to, or for access to or support of, the Hotel Unit.

(d) Modify or terminate the definition of Project Standard.

(e) Modify or terminate the Association's management and maintenance responsibilities set forth in Section 7.1.

(f) Modify or terminate the use restrictions and prohibits set forth in Section 13.1, Section 13.3 and Exhibit G.

(g) Modify or terminate this Section 15.3.

(h) Any amendment that would have a material adverse effect on the Hotel Unit, Hotel Unit Owner or the Hotel Operations.

Section 15.4 Recording of Amendments. Amendments to this Declaration required by this Article XV 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 and First Mortgagees have given written consent to the amendment, shall satisfy the requirement of evidence of the required approval. The Secretary must further certify that originals of such written consents by Owners and Eligible First Mortgagees, along with the recorded amendment, are in the corporate records of the Association and available for inspection.

ARTICLE XVI
FIRST MORTGAGEES

Section 16.1 Notice of Objection.

(a) Unless an Eligible First Mortgagee or other First Mortgagee entitled to consent to certain amendments or actions as provided in this Article XVI provides the Secretary of the Association with a negative response to the proposed amendment or action within sixty (60) days after it is given notice of the proposal, stating with specificity the particular proposed amendment or action to which the Eligible First Mortgage or other First Mortgagee does not consent, the Eligible First Mortgagee or other First Mortgagee shall be conclusively deemed to have approved the proposed amendment or action and the Secretary of the Association may so state in any document.

(b) Notices sent to an Eligible First Mortgagee shall be sent by certified mail to the last known address provided to the Association by the Eligible First Mortgagee.

(c) If First Mortgagees other than Eligible First Mortgagees are entitled pursuant to this Article XVI to approve or disapprove any proposed amendment or action, the Association shall send a dated, written notice and a copy of any proposed amendment or action by certified mail to each First Mortgagee at its most recent address as shown on the recorded deed of trust or recorded assignment thereof.

Section 16.2 Certain HUD Requirements Relating to Eligible First Mortgagees.

(a) **Notices**. Each Eligible First Mortgagee will be entitled to timely written notice of:

(i) Any proposed amendment of the Association Documents effectuating a change in: (A) the boundaries of any Unit or the exclusive easement rights appertaining thereto; (B) the interests in the General or Limited Common Elements appertaining to any Unit or the liability for Common Expenses appertaining thereto; (C) the number of votes in the Association appertaining to any Unit; or (D) the purposes to which any Unit or the Common Elements are restricted (in each case, such notice to be provided to the Eligible First Mortgagee that holds a First Mortgage in the subject Unit);

(ii) Any proposed termination of the common interest community represented by the Residential Unit;

(iii) Any condemnation loss or any casualty loss which affects a material portion of the common interest community represented by the Unit or which affects the Unit on which there is a First Mortgage held, insured, or guaranteed by such Eligible First Mortgagee;

(iv) Any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the First Mortgage of such Eligible Mortgagee, if such delinquency has continued for a period of sixty (60) days;

(v) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association pursuant to Article IX; and

(vi) any other matter requiring the vote or consent of the Eligible First Mortgagees hereunder.

(b) **Restrictions on Amendments**. The consent of at least 51% of the Eligible First Mortgagees and at least 67% of the Owners shall be required to materially amend any provisions of the Association Documents, or to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:

(i) voting;

(ii) assessments, assessment liens or the priority of assessment liens;

(iii) reserves for maintenance, repair and replacement of the Common Elements;

(iv) insurance or fidelity bonds;

(v) rights to use of the Common Elements;

(vi) responsibility for maintenance and repairs;

(vii) expansion or contraction of the Condominium regime, or the addition, annexation or withdrawal of property to or from such regime;

(viii) the redefinition of Unit boundaries, other than amendments contemplated by Sections 3.4 or 4.3 or any provision of Articles XIV or XVII relating to the redefinition of Unit boundaries;

(ix) reallocation of interests in the General Common Elements or Limited Common Elements, other than amendments contemplated by Sections 3.4 or 4.3, or any provision of Articles XIV or XVII relating to any such reallocation of interests;

(x) convertibility of Units into Common Elements or vice versa, other than any provision of Article XVII relating to any such conversion; or

(xi) leasing of Units.

Notwithstanding the foregoing, the foregoing approval requirements do not apply to amendments effectuated by the exercise of any Special Declarant Rights in accordance with the provisions of this Declaration.

(c) **Protection of Provisions for the Benefit of First Mortgagees**. The written consent of 51% of the Eligible First Mortgagees and 67% of the Owners shall be required to amend any provision of the Project Documents which are for the express benefit of First Mortgagees or the insurers or guarantors of First Mortgagees.

(d) **Certain Approval Rights of Eligible Mortgagees**.

(i) Any restoration or repair of a Unit after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval of 51% of the Eligible First Mortgagees is obtained.

(ii) Unless the formula for reallocation of Allocated Interests after a partial condemnation or partial destruction of the Project is fixed in advance by this Declaration or by applicable law, no such reallocation may be effectuated without the approval of 51% of the Eligible First Mortgagees.

Section 16.3 Other Agency Requirements.

(a) **Limitations on Actions of Association**. Subject to the rights of Declarant set forth in Article XVII, and the provisions of Section 15.1(c) hereof, unless at least 67% of the First Mortgagees or 67% of the Owners (other than Declarant) have given their prior written approval, the Association is not entitled to take any of the following actions:

(i) By act or omission seek to abandon or terminate the Condominium represented hereby;

(ii) Change the *pro rata* interest or obligations of any Unit to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the *pro rata* share of ownership of each Unit in the Common Elements, other than as provided in Sections 3.4, 4.3, or 5.3 or any provision of Articles XIV or XVII relating to any such reallocation of interests;

(iii) Partition or subdivide any Unit except in accordance with Section 3.4 or Article XVII;

(iv) Seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements by act or omission, except to the extent necessary to allow a Unit to be expanded pursuant to Article XVII. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements by the common interest community represented by the Residential Unit is not a transfer in the meaning of this paragraph;

(v) Use hazard insurance proceeds for losses to any part of the Common Elements for other than the repair, replacement or reconstruction of the Common Elements.

(b) **No Rights of First Refusal**. The right of an Owner to sell, transfer or otherwise convey such Owner's Unit shall not be subject to any right of first refusal or similar restriction; and notwithstanding the purported existence of such a restriction, such Unit may be sold free of any such restrictions. Any purported right of first refusal shall not impair the rights of a First Mortgagee to (i) foreclose or take title to a Unit pursuant to the remedies in the subject mortgage, (ii) accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor, or (iii) sell or lease a Unit acquired by the First Mortgagee.

(c) **Insurance/Condemnation Proceeds.** No provision hereof shall be deemed or construed to give an Owner or any other party priority over any rights of the First Mortgagee of the subject Unit pursuant to its mortgage in the case of payment to the Owner of insurance proceeds or condemnation awards for losses to or a taking of any Common Elements.

ARTICLE XVII
DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 17.1 **Development Rights**. Declarant hereby reserves for itself and its successors in title (if specifically recited in a deed or grant from Declarant and accepted, in writing, by that successor), the following Development Rights, which Development Rights are appurtenant to, benefit, and burden all of the Real Property that is subject to this Declaration:

(a) The right to (i) enlarge or expand Units within the extended vertical boundaries of a Unit up to the height as allowed by the Governmental Agencies having jurisdiction over the Project; (ii) reduce or diminish the size of Units; (iii) reduce or diminish the Common Elements; (iv) relocate boundaries between adjoining or otherwise contiguous Units; (v) enlarge the Common Elements; and (vi) complete or make improvements, as expansion rights may be approved by the Governmental Agencies having jurisdiction over the Project.

(b) The right to create or construct additional Units and Common Elements, to convert Units into Common Elements and *vice versa*, and the right to convert General Common Elements into Limited Common Elements of any nature and *vice versa.*

(c) The right to withdraw all or any part of the Common Elements from the provisions of this Declaration.

(d) The right to withdraw Units from the provisions of this Declaration.

(e) The right to exercise any other right reserved to Declarant hereunder and identified as a Development Right.

(f) To the extent not set forth above, the development rights described in Section 67-27-203(12) of the Act.

Section 17.2 **Special Declarant Rights**. In addition to the rights reserved above, Declarant hereby reserves the following Special Declarant Rights, which Special Declarant Rights are appurtenant to, benefit and burden all of the Real Property that is subject to this Declaration. Such Special Declarant Rights shall include, but are not limited to:

(a) The right to:

(i) maintain sales offices, management offices and models in Units or on the Common Elements in such number, size and location as Declarant reasonably determines;

(ii) maintain signs and advertising on the Project to advertise the Residential Condominium Units, the Project, or other communities developed or managed by, or affiliated with Declarant;

(iii) enter into, establish, execute, amend and otherwise deal with contracts and agreements for the use, lease, Repair Work or regulation of parking or Common Elements, which may or may not be a part of the Project;

(iv) merge or consolidate the Project with another condominium as provided in the Act;

(v) exercise any additional reserved right created by any other provision of this Declaration; and

(vi) exercise any Development Rights reserved or allowed in the Act.

(b) The right to perform Repair Work on any portion of the Project, the right to perform construction work, and the right to store materials in secure areas, in Units and in Common Elements, and the future right to control such Repair Work, and the right of access thereto, until completion. Repair Work may be performed without the consent or approval of any Owner or First Mortgagee, except as expressly required by this Declaration. In addition to other easements granted in this Declaration, Declarant and its assignees shall have (i) an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in or assigned under this Declaration, and (ii) a reserved easement for access to Utilities/Mechanical Equipment within the Project for any properties which Declarant may have the right to add, even if not added to the Project, including the right to construct underground Utilities/Mechanical Equipment across or under the Real Property.

(c) The right to allocate areas that constitute a part of the Common Elements as Limited Common Elements for the exclusive use of the Owners of Units to which those areas are appurtenant. Declarant may allocate or assign Common Elements or Limited Common Element areas (i) by making such an allocation in a recorded instrument, (ii) in the deed to the Unit to which such Limited Common Element shall be appurtenant, (iii) by recording an appropriate amendment or supplement to this Declaration, or (iv) by recording a supplement to the Master Plat. Such allocations by Declarant may be made as a matter of reserved right.

(d) The right to use, and to grant to others, easements through the Common Elements as may be reasonably necessary.

(e) During the Declarant Control Period, to appoint and remove the members of the Board and officers of the Association.

(f) The right to amend the Declaration, including the Master Plat, in any manner authorized by the Act, including in connection with the exercise of the Development Rights, without the consent or joinder of the Owners or First Mortgagees, provided that no such

amendment shall have an adverse effect on the rights or obligations of any Owner or First Mortgagee.

(g) The right to retain all personal property and equipment used in the sales, marketing, construction and Repair Work of the Project that has not been represented as the property of the Association. Declarant reserves the right to remove from the Project (promptly after the sale of (*i.e.*, transfer of fee simple title to) the last Unit) any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

(h) The right to establish, from time to time, by dedication or otherwise, public streets, utility and other easements for purposes including access, skyways, drainage, parking areas, ducts, shafts, flues, conduit installation areas for the benefit of the Project and any improvements from time to time located thereon, and the right to create other reservations, exceptions, and exclusions.

(i) The right to lease or license portions of the General Common Elements, and to grant non-exclusive easements over, across and through the General Common Elements, for the use by telecommunications companies of a portion of the Project (including the use of the roof of the Residential Unit for the installation and maintenance of telecommunications equipment) for the provision of telecommunications services to locations other than the Project as more particularly described in Section 12.10.

Section 17.3 Other Declarant Rights. Declarant or its assignees may exercise any reserved rights on all or any portion of the Real Property in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Project beyond the number of Units initially submitted.

Section 17.4 Term of Reservation of Reserved Rights. If any right reserved herein by Declarant for the benefit of Declarant is a "Development Right" or a "Special Declarant Right" as such terms are defined herein or in the Act, then such right shall expire in accordance with the provisions reserving the right in question, or if no such expiration is identified, then such right shall expire 50 years following the date this Declaration is recorded in the Official Records, notwithstanding that such date may be later than the expiration of the Declarant Control Period. Any such reserved rights may be transferred by Declarant from time to time in whole or in part to any person by an instrument executed by Declarant and its transferee, describing the rights transferred and recorded in the Official Records, in compliance with the Act. All Development Rights and Special Declarant Rights shall be deemed excepted and reserved by Declarant in each deed or other instrument by which any property within the Project is conveyed by Declarant to a third party whether or not specifically stated therein.

Section 17.5 Interference with Declarant Rights. Without the prior express written consent of Declarant (whether or not within the Declarant Control Period and whether or not Declarant then owns any property governed by this Declaration), neither the Association nor any Owner may take any action or adopt any rule that would have the effect of interfering with, eliminating or diminishing any Special Declarant Right or Development Right, nor may any provision of this Declaration be amended, rescinded or modified to interfere with, eliminate or diminish any Special Declarant Right or Development Right.

ARTICLE XVIII
MISCELLANEOUS

Section 18.1 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 18.2 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 18.3 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 18.4 Reserved.

Section 18.5 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, Declarant, 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 18.6 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 18.7 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.

(c) **Certain HUD Requirements**.

(i) The Association shall make available to Owners and First Mortgagees current copies of the Association Documents, and the other books, records and financial statements of the Association. The Association also shall be required to make available to prospective Unit purchasers current copies of the Association Documents and the most recent annual audited financial statement, if such is prepared. "Available" means at least available for inspection upon request, during normal business hours or under other reasonable circumstances.

(ii) Upon written request from any of the Agencies and Corporations which has an interest or prospective interest in the Residential Unit, the Association shall prepare and furnish within a reasonable time an audited financial statement of the Association for the immediately preceding fiscal year.

Section 18.8 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 (1) business day after timely deposit with the courier service, charges prepaid; and (c) if mailed, three (3) 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 18.9 Non-Waiver. Failure by Declarant, 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 18.10 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 18.11 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 18.12 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 Residential Declaration, this Declaration shall control. Notwithstanding anything to the contrary contained herein, if there is any inconsistency between this Declaration, the Residential 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 22nd day of December, 2021.

151 Nashville Project LP
a Delaware limited partnership

By: _____
Name: Dean F. Stratouly
Title: Authorized Signatory

Address: c/o The Congress Group, Inc.
125 High Street
Oliver Street Tower, Suite 332
Boston, MA 02110
Attention: Dean Stratouly

Commonwealth ~~STATE~~ OF Massachusetts)

COUNTY OF Suffolk)

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Dean F. Stratouly, 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 Authorized Signatory of 151 Nashville Project LP, a Delaware limited partnership.

Witness my hand and seal, at office in Boston, Massachusetts, this the 22nd day of December, 2021.

_____
NOTARY PUBLIC

My Commission Expires: August 16, 2024

CHRISTINE M. JACKMAN
Notary Public
Commonwealth of Massachusetts
My Commission Expires
August 16, 2024

Exhibit A

LEGAL DESCRIPTION OF THE REAL PROPERTY

Land in Davidson County, Tennessee being Lot 1 on the Plat of the Consolidation of 151 First Avenue of record under Instrument No. 20190403-0030305 in the Register's Office for Davidson County, Tennessee to which plat reference is made for a more complete and accurate legal description.

Being a portion of the property conveyed to 151 Nashville Project, LP by deed from Market Street Apartments, LTD, Jacob ("Jack") May and Mary Loventhal Jones of record under Instrument No. 20190305-0019846, Register's Office for Davidson County, Tennessee and by deed from Jacob ("Jack") May of record under Instrument No. 20190305-0019845, Register's Office for Davidson County, Tennessee.

Exhibit B

BYLAWS
OF
151 FIRST AVENUE MASTER CONDOMINIUM ASSOCIATION, INC.

ARTICLE I

Members
(Owners)

Section 1. Eligibility. The Members of 151 First Avenue Master Condominium Association, Inc., a Tennessee not-for-profit corporation (the "Association"), shall consist of the respective owners (collectively, the "Owners") of the Property known as 151 First Avenue Master Condominium, located at 100 Demonbreun, Nashville, Tennessee 37201 (the "Property"), in accordance with the respective percentages of ownership interest in the Common Elements of the Property owned by the respective Owners (these and other terms are used in these Bylaws as they are defined in the Declaration establishing 151 First Avenue Master Condominium, which Declaration is recorded in the Register's Office for Davidson County, Tennessee. The words "member" or "members" as used in these Bylaws means and shall refer to "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 an 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, 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 electronic mail transmission to an e-mail address provided by such Owner to the Board for such purpose.

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 Residential Condominium Units comprising the Residential Unit shall be exercised by the Residential 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. An 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 assessment. An 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, an authorized representative of the Residential Association and at least one (1) other Owner shall constitute a quorum of the Association.

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 Section 1.

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

Section 3. Vacancies. Any vacancy occurring in the Board (except vacancies in the first Board which shall be filled by the Declarant) shall be filled by the Owner of the Unit authorized to select such director or the Residential Association.

Section 4. Meetings. A regular annual meeting of the Board shall be held within seven (7) days following the regular annual meeting of 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 at any time by the Owner of the Unit authorized to select such director or the Residential Association. Only the Declarant may remove a member of the First Board.

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, at least one (1) director appointed by the Residential Association and at least one (1) director appointed by one (1) other Owner shall constitute a quorum of the Board.

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 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 Owners as expressed in a resolution duly adopted at any annual or Special Meeting of the Owners;

(m) to exercise all other powers and duties of the Association or 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 Owners or the Residential 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 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 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 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 may provide for a reserve for contingencies for the year in accordance with Section 8.3 of the Declaration.

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 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 Owner or the Residential Association, 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 Owner and the Residential 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.

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

(b) 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 Owner or the Residential Association 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 Owners are responsible for the existence of any such lien, the 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 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 Owners in the ownership percentages of the Owners in the Common Elements from time to time existing.

ARTICLE V

Contractual Powers

No contract or other transaction between the Association and one or more of its Directors or between the 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 Owners holding two-thirds (2/3) of the total Allocated Interests. Notwithstanding the foregoing, no amendment to these Bylaws shall change the right of an Owner to appoint directors as provided in Article II, Section 1 of these Bylaws without the consent of such Owner. The Board of Directors of the Residential Association shall have the authority to approve amendments to these Bylaws on behalf of all owners of such Unit. 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 these Bylaws of the Association, (iii) the Board and (iv) the Declarant, against all contractual and other liabilities to others arising out of contracts made by or other acts of such directors, Board, officers, committee members or Declarant, on behalf of the Owners, or arising out of their status as directors, Board, officers, committee members or Declarant, 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, committee member or Declarant may be involved by virtue of such persons being or having been such director, officer, Board, committee member, or Declarant; 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, committee member, or Declarant, or

(b) any matter settled or compromised, 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, committee member, or Declarant.

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 unless it shall ultimately be determined that such person is 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, Declarant or by the Managing Agent on behalf of the Owners shall provide that the directors, Board, officers, members of such committees, Declarant or the Managing Agent, as the case may be, are acting only as agents for the Owners' and shall have no personal liability thereunder (except as Owners), and that each 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 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 Declarant or 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. An 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 note and 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 an 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 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 Establishing 151 First Avenue Master Condominium, which Declaration is recorded in the Register's Office for Davidson County, Tennessee.

ARTICLE X

Conflicts

These Bylaws are set forth to comply with the requirements of the Act, and to allow these Bylaws to control in specific situations where such law allows. In case any provision of these 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)

FILED

CHARTER
OF
151 FIRST AVENUE 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 151 First Avenue Master Condominium Association, Inc.:

FIRST: The name of the corporation shall be **151 FIRST AVENUE MASTER CONDOMINIUM ASSOCIATION, INC.**, hereinafter referred to as the "Association."

SECOND: The Association is a mutual benefit corporation.

THIRD: The period of its duration is perpetual.

FOURTH: The 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 **151 FIRST AVENUE 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 151 First Avenue 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.

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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 Article Fourth 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 Article Fourth.

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 Bylaws. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by

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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
Meredith Strongin	100 Park Avenue – 6th Floor New York NY 10017
Paula Phillips	125 High Street, Oliver Street Tower, STE 332 Boston, MA 02110
John Fraser	390 Madison Avenue, 14th Floor New York, NY 10017

Members of the initial Board may only be removed by Declarant. After the date of the transfer of the first Unit (including, for avoidance of doubt, a Residential Condominium Unit), any director may be removed, either with or without cause, at any time, by the Owner or, if applicable, the Board of the Residential Association authorized to select such director.

EIGHTH: Any vote of the Board resulting in a tie ("Deadlock") shall be resolved in the following manner:

(a) The Board shall in good faith attempt to negotiate for a period not to exceed ten (10) days from the date of such vote in an effort to resolve the Deadlock.

(b) If the Board is unable to resolve the Deadlock within such ten (10) day period, the Board shall retain, within ten (10) additional days, a mutually acceptable neutral and impartial "expert" having (or being a senior member of a firm that has) not less than ten (10) years' experience in the area of expertise on which the dispute is based to assist the Board in resolving the Deadlock. If the Board is unable to select an expert then the President of the Association shall select the expert. The expert shall discuss the matter with the Board and, failing resolution thereof, within twenty (20) days after the expert has been retained, the expert shall advise the Board in writing of his or her views, which views shall be final, conclusive and binding upon the Board and may be enforced in any court having jurisdiction. The decision of the expert shall comply with this Declaration, these Bylaws and applicable law.

(c) The expert shall exceed its power if he or she ignores, or renders a decision in conflict with, any of the provisions of the Declaration, these Bylaw or applicable law, in which case any member of the Board shall have the right to seek appropriate judicial relief. The fees and expenses of the expert shall be a Common Expense under the Declaration.

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NINTH: The address of the Association's initial principal and registered office is c/o Four Seasons Private Residences Nashville, 222 Second Avenue South, 14th Floor, Nashville, TN 37201. The name of its initial registered agent is Stephen C. Baker, whose address is 511 Union St., Suite 2700, Nashville, TN 37219, email address: steve.baker@wallerlaw.com.

TENTH: 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 the 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.

ELEVENTH: 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.

TWELFTH: 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.

THIRTEENTH: 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.

FOURTEENTH: The name and address of the incorporator are:

Stephen C. Baker
Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville, Tennessee 37219

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 17th day of December, 2021.

Stephen C. Baker

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Tre Hargett
Secretary of State

Karen Johnson Davidson County
Batch# 776926 CHARTER
12/20/2021 02:22:24 PM 6 pgs
Fees: $7.50 Taxes: $0.00
[redacted]
20211220-0167931

Division of Business Services
Department of State
State of Tennessee
312 Rosa L. Parks AVE, 6th FL
Nashville, TN 37243-1102

151 FIRST AVENUE MASTER CONDOMINIUM ASSOCIATION, INC.
FL 14
222 2ND AVE S
NASHVILLE, TN 37201-2366

December 20, 2021

Filing Acknowledgment

Please review the filing information below and notify our office immediately of any discrepancies.

SOS Control # :	**001265332**	Formation Locale:	TENNESSEE
Filing Type:	Nonprofit Corporation - Domestic	Date Formed:	12/17/2021
Filing Date:	12/17/2021 3:49 PM	Fiscal Year Close:	12
Status:	Active	Annual Report Due:	04/01/2023
Duration Term:	Perpetual	Image # :	B1105-7608
Public/Mutual Benefit:	Mutual		
Business County:	DAVIDSON COUNTY		

Document Receipt

Receipt # : 006783685	Filing Fee:	$100.00
Payment-Account - #44219 WALLER LANSDEN DORTCH, NASHVILLE, TN		$100.00

Registered Agent Address:
STEPHEN C. BAKER
STE 2700
511 UNION ST
NASHVILLE, TN 37219-1791

Principal Address:
FL 14
222 2ND AVE S
NASHVILLE, TN 37201-2366

Congratulations on the successful filing of your **Charter** for **151 FIRST AVENUE MASTER CONDOMINIUM ASSOCIATION, INC.** in the State of Tennessee which is effective on the date shown above. You must also file this document in the office of the Register of Deeds in the county where the entity has its principal office if such principal office is in Tennessee. Please visit the Tennessee Department of Revenue website (www.tn.gov/revenue) to determine your online tax registration requirements. If you need to obtain a Certificate of Existence for this entity, you can request, pay for, and receive it from our website.

You must file an Annual Report with this office on or before the Annual Report Due Date noted above and maintain a Registered Office and Registered Agent. Failure to do so will subject the business to Administrative Dissolution/Revocation.

Tre Hargett
Secretary of State

Processed By: Nichole Hambrick

Exhibit D

PLAT
OF
151 FIRST AVENUE MASTER CONDOMINIUM

151 First Avenue Master Condominium

The property subject to 151 First Avenue Master Condominium is more particularly described as Land in Davidson County, Tennessee being Lot 1 on the Plat of the Consolidation of 151 First Avenue of record under Instrument No. 20190403--0030305 in the Register's Office for Davidson County, Tennessee to which plat reference is made for a more complete and accurate legal description.

ARCHITECT CERTIFICATION:

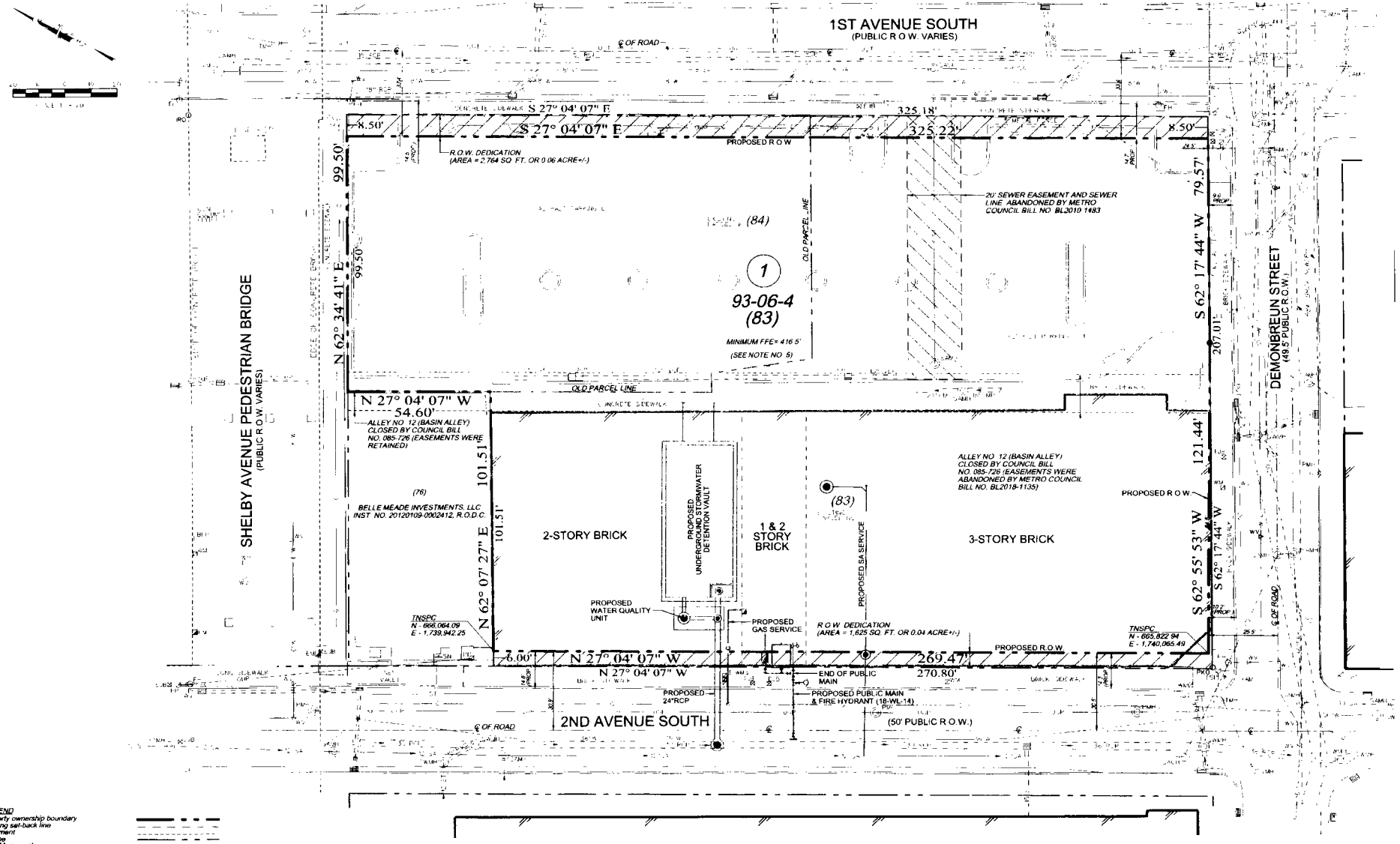
I certify, to best of my knowledge, information and belief,
the attached Plat for 151 First Avenue Master Condominium
contain all information required by T.C.A. Section 66-27-309(d).

Name: Gary Kohn

Date: 12/27/2021

License No.:





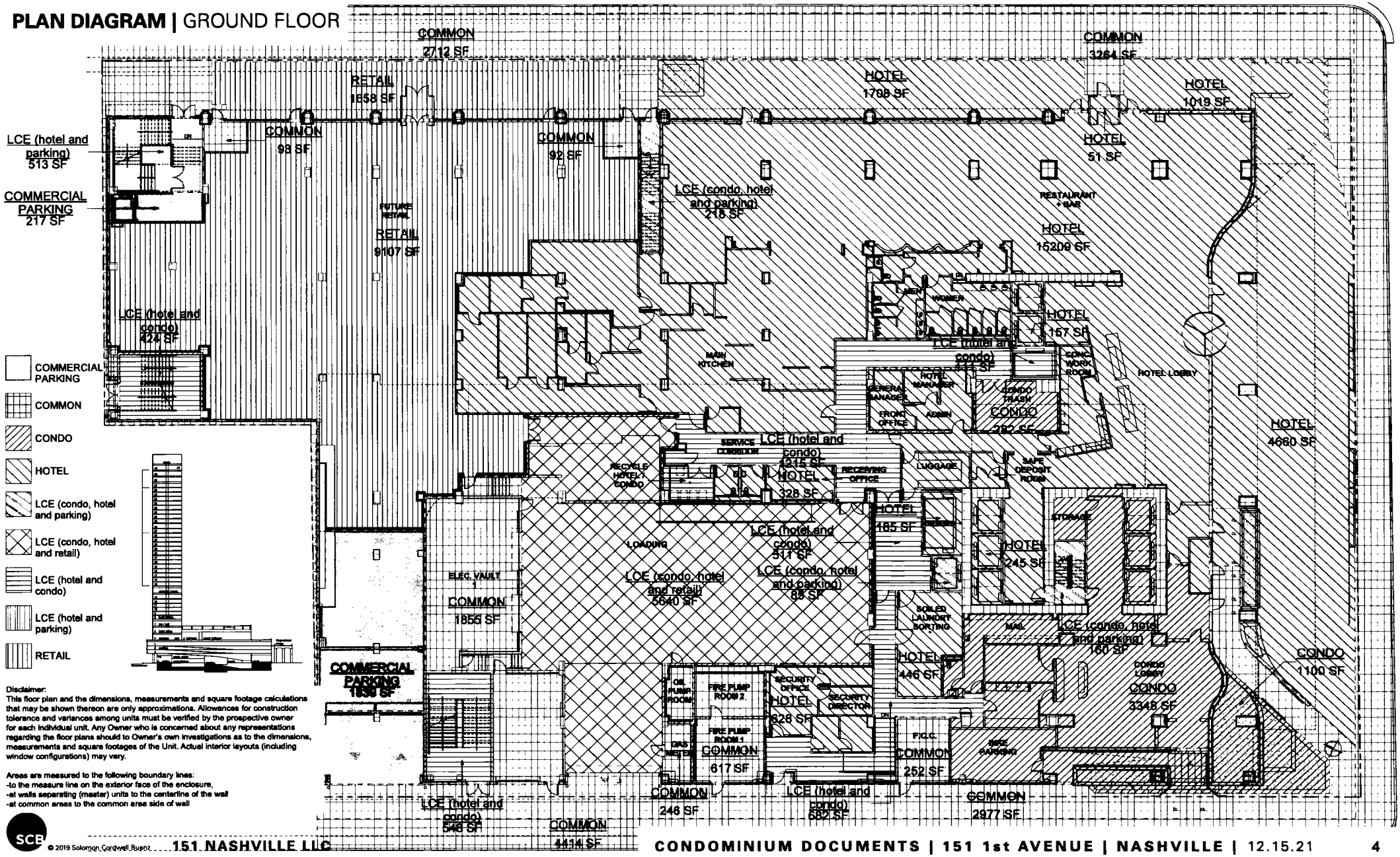
LEGEND
Property ownership boundary
Building set-back line
Easement
Lot line
New Monument
Existing monuments
Iron Pin (O)
Iron Pin (N)
Lot number — 1
Property map parcel number — (83, 84)
Pertains to property map — 93-06-4

LOT 1 AREA = 59,805 SQ. FT., OR 1.373 ACRES +/-
R.O.W. DEDICATION (1ST AVENUE) = 2,764 SQ. FT. OR 0.063 ACRE +/-
R.O.W. DEDICATION (2ND AVE. & DEMONBREUN) 1,707 SQ. FT. OR 0.039 ACRE +/-
TOTAL AREA = 64,276 SQ. FT. OR 1.476 ACRES +/-

CONDOMINIUM DOCUMENTS - AREA SUMMARY

	Retail	Commercial Parking	Condo	Hotel	Common	LCE (condo, hotel, parking)	LCE (condo, hotel, retail)	LCE (hotel, condo)	LCE (hotel, parking)	TOTALS
Roof					7,643					7,643
41.5			419							419
41			3,715	288	6,366	399		126		10,894
40			10,684		584	397		27		11,692
39			11,186		534	397		33		12,150
38			11,186		534	397		33		12,150
37			11,186		534	397		33		12,150
36			11,178		563	376		33		12,150
35			11,178		563	376		33		12,150
34			11,178		563	376		33		12,150
33			11,178		563	376		33		12,150
32			11,178		563	376		33		12,150
31			11,178		563	376		33		12,150
30			11,178		563	376		33		12,150
29			11,178		563	376		33		12,150
28			11,178		563	376		33		12,150
27			11,178		563	376		33		12,150
26			10,966		773	378		33		12,150
25			10,966		773	378		33		12,150
24			10,966		773	378		33		12,150
23			10,966		773	378		33		12,150
22			10,966		773	378		33		12,150
21			10,966		773	378		33		12,150
20			10,966		773	378		33		12,150
19			10,966		773	378		33		12,150
18			10,966		773	378		33		12,150
17			10,966		773	378		33		12,150
16			10,966		773	378		33		12,150
15			10,966		773	378		33		12,150
C.A.			15,195	5,292	1,311	399		2,198		24,395
14				23,061		453		185		23,699
12				23,061		453		185		23,699
11				23,061		453		185		23,699
10				23,061		453		185		23,699
9				23,061		453		185		23,699
8				21,932	1,242	374		183		23,731
7			318	40,575	1,381	429		498		43,201
6.5							640			640
6			5,711	21,460	1,979	423		785	505	30,863
5				49,718	1,560	436		756	449	52,919
4.5			6,624		92				588	7,304
4	195	98	45,810		2,534	442		1,591	400	51,070
3		47,519		190	1,701	442		933	402	51,187
2		44,693			1,728	441		902	402	48,166
1M	1,479	1,314	187	7,124	9,239	1,020		1,882	572	22,817
1	10,765	2,056	4,730	24,635	18,295	462	5,640	3,492	513	70,588
TOTALS	12,439	95,680	370,329	286,519	72,168	17,416	6,280	15,129	3,831	879,774
%	1.41%	10.88%	42.09%	32.57%	8.20%	1.98%	0.71%	1.72%	0.44%	100.0%

PLAN DIAGRAM | GROUND FLOOR

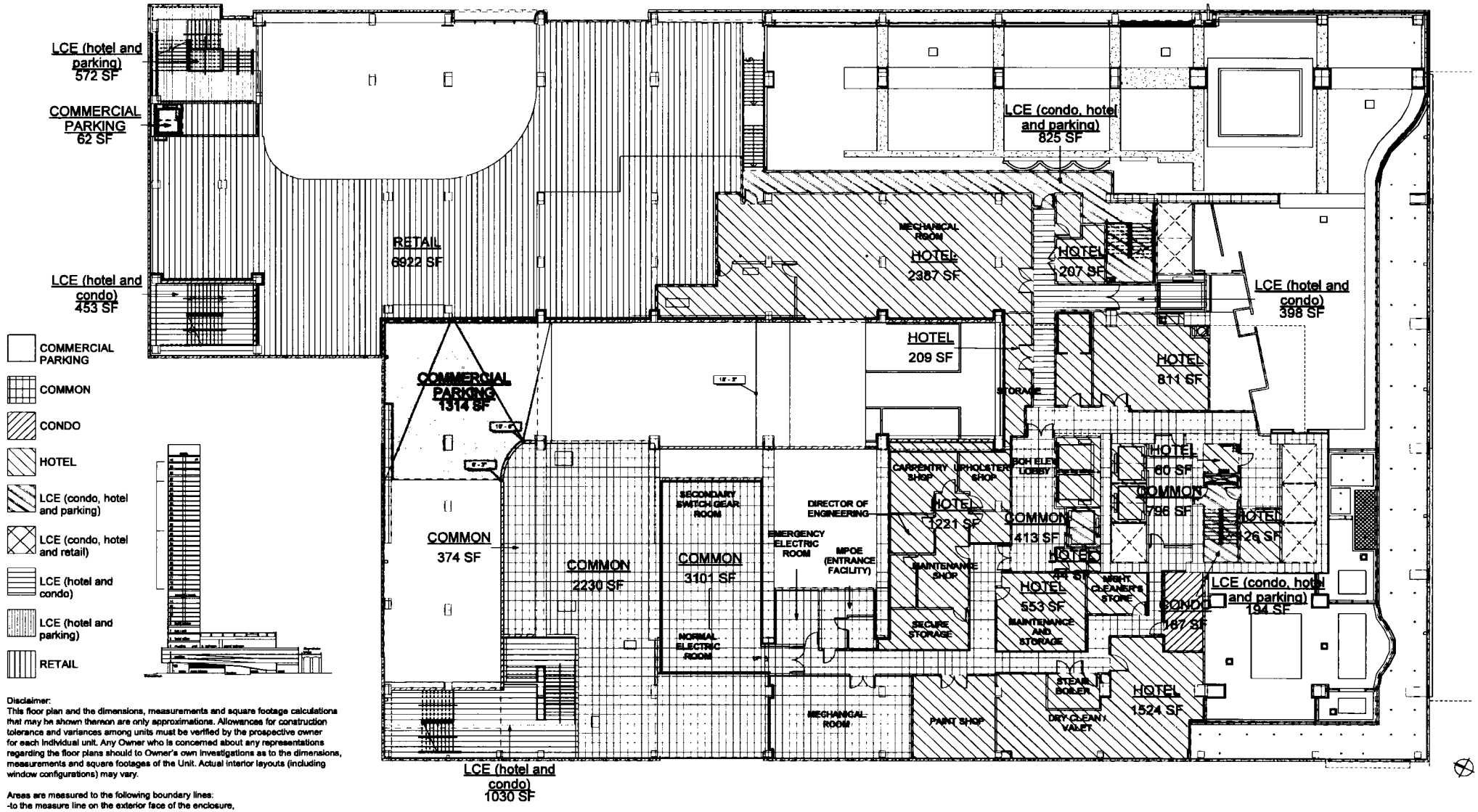


Disclaimer:
This floor plan and the dimensions, measurements and square footage calculations that may be shown thereon are only approximations. Allowances for construction tolerance and variances among units must be verified by the prospective owner for each individual unit. Any Owner who is concerned about any representations regarding the floor plans should to Owner's own investigations as to the dimensions, measurements and square footages of the Unit. Actual interior layouts (including window configurations) may vary.

Areas are measured to the following boundary lines:
-to the measure line on the exterior face of the enclosure,
-at walls separating (master) units to the centerline of the wall
-at common areas to the common area side of wall

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PLAN DIAGRAM | LEVEL 1M MEZZANINE

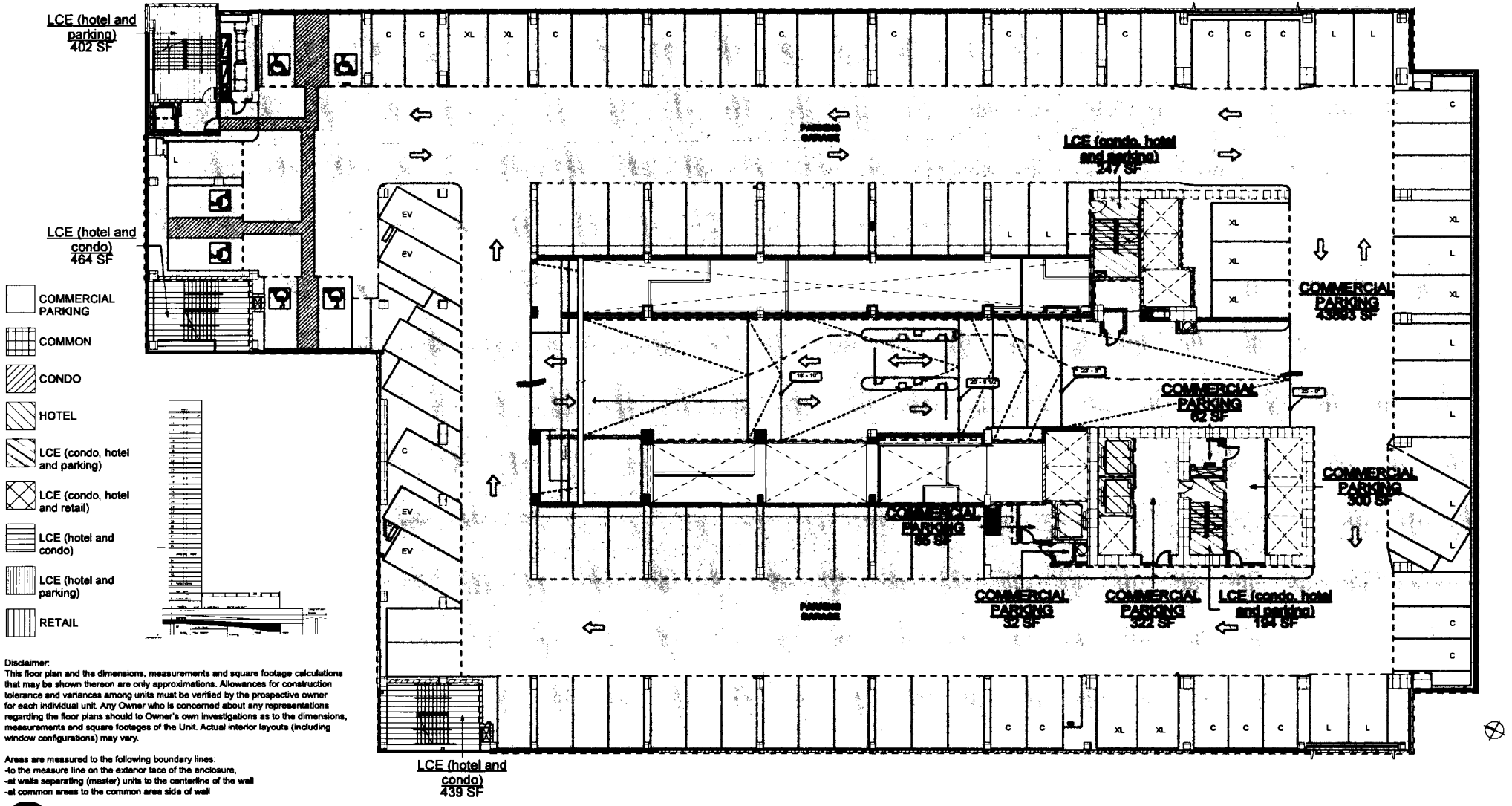


Disclaimer:
This floor plan and the dimensions, measurements and square footage calculations that may be shown thereon are only approximations. Allowances for construction tolerance and variances among units must be verified by the prospective owner for each individual unit. Any Owner who is concerned about any representations regarding the floor plans should to Owner's own investigations as to the dimensions, measurements and square footages of the Unit. Actual interior layouts (including window configurations) may vary.

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-to the measure line on the exterior face of the enclosure,
-at walls separating (master) units to the centerline of the wall
-at common areas to the common area side of wall

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PLAN DIAGRAM | LEVEL 2 PARKING

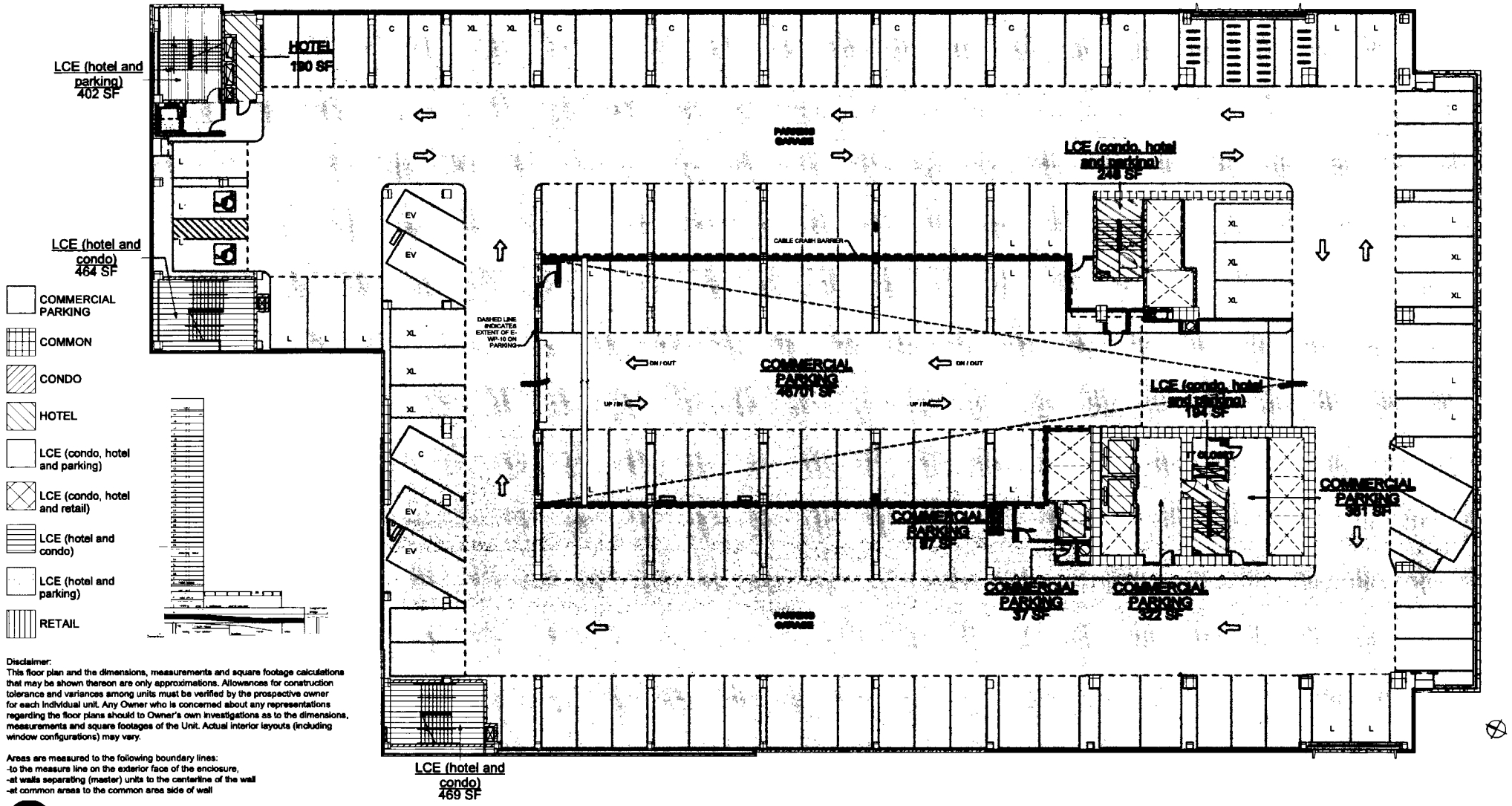


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Areas are measured to the following boundary lines:
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-at walls separating (master) units to the centerline of the wall
-at common areas to the common area side of wall

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PLAN DIAGRAM | LEVEL 3 PARKING

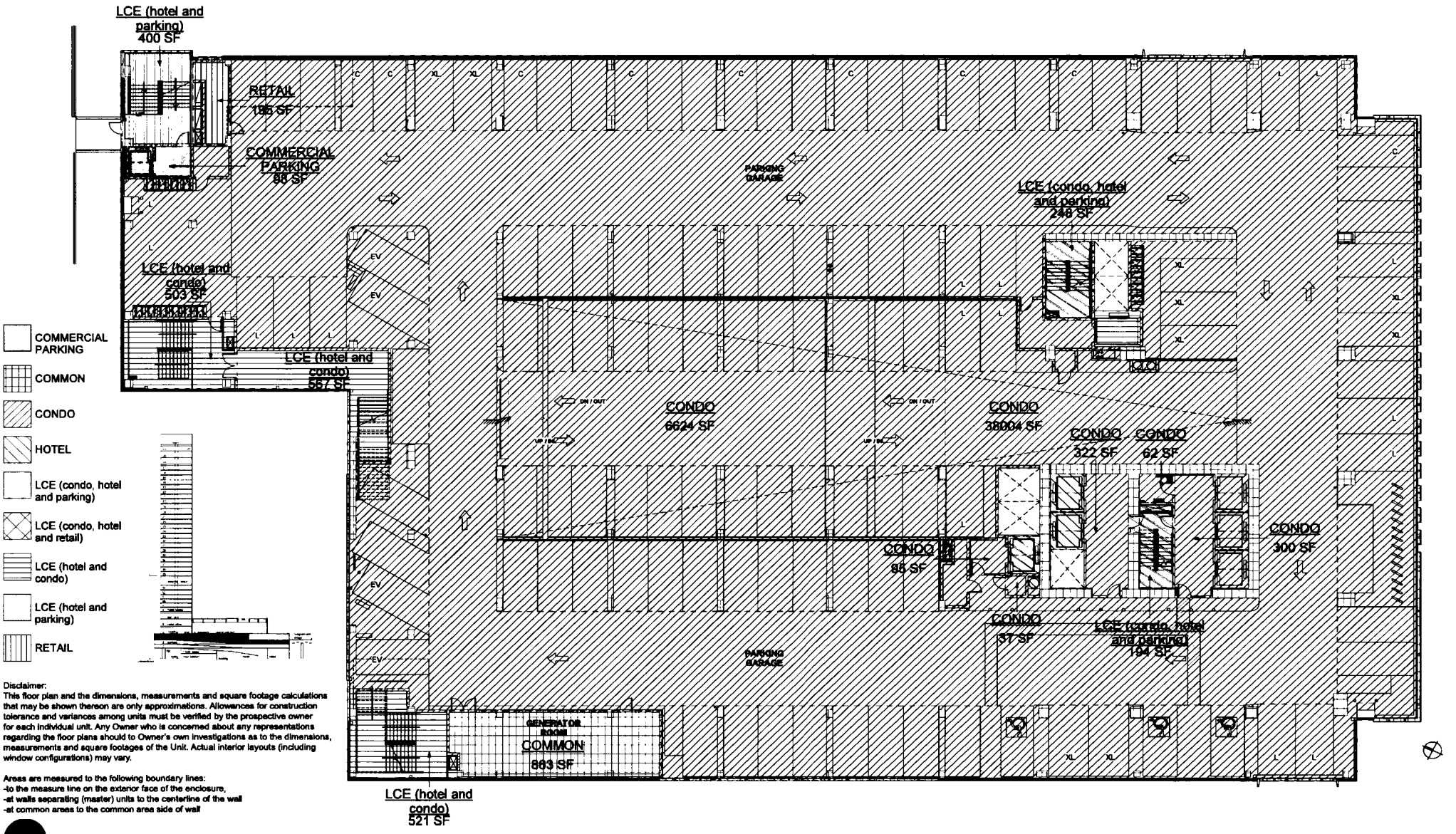


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PLAN DIAGRAM | LEVEL 4 PARKING

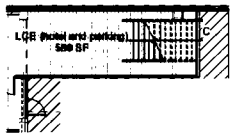


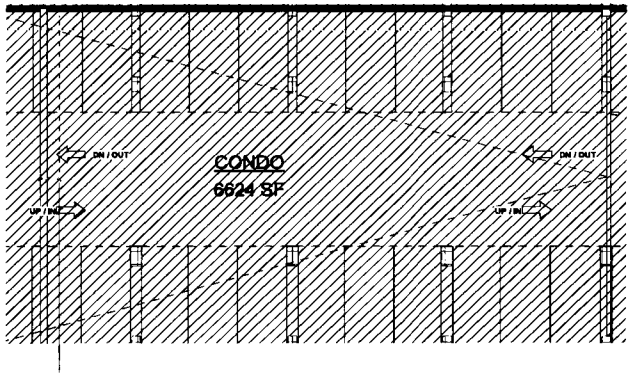
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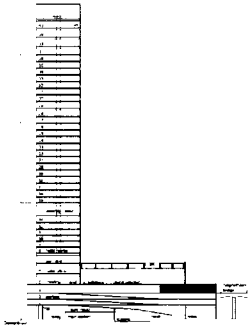
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PLAN DIAGRAM | LEVEL 4.5 PARKING





- COMMERCIAL PARKING
- COMMON
- CONDO
- HOTEL
- LCE (condo, hotel and parking)
- LCE (condo, hotel and retail)
- LCE (hotel and condo)
- LCE (hotel and parking)
- RETAIL



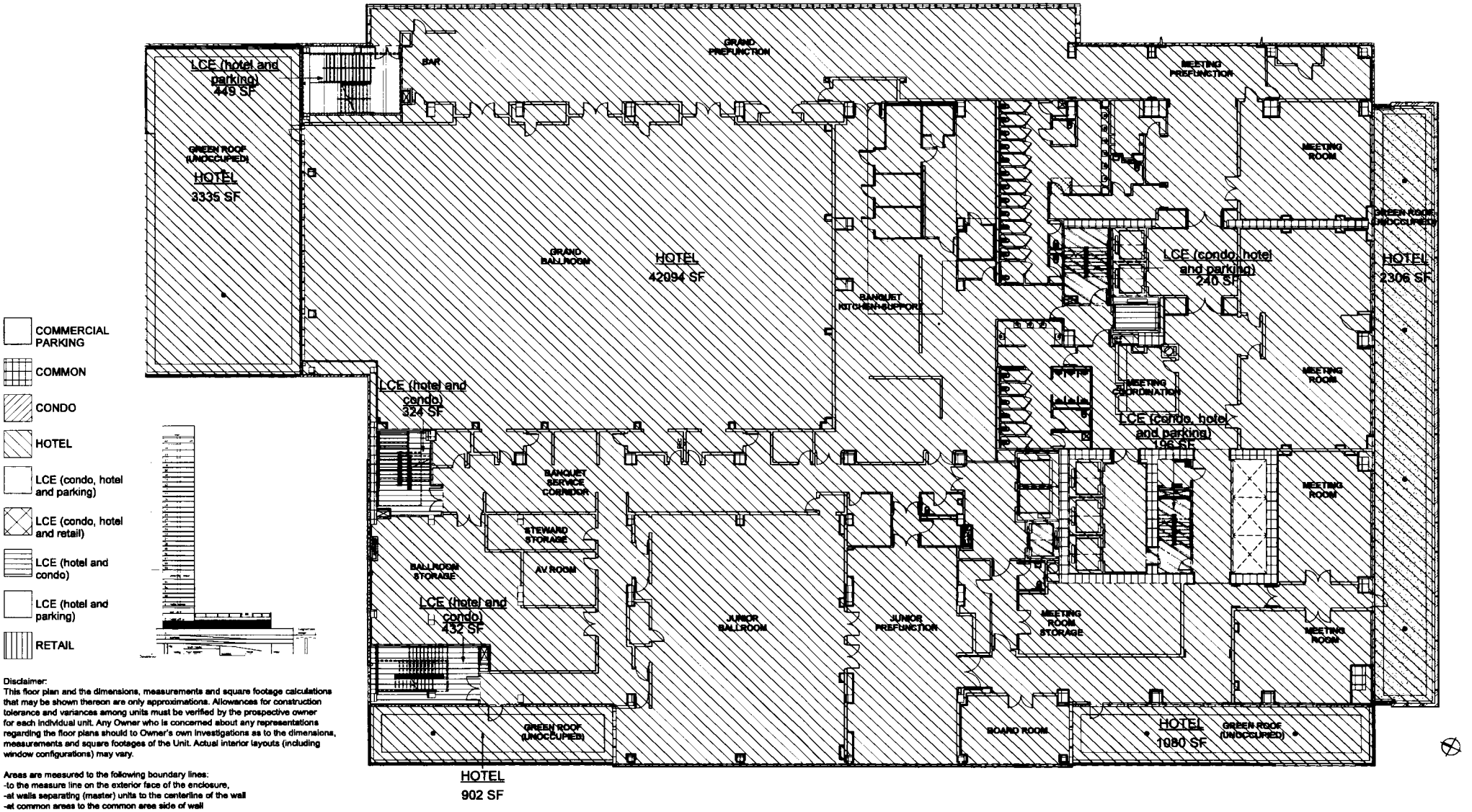
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LCE (hotel and condo)
521 SF

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PLAN DIAGRAM | HOTEL LEVEL 5 BALLROOMS + MEETING

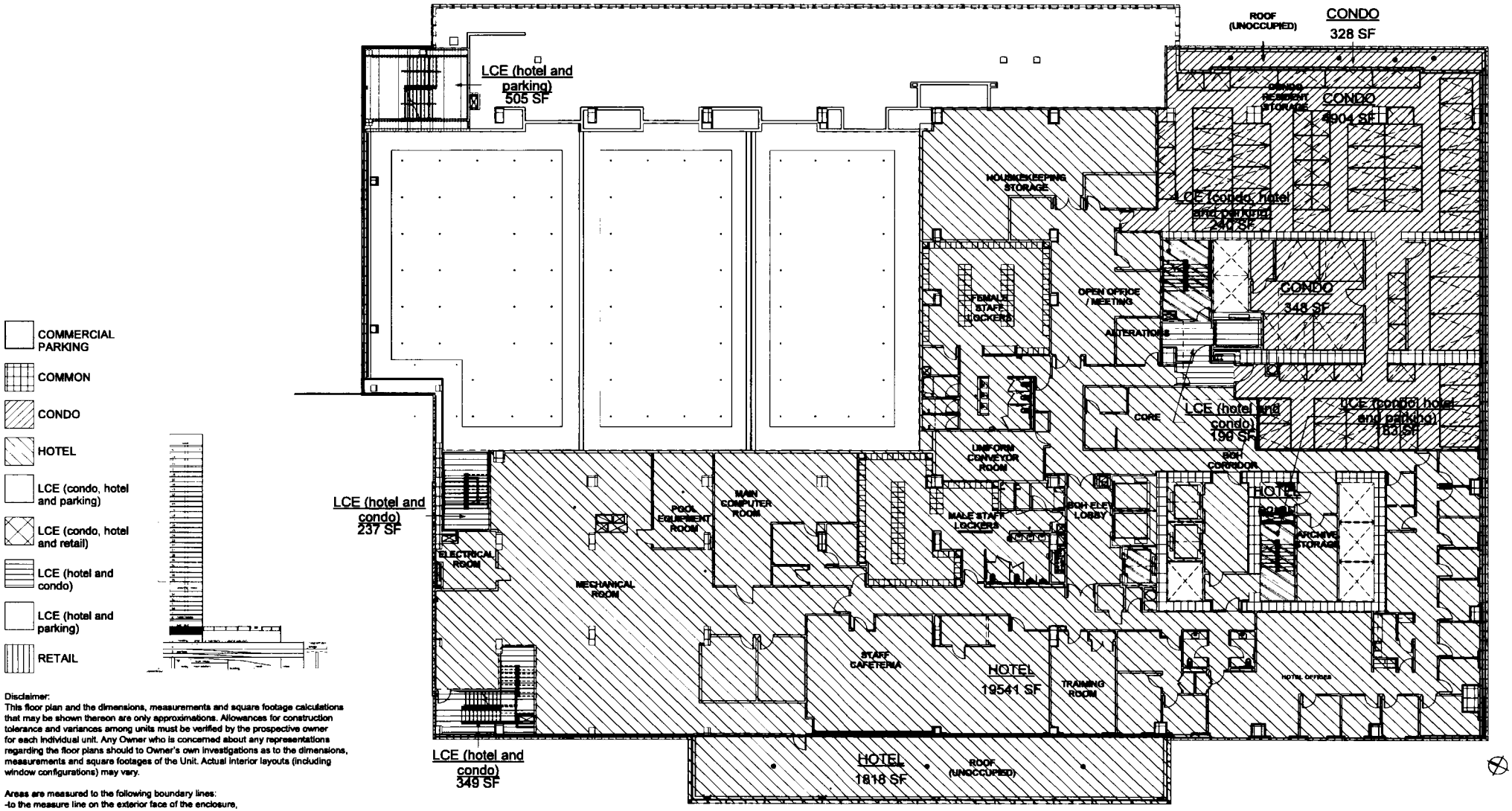


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PLAN DIAGRAM | HOTEL LEVEL 6 HOTEL BoH

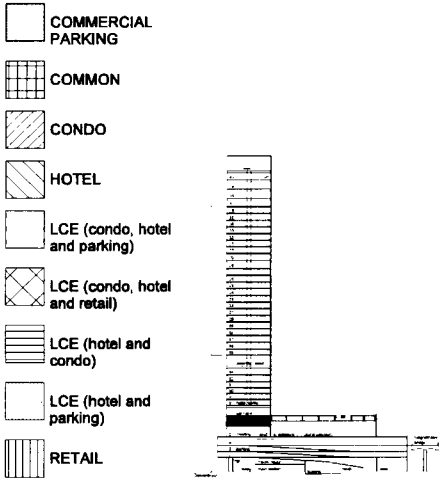


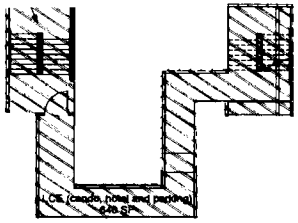
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PLAN DIAGRAM | HOTEL LEVEL 6 HOTEL BoH - STAIR TRANSFER



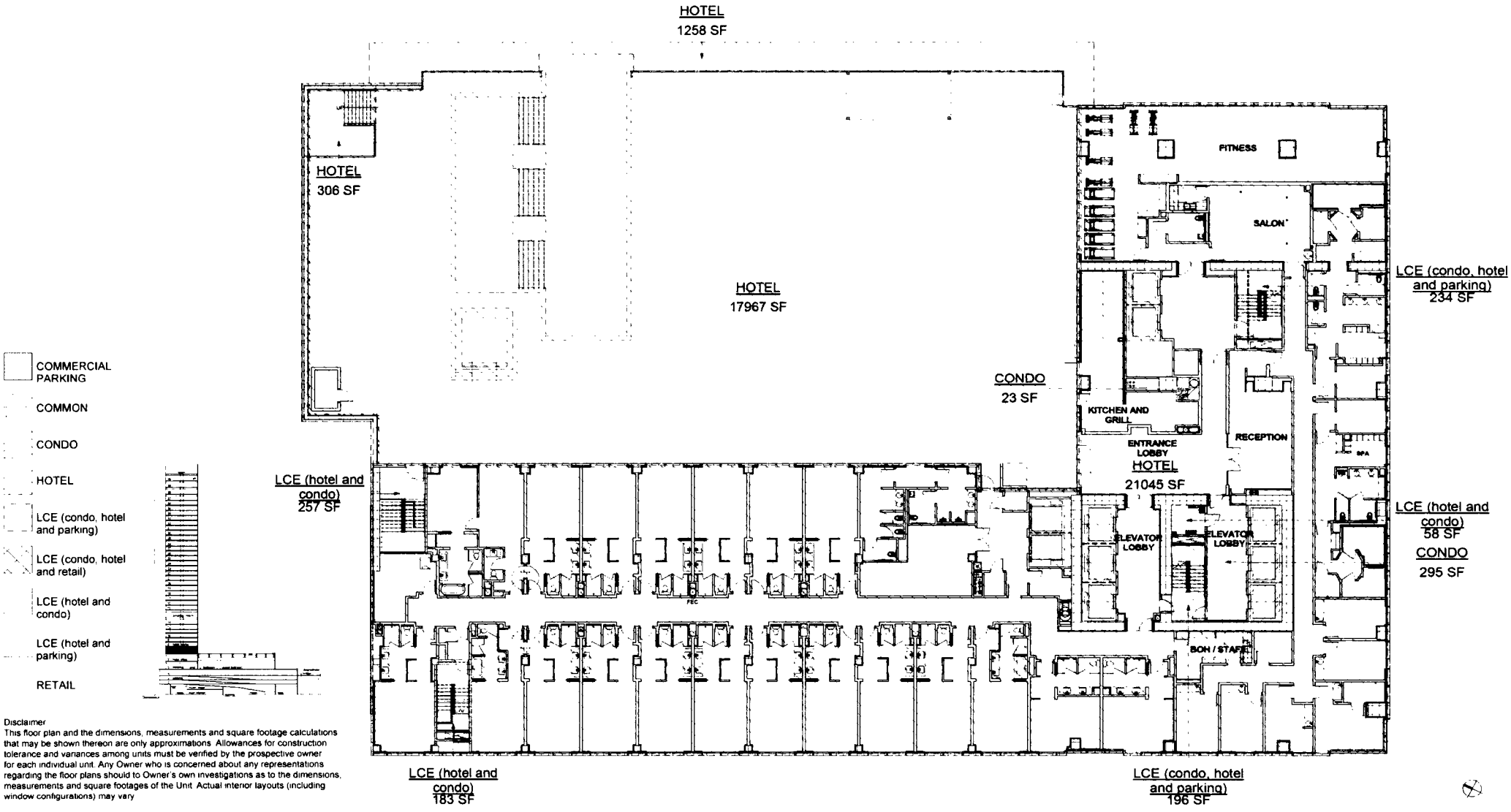


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PLAN DIAGRAM | HOTEL LEVEL 7 AMENITY + DECK

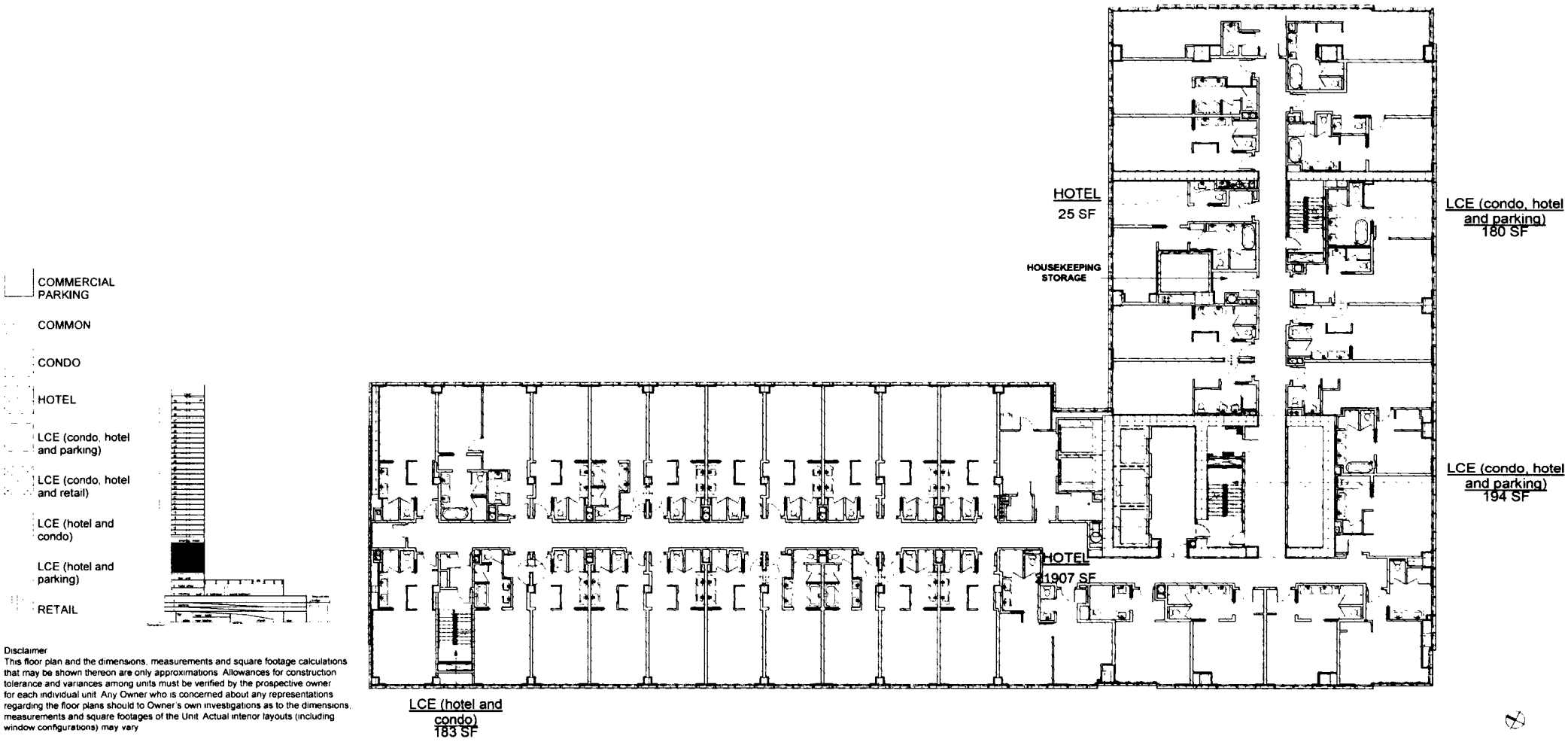


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PLAN DIAGRAM | HOTEL LEVELS 8-14

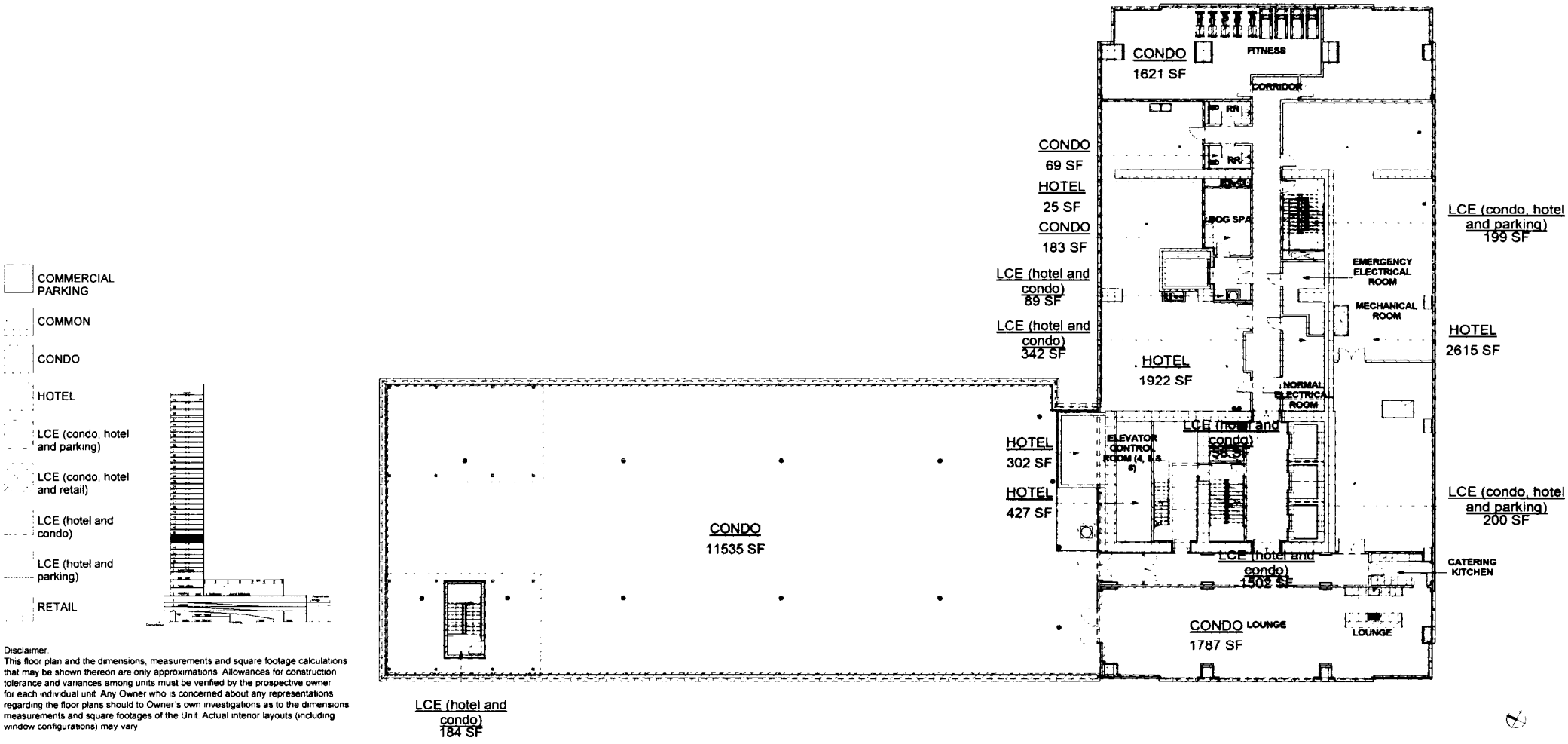


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PLAN DIAGRAM | LEVEL CONDO AMENITY

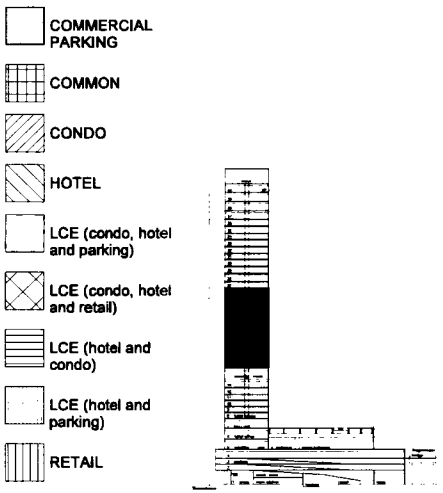


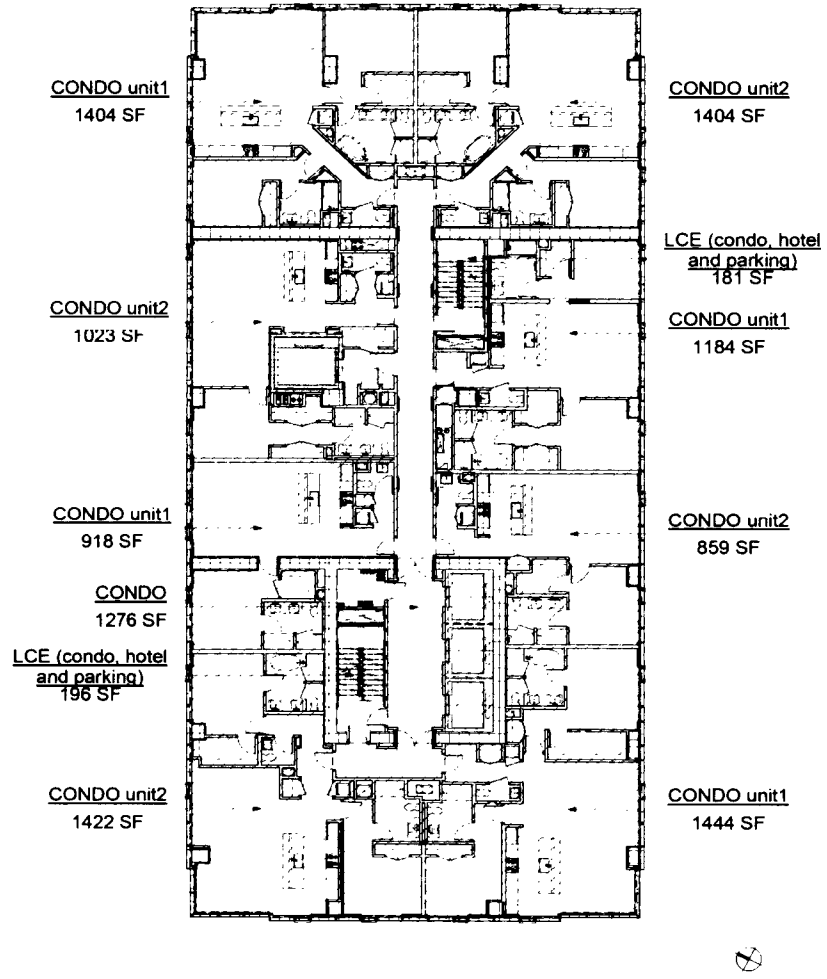
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PLAN DIAGRAM | LEVEL 15-26 (CONDO TIER 1)





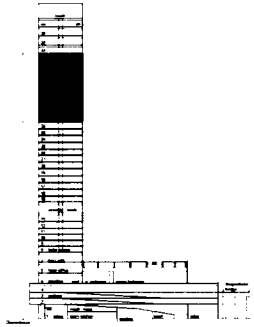
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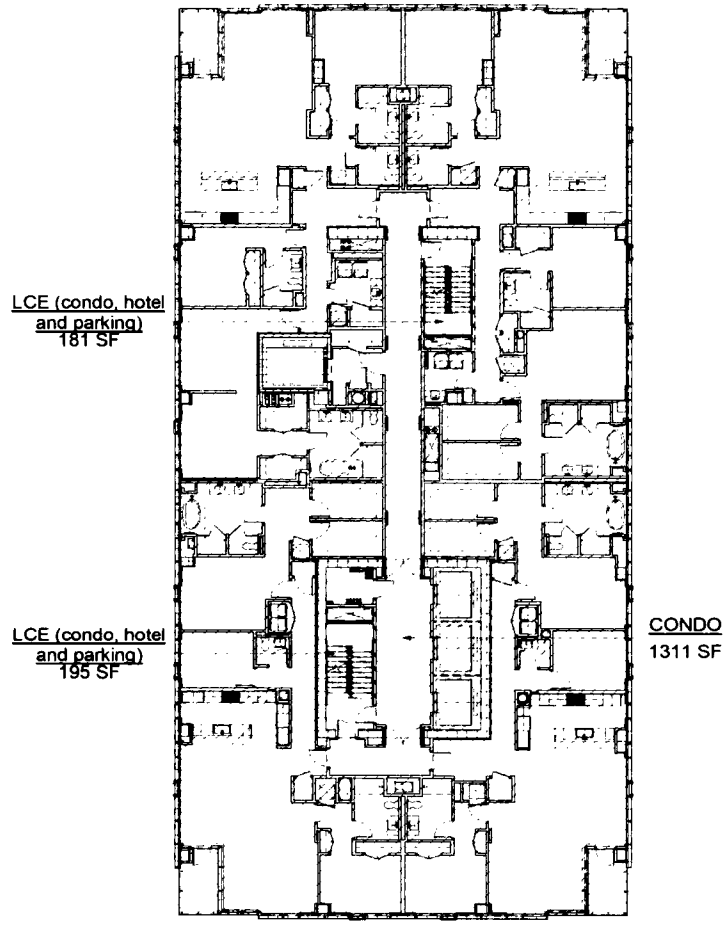
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PLAN DIAGRAM | LEVEL 27-36 (CONDO TIER 2)

- COMMERCIAL PARKING
- COMMON
- CONDO
- HOTEL
- LCE (condo, hotel and parking)
- LCE (condo, hotel and retail)
- LCE (hotel and condo)
- LCE (hotel and parking)
- RETAIL



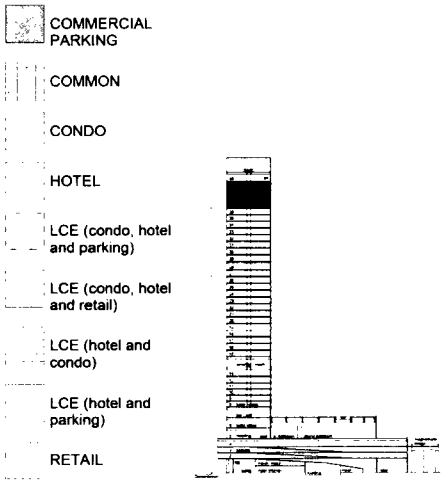


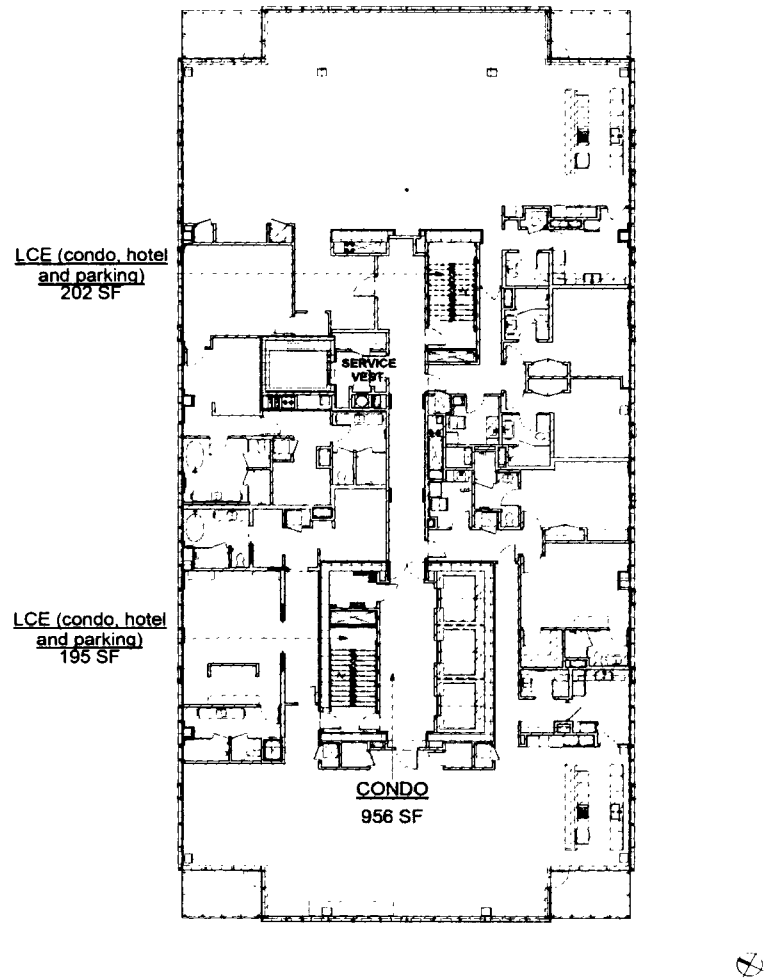
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PLAN DIAGRAM | LEVEL 37-39 (CONDO TIER 3)





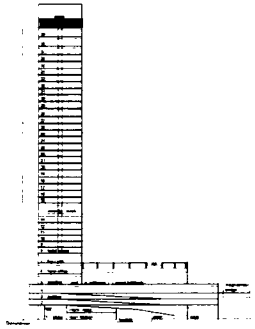
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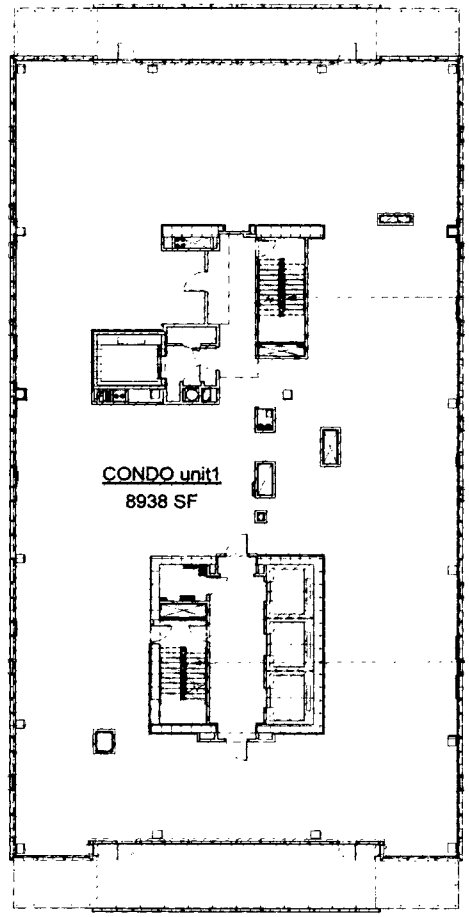
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PLAN DIAGRAM | LEVEL 40 PENTHOUSE

- COMMERCIAL PARKING
- COMMON
- CONDO
- HOTEL
- LCE (condo, hotel and parking)
- LCE (condo, hotel and retail)
- LCE (hotel and condo)
- LCE (hotel and parking)
- RETAIL



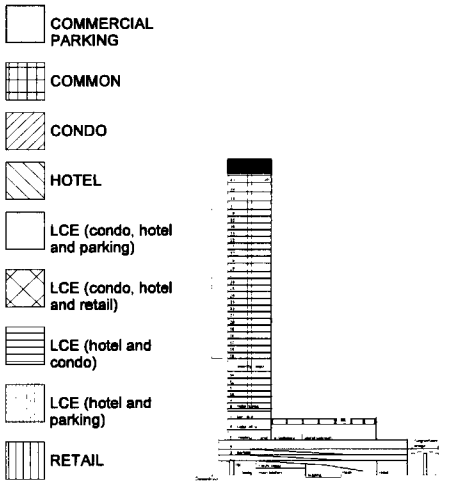


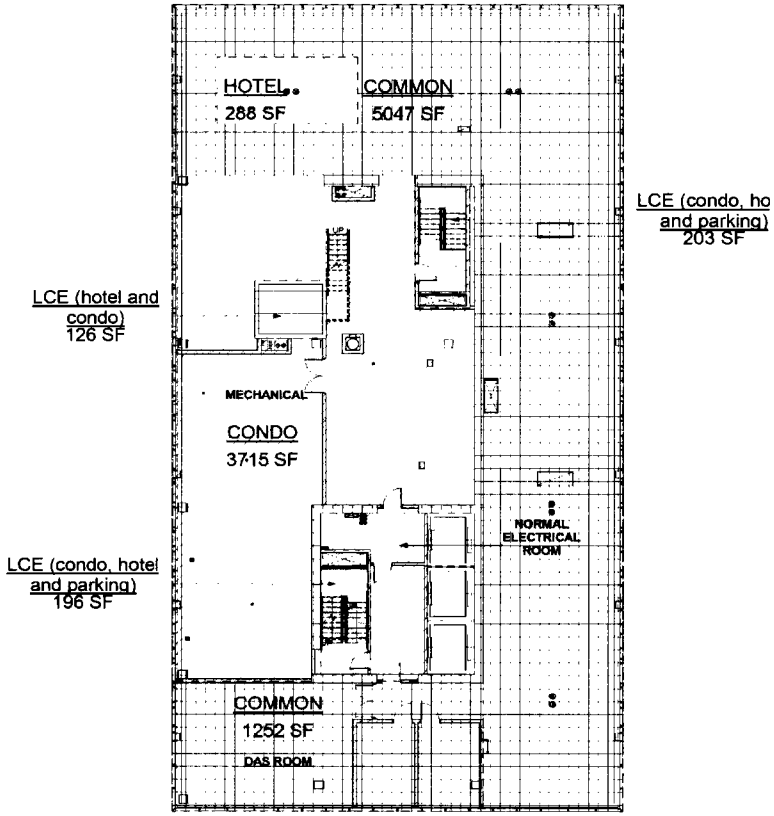
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PLAN DIAGRAM | MECHANICAL PENTHOUSE LEVEL





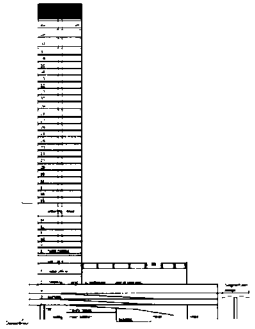
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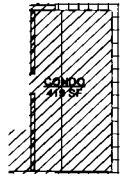
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PLAN DIAGRAM | MECHANICAL PENTHOUSE LEVEL - ELEVATOR MACHINE ROOM

- COMMERCIAL PARKING
- COMMON
- CONDO
- HOTEL
- LCE (condo, hotel and parking)
- LCE (condo, hotel and retail)
- LCE (hotel and condo)
- LCE (hotel and parking)
- RETAIL





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PLAN DIAGRAM | ROOF PLAN

COMMERCIAL PARKING

COMMON

CONDO

HOTEL

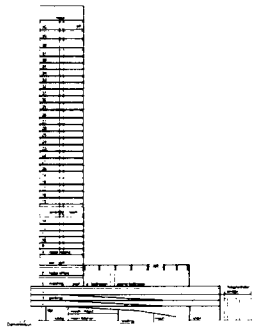
LCE (condo, hotel and parking)

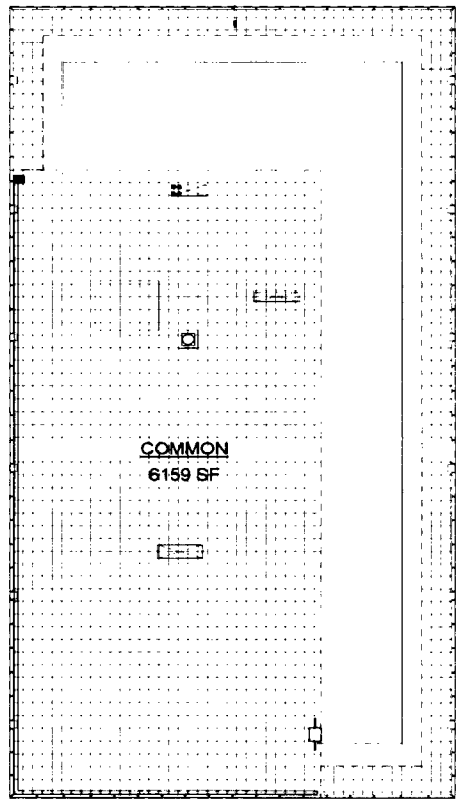
LCE (condo, hotel and retail)

LCE (hotel and condo)

LCE (hotel and parking)

RETAIL





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Exhibit E

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

Unit	Approximate Gross area	Ownership and Voting Percentage
	in Sq. Ft.	
Hotel Unit	332,336	37.78%
Residential Unit	425,829	48.40%
Retail Unit	13,729	1.56%
Commercial Parking Unit	107,879	12.26%
Total	879,774	100.00%

The percentage interest of the Units is based upon the approximate area in square feet of such Units. The square footages described above are determined by measuring from the vertical planes of the interior surfaces of the exterior windows and exterior doors, the interior unfinished surfaces of walls between Units, the interior unfinished surface of corridor walls, the interior unfinished surfaces of exterior walls and the interior unfinished surfaces of structural walls and columns located within the boundaries of a Unit. For purposes of this Declaration, the square footages set forth above are intended only for the purpose of this exhibit and for no other purpose.

Exhibit F

EASEMENTS AND RESTRICTIONS OF RECORD

1. All Easements, conditions and restrictions effecting the premises as shown on plat of Consolidation of 151 First Avenue of record under Instrument No. 20190403-0030305, in the Register's Office of Davidson County, Tennessee.

Exhibit G

PROHIBITED USES

(a) All transient rental activities, except for hotel use permitted pursuant to Section 13.1(b), including but not limited to any online hospitality services, agents or brokers such as "Airbnb" or "VRBO" or other similar companies or services.

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

(c) Establishment selling pornographic materials or drug-related paraphernalia;

(d) Live performance theater exhibiting nude or lewd performers or performances or lascivious behavior;

(e) Flea market, so-called "dollar store" or similar discount store;

(f) Casino or off-track betting store or parlor;

(g) Pawn shop, currency exchange or check cashing establishment;

(h) Automobile sale, rental or repair/maintenance facility;

(i) Hospital, medical center, medical clinic or laboratory with regular visiting patients (including abortion clinics);

(j) Public health clinic;

(k) Manufacturing or industrial uses;

(l) Massage parlor;

(m) Mortuary, crematorium or funeral services;

(n) Recycling center or collection facility unless collection bins are required by law, and then only to the extent required by law;

(o) 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;

(p) Foreign or domestic embassy, consulate or other governmental or quasi-governmental agency or office;

(q) Dry cleaners with on-site cleaning of clothing involving any use of cleaning chemicals; provided that a drop-off and pick up service shall be permitted;

(r) Gun shop or other business selling firearms or other firearm ammunition.

(s) Smoke shop;

(t) Drug or substance abuse treatment center, clinic or facility;

(u) Needle exchange services;

(v) Medical marijuana dispensary, growing facility or other facility involved in the legal or illegal growth, sale or distribution of marijuana;

(w) Tattoo parlor;

(x) Soup kitchen, food bank or similar establishment; or

(y) Thrift shop, second hand store, consignment store or any store or facility similar to a "Salvation Army" or "Goodwill" store.

Exhibit H

ALLOCATION OF COMMON EXPENSES

Common Expense Allocation Ratio
Hotel Unit: 37.46%
Residential Unit: 48.41%
Retail Unit: 1.63%
Commercial Parking Unit: 12.51%
Method for allocating percentages: Percentages based on share of square footage

ALLOCATIONS FOR LIMITED COMMON ELEMENTS (Section 8.2(a)(i))

LCE (condo, hotel and parking)
Hotel Unit: 38.07%
Residential Unit: 49.21%
Commercial Parking Unit: 12.71%
Method for allocating percentages: Percentages based on share of square footage

LCE (condo, hotel and retail)
Hotel Unit: 42.81%
Residential Unit: 55.33%
Retail Unit: 1.86%
Method for allocating percentages: Percentages based on share of square footage

LCE (hotel and condo)
Hotel Unit: 43.62%
Residential Unit: 56.38%
Method for allocating percentages: Percentages based on share of square footage

LCE (hotel and parking)
Hotel Unit: 74.97%
Commercial Parking Unit: 25.03%
Method for allocating percentages: Percentages based on share of square footage

ALLOCATIONS BENEFITTING FEWER THAN ALL UNITS OR DISPROPORTIONATELY BENEFITING CERTAIN UNITS (Section 8.2(a)(ii))

HVAC Maintenance
Hotel Unit: 42.81%
Residential Unit: 55.33%
Retail Unit: 1.86%
Method for allocating percentages: Based on square footage.

Pest Control
Hotel Unit: 42.81%
Residential Unit: 55.33%

Retail Unit: 1.86%
Method for allocating percentages: Based on square footage

Window Cleaning
Hotel Unit: 42.81%
Residential Unit: 55.33%
Retail Unit: 1.86%
Method for allocating percentages: Based on square footage

Air Condition Repairs
Hotel Unit: 42.81%
Residential Unit: 55.33%
Retail Unit: 1.86%
Method for allocating percentages: Based square footage

ALLOCATIONS BASED ON INSURANCE (Section 8.2(a)(ii))

Insurance [SUBJECT TO CHANGE]
Hotel Unit: 66.5%
Residential Unit: 28%
Retail Unit: 0.5%
Commercial Parking Unit: 5.0%
Method for allocating percentages: Risk based on the allocation of the premium among the Units.