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DECLARATION OF CONDOMINIUM REGIME FOR FULTON CONDOMINIUMS

(A Condominium Community in Davidson County, Tennessee)

DECLARANT: MONROE GERMANTOWN LLC, a Tennessee limited liability company

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DECLARATION OF CONDOMINIUM REGIME
FOR
FULTON CONDOMINIUMS

MONROE GERMANTOWN LLC, a Tennessee limited liability company ("**Declarant**") is the owner of the tract of land in Davidson County, Tennessee, as more particularly described on Exhibit "A" attached hereto and incorporated herein, together with all Improvements thereon and all easements, rights, and appurtenances thereto (collectively, the "**Property**"). The Property is hereby submitted to the terms and provisions of the Tennessee Condominium Act of 2008, for the purposes of creating the condominiums known as Fulton Condominiums.

NOW, THEREFORE, it is hereby declared that the Property will be held sold, conveyed, leased, occupied, used, insured, and encumbered with this Declaration, including the representations and reservations of Declarant, set forth on Appendix "A", attached hereto, which will run with the Property and be binding upon all parties having right, title, or interest in or to such property, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof.

ARTICLE 1
DEFINITIONS

Unless otherwise defined in this Declaration, terms defined in Section 66-27-203 of the Act have the same meaning when used in this Declaration. The following words and phrases, whether or not capitalized, have specified meanings when used in the Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

1.1. "**Act**" means Chapter 27 of the Tennessee Property Code, the Tennessee Condominium Act of 2008, as it may be amended from time to time.

1.2. "**Applicable Law**" means the statutes and public laws and ordinances in effect at the time a provision of the Documents is applied, and pertaining to the subject matter of the Document provision. Statutes and ordinances specifically referenced in the Documents are "Applicable Law" on the date of the Document, and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

1.3. "**Architectural Reviewer**" means Declarant during the Development Period. After expiration of the Development Period, the rights of the Architectural Reviewer will automatically be transferred to the Board.

1.4. "**Assessment**" means any charge levied against a Unit or Owner by the Association, pursuant to the Documents, the Act, or Applicable Law, including but not limited to Regular Assessments, Special Assessments, Utility Assessments, Residential Unit

Assessments, Commercial Unit Assessments, Individual Assessments and Deficiency Assessments as described in *Article 5* of this Declaration.

1.5. "**Association**" means Fulton Condominium Community, Inc., a Tennessee nonprofit corporation, the Members of which shall be the Owners of Units within the Regime. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration, the Certificate, the Bylaws, the Act, and Applicable Law.

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

1.7. "**Building**" means the building described on the Plat and Plans now existing or hereafter placed on the Property.

1.8. "**Bylaws**" mean the bylaws of the Association, as they may be amended from time to time.

1.9. "**Charter**" means the Charter of the Association filed in the Office of the Secretary of State of Tennessee, as the same may be amended from time to time.

1.10. "**Commercial LCE**" means those portions of the Property reserved for either the exclusive use or maintenance by the Owner(s) of the Commercial Unit(s). Any Commercial LCE will be designated as "Commercial LCE" on the Plat and Plans.

1.11. "**Commercial Unit**" means the Unit(s) described on the Plat and Plans and shown as a "Commercial Unit".

1.12. "**Common Element**" means all portions of the Regime, **SAVE AND EXCEPT** the Units. All Common Elements are "**General Common Elements**", except if such Common Elements have been allocated as "**Limited Common Elements**" by or in accordance with this Declaration or the Plat and Plans for the exclusive use of one or more but less than all of the Units.

1.13. "**Common Expenses**" means the expenses incurred or anticipated to be incurred by the Association for (i) the Regime, including but not limited to those expenses incurred for the maintenance, repair, replacement and operation of the Common Elements; (ii) any expenses classified as a "Common Expense" under this Declaration; and (iii) for any expense reasonably related to the purposes for which the Association was formed.

1.14. "**Community Manual**" means the community manual, if any, which may be initially adopted and Recorded by the Declarant as part of the initial project documentation for the Regime. The Community Manual may include the Bylaws and Rules and policies governing the Association as the Board determines to be in the best interest of the Association, in its sole and absolute discretion. The Community Manual may be amended, from time to time, by a Majority of the Board; provided, however, that during the Development Period, any

amendment to the Community Manual must be approved in advance and in writing by the Declarant.

1.15. "**Declarant**" means **MONROE GERMANTOWN LLC**, a Tennessee limited liability company. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by Recorded written instrument, assign, in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights and duties under this Declaration to any Person. Declarant may also, by Recorded written instrument, permit any other Person to participate in whole, in part, exclusively or non-exclusively, in any of Declarant's privileges, exemptions, rights and duties under this Declaration.

1.16. "**Declarant Control Period**" means that period of time during which Declarant controls the operation and management of the Association, pursuant to Appendix "A" of this Declaration. The duration of the Declarant Control Period is from the date this Declaration is Recorded until the earlier of either (i) one hundred twenty (120) days after seventy-five percent (75%) of the total number of Units have been conveyed to purchasers of Units other than Declarant, or (ii) seven (7) years have elapsed from the conveyance of the first Unit to a purchaser other than Declarant.

1.17. "**Declaration**" means this document, as it may be amended from time to time.

1.18. "**Development Period**" means the seven (7) year period beginning on the date this Declaration is Recorded, during which Declarant has certain rights as more particularly described on Appendix "A", attached hereto, including rights related to development, construction, expansion, and marketing of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the Property. Declarant may terminate the Development Period by Recording a notice of termination.

During the Development Period, Appendix "A" has priority over the terms and provisions of this Declaration.

1.19. "**Documents**" mean, individually or collectively as the case may be, this Declaration, the Plat and Plans, the Charter, Bylaws, the Community Manual and the Rules of the Association, as each may be amended from time to time. An appendix, attachment, exhibit, schedule, or certification accompanying a Document is a part of that Document.

The Documents are subject to amendment or modification from time to time. By acquiring a Unit in Fulton Condominiums, you agree to comply with the terms and provisions of the Documents, as amended or modified.

1.20. "**General Common Elements**" mean Common Elements which are not Limited Common Elements. General Common Elements are designated as "General Common Element" or "GCE", on the Plat and Plans and as provided in *Section 4.2* of this Declaration.

1.21. "**Improvement**" means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, within the Property.

1.22. "**Limited Common Elements**", if any, mean those portions of the Regime reserved for the exclusive use of one or more Owners to the exclusion of other Owners. Limited Common Elements are designated as "Limited Common Element" or "LCE", on the Plat and Plans and as provided in *Sections 4.2, 4.3* and *4.4* of this Declaration.

1.23. "**Majority**" means more than half.

1.24. "**Member**" means a member of the Association, each Member being an Owner of a Unit, unless the context indicates that member means a member of the Board or a member of a committee of the Association.

1.25. "**Mortgagee**" means a holder, insurer, or guarantor of a purchase money mortgage secured by a Recorded senior or first deed of trust lien against a Unit.

1.26. "**Occupant**" means a resident, occupant or tenant of a Unit, including specifically both Residential Units and Commercial Unit(s), regardless of whether the Person owns the Unit.

1.27. "**Owner**" means a holder of Recorded fee simple title to a Unit. Declarant is the initial Owner of all Units. Mortgagees who acquire title to a Unit through a deed in lieu of foreclosure or through judicial or non-judicial foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association.

1.28. "**Permittee**" means any Occupant and any officer, agent, employee, licensee, lessee, customer, vendor, supplier, guest, invitee or contractor of an Owner or Declarant.

1.29. "**Person**" means any individual or entity having the legal right to hold title to real property, and any fiduciary acting in such capacity on behalf of the foregoing.

1.30. "**Plat and Plans**" means the plat and plans more particularly described on Exhibit "B" of this Declaration and made a part of this Declaration, as changed, modified, or amended in accordance with this Declaration.

1.31. **"Property"** means the tract of land in Davidson County, Tennessee, as more particularly described on Exhibit "A" attached hereto, together with all Improvements thereon and all easements, rights, and appurtenances thereto, and includes every Unit and Common Element thereon.

1.32. **"Record, Recordation, Recorded, and/or Recording"** means filing the referenced instrument or document with the Register of Deeds of Davidson County, Tennessee.

1.33. "**Regime**" means the Property, Units, General Common Elements, and Limited Common Elements that comprise the condominium regime established by this Declaration.

1.34. "**Residential LCE**" means those portions of the Regime reserved for the exclusive use of one Residential Unit Owner to the exclusion of other Owners. Residential LCE is designated as "Residential Limited Common Element" "Residential LCE" or "R-LCE", on the Plat and Plans and as provided in *Section 4.3* of this Declaration.

1.35. "**Residential Unit**" means every Unit other than the Commercial Unit(s) located in the Building.

1.36. "**Rules**" means rules and regulations of the Association adopted in accordance with the Documents or the Act. The Board may, from time to time, modify, supplement, or amend the Rules; provided, however, that until expiration or termination of the Development Period, any modification, supplement, or amendment to the Rules must be approved in advance and in writing by the Declarant. Further, no Rule may be adopted that affects the use or operation of a Commercial Unit without the advance written approval of the Owner of such Commercial Unit.

1.37. "**Sales Restriction Period**" means a period commencing on the date that a Residential Unit is conveyed to an Owner by Declarant and ending on the earlier of (i) twelve months after the date of the conveyance of such Residential Unit to the Owner by Declarant or (ii) the date the last of the Residential Units with the same number of bedrooms as such Residential Unit (e.g., one bedroom, two bedroom or three bedroom Residential Units) is conveyed to an Owner by Declarant.

1.38. "**Shared Residential LCE**" means those portions of the Regime reserved for the exclusive use of more than one Residential Unit Owner to the exclusion of other Owners. Shared Residential LCE is designated as "Shared Residential Limited Common Element" "Shared Residential LCE" or "SR-LCE", on the Plat and Plans and as provided in *Section 4.3* of this Declaration.

1.39 "**Signage**" means any signage, lettering, decorations, banners, advertising or marketing media, awnings, canopies, window covering, or any other form of expression on the Skin or in the interior of the Improvements if the same is visible from the exterior of the Improvements.

1.40. "**Skin**" means the exterior surface of the Building or portions thereof, as applicable, not including the roof or any balcony serving a Residential Unit.

1.41. "**Structure**" means all foundations, footings, columns, flat slabs, sheer walls, girders, support beams, post tension cables or rods and including any and all other structural components that support, uphold or are a part of the Building, whether or not shown on the Plat and Plans.

1.42. "**Systems**" means all fixtures, utilities, equipment, pipes, lines, wires, computer cables, conduits, circuits, junction boxes, hangers, pull boxes, terminal points, electronic devices, air compressors, air handlers, chillers and other systems used in the production, heating, cooling and/or transmission of air, water, gas, electricity, communications, waste water, sewage, audio and video signals, and other utility services including the main switch gear conduits, plumbing chases and mechanical shafts on the Property. The Systems exclude utility facilities located in easements which are owned and maintained by a third-party providing utility services to the Property.

1.43. "**Telecommunications Easement Area**" means, collectively, all roof surfaces of the Building, the airspace located above the roof surfaces to a height of thirty (30) feet above such roof surfaces and such other portions of the Building that Declarant and its successors, assigns, and Permittees need to access in order to utilize the rights reserved by the Declarant, as more specifically set forth in *Section 3.12* in this Declaration.

1.44. "**TNCA**" means the Tennessee Nonprofit Corporation Act, as amended from time to time.

1.45. "**Underwriting Lender**" means a national institutional mortgage lender, insurer, underwriter, guarantor, or purchaser on the secondary market, such as Federal Home Administration (FHA), Federal Home Loan Mortgage Corporation (Freddie Mac), Federal National Mortgage Association (Fannie Mae), or the Veterans Administration, singularly or collectively. Use of the term "Underwriting Lender" in this Declaration, and the specific instructions listed in this definition, may not be construed as a limitation on an Owner's financing options or as a representation that the Property is approved by any specific institution.

1.46. "**Unit**" means a physical portion of the Property designated by this Declaration for separate ownership, the boundaries of which are shown on the Plat and Plans, as further described in *Article 4* of this Declaration. The term Unit includes Residential Units and the Commercial Unit(s).

ARTICLE 2
PROPERTY SUBJECT TO DOCUMENTS

2.1. **Subject To Documents**. The Property is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Declarant's representations and reservations as set forth on Appendix "A", attached hereto, which run with the Property, bind all Persons having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property.

2.2. **Adjacent Land Use**. Declarant makes no representation of any kind as to current or future uses, actual or permitted, of any land that is adjacent to or near the Property.

2.3. **Additional Property**. Additional real property may be annexed into the Regime and subjected to the Declaration and the jurisdiction of the Association with the approval of Owners holding at least eighty percent (80%) of the total votes in the Association, or, during the Development Period, unilaterally by Declarant as permitted in Appendix "A". Annexation of additional property is accomplished by the Recording of an amendment or supplement to the Declaration, which will include a description of the additional real property. The amendment or supplement may include a description of the Units added to the Regime. Upon the annexation of such property into the Regime such land will be considered part of the Property for the purposes of this Declaration.

2.4. **Recorded Easements and Licenses**. In addition to the easements and restrictions contained in this Declaration, the Property is subject to all Recorded easements, licenses, leases, and encumbrances, including those described in the attached Exhibit "G", and including those described on the Plat and Plans, and any shown on a Recorded plat, each of which is incorporated herein by reference. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by such easements, licenses, leases, and encumbrances. Each Owner further agrees to maintain any easement that crosses such Owner's Unit and for which the Association does not have express responsibility.

2.5. **Common Elements**. The Common Elements of the Regime consist of all portions of the Regime, SAVE AND EXCEPT the Units.

2.5.1. Ownership & Maintenance. The designation of Common Elements is determined by this Declaration. Declarant may install, construct, or authorize Improvements on Common Elements in connection with the development of the Property, and the cost thereof is not a Common Expense. Thereafter, all costs attributable to Common Elements, including maintenance, insurance, and enhancements, are automatically the responsibility of the Association, unless this Declaration, provides for a different allocation for a specific Common Element.

2.5.2. Acceptance. By accepting an interest in or title to a Unit, each Owner is deemed: (i) to accept the Common Elements, and any Improvement thereon, in their then-existing condition; (ii) to acknowledge the authority of the Association, acting through its Boards of Directors, for all decisions pertaining to the Common Elements; (iii) to acknowledge that transfer of a Common Element's title (if any) to the Association by or through Declarant is a ministerial task that does not require acceptance by the Association; and (iv) to acknowledge the continuity of maintenance of the Common Elements, regardless of changes in the Association's management.

ARTICLE 3
PROPERTY EASEMENTS, RIGHTS AND RESTRICTIONS

3.1. **General**. In addition to other easements, rights and restrictions established by the Documents, the Property is subject to the easements, rights and restrictions contained in this Article.

3.2. **Owner's Easement of Enjoyment**. Every Owner is granted a right and easement of enjoyment over the General Common Elements and use of Improvements therein, subject to other limitations, rights and easements contained in the Documents. An Owner who does not occupy a Unit delegates this right of enjoyment to the Occupants of the Owner's Unit, and is not entitled to use the General Common Elements. In addition, every Owner is granted an easement over the General Common Elements, to the extent necessary, to provide access to an Owner's Unit and for utilities serving the Owner's Unit. The right of access for necessary ingress and egress to an Owner's Unit cannot be suspended by the Board for violations of the Documents or nonpayment of Assessments.

3.3. **Owner's Maintenance Easement**. Each Owner is hereby granted an easement over and across any adjoining Unit and Common Elements to the extent reasonably necessary to maintain or reconstruct such Owner's Unit, subject to the consent of the Board and the consent of the Owner of the adjoining Unit, or the consent of the Board in the case of Common Elements, and provided that the Owner's use of the easement granted hereunder does not damage or materially interfere with the use of the adjoining Unit or Common Elements. Requests for entry into an adjoining Unit must be made to the Board and the Owner of such Unit in advance. The consent of the adjoining Unit Owner will not be unreasonably withheld; however, the adjoining Unit Owner may require that access to its Unit be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. Access to the Common Elements for the purpose of maintaining or reconstructing any Unit must be approved in advance and in writing by the Board. The Board may require that access to the Common Elements be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. The Board may require that the Owner abide by additional reasonable rules with respect to use and protection of the Units and the Common Elements during any such maintenance or reconstruction. If an Owner damages an adjoining Unit or Common Element in exercising the easement granted hereunder, the Owner will be required to restore the Unit or Common Element to the condition which existed prior to any such damage, at such Owner's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Owner is notified in writing of the damage by the Board or the Owner of the damaged Unit.

Prior to commencing any work upon a Unit which requires access to, over or through the Common Elements or other Units, the Person performing such work must deliver to the Board, in form satisfactory to the Board:

(i) releases of the Board and the Association for all claims that such Person may assert in connection with such work;

(ii) indemnities of the Board and the Association, holding each and all of them harmless from and against any claims asserted for loss or damage to persons or property, including, but not limited to, Common Elements or other Units;

(iii) certificates of insurance, including liability and workmen's compensation coverage, in amounts and with companies reasonably acceptable to the Board; and

(iv) all other information and assurances which the Board may reasonably require.

3.4. **Owner's Ingress/Egress Easement**. Each Owner is hereby granted a perpetual easement over the Property, as may be reasonably required, for vehicular and pedestrian ingress to and egress from the Owner's Unit or the Limited Common Elements assigned thereto.

3.5. **Owner's Encroachment Easement**. Every Owner is granted an easement for the existence and continuance of any encroachment by the Owner's Unit on any adjoining Unit or Common Element now existing or which may come into existence hereafter, as a result of construction, repair, shifting, settlement, or movement of any portion of a Building, or as a result of condemnation or eminent domain proceedings, so that the encroachment may remain undisturbed so long as the Improvement stands. The easement granted herein is not intended to permit the continuance of any Improvement installed by an Owner not otherwise approved in advance by the Architectural Reviewer.

3.6. **Easement of Cooperative Support**. Each Owner is granted an easement of cooperative support over each adjoining Unit and Limited Common Element assigned thereto (if any) as needed for the common benefit of the Property, or for the benefit of Units in a Building, or Units that share any aspect of the Property that requires cooperation. By accepting an interest in or title to a Unit, each Owner: (i) acknowledges the necessity for cooperation in a condominium; (ii) agrees to try to be responsive and civil in communications pertaining to the Property and to the Association; (iii) agrees to provide access to the Owner's Unit and Limited Common Elements when needed by the Association to fulfill its duties; and (iv) agrees to refrain from actions that interfere with the Association's maintenance and operation of the Property.

3.7. **Association's Access Easement**. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Elements and the Owner's Unit and all Improvements thereon for the following purposes:

(i) To perform inspections and/or maintenance that is permitted or required of the Association by the Documents or by Applicable Law.

(ii) To perform maintenance that is permitted or required of the Owner by the Documents or by Applicable Law, if the Owner fails or refuses to perform such maintenance.

(iii) To enforce the Documents.

(iv) To exercise self-help remedies permitted by the Documents or by Applicable Law.

(v) To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.

(vi) To respond to emergencies.

(vii) To perform any and all functions or duties of the Association as permitted or required by the Documents or by Applicable Law.

3.8. **Utility Easement**. Declarant, during the Development Period, and the Association thereafter, may grant permits, licenses, and easements over the Common Elements for utilities, and other purposes reasonably necessary for the proper operation of the Regime. Declarant during the Development Period, and the Association thereafter, may grant easements over and across the Units and Common Elements to the extent necessary or required to provide utilities to Units; provided, however, that such easements will not unreasonably interfere with the use of any Residential Unit for residential purposes or any Commercial Unit for commercial purposes. This provision is not intended to modify the terms and provisions of any easements granted to a utility company, the general public or to any government authority (i.e., not as the Owner of any Unit), and the utility easement may include, without limitation, easements over and across the Property granted to the City of Nashville, acting by and through its municipally-owned electric utility, Nashville Electric Service, and its successors and assigns ("NES"), as may be necessary for NES to provide utilities to the Property, including but not limited to chilled water service. A company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property; provided, however, this easement may not be exercised without prior notice to the Board and may not unreasonably interfere with the use of a Unit for its intended purposes. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master or cable television, and security.

3.9. **Easements Reserved to Declarant**. During any period that Declarant owns a Unit, Declarant and its duly authorized contractors, subcontractors, representatives, agents,

associates, employees, tenants and successors and assigns shall have: (i) a non-exclusive easement for access and ingress to, egress from and use of the Common Elements for the placement and maintenance of signs, banners, balloons, decorations, marketing materials and tables, a sales office, a leasing office, a business office, promotional facilities and model units, together with such other facilities as in the opinion of Declarant may be reasonably required, convenient or incidental to the completion, renovation, improvement, development, sale or lease of any Unit, or any portion thereof; and (ii) a nonexclusive easement to use and enjoy the Common Elements for special events, promotional activities and grand opening celebrations. In connection with the hosting of special events, promotional activities and grand opening celebrations in the Common Elements, Declarant shall be permitted to have live entertainment, and any noise created therefrom shall not be deemed a nuisance and shall not cause Declarant and its representatives, agents, associates, employees, tenants and guests to be deemed in violation of any provision of the Documents.

3.10. **Easement to Inspect and Right to Correct**. For a period of ten (10) years after the expiration of the Development Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builder, and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any Systems, Structure, Improvement, or condition that may exist on any portion of the Property, including the Common Elements and Units, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. The party exercising the easement reserved hereunder will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a utility panel may be warranted by a change of circumstance, imprecise siting, or desire to comply more fully with Applicable Law. This Section may not be construed to create a duty for Declarant or the Association, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant, and the Declarant's architect, engineer, other design professionals, builder, and general contractor an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Elements and each Unit for the purposes contained in this Section.

3.11. **Signage Easement**. Declarant hereby grants and reserves for itself, its assigns and Permittees an exclusive, assignable, perpetual and irrevocable easement, license and right to use the portions of the Skin to install Signage (the "Declarant Signage Rights"). Declarant, its assigns and Permittees hereby reserves the right to use, sell, lease or assign all or any portion of the Declarant Signage Rights for any purpose permitted under Applicable Law. In addition, Declarant, for itself and its assigns and Permittees, reserves a non-exclusive, perpetual and irrevocable easement over the Property for access to and from all Signage installed pursuant to the Declarant Signage Rights and to construct, install, use, maintain, repair, replace, improve, remove, operate and license or allow others to do the same, any Signage installed pursuant to the Declarant Signage Rights, including the right to utilize electrical power from any Unit, but subject to the right of the Owner of such Unit charging for the actual costs of such electrical

power and any sub-metering costs associated with determining electrical usage and provided that such electrical usage shall not cause such Unit's electrical capacity to be limited for its own use, and in such event, Declarant and its assigns and Permittees shall cease such use of electrical power or provide additional capacity to the affected Owner's electrical system, at the sole expense of the party exercising the easement and use rights set forth in this subparagraph. The rights reserved to Declarant under this Section 3.11 shall benefit only Declarant and its assigns and Permittees, and no Owner or successor-in-title to any portion of the Property shall have any rights to income derived from or in connection with the easements granted in this Section 3.11 except as expressly approved in writing by Declarant. The provisions of this Section 3.11 shall not be amended without the written consent of Declarant.

3.12. **Telecommunications Easement**. Declarant hereby reserves for itself, and its successors, assigns and Permittees an exclusive, perpetual and irrevocable easement, license and right to use the Telecommunications Easement Area. The Telecommunications Easement Area may be used for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of telecommunications, video and digital 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 "Telecommunications Equipment"). In addition, Declarant, for itself, and its successors, assigns and Permittees, reserves a non-exclusive, perpetual and irrevocable easement over the Property for access to and from the Telecommunications 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 Telecommunications Equipment, including the right to utilize electrical power from any Unit, but subject to the right of the Owner of such Unit charging for the actual costs of such electrical power and any sub-metering costs associated with determining electrical usage and provided that such electrical usage shall not cause such Unit's electrical capacity to be limited for its own use, and in such event, Declarant and its assigns and Permittees shall cease such use of electrical power or provide additional capacity to the affected Owner's electrical system, at the sole expense of the party exercising the easement and use rights set forth in this subparagraph. Declarant also reserves the right to select and contract with Permittees to install, operate, and/or maintain the Telecommunications Equipment and to provide any telecommunication, video or digital service associated therewith, which contracts may be assignable to the Association. Declarant shall have and hereby reserves unto it and its assigns and Permittees the sole and exclusive right to collect and retain any and all income received from or in connection with the rights described in this Section 3.12. The rights reserved to Declarant under this Section 3.12 shall benefit only Declarant and its successors, assigns and Permittees, and no Owner or successor-in-title to any portion of the Property shall have any rights to income derived from or in connection with the easements granted in this Section 3.12, except as expressly approved in writing by Declarant. EACH OWNER AND OCCUPANT WILL RELEASE AND HOLD HARMLESS THE DECLARANT, ITS SUCCESSORS, ASSIGNS AND PERMITTEES FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT

MAY ARISE BY REASON OF ANY ACTS, ACTIONS OR ACTIVITIES PERMITTED BY DECLARANT OR OTHERS, INCLUDING ANY OMISSIONS, UNDER THIS SECTION 3.12 (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE DECLARANT'S OR OTHERS' NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE DECLARANT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE. The provisions of this Section 3.12 shall not be amended without the written and acknowledged consent of Declarant.

3.13. **Systems Easement**. Declarant hereby grants and reserves a perpetual, assignable and non-exclusive systems easement over, on, under and across the Systems for the benefit of each Owner and the Association for the use of and the connection to any portion of the Systems intended for such Owner's or the Association's use.

3.14. **Assignment of Parking**. Declarant, during the Development Period, reserves the right to designate and assign portions of the Common Elements as parking spaces for the exclusive use of any Owner. Each assignment of parking space(s) to a Unit will be memorialized by a written instrument, executed by Declarant and Recorded, which shall identify the parking space(s) and the Unit assigned thereto. The assignment shall be made a part of the corporate records of the Association, will be considered an agreement between the Association and such Owner with regard to use of the parking spaces so assigned, and may not be terminated or modified without the consent of Declarant during the Development Period, the Association, and the Owner of the Unit to which the parking space(s) was assigned. Parking spaces not specifically assigned by Declarant for the exclusive use of an Owner of a Unit will be under the exclusive control and administration of the Association after expiration of the Development Period.

ARTICLE 4
UNITS, LIMITED COMMON ELEMENTS & ALLOCATIONS

4.1. **Initial Submitted Units and Maximum Number of Units**. The Regime will initially consist of one (1) Commercial Unit and two hundred ten (210) Residential Units, for a total of two hundred eleven (211) Units. During the Development Period, Declarant, as permitted in Appendix "A", has reserved the right to create a maximum of two hundred thirty (230) Units on the Property and additional property added to the Regime. To add Units or property to the Regime, Declarant during the Development Period may, from time to time, Record an amendment to this Declaration. The amendment will: (i) describe the property being added to the Regime, if applicable; (ii) describe and assign an identifying number to each new Unit; (ii) reallocate the Common Interest Allocation among all Units then existing within the Regime; (iii) describe any Limited Common Elements, if any, created or designated to each new Unit; and (iv) with respect to new Units, include the information required by Section 66-27-305 and Section 66-27-309(b) of the Act, as applicable. The amendment will include a description of

the Units added to the Regime if Declarant elects to create Units upon recordation of the amendment OR if Declarant elects to create additional Units subsequent to the Recordation of the amendment adding property to the Regime, the amendment will describe the property and include the information required by Section 66-27-305 and Section 66-27-309(b) of the Act, as applicable. No assurance is given as to the dispersion of new Units, total number of new Units, or size of such Units.

4.2. **Unit Boundaries**. The boundaries and identifying number of each Unit are shown on the Plat and Plans and are described further below:

4.2.1. Horizontal (Upper and Lower) Boundaries. The upper horizontal boundary of each Unit is the horizontal plane formed by the lowermost unfinished surface of the concrete or other material comprising the permanent ceiling (any dropped soffit areas and/or false ceiling is within the Unit) in the uppermost floor of the Unit. The lower horizontal boundary of each Unit is the horizontal plane formed by the uppermost surface of the unfinished concrete of the lowermost floor of the Unit. Any decorative or finished flooring, carpet pads, and sub-flooring above or on the unfinished concrete floor is within the boundaries of the Unit. The upper and lower horizontal boundaries of each Unit extend to their intersections with the Unit's vertical boundaries, as described in *Section 4.2.2*.

4.2.2. Vertical (Perimeter) Boundaries. The vertical or perimeter boundaries of each Unit are (i) for portions of the Unit which adjoin an exterior wall of the Building, the vertical plane created by the inside facing surfaces of the material comprising the exterior wall of the Building, which extends from the lower horizontal boundary of the Unit to the upper horizontal boundary of the Unit as described in *Section 4.2.1*; (ii) for portions of the Unit which adjoin a window, window wall system, or exterior glass surface of the Building, the interior-facing surface of the window, other glass surface or window wall system extending from the lower horizontal boundary of the Unit to the upper horizontal boundary of the Unit as described in *Section 4.2.1;* (iii) for portions of the Unit which adjoin a wall separating the Unit from another Unit, the vertical plane created by the centerline of such wall, extending from the lower horizontal boundary of the Unit to the upper horizontal boundary of the Unit as described in *Section 4.2.1*; (iv) for portions of the Unit which adjoin any Common Element core components, e.g., the area including the stairways, as depicted on the Plats and Plans, the vertical plane created by the interior unfinished wall (i.e., Unit facing) separating the Unit from the Common Element wall, extending from the lower horizontal boundary of the Unit to the upper horizontal boundary of the Unit as described in *Section 4.2.1*; and (v) for portions of a Unit not otherwise addressed by subsections (i) through (iv) above, the vertical or perimeter boundaries reflected on the Plat and Plans.

4.2.3. Further Description of Units.

(i) Except where provisions of this Declaration otherwise specify, all air spaces, interior walls and partitions, and other fixtures and improvements within the foregoing boundaries are a part of the Unit. In addition, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting part of the finished surfaces of the Unit are a part of a Unit.

(ii) The Structure is a General Common Element, including any portion of the Structure within the boundaries of a Unit as described in *Section* 4.2.2.

(iii) If any chute, flue, duct, wire, conduit, or any other similar fixture serves more than one (1) Residential Unit and is partially within and partially outside the designated boundaries of a Residential Unit, then the portion serving only one (1) Residential Unit is designated as part of that Residential Unit, and the portion serving more than one (1) Residential Unit is hereby designated as Residential LCE.

(iv) If any chute, flue, duct, wire, conduit, or any other similar fixture serves one (1) or more Commercial Unit and is partially within and partially outside the designated boundaries of a Commercial Unit, then the portion serving only one (1) Commercial Unit is designated as part of that Commercial Unit, and the portion serving one (1) or more Commercial Unit is hereby designated as Commercial LCE.

(v) Unit boundaries shall include any and all attachments to, protrusions from and appurtenances attached to and exclusively serving such Unit and shall exclude any portion of the Common Elements that may be located within such Unit's boundaries.

(vi) Improvements, fixtures, and equipment serving the Unit exclusively, whether located inside or outside the Unit, whether or not attached to or contiguous with the Unit, including but not limited to water heaters, air conditioners, solar systems, utility meters, fuse boxes, electrical switches, wiring, pipes, ducts, conduits, smoke detectors, security systems, appliance systems, television antennas, lighting fixtures, telephone and electrical receptacles are part of such Unit.

(vii) In interpreting deeds, plats, and floor plans, the existing physical boundaries of a Unit as originally conveyed by Declarant, or as reconstructed in substantial accordance with the Plat and Plans, shall be conclusively presumed to be its boundaries regardless of minor variances between the actual boundaries and the boundaries shown on the Plat and Plans or described in a deed.

4.2.4. Units Generally. If the foregoing description of Unit boundaries is inconsistent with the Plat and Plans, then this *Section 4.2* hereof will control. It is the express intent of the Declarant that the property described as being part of a Unit shall for all purposes herein be treated as and constitutes a lawfully described "Unit" as that term is defined in the Act. In the event that there is a final judicial determination by a court of competent jurisdiction that the boundaries of a Unit or any portion thereof are so indefinite and vague so as to not create a legally constituted "Unit" within the meaning of the Act, then that portion of the Unit that has not been adequately described shall be severed from the property deemed a part of the Unit (if the remainder of the Unit, excluding the severed portion thereof, constitutes a properly described "Unit" under the Act) and shall thereafter be deemed a Limited Common Element reserved to the exclusive use of said Unit, subject to the rights and obligations of other Owners with respect to said property.

The space contained within the Unit's vertical and horizontal boundaries is not related to the size of the Unit's living areas and may include structural walls and columns. Similarly, the Units are initially marketed on the basis of a limited number of representational floorplans, each of which is marked with a rounded and estimated size of air-conditioned space, taken from pre-construction architectural drawings. Those marketing sizes may vary from the size of the actual space contained within the Unit's vertical and horizontal boundaries and the actual area contained within the air conditioned space of the Unit.

SIZE OF UNIT
The size of a Unit may be measured in different ways for different purposes, such as for tax purposes, appraisal purposes, sales purposes, and for purposes of carpeting and painting. No single measurement is definitive for all purposes. Measurements may be of the area under roof, or the air conditioned space, or the area within the Unit's legal boundaries. The Unit's partition wall cavities and/or its perimeter wall cavities may or may not be included. The Unit's balcony space may or may not be included.

4.3. **Initial Designations Of Limited Common Elements**.

4.3.1. Initial Designation of Residential LCE. The following portions of the Common Elements are Residential LCE assigned to the Residential Unit which they exclusively serve and as may be designated and described on the Plat and Plans:

(i) the portion of the Common Elements on which there is located any portion of the air conditioning or heating system exclusively serving a particular Residential Unit is assigned as a Residential LCE to the Residential Unit so served;

(ii) exterior doors serving a single Residential Unit, including any sliding glass doors, shall be Residential LCE allocated solely to that Unit, regardless of whether contained within the boundaries of the Unit;

(iii) any utility meter that serves only one Residential Unit is assigned as a Residential LCE to the Unit so served;

(iv) each mailbox or mail slot serving a single Residential Unit is assigned as a Residential LCE to the Unit so served; and

(v) any balcony that serves only one Residential Unit is assigned as a Residential LCE to the Unit so served.

4.3.2. Initial Designation of Shared Residential LCE. Any Residential LCE serving more than one (1) Residential Unit (i.e. elevators, hallways, amenity areas, etc.).

4.3.3. Initial Designation of Commercial LCE. The following portions of the Common Elements are Commercial LCE assigned to the Commercial Unit(s) which may be designated and described on the Plat and Plans:

(i) the portion of the Common Elements on which there is located any portion of the air conditioning or heating system exclusively serving a particular Commercial Unit is assigned as a Commercial LCE to the Commercial Unit so served;

(ii) exterior doors serving the Commercial Unit(s), including any sliding glass doors, shall be Commercial LCE allocated solely to that Unit, regardless of whether contained within the boundaries of the Unit;

(iii) any utility meter that serves the Commercial Unit(s) is assigned as a Commercial LCE to the Unit so served; and

(iv) each mailbox or mail slot serving the Commercial Unit(s) is assigned as a Commercial LCE to the Unit so served.

4.4. **Subsequent Allocation of Limited Common Elements**. A Common Element not allocated by this Declaration as a Limited Common Element may be so allocated only in accordance with the Act or the provisions of this Declaration. Declarant has reserved the right as set forth in Appendix "A" of this Declaration, to create and assign Limited Common Elements within the Property and to reallocate General Common Elements as Limited Common Elements (including Residential LCE or Commercial LCE).

4.5. **Common Interest Allocation**. The percentage of interest in the Common Elements (the "Common Interest Allocation") allocated to each Unit is set forth on Exhibit "C",

and is assigned to each Unit in accordance with a ratio of the square footage of each Unit to the total square footage of all Units established by this Declaration. The same formula will be used in the event the Common Interest Allocation is reallocated as a result of any increase or decrease in the number of Units subject to this Declaration. In the event an amendment to this Declaration is filed which reallocates the Common Interest Allocation as a result of any increase or decrease in the number of Units, the reallocation will be effective on the date such amendment is Recorded.

4.6. **Common Expense Liabilities**. The percentage of liability for common expenses allocated to each Unit (the "Common Expense Liability") and levied pursuant to Article 5 is equivalent to the Common Interest Allocation assigned to the Unit in accordance with Section 4.5.

4.7. **Residential LCE Allocation**. The percentage of interest in the Residential LCE (the "Residential LCE Allocation") allocated to each Residential Unit is set forth on Exhibit "C", and is assigned to each Residential Unit in accordance with a ratio of the estimated square footage of each Residential Unit to the total estimated square footage of all Residential Units established by this Declaration. The same formula will be used in the event the Residential LCE Allocation is reallocated as a result of any increase or decrease in the number of Residential Units subject to this Declaration. In the event an amendment to this Declaration is filed which reallocates the Residential LCE Allocation as a result of any increase or decrease in the number of Residential Units, the reallocation will be effective on the date such amendment or notice of annexation is Recorded.

4.8. **Commercial LCE Allocation**. The percentage of interest in the Commercial LCE (the "Commercial LCE Allocation") allocated to each Commercial Unit is set forth on Exhibit "C", and is assigned to each Commercial Unit in accordance with a ratio of the estimated square footage of each Commercial Unit to the total estimated square footage of all Commercial Units established by this Declaration. The same formula will be used in the event the Commercial LCE Allocation is reallocated as a result of any increase in the number of Commercial Units subject to this Declaration. In the event an amendment to this Declaration is filed which reallocates the Commercial LCE Allocation as a result of any increase or decrease in the number of Commercial Units, the reallocation will be effective on the date such amendment or notice of annexation is Recorded.

4.9. **Votes**. The votes of the Association shall be allocated as follows:

(i) Each Residential Unit is allocated one (1) vote; and

(ii) A Commercial Unit is allocated votes based on square footage. For every fifty (50) square feet, a Commercial Unit shall be allocated one (1) vote. For the avoidance of doubt, if a Commercial Unit is comprised of one thousand (1,000) square feet, it shall be allocated twenty (20) votes.

If the Commercial Unit is subdivided, the votes allocated to each Commercial Unit resulting from the subdivision will be allocated pro-rata based on the relative size of each resulting Commercial Unit as compared to the Commercial Unit prior to such subdivision.

ARTICLE 5
COVENANT FOR ASSESSMENTS

5.1. **Purpose of Assessments**. The Association will use Assessments for the general purposes of preserving and enhancing the Regime, and for the benefit of Owners and Occupants, including but not limited to maintenance of the Regime, management and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the Board's decision with respect to the use of Assessments is final.

5.2. **Personal Obligation**. An Owner is obligated to pay Assessments levied by the Board against the Owner or the Owner's Unit. Payments are made to the Association at its principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other Person or entity regarding any matter to which the Documents pertain. No Owner may exempt itself from its Assessment liability by waiver of the use or enjoyment of the Common Elements or by abandonment of his Unit. An Owner's obligation for Assessments is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of Assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Unit.

5.3. **Types of Assessments**. There are seven (7) types of Assessments: Regular Assessments, Special Assessments, Utility Assessments, Residential Unit Assessments, Commercial Unit Assessments, Individual Assessments, and Deficiency Assessments.

5.4. **Regular Assessments.**

5.4.1. Purpose of Regular Assessments. Regular assessments (the "**Regular Assessments**") are used for Common Expenses related to the recurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

(i) Maintenance, repair, and replacement, as necessary, of the General Common Elements, and Improvements, equipment, signage, and property owned by the Association.

(ii) Maintenance examination and report, as required by *Section 8.2*.

(iii) Utilities billed to the Association.

(iv) All premiums for insurance, with the exception of property insurance obtained by the Association in accordance with *Section 14.1*.

(v) All deductibles attributable to insurance obtained by the Association unless levied as an Individual Assessment in accordance with *Section 5.7(vi)*. Unless levied as an Individual Assessment in accordance with *Section 5.7(vi)*, deductibles for property insurance obtained by the Association in accordance with *Section 14.1* are allocated to the Residential Units and the Commercial Unit(s) in the same manner as the insurance premium attributable thereto.

(vi) Services obtained by the Association and available to or provided to all Units.

(vii) Taxes on property owned by the Association and the Association's income taxes.

(viii) Management, legal, accounting, auditing, and professional fees for services to the Association.

(ix) Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.

(x) Contributions to the reserves for the General Common Elements.

(xi) Any other expense which the Association is required by Applicable Law or the Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Regime or for enforcement of the Documents.

5.4.2. Annual Budget- Regular. The Board will prepare and approve an annual budget with the estimated expenses to be incurred by the Association for each fiscal year. The budget will take into account the estimated income and Common Expenses of the Association for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or a summary of the budget available to each Owner, although failure to receive a budget or budget summary will not affect an Owner's liability for Assessments. The Board will provide copies of the budget to Owners who make written request and pay a reasonable copy charge.

5.4.3. Basis of Regular Assessments. Regular Assessments will be based on the annual budget, minus estimated income from sources other than Regular Assessments. Each Owner of a Unit will be liable for the Unit's share of the annual budget based on the Common Expense Liability allocated to such Owner's Unit. If the Board does not approve an annual budget or fails to determine new Regular Assessments for any year, or delays in doing so, Owners will continue to pay the Regular Assessment as last determined by the Board.

5.4.4. Supplemental Increases. If, during the course of a year, the Board determines that Regular Assessments are insufficient to cover the estimated Common Expenses of the Association for the remainder of the year, the Board may increase Regular Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. Supplemental increases will be apportioned among the Units in the same manner as Regular Assessments.

5.5. **Special Assessments**. The Board may levy one or more special assessments (the "Special Assessments") against all Units for the purpose of defraying, in whole or in part, Common Expenses not anticipated by the annual budget or reserve funds. Special Assessments may be used for the same purposes as Regular Assessments. Special Assessments do not require the approval of the Owners, except that Special Assessments for the acquisition of real property must be approved by Owners representing at least a Majority of the votes in the Association. Special Assessments will be apportioned among the Units in the same manner as Regular Assessments.

5.6. **Utility Assessments**. This Section applies to utilities serving the Units and consumed by the Owner and/or Occupants that are billed to the Association by the utility provider, and which may or may not be sub-metered by or through the Association. The Board may levy a utility assessment (the "Utility Assessment") against each Unit. If the Units are sub-metered for consumption of a utility, the Utility Assessment will be based on the sub-meter reading. If the Units are not sub-metered, the Board may allocate the Association's utility charges among the Units by any conventional and reasonable method for similar types of properties or may use the consumption of a sub-metered utility for the purpose of allocating utilities that are not sub-metered. The levy of a Utility Assessment may include a share of the utilities for the Common Elements, as well as administrative and processing fees, and an allocation of any other charges that are typically incurred in connection with utility or sub-metering services. The Board may, from time to time, change the method of utility allocation, provided the method of allocation is reasonable.

5.7. **Individual Assessments**. The Board may levy an individual assessment (the "Individual Assessment") against an Owner and the Owner's Unit. Individual Assessments may include, but are not limited to: (i) interest, late charges, and collection costs on delinquent Assessments; (ii) reimbursement for costs incurred in bringing an Owner or the Owner's Unit into compliance with the Documents; (iii) fines for violations of the Documents; (iv) transfer-related fees and resale certificate fees; (v) fees for estoppel letters and copies of the Documents; (vi) insurance deductibles levied in accordance with Section 15.5; and (vii) reimbursement for damage or waste caused by willful or negligent acts of the Owner, Occupant, or their guests, invitees, or agents.

5.8. **Deficiency Assessments**. The Board may levy a deficiency assessment (the "Deficiency Assessment") against all Units for the purpose of defraying, in whole or in part, the cost of maintenance, repair, and replacement of the Common Elements, as necessary, performed by the Association or its permittees if insurance proceeds or condemnation awards prove

insufficient. Deficiency Assessments will be apportioned among the Units in accordance with the Common Expense Liability assigned to the Units.

5.9. **Residential Unit Assessments.**

5.9.1. Purpose of Residential Unit Assessments. The Board may levy a residential unit assessment (the "**Residential Unit Assessment**") against an Owner's Residential Unit. Residential Unit Assessments are used for expenses related to the recurring, periodic, and anticipated responsibilities of the Association or its designee with respect to administration, maintenance and repair of the Residential LCE or other expenses only applicable to the Residential Units, including but not limited to the costs of: (i) maintaining, repairing, and replacing, as necessary the Residential LCE; (ii) the property insurance premium allocated to the Residential Units in accordance with *Section 14.2.6*; (iii) utilities billed to the Association and attributable to the Residential Units; (iv) services billed to the Association and serving the Residential Units; and (v) contributions to the reserve funds attributable to the Residential Units and Residential LCE.

5.9.2. Annual Budget-Residential Unit Assessments. The Board will prepare and approve an annual budget with the estimated expenses to be incurred by the Association or its designee pursuant to *Section 5.9.1* above. The budget will take into account the estimated income and expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or a summary of the budget available to each Owner, although failure to receive a budget or budget summary will not affect an Owner's liability for Residential Unit Assessments.

5.9.3. Basis of Residential Unit Assessments. Each Residential Unit will be liable for Residential Unit Assessments based on such Unit's Residential LCE Allocation established pursuant to *Section 4.7*. If the Board does not approve an annual budget or fails to determine new Residential Unit Assessments for any year, or delays in doing so, Owners will continue to pay the applicable Residential Unit Assessments as last determined.

5.9.4. Supplemental Increases. If during the course of a year the Board determines that Residential Unit Assessments are insufficient to cover the estimated expenses for the remainder of the year, the Board may increase Residential Unit Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. Supplemental increases will be apportioned among the Residential Units in the same manner as Residential Unit Assessments.

5.10. **Commercial Unit Assessments.**

5.10.1. Purpose of Commercial Unit Assessments. The Board may levy a commercial unit assessment (the "**Commercial Unit Assessment**") against an Owner's

Commercial Unit. Commercial Unit Assessments are used for expenses related to the recurring, periodic, and anticipated responsibilities of the Association or its designee with respect to administration, maintenance and repair of the Commercial LCE, including but not limited to the costs of: (i) maintaining, repairing, and replacing, as necessary the Commercial LCE; (ii) the property insurance premium allocated to the Commercial Unit(s) in accordance with *Section 14.2.6*; (iii) utilities billed to the Association and attributable to the Commercial Unit(s); (iv) services billed to the Association and serving the Commercial Unit(s); and (v) contributions to the reserve funds attributable to the Commercial Unit(s) and Commercial LCE. A Commercial Unit Assessment may only be levied in the event a Commercial Unit is assigned Commercial LCE.

5.10.2. Annual Budget-Commercial Unit Assessments. The Board will prepare and approve an annual budget with the estimated expenses to be incurred by the Association or its designee pursuant to *Section 5.10.1* above. The budget will take into account the estimated income and expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or a summary of the budget available to each Owner, although failure to receive a budget or budget summary will not affect an Owner's liability for Commercial Unit Assessments.

5.10.3. Basis of Commercial Unit Assessments. Each Commercial Unit will be liable for Commercial Unit Assessments based on such Unit's Commercial LCE Allocation established pursuant to *Section 4.8*. If the Board does not approve an annual budget or fails to determine new Commercial Unit Assessments for any year, or delays in doing so, Owners will continue to pay the applicable Commercial Unit Assessments as last determined.

5.10.4. Supplemental Increases. If during the course of a year the Board determines that Commercial Unit Assessments are insufficient to cover the estimated expenses for the remainder of the year, the Board may increase Commercial Unit Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. Supplemental increases will be apportioned among the Commercial Unit(s) in the same manner as Commercial Unit Assessments.

5.11. **Due Date**. Regular Assessments are due annually, with monthly installments of the total annual Regular Assessment to be paid on the first calendar day of each month or on such other date or frequency as the Board may designate in its sole and absolute discretion, and are delinquent if not received by the Association on or before such date. Utility, Special, Individual, and Deficiency Assessments are due on the date stated in the notice of Assessment or, if no date is stated, within ten (10) days after notice of the Utility, Special, Individual, or Deficiency Assessment is given.

5.12. **Working Capital Fund**. Upon the transfer of a Unit (including both transfers from Declarant to the initial Owner, and transfers from one Owner of a Unit to a subsequent

Owner of the Unit), a working capital fee in an amount equal to two (2) months of Regular Assessments and, for Residential Units only, two (2) months of Residential Unit Assessments, as applicable, will be paid from the transferee of the Unit to the Association for the Association's working capital fund. Each working capital contribution will be collected from the transferee of a Unit upon the conveyance of the Unit from one Owner (including Declarant) to another (expressly including any re-conveyances of the Unit upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers of a Unit will not be subject to the working capital contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's Assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-Owners, or to the Owner's spouse, child, or parent; (iv) any grantee who is the domestic partner or former spouse of the grantor; (v) any grantee that is a wholly-owned entity of the grantor; and (vi) any grantee to whom a Unit is conveyed by a will or through the law of intestacy. Contributions to the fund are not advance payments of Regular Assessments or Residential Unit Assessments and are not refundable. The Declarant during the Development Period, and thereafter the Board, will have the power to waive the payment of any working capital fund contribution attributable to a Unit (or all Units) by the Recordation of a waiver notice, which waiver may be temporary or permanent.

5.13. **Reserve Funds**. The Association may maintain reserves at a level determined by the Board to be sufficient to cover the cost of operational and maintenance emergencies or contingencies, replacement or major repair of components of the General Common Elements.

5.14. **Declarant's Right to Inspect and Correct Accounts**. For a period of six (6) years and one (1) day after termination or the expiration of the Declarant Control Period, Declarant reserves for itself and for Declarant's accountants and attorneys, the right, but not the duty, to inspect, correct, and adjust the Association financial records and accounts established during the Declarant Control Period. The Association may not refuse to accept an adjusting or correcting payment made by or for the benefit of Declarant. By way of illustration but not limitation, Declarant may find it necessary to re-characterize an expense or payment to conform to Declarant's obligations under the Documents or Applicable Law. This Section may not be construed to create a duty for Declarant or a right for the Association, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant a right of access to the Association's books and records that is independent of Declarant's rights during the Declarant Control Period and Development Period.

5.15. **Association's Right to Borrow Money**. The Association is granted the right to borrow money, subject to the ability of the Association to repay the borrowed funds from Assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, or pledge any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.

5.16. **Limitations of Interest**. The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to Applicable Law. Notwithstanding anything to the contrary in the Documents or any other document or agreement executed or made in connection with the Association's collection of Assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by Applicable Law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by Applicable Law, the excess amount will be applied to the reduction of applicable unpaid Assessments, or reimbursed to the Owner if those Assessments are paid in full.

ARTICLE 6
ASSESSMENT LIEN

6.1. **Assessment Lien**. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay Assessments to the Association. Each Assessment is a charge on the Unit and is secured by a continuing lien on the Unit. Each Owner, and each prospective Owner, is placed on notice that title to such Owner's Unit may be subject to the continuing lien for Assessments attributable to a period prior to the date the Owner purchased its Unit. An express lien on each Unit is hereby granted and conveyed by Declarant to the Association to secure the payment of Regular Assessments, Special Assessments, Utility Assessments, Individual Assessments, Residential Unit Assessments, Commercial Unit Assessments and Deficiency Assessments.

6.2. **Superiority of Assessment Lien**. The Assessment lien is superior to all other liens and encumbrances on a Unit, except only for: (i) real property taxes and assessments levied by governmental and taxing authorities; (ii) a Recorded deed of trust lien securing a loan for construction or acquisition of Improvements upon the original Unit; (iii) a deed of trust or vendor's lien Recorded before this Declaration; or (iv) a first or senior purchase money vendor's lien or deed of trust lien Recorded before the date on which the delinquent Assessment became due. The Assessment lien is superior to any Recorded assignment of the rights to insurance proceeds on the Unit unless the assignment is part of a superior deed of trust lien.

6.3. **Effect of Mortgagee's Foreclosure**. Foreclosure of a superior lien extinguishes the Association's claim against the Unit for unpaid Assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner. The purchaser at the foreclosure sale of a superior lien is liable for Assessments coming due from and after the date of the sale.

IF YOU FAIL TO PAY ASSESSMENTS TO THE ASSOCIATION, YOU MAY LOSE TITLE TO YOUR UNIT IF THE ASSOCIATION FORECLOSES ITS ASSESSMENT LIEN AGAINST YOUR UNIT.

6.4. **Notice and Release of Notice**. The Association's lien for Assessments is created by Recordation of this Declaration, which constitutes record notice and perfection of the lien. In

accordance with the Act, notice of delinquent assessments must be recorded to preserve certain priorities of the Association's lien. Each lien filed by the Association must be prepared and filed by an attorney licensed to practice law in the State of Tennessee. If the debt is cured after a notice has been Recorded, the Association will Record a release of the notice at the expense of the curing Owner. The Association may require reimbursement of its costs of preparing and Recording the notice before granting the release. In the event the Association causes a notice of the lien to be Recorded, a copy of the notice will be sent to the defaulting Owner and to such Owner's Mortgagee.

6.5. **Power of Sale**. By accepting an interest in or title to a Unit, each Owner grants to the Association a private power of sale in connection with the Association's assessment lien. The Board may appoint, from time to time, any Person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. Any such appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board meeting.

6.6. **Foreclosure of Lien**. The Assessment lien may be enforced by judicial or non-judicial foreclosure. A non-judicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Title 35, Chapter 5 of the Tennessee Code Annotated, or in any manner permitted by Applicable Law. In any foreclosure, the Owner will be required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees. The Association has the power to bid on the Unit at a foreclosure sale and to acquire, hold, lease, mortgage, and convey same.

ARTICLE 7
EFFECT OF NONPAYMENT OF ASSESSMENTS

7.1. **Generally**. An Assessment is delinquent if the Association does not receive payment in full by the Assessment's due date. The Association, acting through the Board, is responsible for taking action to collect all delinquent Assessments. From time to time, the Association may delegate some or all of its collection procedures and remedies, as it in its sole discretion deems appropriate, to a manager, attorney or a debt collector. Neither the Association nor the Board, however, is liable to an Owner or other Person for its failure or inability to collect or attempt to collect an Assessment. The following remedies are in addition to and not in substitution for all other rights and remedies which the Association may have pursuant to the Documents or Applicable Law.

7.2. **Interest**. Delinquent Assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of twelve percent (12%) per annum or the maximum permitted by Applicable Law. If the Board fails to establish a rate, the rate is ten percent (10%) per annum.

7.3. **Late Fees**. Delinquent Assessments are subject to reasonable late fees, at a rate to be determined by the Board.

7.4. **Collection Expenses**. The Owner of a Unit against which Assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent Assessments, including attorneys' fees and processing fees charged by the manager.

7.5. **Acceleration**. If an Owner defaults in paying any Assessment that is payable in installments, the Association may accelerate the remaining installments on ten (10) days' written notice to the defaulting Owner. The entire unpaid balance of the Assessment becomes due on the date stated in the notice.

7.6. **Suspension of Vote and Right to Use Common Elements**. Subject to the below-described limitations, if an Owner's account has been delinquent for at least thirty (30) days, the Association may suspend the right to vote appurtenant to the Unit during the period of delinquency. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay Assessments. When the Association suspends an Owner's right to vote, the suspended Owner may nevertheless participate as a Member of the Association for the following activities: (i) be counted towards a quorum; (ii) attend meetings of the Association; (iii) participate in discussion at Association meetings; (iv) be counted as a petitioner for a special meeting of the Association; and (v) vote to remove a Director and for the replacement of the removed Director. If the number of suspended Members exceeds twenty percent (20%) of the total Members (Co-Owners of a Unit constituting one member), all Members are eligible to vote. These limitations are imposed to prevent a Board from disenfranchising a large segment of the membership and to preserve the membership's right to remove and replace Directors.

7.7. **Assignment of Rents**. Every Owner hereby grants to the Association a continuing assignment of rents to secure the payment of Assessments to the Association. If a Unit's account becomes delinquent during a period in which the Unit is leased, then the Association may direct the tenant to deliver rent to the Association for application to the delinquent account, provided the Association gives the Owner notice of the delinquency, a reasonable opportunity to cure the debt, and notice of the Owner's right to a hearing before the Board. The Association must account for all monies received from a tenant and must remit to the Owner any rents received in excess of the past-due amount. A tenant's delivery of rent to the Association under the authority hereby granted is not a breach of the tenant's lease with the Owner and does not subject the tenant to penalties from the Owner.

7.8. **Money Judgment**. The Association may file suit seeking a money judgment against an Owner delinquent in the payment of Assessments, without foreclosing or waiving the Association lien for Assessments.

7.9. **Notice to Mortgagee**. The Association may notify and communicate with any holder of a lien against a Unit regarding the Owner's default in the payment of Assessments.

7.10. **Application of Payments**. The Association may adopt and amend policies regarding the application of payments. After the Association notifies the Owner of a

delinquency, any payment received by the Association may be applied in the following order: collections cost and attorney's fee, fines, reimbursable expenses, late charges and interest, Individual Assessments, Deficiency Assessments, Special Assessments, Utility Assessments, Residential Unit Assessments (as applicable), Commercial Unit Assessments (as applicable) and (lastly) Regular Assessments. The Association may refuse to accept partial payment, i.e., less than the full amount due and payable. The Association may also refuse to accept payments to which the Owner attaches conditions or directions contrary to the Association's policy for applying payments. The policies of the Association may provide that endorsement and deposit of a payment does not constitute acceptance, and that acceptance occurs when payment is posted to the Owner's account.

ARTICLE 8
MAINTENANCE AND REPAIR OBLIGATIONS

8.1. **Association Maintenance**. The Association's maintenance obligations will be discharged when and how the Board deems appropriate. The Association maintains, repairs and replaces, as a Common Expense, the following:

(i) All Common Elements (including Residential LCE and Commercial LCE), the Skin, and Structure. Notwithstanding anything contained in this *Section 8.1*, the costs associated with the maintenance, repair or replacement of Residential LCE will be assessed as a Residential Unit Assessment and the costs associated with the repair or replacement of Commercial LCE will be assessed as a Commercial Unit Assessment;

(ii) Periodic painting, staining, caulking and/or cleaning of entry doors and door frames, on a schedule to be determined by the Board.

The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner, or (ii) such property is dedicated to any local, state or federal government or quasi-governmental entity; provided, however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to any portion of the Building by an Owner or Occupant that is the responsibility of the Association hereunder shall be performed at the sole expense of such Owner or Occupant and the Owner and Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

The Association shall repair incidental damage to any Unit resulting from performance of work that is the responsibility of the Association. As finish levels can have varying degrees,

such repairs will be complete only to the extent of being "paint-ready". Such repair and subsequent cleaning shall be performed on a reasonableness standard. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such Persons of its choice such duties as are approved by the Board.

The Association shall not be liable for injury or damage to Person or property caused by the elements or by the Owner or Occupant of any Unit or any other Person or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Property or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except for injuries or damages arising after the Owner or Occupant of a Unit has put the Association on written notice of a specific leak or flow and the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter. The Association shall not be liable to any Owner of any Unit or such Owner's Occupant or their guests and invitees for loss or damage, by theft or otherwise, of any property, which may be stored in or upon any of the Property. The Association shall not be liable to any Owner or any Owner's Occupant or their guests and invitees for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under the Documents or for inconvenience or discomfort arising from the making of repairs or Improvements which are the responsibility of the Association or from any action taken by the Association to comply with any law, ordinance or with any order or directive of any municipal or other governmental authority.

8.2. **Inspection Obligations.**

8.2.1. Contract for Services. The Association shall, at all times, contract with (subject to the limitations otherwise set forth in this Declaration) or otherwise retain the services of independent, qualified, licensed individuals or entities to provide the Association with inspection services relative to the maintenance, repair and physical condition of the Regime.

8.2.2. Schedule of Inspections. Inspections will take place in accordance with prudent business practices but no less frequently than once every twenty-four (24) months. A Guide to Association's Examination of the Building is attached to this Declaration as Exhibit "D". The inspectors shall provide written reports of their inspections to the Association promptly following completion thereof. The written reports shall identify any items of maintenance or repair that either require current action by the Association or will need further review and analysis. Subject to the provisions of this Declaration below, the Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors.

8.2.3. Notice to Declarant. During the Development Period, the Association shall deliver to Declarant ten (10) days advance written notice of all such inspections (and an opportunity to be present during such inspection, personally or through an agent) and shall provide Declarant (or its designee) with a copy of all written reports prepared by the inspectors.

8.2.4. Reserve Study. The Association shall, as required under Section 66-27-403(g) of the Act, contract with (subject to the limitations otherwise set forth in this Declaration) or otherwise retain the services of independent, qualified, licensed individuals or entities to provide the Association with a reserve study for the purpose of maintaining reserves in accordance with *Section 5.13*.

8.2.5. Limitation. The provisions of this Section shall not apply during the Declarant Control Period unless otherwise directed by the Declarant.

8.3. **Owner Responsibility**. Except as otherwise expressly provided in this Declaration, each Owner shall operate and fully maintain, repair and, when necessary, replace, at its cost and expense, all portions of such Owner's Unit and all areas that Owner has agreed to operate, maintain, repair and replace elsewhere in this Declaration, and all items, equipment, facilities, utilities and other items with respect to which it has exclusive rights (regardless of who actually owns the Unit on which such items are located), so that the same are at all times in good order, condition and repair, and in accordance with any applicable standards, procedures or requirements of the Documents. The foregoing obligation by each Owner to operate, maintain, repair and, when necessary, replace, shall include, without limitation, keeping all portions of the Unit and any Limited Common Element (including Commercial LCE and Residential LCE) serving such Unit in a clean, unlittered orderly and sanitary condition.

A summary of the maintenance responsibilities allocated among the Association and the Owners generally is set forth on Exhibit "E", attached hereto and incorporated herein by reference.

8.4. **Disputes**. If a dispute arises regarding the allocation of maintenance responsibilities by this Declaration, the dispute will be resolved by the Board, who shall delegate such maintenance responsibilities to either the Association or the individual Owner(s), as determined by the Board in its sole and absolute discretion.

8.5. **Warranty Claims**. If the Owner is the beneficiary of a warranty against defects of the Common Elements, then the Owner irrevocably appoints the Association, acting through the Board, as his attorney-in-fact to file, negotiate, receive, administer, and distribute the proceeds of any claim against the warranty that pertains to Common Elements or any portion of the Building to which the Association is required to maintain in accordance with this Declaration.

8.6. **Sheetrock**. Notwithstanding anything to the contrary in the Documents, the Association is not responsible for the repair and replacement of sheetrock in any Unit, or for any surface treatments on the sheetrock, regardless of the source of damage and the availability of insurance. This provision is provided for the benefit of the Association and is warranted by the difficulty of scheduling interior sheetrock work and the possibility that the Owner may not be satisfied with the quality or appearance of spot repairs. If the Association receives insurance proceeds for sheetrock damage to a Unit and chooses to not perform the repairs, then the Owner of the damaged Unit is entitled to the proceeds in exchange for an indemnification regarding the damage and a release from future claims for the same damage.

8.7. **Mold and/or Mildew**. Mold and/or mildew can grow in any portion of the Building that is exposed to elevated levels of moisture including, but not limited to, the parking facilities and those portions of the Building in which HVAC condenser units are located. Therefore, all Owners and the Association agree with respect to their defined areas of maintenance responsibility to: (i) regularly inspect the parts of the Building and Unit that they respectively maintain and which are visible and accessible without having to first conduct invasive testing, for the existence of mold, mildew and/or water intrusion (except when the water intrusion is part of the normal functioning of Improvements and appliances such as showers, sinks, dishwashers and other similar appliances and Improvements) and/or damage; (ii) upon discovery, immediately repair in a good and workman-like condition the source of any water intrusion in the parts of the Building or Unit that they respectively maintain; (iii) remediate or replace any building material located in the parts of the Building or Unit that they respectively maintain that has absorbed water or moisture as a result of water intrusion; and (iv) promptly and regularly remediate all mold and/or mildew discovered in the parts of the Building or Unit that they respectively maintain in accordance with current industry-accepted methods. In addition, the Association agrees to notify the Owners and Declarant, and each Owner agrees to notify the Association and Declarant of the discovery of mold, mildew and/or water intrusion and/or damage in the parts of the Building or Unit that they respectively maintain. Each Owner further agrees not to block or cover or permit anyone to block or cover any of the heating, ventilation or air-conditioning ducts located in his Unit.

Notwithstanding anything to the contrary herein, Declarant shall have no obligation to perform any invasive testing or inspections, maintenance or repairs in accordance with this subparagraph and shall not be held liable for any loss or damage caused by the failure of the Association or an Owner to perform their obligations herein.

8.8. **Balconies**. Notwithstanding any provision in this Declaration to the contrary, the Owner is responsible for the routine cleaning of the balcony appurtenant to such Owner's Unit. In the event the Association is required to access an Owner's balcony to perform any maintenance, repair or replacement, the Owner will provide access through the Owner's Unit to the Association and its Permittees. In conjunction with any maintenance, repair or replacement by the Association, and upon the Association's written request, the Owner will promptly remove all personal property from the balconies during such maintenance, repair or replacement. The Association may levy an Individual Assessment against an Owner and the

Owner's Unit for any costs or expenses incurred by the Association as a result of such Owner's failure or refusal to cooperate with the Association's requests for access or removal.

8.9. **Odors**. Owners and Occupants shall be required at all times to take appropriate action to minimize the transmission of food-related or other odors from one Unit to other Units and the Common Elements. Specifically, and without limitation on the foregoing, Owners and Occupants of any Commercial Unit containing a restaurant or other food service establishment shall be obligated to vent and/or direct the Unit's exhaust, grease traps and other facilities capable of transmitting odors so as to minimize, to the greatest extent possible, the transmission of odors from the Unit to other Units and the Common Elements.

8.10. **Measures Related to Insurance Coverage**. The Board, upon resolution, shall have the authority to require all or any Owner(s) to do any act or perform any work involving portions of the Regime which are the maintenance responsibility of the Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage in the Regime, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring Owners to install and maintain smoke detectors, requiring Owners to certify that they have wired the smoke detectors to the Building's fire panel, requiring Owners to allow the Association to inspect the smoke detectors on a schedule to be determined by the Board, requiring Owners to make Improvements to the Owner's Unit, and such other measures as the Board may reasonably require. In addition to, and not in limitation of, any other rights the Association may have, if any Owner does not comply with any requirement made by the Board pursuant to this Section, the Association, upon fifteen (15) days' written notice (during which period the Owner may perform the required act or work without further liability), may perform such required act or work at the Owner's sole cost. Such cost shall be an Individual Assessment and a lien against the Unit as provided herein. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to this Section, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit, except that access may be had at any time without notice in an emergency situation.

8.11. **Owner's Default in Maintenance**. If the Board determines that an Owner has failed to properly discharge such Owner's obligation to maintain, repair, and replace items for which the Owner is responsible, then the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at the Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform the maintenance, the Association may do so at the Owner's expense, which may be levied as an Individual Assessment against the Owner and the Owner's Unit. In case of an emergency, however, the Board's responsibility to give the Owner written notice may be waived and the Board may take any action it deems necessary to protect Persons or property, the cost of the action being the Owner's expense.

8.12. **Failure to Maintain**. Notwithstanding the foregoing obligations to maintain, repair and replace, if any Owner or those claiming by, through or under it, abuses, misuses or fails to operate, maintain, repair or replace in the manner provided in this Declaration any item for which it is responsible hereunder or otherwise creates a situation in any portion of the Regime with respect to which non-exclusive easements and licenses have been granted by this Declaration such that said areas require maintenance, repair or replacement in excess of what would be required by normal use of said areas for their intended purposes, the Owner causing the excess use shall be responsible for the excess costs of operating, maintaining, repairing and replacing said areas, which may be levied as an Individual Assessment against the Owner and the Owner's Unit. Each Owner shall indemnify and hold harmless Declarant, the Association, and the other Owners (except for their own negligence) from all loss, damage, cost, liability or expense, including, without limitation, reasonable attorneys' fees actually incurred, arising from such Owner's failure to operate, maintain, repair or replace in the manner provided in this Declaration any item for which it is responsible hereunder or otherwise creates a situation in any portion of the Property with respect to which non-exclusive easements and licenses have been granted by this Declaration such that said areas require maintenance, repair or replacement in excess of what would be required by normal use of said areas for their intended purposes. Each Owner shall maintain and promptly upon request, from time to time, make available to Declarant during the Development Period, the Association and any other Owner complete maintenance records for its Unit with respect to which easement rights exist under this Declaration. As to any items (such as exterior painting) that require coordination or cooperation as to timing, materials, payment or the like, the parties shall be reasonable in so cooperating and coordinating.

ARTICLE 9
ARCHITECTURAL COVENANTS AND CONTROL

9.1. **Purpose**. Because the Units are part of a single, unified community, the Architectural Reviewer has the right to regulate every aspect of the design, use and appearance of Units and Common Elements. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained. Another purpose is to allow the Association to respond to changes in technology, style, and taste. The Architectural Reviewer has the right to regulate every aspect of proposed or existing Improvements within the Regime, including replacements or modifications of original construction or installation. During the Development Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control.

9.2. **Declarant Rights**. During the Development Period, neither the Association, the Board, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with architectural control over the Regime. Until expiration of the Development Period, architectural control over the Regime is discharged by Declarant or its designee. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other Person or any organization.

9.2.1. Owner Agrees. Each Owner, by accepting an interest in or title to a Unit, covenants and agrees that Declarant has a substantial interest in ensuring that the Improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market the Regime or the Units or Declarant's other developments. Accordingly, during the Development Period, architectural approval may be granted or withheld at Declarant's sole discretion.

9.2.2. Delegation by Declarant. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to a committee comprised of architects, engineers, or other Persons who may or may not be Members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant: (i) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) to veto any decision which Declarant, in its sole discretion, determines to be inappropriate or inadvisable for any reason.

9.3. **Limits on Liability**. Until expiration or termination of the Development Period, Declarant has sole discretion with respect to taste, design, and all standards specified by this Article. After expiration or termination of the Development Period, or after a delegation of duties as provided in Section 9.2 above, the Association has sole discretion with respect to taste, design, and all standards specified by this Article. Neither Declarant, nor the Association, or their directors, officers, committee members, employees or agents, as the case may be, will have any liability for decisions made in good faith, and which are not arbitrary or capricious. Neither Declarant, nor the Association, or their directors, officers, committee members, employees or agents, as the case may be, are responsible for: (i) errors in or omissions from the plans and specifications submitted for approval; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with governmental codes and ordinances, state and federal laws. Approval of a modification or Improvement may not be deemed to constitute a waiver of the right to withhold approval of similar proposals, plans or specifications that are subsequently submitted.

9.4. **Prohibition of Construction, Alteration and Improvement**. Without the Architectural Reviewer's prior written approval, a Person may not commence or continue any construction, alteration, addition, improvement, installation, modification, redecoration, or reconstruction of or to the Property (including any Unit), or do anything that affects the appearance, use, or structural integrity of the Property (including any Unit), if such activity would: (i) involve connection to or relocating pipes, lines, vents, conduits and/or other apparatus associated with common utilities; (ii) place an additional load on any structural or load bearing portion of a Unit; or (iii) require penetration of any concrete floor or ceiling slab. Notwithstanding anything in this Declaration to the contrary, it will be expressly permissible for the Owner to make and/or permit architectural changes, alterations and improvements to be made to the interior portions of such Owner's Unit without the approval of the Architectural Reviewer, unless the alteration: (i) involves connecting to or relocating pipes, lines, conduits

and/or other apparatus for access to common utilities; (ii) places an additional load on any structural or load bearing portions of a Unit; or (iii) requires penetration of any concrete floor or ceiling slab. If an alteration will involve or result in any of the effects specified in (i) through (iii) of the previous sentence, the alteration must be approved in advance and in writing by the Architectural Reviewer. Such approval will not be unreasonably withheld by the Architectural Reviewer so long as the Owner or Occupant of the Unit has presented to the Architectural Reviewer such information as the Architectural Reviewer may reasonably require, which may include, among other items, the following documentation: (A) a report or drawing prepared and certified by a structural engineer licensed in the State of Tennessee, which report or drawing will demonstrate that such proposed interior modifications will not in any way affect or impair the structural soundness or integrity of the Building or any of the Units; (B) building plans for the proposed interior modifications; and (C) a certificate of insurance from applicant's contractor, which names the Association as an additional insured. Notwithstanding the foregoing, prior to commencing the construction, alteration, addition, improvement, installation, modification, redecoration, or reconstruction approved by the Architectural Reviewer, the Owner or Occupant shall provide the Architectural Reviewer with copies of all necessary permits or approvals required by governmental authorities for the proposed interior modifications.

Furthermore, if alterations to the interior of a Unit require the penetration of the concrete floor or ceiling slab, the Owner shall be required to provide the Architectural Reviewer with a report prepared and certified by a structural engineer licensed in the State of Tennessee confirming that an x-ray analysis has been performed for the purposes of verifying that such penetration of the concrete floor or ceiling slab will not impair the structural integrity of such concrete floor or ceiling slab or result in the severing of any structural post-tension system or conduits that may be located within the concrete floor or ceiling slab.

Notwithstanding the foregoing, an Owner or Occupant will not relocate or make any connection to a pipe, line, conduit and/or other apparatus for access to common utilities if such connection will impair or have an adverse effect to the utilities or service of utilities to the other Units.

It will be expressly permissible for the Owner of a Commercial Unit to make and/or permit changes and alterations to any interior storefront window display within the Commercial Unit, from time to time, subject to the terms and provisions hereof.

9.5. **No Deemed or Verbal Approval**. Approval by the Architectural Reviewer may not be deemed, construed, or implied from an action, a lack of action, or a verbal statement by Declarant, Declarant's representative or designee, or an Association director or officer, a member or chair of the Architectural Reviewer-appointed architectural control committee, the Association's manager, or any other representative of the Association. To be valid, approval of the Architectural Reviewer must be: (i) in writing; (ii) on a form or letterhead issued by the Architectural Reviewer; (iii) signed and dated by a duly authorized representative of the

Architectural Reviewer; (iv) specific to a Unit; and (v) accompanied by detailed plans and specifications showing the proposed change. If the Architectural Reviewer fails to respond in writing – negatively, affirmatively, or requesting information – within 60 days after the Architectural Reviewer's actual receipt of the Owner's application, then the application is deemed denied. Under no circumstance may approval of the Architectural Reviewer be deemed, implied, or presumed. If the Architectural Reviewer approves a change, the Owner or the Architectural Reviewer may require that the architectural approval be Recorded. Approval of an architectural change automatically terminates if work on the approved Improvement has not started by the commencement date stated in the approval instrument or, if no commencement date is stated, within 90 days after the date of approval.

9.6. **Application to Architectural Reviewer**. To request Architectural Reviewer approval, an Owner must make written application and submit two identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. The application must clearly identify any requirement of this Declaration for which a variance is sought. If the application is for work that requires a building permit from a municipality or other regulatory authority, the Owner must obtain such permit and provide a copy to the Architectural Reviewer in conjunction with the application. The Architectural Reviewer may return one set of plans and specifications to the applicant marked with the Architectural Reviewer's response, such as "Approved," "Denied," or "Submit Additional Information." The Architectural Reviewer will retain the other set of plans and specifications, together with the application, for its files. The Architectural Reviewer has the right, but not the duty, to evaluate every aspect of construction and property use that may alter or adversely affect the general value of appearance of the Property.

9.7. **Owner's Duties**. If the Architectural Reviewer approves an Owner's application, then the Owner may proceed with the Improvement, provided:

(i) The Owner adheres strictly to the plans and specifications which accompanied his application.

(ii) The Owner initiates and completes the Improvement in a timely manner.

(iii) If the approved application is for work that requires a building permit from the City of Nashville, the Owner must obtain the appropriate permit. The Architectural Reviewer's approval of plans and specifications does not mean that they comply with the city's requirements. Alternatively, approval by the city does not ensure Architectural Reviewer approval.

ARTICLE 10
USE RESTRICTIONS

10.1. **Variance**. The use of the Regime is subject to the restrictions contained in this Article, and subject to Rules adopted pursuant to this Declaration. The Declarant, and after the expiration of the Development Period, the Board, may grant a variance or waiver of a restriction or Rule on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing and executed by Declarant and/or a Majority of the Board, as applicable. The grant of a variance does not constitute a waiver or estoppel of the Association's right to deny a variance in other circumstances.

10.2. **Association's Right to Promulgate Rules and Amend Community Manual**. The Association, acting through the Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property; provided, however, no Rule may be adopted that affects the use or operation of a Commercial Unit without the advance written approval of the Owner of such Commercial Unit. The Association, acting through a Majority of the Board, is further granted the right to adopt, amend, repeal, and enforce the Community Manual, setting forth therein such policies governing the Association as the Board determines to be in the best interest of the Association, in its sole and absolute discretion; provided, however, that during the Development Period, any modification, amendment or repeal to the Community Manual or the Rules, and each new policy or Rule, must be approved in advance and in writing by the Declarant.

10.3. **Rules**. In addition to the restrictions contained in this Article, each Unit is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing:

(i) Use of Common Elements or portions of the Building to which the Association is required to maintain in accordance with this Declaration.

(ii) Hazardous, illegal, or annoying materials or activities on the Property.

(iii) The use of services provided through the Association.

(iv) The consumption of utilities billed to the Association.

(v) The use, maintenance, and appearance of anything visible from the street, Common Elements, or other Units.

(vi) The occupancy and leasing of Units.

(vii) Animals.

(viii) Vehicles.

(ix) Disposition of trash and control of vermin, termites, and pests.

(x) Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for Occupants.

(xi) Any other matters as deemed necessary by the Board.

10.4. **Use of Common Elements**. Except as expressly permitted in the Documents, there shall be no obstruction of the Common Elements, nor shall anything be kept on, parked on, stored on or removed from any part of the Common Elements without the prior written consent of Declarant (during the Declarant Control Period) and the Board thereafter, except as specifically provided herein. With prior written approval, and subject to any restrictions imposed by Declarant or the Board, an Owner may reserve portions of the Common Elements for use for a period of time as set by Declarant or the Board. Any such Owner who reserves a portion of the Common Elements as provided herein shall assume, on behalf of himself or herself and his or her guests, Occupants and family, all risks associated with the use of Common Elements and all liability for any damage or injury to any Person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

10.5. **Prohibition of Damage, Nuisance and Noise**. Nothing shall be done or kept on the Property, or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body.

The Units are built in close proximity to one another, resulting in the sharing of common walls, floors and ceilings. As a result, noise and vibration may be detectable between Units or between Units and the Common Elements. Therefore, an Owner or Occupant shall not conduct activities within a Unit or use a Unit in a manner that interferes with or causes disruption to the use and quiet enjoyment of another Unit by its respective Owner and Occupant.

Furthermore, noxious, destructive or offensive activity shall not be carried on within any portion of the Building. No Owner or Occupant of a Unit may use or allow the use of the Unit or any portion of the Building at any time, in any way or for any purpose which may endanger the health, unreasonably annoy or disturb or cause embarrassment or discomfort to other Owners or Occupants, or in such a way as to constitute, in the sole opinion of Declarant during the Development Period, and the Board thereafter, a nuisance. In addition, no Owner or Occupant of a Unit may use or allow the use of a Unit or the Common Elements in any manner which creates disturbing noises, including, without limitation, use of stereo speakers or equipment that will, in the sole discretion of the Board, interfere with the rights, comfort or convenience of the other Owners or Occupants. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights.

No Owner, Occupant or agent of such Owner or Occupant shall do any work which, in the reasonable opinion of the Board or its designee, would jeopardize the soundness or safety of the Property or any structure created thereon, would reduce the value thereof, or would impair any easement or other interest in real property thereto, without in every such case the unanimous, prior written consent of all Members and their Mortgagees.

No damage to or waste of the Common Elements, or any part thereof, shall be permitted by any Owner or member of his or her family or any invitee of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner, members of his or her family, guests, invitees, or Occupants of his or her Unit.

10.6. **Firearms and Fireworks**. The display or discharge of firearms or fireworks on the Common Elements is prohibited; provided, however, that the display of lawful firearms on the Common Elements is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common Elements directly en route to a motor vehicle that is owned by the Occupant or under the Occupant's control, or directly en route to the Occupant's Unit. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size, and shall also include, without limitation, sling shots, archery, and other projectile emitting devices. The Association, acting through the Board, is granted the right, but not the duty, to adopt, amend, and repeal Rules regarding the carrying of handguns, both openly carried or concealed, and the posting of signs and notices prohibiting such activity.

10.7. **Handicapped Parking**. Each Unit may have one or more parking spaces assigned for its exclusive use. Such assigned parking spaces may only be used by the Owner or Occupants to whom the parking spaces are assigned, and their guests and families. Notwithstanding anything to the contrary stated herein, with respect to any handicap parking spaces assigned exclusively to a Unit, such handicap parking spaces shall be assigned subject to the rights of Declarant (during the Development Period) or the Association thereafter to require the Owner to whose Unit such handicap parking space has been assigned (hereinafter, the "Original Owner") to grant a license to use such handicap parking space to another Owner (hereinafter, the "Disabled Owner"), provided that: (i) the Disabled Owner (or his or her Occupant) qualifies under Applicable Laws to use a handicap parking space in public facilities, (ii) the Disabled Owner provides the Original Owner with a license to use the Disabled Owner's parking space, and (iii) upon such time that the Disabled Owner (or his or her Occupant) no longer qualifies as provided in subsection (i) hereof, the licenses shall automatically expire and the Original Owner and the Disabled Owner shall use their respective, original parking spaces. In the event more than one (1) Original Owner who is not disabled has been assigned a handicapped parking space and the Declarant (during the Development Period) or the Association thereafter requires reassignment to a Disabled Owner, the handicapped space to be reassigned will be determined by random selection.

10.8. **Heating and Cooling of Units**. In order to prevent breakage of water pipes during colder months of the year and growth of mold and mildew during warmer months of the year resulting in damage to any portion of the Regime, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, when the thermostats are in heating mode, the Units shall be maintained at a setting of no less than fifty-five (55) degrees Fahrenheit, and when the thermostats are in cooling mode, the Units shall be maintained at a setting of no more than seventy-eight (78) degrees Fahrenheit (except during power failures or periods when air conditioning equipment is broken). Owners and Occupants shall take all steps possible on a timely basis to keep heating and cooling equipment, including, but not limited to, the thermostat, in good working order and repair

10.9. **Abandoned Personal Property**. Personal property shall not be kept, or allowed to remain for more than one (1) hour upon any portion of the Common Elements, other than on a Limited Common Element, without prior written Board permission. If the Board determines that a violation exists, then, the Board may remove and either discard or store the personal property in a location which the Board may determine and shall have no obligation to return, replace or reimburse the owner of the property; provided, however, in such case, the Board shall give the property owner, if known, notice of the removal of the property and the disposition of the property within twenty-four (24) hours after the property is removed. Neither the Association nor any officer or agent thereof shall be liable to any Person for any claim of damage resulting from the removal activity in accordance herewith. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

10.10. **Move In/Move Out**. The Association has the right to adopt rules and regulations associated with the moving of furniture, personal property, construction materials, and other over-sized items in or out of the Building. The Association may require a nonrefundable security deposit prior to using an elevator for moving furniture, construction materials or other over-sized items. The Association shall also be authorized to approve movers and/or moving companies that require access to the Building for the purpose of moving furniture, construction materials, and other over-sized items, on behalf of an Owner or Occupant, in or out of the Building, but such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary stated herein, an Owner or Occupant shall not leave unattended any furniture, personal property, construction materials, and other over-sized items on any portion of the Building for any period of time.

10.11. **Animals - Household Pets. The Rules contain various restrictions regarding the maintenance of pets in the Regime, as may be supplemented from time to time by the Board.**

10.12. **Declarant Privileges**. In connection with the development and marketing of the Units, Declarant has reserved a number of rights and privileges to use the Regime in ways that are not available to other Owners and Occupants, as provided in this Declaration and on Appendix "A" attached hereto. Declarant's exercise of a Development Period right that appears

to violate a provision of this Article does not constitute waiver or abandonment of the restriction by the Association.

10.13. **Fire Safety**. Other than handheld fire extinguishers, no Person may use, misuse, cover, disconnect, tamper with, or modify the fire and safety equipment within the Regime, including the sprinkler heads and water lines in and above the ceilings of the Unit, or interfere with the maintenance and/or testing of same by Persons authorized by the Association or by public officials.

10.14. **Weight and Sound Restriction**. In addition to and without limiting the provisions set forth in Article 9 of this Declaration, an Owner or other Person authorized by such Owner: (i) shall not install any hard and/or heavy surface floor coverings including, without limitation, tile, marble, stone, wood and the like unless approved by the Architectural Reviewer; and (ii) must ensure a sound control underlayment system is used, which system must be approved in writing by the Architectural Reviewer prior to installation. Installation of such sound control underlayment system shall include provisions for a perimeter insulation material which will ensure that impact noises are not transmitted into a space below, either directly through the floor or by flanking through the surrounding walls. Each Owner hereby acknowledges and agrees that sound transmission in a mid-rise building such as the Regime is very difficult to control, and that noises from adjoining or nearby Units and/or mechanical equipment can often be heard in another Unit. THIS DECLARATION DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE LEVEL OF SOUND TRANSMISSION BETWEEN AND AMONG UNITS IN THE OTHER PORTIONS OF THE REGIME, AND EACH OWNER HEREBY WAIVES AND EXPRESSLY RELEASES ANY SUCH WARRANTY AND CLAIM FOR LOSS OR DAMAGES RESULTING FROM SOUND TRANSMISSION.

NOT SOUNDPROOFED
The Units are not soundproofed. Noise transmission will occur.

10.15. **Residential Restrictions**. The use of the Residential Units is subject to the following:

10.15.1. Occupancy. The Board may adopt Rules regarding the occupancy of Residential Units. If the Rules fail to establish occupancy standards, no more than two Persons per bedroom may occupy a Residential Unit, subject to the exception for familial status. The Association's occupancy standard for Occupants who qualify for familial status protection under the fair housing laws may not be more restrictive than the minimum (*i.e., the fewest people per Unit*) permitted by the U.S. Department of Housing and Urban Development. A Person may not occupy a Residential Unit if the Person constitutes a direct threat to the health or safety of other Persons, or if the Person's occupancy would result in substantial physical damage to the property of others.

10.15.2. Permitted Residential Uses; Prohibited Residential Uses Restriction. The use of a Residential Unit is limited exclusively to residential purposes or any other use permitted by this Declaration. No professional, business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including, without limitation, any activity for which the provider is compensated in any way or receives any form of consideration; provided, however, that Declarant, its agents, successors and assigns may use any portion of the Regime for model Unit site(s), rental and sales offices and the display of signs associated with such sales and leasing activities. The provisions of this *Section 10.15.2* shall not preclude any of the above-described activities without external evidence thereof, provided that all of the following conditions are fulfilled: (i) such activities are conducted in conformance with all applicable governmental ordinances (ii) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from outside of the boundaries of the Unit; (iii) no such activity increases the liability or casualty insurance obligation or premium of the Association; (iv) activities which do not materially increase visible traffic to and from a Unit; (v) such activities are consistent with the residential character of the Regime and conform with the provisions of this Declaration.

10.16. **Commercial Restrictions**. The Commercial Unit(s) may be used for professional, business, or commercial activity that conforms to all zoning requirements applicable to the Property. The Commercial Unit(s) may not be used for: (i) a business that specializes in bankruptcy or liquidation sales or the selling of fire damaged items, (ii) an auction house, flea market, pawn shop, thrift store or other store which sells used or "second-hand" merchandise; (iii) a kennel or other business involving the boarding or care of animals; (iv) an establishment for sale of automobiles, trucks, mobile homes, or recreational motor vehicles; (v) a dance hall (except a professional dance instruction studio), ballroom, discotheque or game parlor; (vi) an adult type bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation, magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult type entertainment or activities (including, without limitation, any displays or activities of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts); (vii) a sexually oriented massage parlor; (viii) a gambling establishment or betting parlor; (ix) a mortuary, crematorium or funeral home; (x) a dry cleaning plant, central laundry or laundromat; (xi) a storage or mini warehouse facility; or (xii) any use which is offensive by reason of odor, fumes, dust, smoke, noise or pollution, or hazardous by reason of excess danger of fire or explosion.

10.17. **Signs**. Except for signs placed by Declarant, its assigns or Permittees in accordance with their rights under Section 3.11, no sign of any kind, including signs advertising Units for sale, for rent or for lease, may be erected, placed, or permitted to remain on the Property (including balconies) or to be visible from windows in the Units. As used in this Section, "sign" includes, without limitation, lettering, images, symbols, pictures, shapes, lights, banners, and any other representation or medium that conveys a message. Except for signs

placed by Declarant, its assigns or Permittees in accordance with their rights under Section 3.11, the Architectural Reviewer may, but is not required to, authorize a sign, and such authorization may specify the location, nature, dimensions, number, and time period of a sign. This prohibition against signs also applies to any object visible from a street or driveway which the Board deems to be unsightly or inappropriate. The Association may cause the immediate removal of any sign or object that violates this Section or which the Board deems inconsistent with Property standards without liability for trespass or any other liability connected with the removal.As provided in Appendix "A", Declarant has reserved the right to maintain signs and other items on the Property for the purpose of promoting, identifying and marketing the Property and off-site developments of Declarant or its assigns.

10.18. **Structural Integrity**. No Person may directly or indirectly impair the structural soundness or integrity of a Building or a Unit, nor do any work or modification that will impair an easement or real property right.

10.19. **Antennas and Satellite Dishes**. Except as provided below, no satellite dish, antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on any portion of the Regime, including the Unit or a balcony; provided, however, that the Association shall have the right, but not the obligation, to erect, construct and maintain such devices. The following shall apply to all Unit Owners:

(A) No transmission antenna, of any kind, may be erected anywhere within the Regime, without written approval of the Architectural Reviewer.

(B) DBS and MMDS satellite dishes or antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the Rules of the Association, and only if and to the extent such rules mandate that such dishes or antennas be allowed, both as may be amended from time to time. In such event, the Architectural Reviewer may designate and restrict the specific location and color of such satellite dishes and antennas, to the extent permitted under the FCC rules and regulations.

10.20. **Cable Conduit**. The Property is designed with a conduit for use with cable television lines. Each Owner may use the conduit for its intended purpose and for no other purpose. The draping of cable wires on the exterior of the Building, or the installation of additional conduits, are prohibited without the Architectural Reviewer's prior written consent.

10.21. **Smoking Prohibited**. Smoking, which includes vaping or the use of any other electronic cigarette, shall not be permitted in a Unit, including balconies attached thereto, or any of the Common Elements including, but not limited to, the lobby, elevators, corridors, storage units, pools and other amenity areas.

10.22. **No Piercing of Walls or Ceilings**. In addition to and without limiting the provisions set forth in Article 9 of this Declaration, an Owner or other Person authorized by such Owner shall not pierce any of the Unit walls with any type of nail, screw, drill bit or other similar item in excess of ¾ inch in length without first obtaining the consent of the Architectural Reviewer.

Furthermore, if alterations to the interior of a Unit require the penetration of the concrete floor or ceiling slab, the Owner shall be required to provide the Architectural Reviewer with a report prepared and certified by a structural engineer licensed in the State of Tennessee confirming that an x-ray analysis has been performed for the purposes of verifying that such penetration of the concrete floor or ceiling slab will not impair the structural integrity of such concrete floor or ceiling slab or result in the severing of any structural post-tension system or conduits that may be located within the concrete floor or ceiling slab.

10.23. **Rubbish, Trash and Garbage**. All rubbish, trash and garbage will be regularly removed from a Unit and shall not be allowed to accumulate therein. No rubbish, trash or garbage shall be placed on the General Common Elements or Limited Common Elements, and will be moved to the Regime's common trash facilities for collection, or otherwise removed from the Regime by an Owner or Occupant.

10.24. **Wireless Internet Systems**. A wireless internet communication network ("WiFi System") may be installed or otherwise used in a Unit provided precautions are taken to insure against interfering with, disturbing, or intercepting computer, communications, or other permitted electronic signals, networks, or systems installed in other portions of the Regime. The Association may establish reasonable requirements relating to the installation of WiFi Systems that must be complied with, including, without limitation, requiring assurance from the installation of the system that proper precautions are being taken. Notwithstanding the foregoing, compliance with requirements relating to the installation of WiFi Systems is not a guarantee that any WiFi System installed or otherwise used in a Unit will not interfere with, disturb, or intercept other signals, networks, or systems within the Regime. The Association may require that any WiFi System found to cause such problems be terminated. The Association, Declarant, and their respective current and former partners, members, directors, officers agents employees, affiliates, and committee members, shall not in any way be considered insurers or guarantors of the proper operation or use of any WiFi Systems in the Regime, nor shall any of such Persons be held liable for any loss or damage relating to the use or operation of WiFi Systems in the Regime.

10.25. **Restriction on Resale of Units During Sales Restriction Period**. No Owner shall offer any Unit for sale or advertise or otherwise market or attempt to market a Unit for sale in any way during the Sales Restriction Period. This restriction shall not apply to any (i) foreclosure; (ii) acceptance of a deed in lieu of foreclosure; (iii) resale of Units after the events set forth in (i) and (ii) above; or (iv) exercise of the power of sale by any Mortgagee. In addition, this restriction shall not apply to any Mortgagee.

10.26. **Use of Common Elements and Balconies**. Except as otherwise provided herein, the use of the Common Elements assigned to the Units is restricted exclusively to the Owners of the Unit to which such Common Elements are assigned, and said Owner's family members, guests, tenants and invitees. The assigned Common Elements are reserved for exclusive use, but shall not be construed or interpreted to be separate and apart from the Common Elements in general, and the restrictions applicable to the Common Elements shall also apply to the assigned Common Elements.

10.26.1. Balconies. Each Owner is advised to review any applicable Rules for restrictions pertaining to objects which may and may not be placed on a balcony serving a Unit.

ARTICLE 11
UNIT LEASING

11.1. **Leasing of Residential Units Generally**. In order to preserve the character of the Regime as predominantly Owner-occupied, and to comply with the eligibility requirements for financing in the secondary mortgage market, the leasing of Residential Units shall be governed by the restrictions imposed by this Article. The provisions of this *Section 11.1* shall not apply to any Commercial Unit. Except as provided herein, the leasing of Units shall be prohibited. "Leasing," for the purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any Person other than the Owner. For purposes hereof, occupancy by (i) a roommate of an Owner who occupies the Unit as such Owner's primary residence; or (ii) Owner's family member or Owner's employee shall not constitute Leasing hereunder.

11.1.1. General. Owners desiring to lease their Residential Units may do so only if they have applied for and received from the Board either a "Leasing Permit" or a "Hardship Leasing Permit." During the Development Period, Declarant is also expressly permitted to issue a "Leasing Permit" or a "Hardship Leasing Permit" to (i) a prospective purchaser of a Unit (if such prospective purchaser and the seller thereof have executed a binding contract therefor, provided that, in such event, the "Leasing Permit" or a "Hardship Leasing Permit" (as the case may be) will be effective only after the prospective purchaser has acquired the Unit); or (ii) an Owner. Such a permit, upon its issuance, will allow an Owner to lease his or her Residential Unit provided that such Leasing is in strict accordance with the terms of the permit and this Article. The Board shall have the authority to establish conditions as to the duration and use of such permits consistent with this Section. All Leasing Permits (excluding Hardship Leasing Permits) shall be valid only as to a specific Residential Unit and will be transferred to successor Owners of a specific Residential Unit. Leasing Permits (excluding Hardship Leasing Permits) can be transferred between Residential Units with the consent of Declarant during the Development Period, the Association, and the Owner of the Residential Unit to which the Leasing Permit was assigned. All Hardship Leasing Permits shall be valid only as to a specific Owner and such Owner's Residential Unit and shall not be transferable between either Residential Units or Owners.

11.1.2. Leasing Permits. An Owner's request for a Leasing Permit shall be denied if current, outstanding Leasing Permits have been issued for more than 35% of the total number of Residential Units in the Regime (excluding Units owned by Declarant). Notwithstanding anything to the contrary herein, and in accordance with the Declarant's reservation of the right to issue a Leasing Permit or Hardship Leasing Permit to a prospective purchaser of a Unit in *Article 11, Section 11.1.1*, until such time as Declarant has conveyed all Units in the Regime, no Leasing Permit or Hardship Leasing Permit may be issued without the advanced written consent of Declarant, which consent may be withheld in Declarant's sole discretion. Declarant, during the Development Period, may charge a fee for the issuance of a Leasing Permit and Declarant is entitled to retain the revenue from such fee. After the expiration of the Development Period, the Association may charge a fee for the issuance of a Leasing Permit and the Association is entitled to retain the revenue from such fee. Owners who have been denied a Leasing Permit shall automatically be placed on a waiting list for a Leasing Permit and shall be issued the same if they so desire when the number of current outstanding Leasing Permits issued falls to 35% or less of the total Residential Units in the Regime. The issuance of a Hardship Leasing Permit to an Owner shall not cause the Owner to be removed from the waiting list for a Leasing Permit.

11.1.3. Hardship Leasing Permits. If the failure to lease will result in a hardship, then the Owner may seek to lease on a hardship basis by applying to the Board for a Hardship Leasing Permit. The Board shall have the authority to issue or deny requests for Hardship Leasing Permits in its discretion after considering the following factors: (i) the nature, degree, and likely duration of the hardship, (ii) the harm, if any, which will result to the Regime if the permit is approved, (iii) the number of Hardship Leasing Permits which have been issued to other Owners, (iv) the Owner's ability to cure the hardship, and (v) whether previous Hardship Leasing Permits have been issued to the Owner. A "hardship" as described herein shall include, but not be limited to the following situations: (i) a Unit Owner must relocate his or her residence outside the greater Nashville area and cannot, within six months from the date that the Unit was placed on the market, sell the Unit except at a price below the current appraised market value, after having made reasonable efforts to do so; (ii) where the Owner dies and the Unit is being administered by his or her estate; and (iii) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Unit. Hardship Leasing Permits shall be valid for a term not to exceed one year. Owners may apply for additional Hardship Leasing Permits. Hardship Leasing Permits shall be automatically revoked if during the term of the permit, the Owner is approved for and receives a Leasing Permit.

11.2. **Leasing Provisions**. Leasing of the Residential Units shall be governed by the following provisions:

11.2.1. Notice. The Board, at its election, may require that prior to entering into the lease of a Residential Unit, the Owner provide the Board with a copy of

the proposed lease agreement. The Board shall approve or disapprove the form of said lease. In the event a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with this Declaration and any Rules. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease. The provisions of this *Section 11.2.1* shall not apply to leases of any Commercial Unit.

11.2.2. General. Residential Units may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. **All leases must be for an initial term of not less than six (6) months.** All leases shall be in writing, and the Board may require leases of Residential Units to be in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form that is deemed acceptable. There shall be no subleasing of Residential Units or assignment of Residential Unit leases without prior written Board approval. Within ten days after executing a lease agreement for the lease of a Residential Unit, the Owner shall provide the Board with a copy of the lease in the case of Residential Units and the name of each adult lessee, their cellular phone number and primary email address and make, model and license plate number of any vehicles that will be parked on the premises along with the names of all non-adults occupying the Unit. The Owner must provide the lessee copies of this Declaration, the Bylaws, and the Rules, and the provisions of the same shall be deemed expressly incorporated into any lease.

NO SHORT-TERM LEASING

It is a violation of this Declaration to lease a Unit for a term of less than six (6) months. Violations of the leasing provisions contained herein are subject to fines and any other enforcement action the Association is entitled to under this Declaration or Tennessee law.

11.2.3. Liability for Assessments, Use of Common Elements and Compliance with Documents. Each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(i) Compliance with Documents. The lessee shall comply with all provisions of the Documents and shall control the conduct of all other Occupants and guests of the leased Unit in order to ensure such compliance. The Owner shall cause all Occupants of his or her Unit to comply with the Documents, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any such violation. If the lessee, or a Person occupying a Unit with the lessee,

violates the Documents or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with this Declaration. If the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit.

(ii) Any violation of the Documents by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Applicable Law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Documents, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees actually incurred and court costs associated with the eviction shall be an Assessment and lien against the Unit.

(iii) Use of Common Elements. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Elements, including but not limited to, the use of any and all recreational facilities and other amenities; provided, however, that no lessee may reserve any portion of the Common Elements as provided in *Section 10.4* without the written consent of the Owner.

(iv) Liability for Assessment. When a Unit Owner who is leasing his or her Unit fails to pay any Assessment or any other charge against the Unit for a period of more than 30 days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency to the Association, and, upon request by the Board, lessee shall pay to the Association all unpaid Assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay Assessments or other charges, lessee shall pay to the Association all amounts authorized under this Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for Assessments, for which he or she would otherwise be responsible.

11.3. **Eviction of Tenants**. Every lease agreement on a Unit, whether written or oral, express or implied, is subject to and is deemed to include the provisions included in this Section 11.3.

11.3.1. Violation Constitutes Default. Failure by the tenant or the tenant's guests to comply with the Documents or Applicable Law is deemed to be a default under the lease. When the Association notifies an Owner of such violation, the Owner will promptly obtain compliance or exercise its rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or Applicable Law for the default, including eviction of the tenant, subject to the terms of this Section.

11.3.2. Association as Attorney-in-Fact. Notwithstanding the absence of an express provision in the lease agreement for enforcement of the Documents by the Association, each Owner appoints the Association as the Owner's attorney-in-fact, with full authority to act in the Owner's place in all respects, for the purpose of enforcing the Documents against the Owner's tenants, including but not limited to the authority to institute forcible detainer proceedings, provided the Association gives the Owner at least ten (10) days' notice, by certified mail, of its intent to so enforce the Documents.

11.3.3. Association Not Liable for Damages. The Owner of a leased Unit is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Documents against the Owner's tenant. The Association is not liable to the Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of the Documents against the Owner's tenant.

11.4. **Exemption**. Notwithstanding the above, this Article shall not apply to any leasing transaction entered into by Declarant (regardless of whether said lease is entered into prior to or after the expiration of the Development Period), the Association, or the holder of any first Mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage. Such parties shall be permitted to lease a Residential Unit without first obtaining a permit in accordance with this Article, and such Residential Units shall not be considered as being leased in determining the maximum number of Residential Units that may be leased in accordance with this Article.

11.5. **Unit Marketing Restrictions**. Unless otherwise approved in writing and in advance by Declarant, which approval may be withheld in the sole discretion of Declarant, an Owner may in no event offer the Residential Unit for sale, including but, not limited to, listing the Residential Unit or advertising the Residential Unit for sale in any real estate listing service and/or publication, on any online electronic medium and on any newspaper, radio, television or any other medium for advertising, or otherwise market or attempt to market the Residential Unit for sale in any way prior to such time as Owner has acquired fee title to the Unit.

11.6. **Department of Veterans Affairs Financing**. To the extent that any provision set forth in this Declaration and related documents regarding leasing and/or a right of first refusal is inconsistent with the requirement(s) of guaranteed or direct loan programs of the United States Department of Veterans Affairs, as set forth in chapter 37 of title 38, United States Code, or part 36 of title 38, Code of Federal Regulations ("**DVA Financing**"), such provision shall not apply to any Unit that is: (i) encumbered by DVA Financing; or (ii) owned by the Secretary of Veterans Affairs, an Officer of the United States.

ARTICLE 12
ASSOCIATION OPERATIONS

12.1. **Board**. Unless the Documents expressly reserve a right, action, or decision to the Owners, Declarant, or another party, the Board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Documents to the "Association" means the Association acting through a Majority of its Board.

12.2. **The Association.**

12.2.1. Generally. The duties and powers of the Association are those set forth in the Documents, together with the general and implied powers of a condominium association and a nonprofit corporation organized under Applicable Law. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its Members, subject only to the limitations on the exercise of such powers set forth in the Documents. The Association comes into existence on issuance of its corporate charter. The Association will continue to exist at least as long as this Declaration is effective against the Property, regardless of whether its corporate charter lapses from time to time.

12.2.2. Further Rights. In addition to and not in limitation of all other rights it may have, the Association, acting through the Board, shall have the right and authority:

(i) to enter into Units for maintenance, emergency, security, or safety purposes, which right may be exercised by the Association's Board, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit. For the purposes of this subsection, an emergency justifying immediate entry into a Unit shall include, but not be limited to the following situations: a water or other utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a Person or animal might be injured or sick and require immediate medical attention. No one exercising the rights granted in this

subsection shall be liable for trespass, damages, or in any other manner by virtue of exercising such rights. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a Unit shall exist;

(ii) to make and to enforce the Rules;

(iii) to enforce the Documents by the imposition of reasonable monetary fines and suspension of use and voting privileges as permitted pursuant to the Act;

(iv) to grant and accept permits, licenses, utility easements, leases, and other easements;

(v) to acquire, hold, and dispose of tangible and intangible personal property and real property;

(vi) to collect security deposits in reasonable amounts, as determined by the Board in its sole discretion, to protect against any damage to the Regime, including, without limitation, damage resulting from: moving in or out of a Unit; the transportation and use of construction materials in the Regime; and the alteration, modification, or addition to a Unit and any Limited Common Element appurtenant thereto. Costs for repair of such damage may be deductible from the security deposit and any additional expenses may be assessed against the Unit as an Individual Assessment;

(vii) to approve contractors or subcontractors who have access to the Regime for the purpose of making repairs or Improvements to Units based on Rules promulgated and adopted by the Board. The Board may also impose insurance requirements and collect other non-refundable deposits for use of elevators and the trash receptacles;

(viii) at the sole expense of the Association, without need for a membership vote, and without the consent of any affected Unit Owner, to relocate any portion of the air conditioning, heating, plumbing, ventilating, exhaust or electrical system serving a particular Unit, provided that after such relocation, the system serving the Unit functions at least as well and at no greater cost to the Unit Owner as existed prior to the relocation;

(ix) to close permanently or temporarily any portion of the Common Elements (excluding the Limited Common Elements and any General Common Elements the use of which is reasonably necessary for access to or from a Unit), with thirty (30) days prior notice to all Owners, except that, in emergency situations requiring a temporary closing, prior notice shall not be required so long as notice is given within three days after the closing explaining the reason

for the closing. Notwithstanding the above, the Owners may re-open closed Common Elements by a Majority vote of the total Association vote, cast at a duly called special or annual meeting;

(x) to enter into joint agreements and contracts with any Owner, other associations or any third party for the provision of services, including, without limitation, management, maintenance, valet, porter, concierge, property monitoring services, and trash removal services; and

(xi) to control, manage, operate, maintain, improve and replace the Common Elements or any portion of the Building to which the Association is required to maintain in accordance with this Declaration.

12.3. **Name**. A name is not the defining feature of the Association. The Association may operate under any name that is approved by the Board and (i) filed with the Davidson County Clerk as an assumed name, or (ii) filed with the Secretary of State of Tennessee as the name of the filing entity. The Association may also change its name by amending the Documents, except in the event the corporate charter has been revoked and the name "Fulton Condominium Community, Inc.," is no longer available. In such event, the Board will cause a notice to be Recorded stating the current name of the Association. Another legal entity with the same name as the Association, or with a name based on the name of the Property, is not the Association, which derives its authority from this Declaration.

12.4. **Duration**. The Association comes into existence on the date on which the Charter is filed with the Secretary of State of Tennessee. The Association will continue to exist at least as long as this Declaration, as it may be amended, is effective against all or part of the Property.

12.5. **Governance**. During the Declarant Control Period, Declarant will have the exclusive authority to appoint and remove all directors and officers of the Association. Within one hundred twenty (120) days after twenty-five percent (25%) of the number of Units that may be created under this Declaration have been conveyed to Owners other than Declarant, at least one member of the Board must be elected by Owners other than Declarant. On and after expiration of the Declarant Control Period, the Board will consist of five (5) members, with (i) one (1) director to be appointed by the Owner(s) of the Commercial Unit(s) only (the Owner(s) of the Commercial Unit(s)) being the only Member(s) entitled to appoint such director) and (ii) four (4) directors to be elected by a vote of the Owners of the Residential Units only (the Owners of the Residential Units being the only Members entitled to vote with respect to the election of such directors).

12.6. **Merger**. Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by Owners representing at least eighty percent (80%) of the votes in the Association and Declarant during the Development Period. On merger or consolidation of the Association with

another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Documents within the Property, together with the covenants and restrictions established on any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property.

12.7. **Membership**. Each Owner is a Member of the Association, ownership of a Unit being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the Unit. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at meetings of the Association. If a Unit is owned by more than one Person or entity, each co-owner is a Member of the Association and may exercise the membership rights appurtenant to the Unit.

12.8. **Manager**. The Board may delegate the performance of certain functions to one or more managers or managing agents of the Association. To assist the Board in determining whether to delegate a function, a Guide to Association's Major Management & Governance Functions is attached to this Declaration as Exhibit "F" (for the purpose of this Section, the "Guide"). The Guide lists several of the major management and governance functions of a typical residential development with a mandatory owners association. The Guide, however, may not be construed to create legal duties for the Association and its officers, directors, members, employees, and agents that are not justified by the needs of the Association. Rather, the Guide is intended as a tool or an initial checklist for the Board to use periodically when considering a delegation of its functions. As a list of functions that owners associations commonly delegate to a manager, the Guide should not be considered as a complete list of the Board's duties, responsibilities, or functions. Notwithstanding any delegation of its functions, the Board is ultimately responsible to the Members for governance of the Association.

12.9. **Books and Records. The Association will maintain copies of the Documents and the Association's books, records, and financial statements**. Books and records of the Association will be made available for inspection and copying pursuant to the requirements of the TNCA.

12.10. **Use of Technology**. In recognition of the opportunities offered through computers and continuing advancements in technology, the Association may, as a Common Expense, provide or offer services which make use of computers or other technological services. For example, to the extent permitted by Applicable Law, the Association may send required notices by electronic means; hold Board or Association meetings and permit attendance and voting by electronic means; send and collect assessments and other invoices over the computer; sponsor a community cable or satellite television channel; create and maintain a community intranet or Internet home page offering interactive participation opportunities for users; maintain an "online" newsletter or bulletin board; and provide funding for any of the above purposes.

12.11. **Indemnification**. The Association indemnifies every officer, director, and committee member (for purposes of this Section, "Leaders") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with any threatened or pending action, suit, or proceeding to which the Leader is a party or respondent by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment. A Leader is liable for such Leader's willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. As a Common Expense, the Association may maintain general liability and directors' and officers' liability insurance to fund this obligation.

12.12. **Obligations of Owners**. Without limiting the obligations of Owners under the Documents, each Owner has the following obligations:

12.12.1. Information. Within thirty (30) days after acquiring an interest in a Unit, within thirty (30) days after the Owner has notice of a change in any information required by this Subsection, and on request by the Association from time to time, an Owner will provide the Association with the following information: (i) a copy of the Recorded deed by which Owner has acquired title to the Unit; (ii) the Owner's address, phone number, and driver's license number, if any; (iii) any Mortgagee's name, address, and loan number; (iv) the name and phone number of any Occupant other than the Owner; and (v) the name, address, and phone number of Owner's managing agent, if any.

12.12.2. Pay Assessments and Charges. Each Owner will pay Assessments properly levied by the Association against the Owner or such Owner's Unit and will pay such Assessments and charges without demand.

12.12.3. Compliance with Documents. Each Owner will comply with the Documents as amended from time to time.

12.12.4. Reimburse for Damages. Each Owner will pay for damage to the Property caused by the negligence or willful misconduct of the Owner, an Occupant of the Owner's Unit, or the Owner or Occupant's family, guests, employees, contractors, agents, or invitees.

12.12.5. Liability for Violations. Each Owner is liable to the Association for violations of the Documents by the Owner, an Occupant of the Owner's Unit, or the Owner or Occupant's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.

12.13. **Unit Resales**. This Section applies to every sale or conveyance of a Unit or an interest in a Unit by an Owner other than Declarant:

12.13.1. Resale Certificate. An Owner intending to sell such Owner's Unit will notify the Association and may request a condominium resale certificate from the Association. The Association shall issue a selling Unit Owner a resale certificate within ten (10) business days after the date of receiving a written request for the same.

12.13.2. No Right of First Refusal. The Association does not have a right of first refusal and may not compel a selling Owner to convey the Owner's Unit to the Association.

12.13.3. Other Transfer-Related Fees. A number of independent fees may be charged in relation to the transfer of title to a Unit, including but not limited to, fees for resale certificates, estoppel certificates, copies of Documents, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind and number for the local marketplace. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against Regular or Special Assessments. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's Assessment lien, and are not payable by the Association. This Section does not obligate the Board or the manager to levy transfer-related fees.

12.13.4. Exclusions. The requirements of this Section do not apply to the following transfers: (i) foreclosure of a mortgagee's deed of trust lien, a tax lien, or the Association's Assessment lien; (ii) conveyance by a mortgagee who acquires title by foreclosure or deed in lieu of foreclosure; transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more Co-Owners, or to the Owner's spouse, child, or parent; a transfer by a fiduciary in the course of administering a decedent's estate, guardianship, conservatorship, or trust; a conveyance pursuant to a court's order, including a transfer by a bankruptcy trustee; or (iv) a disposition by a government or governmental agency.

ARTICLE 13
ENFORCING THE DOCUMENTS

13.1. **Notice and Hearing**. Before levying a fine for violation of the Documents (other than nonpayment of Assessments), or before levying an Individual Assessment for property damage, the Association will give the Owner written notice of the levy and an opportunity to be heard, to the extent required by Applicable Law. The Association's written notice must contain a description of the violation or property damage; the amount of the proposed fine or damage charge; a statement that not later than the tenth (10th) day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or charge; and a stated date by which the Owner may cure the violation to avoid the fine, unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding twelve (12)

months. The Association may also give a copy of the notice to the Occupant. Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. The Owner may attend the hearing in person, or may be represented by another Person or by a written communication. The Board may adopt additional or alternative procedures and requirements for notices and hearings, provided they are consistent with the requirements of Applicable Law.

13.2. **Remedies**. The remedies provided in this Article for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by Applicable Law, the Association has the following rights to enforce the Documents:

13.2.1. Nuisance. The result of every act or omission that violates any provision of the Documents is a nuisance, and any remedy allowed by Applicable Law against a nuisance, either public or private, is applicable against the violation.

13.2.2. Fine. The Association may levy reasonable charges, as an Individual Assessment, against an Owner and the Owner's Unit if the Owner or Occupant, or the Owner or Occupant's family, guests, employees, agents, or contractors violate a provision of the Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Documents.

13.2.3. Suspension. The Association may suspend the right of Owners and Occupants to use Common Elements (provided that the rights of ingress and egress are not impaired) for any period during which the Owner or Occupant, or the Owner or Occupant's family, guests, employees, agents, or contractors violate the Documents. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Documents.

13.2.4. Self-Help. The Association has the right to enter a Common Element or Unit to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, Person, vehicle, or condition that violates the Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Unit and Owner as an Individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' notice of its intent to exercise self-help. Notwithstanding the foregoing, the Association may not alter or demolish an item of construction on a Unit without judicial proceedings.

13.2.5. Suit. Failure to comply with the Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be

remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

13.3. **Board Discretion**. The Board may use its sole discretion in determining whether to pursue a violation of the Documents, provided the Board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the Board may determine that under the particular circumstances: (i) the Association's position is not sufficiently strong to justify taking any or further action; (ii) the provision being enforced is or may be construed as inconsistent with Applicable Law; (iii) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable Person or to justify expending the Association's resources; or (iv) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

13.4. **No Waiver**. The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Documents. Failure by the Association or by any Owner to enforce a provision of the Documents is not a waiver of the right to do so thereafter.

13.5. **Recovery of Costs**. The costs of curing or abating a violation are the expense of the Owner or other Person responsible for the violation. If legal assistance is obtained to enforce any provision of the Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Documents or the restraint of violations of the Documents, the prevailing party is entitled to recover from the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

13.6. **SECURITY**. THE ASSOCIATION MAY, BUT IS NOT OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES ON THE PROPERTY DESIGNED, EITHER DIRECTLY OR INDIRECTLY, TO IMPROVE SAFETY IN OR ON THE PROPERTY. EACH OWNER AND OCCUPANT ACKNOWLEDGES AND AGREES, FOR HIMSELF AND HIS GUESTS, THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES ARE NOT PROVIDERS, INSURERS, OR GUARANTORS OF SECURITY ON THE PROPERTY. EACH OWNER AND OCCUPANT ACKNOWLEDGES AND ACCEPTS AS SUCH OWNERS SOLE RESPONSIBILITY TO PROVIDE SECURITY FOR SUCH OWNERS OWN PERSON AND PROPERTY, AND ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO SAME. EACH OWNER AND OCCUPANT FURTHER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS THE OWNER OR OCCUPANT RELIED ON ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE, BURGLARY, AND/OR INTRUSION SYSTEMS RECOMMENDED OR INSTALLED, OR ANY SECURITY MEASURES UNDERTAKEN ON THE PROPERTY. EACH OWNER AND OCCUPANT ACKNOWLEDGES

AND AGREES THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES MAY NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF ANY FAILURE TO PROVIDE ADEQUATE SECURITY OR THE INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

13.7. **INJURY TO PERSON OR PROPERTY**. NEITHER THE ASSOCIATION NOR DECLARANT, OR THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES HAVE A DUTY OR OBLIGATION TO ANY OWNER, OCCUPANT OR THEIR GUESTS: (i) TO SUPERVISE MINOR CHILDREN OR ANY OTHER PERSON; (ii) TO FENCE OR OTHERWISE ENCLOSE ANY LIMITED COMMON ELEMENT, GENERAL COMMON ELEMENT, OR OTHER IMPROVEMENT; OR (iii) TO PROVIDE SECURITY OR PROTECTION TO ANY OWNER, OCCUPANT, OR THEIR GUESTS, EMPLOYEES, CONTRACTORS, AND INVITEES FROM HARM OR LOSS. BY ACCEPTING TITLE TO A UNIT, EACH OWNER AGREES THAT THE LIMITATIONS SET FORTH IN THIS SECTION ARE REASONABLE AND CONSTITUTE THE EXERCISE OF ORDINARY CARE BY THE ASSOCIATION AND DECLARANT. EACH OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND DECLARANT, AND THE ASSOCIATION AND DECLARANT'S AGENTS FROM ANY CLAIM OF DAMAGES, TO PERSON OR PROPERTY ARISING OUT OF AN ACCIDENT OR INJURY IN OR ABOUT THE REGIME TO THE EXTENT AND ONLY TO THE EXTENT CAUSED BY THE ACTS OR OMISSIONS OF SUCH OWNER, HIS TENANT, HIS GUESTS, EMPLOYEES, CONTRACTORS, OR INVITEES TO THE EXTENT SUCH CLAIM IS NOT COVERED BY INSURANCE OBTAINED BY THE ASSOCIATION AT THE TIME OF SUCH ACCIDENT OR INJURY.

ARTICLE 14
INSURANCE

14.1. **Generally**. The Association shall maintain all property and general liability insurance required in accordance with this Article 14 and the Act.

14.2. **Responsibility For Insurance.**

14.2.1. Commercial General Liability and Property Insurance. Commencing upon the first conveyance of any Unit to an Owner other than Declarant, the Association shall obtain and maintain (a) all insurance coverage required by Section 66-27-413 of the Act; provided, however, that with respect to property insurance on the insurable Units and Common Elements prior to completion of construction of the initial Improvements, such insurance coverage may be satisfied by the Builder's Risk policy of the Person constructing such Improvements so long as such policy otherwise satisfies the property insurance coverage required pursuant to the Act and each Owner are named as loss payees under such policy; and (b) at the expense of the Owner incurring such first or senior purchase money vendor's lien or deed of trust lien, such other insurance (or additional coverage) as such Owner's Mortgagee will require. The

property insurance shall be required to provide coverage to repair or reconstruct the Units and Common Elements according to the as-built plans and specifications for such Improvements constructed on the Property by Declarant. Such coverage shall include the Common Elements and all of the Units and the fixtures initially installed therein by Declarant and replacements thereof up to the value of those initially installed by Declarant. This insurance must be in an amount sufficient to cover one-hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard. The Association may, but is not obligated to, insure any improvements or betterments (including wall coverings and fixtures) made by or on behalf of any Owner.

14.2.2. Association Does Not Insure. The Association does not insure an Owner or Occupant's personal property. Each Owner and Occupant is solely responsible for insuring his personal property in his Unit and on the Property, including furnishings, vehicles, and stored items. Each Owner or Occupant is advised to purchase and maintain insurance on the personal property in the Owner's Unit.

14.2.3. Insurance by Owners. Unless otherwise insured by the Association, each Owner is advised to obtain and maintain fire and extended coverage on any Improvements or betterments (including wall coverings and fixtures) made by or on behalf of the Owner other than those made by Declarant, and also any furnishings and other personal property of such Owner within his or her Unit in an amount sufficient to cover one-hundred percent (100%) of the replacement cost of such items. Further, each Owner shall obtain and maintain general liability insurance on his Unit and on Limited Common Elements assigned thereto in amounts not less than the minimum amount determined by the Board from time to time. Each Owner is advised to additionally obtain and maintain loss assessment insurance. Each Owner will provide the Association with proof or a certificate of insurance on request by the Association from time to time. If an Owner fails to maintain required insurance, or to provide the Association with proof of same, the Board may obtain insurance on behalf of the Owner who will be obligated for the cost as an Individual Assessment. The Board may establish additional minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners. Each Owner and Occupant is solely responsible for insuring his personal property, including furnishings, vehicles, and stored items.

14.2.4. Other Insurance by Owners. Notwithstanding any provision in this Declaration to the contrary, the Board may establish minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners. If an Owner fails to maintain required insurance, the Board may obtain it on behalf of the Owner who will be obligated for the cost as an Individual Assessment.

14.2.5. Owners' Responsibilities. On request, an Owner will give the Board written notification of any and all structural changes, additions, betterments, or Improvements to his Unit, and any other information the Board may require to maintain adequate levels of insurance coverage. Each Owner will comply with reasonable requests by the Board for periodic inspection of the Unit for purposes of insurance appraisal. Each Owner, at his expense, will maintain any insurance coverages required by the Association pursuant to this Article. Each Owner at his expense, may obtain additional insurance coverage of his real property, Improvements, and betterments thereto, or personal property.

14.2.6. Allocation of Property Insurance Premiums. The allocation of property insurance premiums will be initially assigned to the Residential Units based on a ratio of the sum of the Common Interest Allocation assigned to all Residential Units to the sum of the Common Interest Allocation assigned to all Units. The premium attributable to each individual Residential Unit is based on the Residential LCE Allocation assigned to each Residential Unit pursuant to *Section 4.7*. The allocation of property insurance premiums will be initially assigned to the Commercial Unit(s) based on a ratio of the sum of the Common Interest Allocation assigned to all Commercial Units to the sum of the Common Interest Allocation assigned to all Units. The premium attributable to each individual Commercial Unit is based on the Commercial LCE Allocation assigned to each Commercial Unit pursuant to *Section 4.8*. The Board may subsequently adjust the allocation of property insurance premiums on an annual basis to (i) the Residential Units based on a ratio of the estimated replacement cost of all Residential Units to the estimated replacement cost of all Units as conveyed by Declarant; or (ii) the Commercial Unit(s) based on a ratio of the estimated replacement cost of all Commercial Units to the estimated replacement cost of all Units as conveyed by Declarant; provided, however, that such adjustment shall only be effective beginning with the next succeeding fiscal year of the Association. In determining the allocation of property insurance premiums, the Board may take into account such factors as the Board may deem appropriate, including, without limitation, any changes to the value of the Residential Units and the Commercial Unit(s) from year-to-year. The Board may (but will not be required to) rely upon the advice of a Tennessee-licensed insurance agent or other such individuals having experience or knowledge in insurance matters. The costs of the insurance premiums attributable to Residential Units and the Residential LCE will be allocated to each Residential Unit as part of the Residential Unit Assessments. The costs of the insurance premiums attributable to the Commercial Unit(s) and any Commercial LCE will be allocated to the Commercial Unit(s) as part of the Commercial Unit Assessments.

14.2.7. Additional Insurance. Notwithstanding the foregoing, at any point in the future, the Board may elect to obtain a property insurance policy that covers improvements or betterments (including wall coverings and fixtures) made by Persons other than those made by Declarant. In the event that the Board obtains a property

insurance policy that covers improvements or betterments made by Persons other than those made by Declarant, the Board shall notify the Owners. Each Owner is advised to periodically consult with the Association to determine the amount of property insurance that the Association has obtained in order to determine the additional amount of insurance needed by each Owner.

The Association will, upon the written request of an Owner or Owners, attempt to obtain, within a reasonable time period after the request, such supplemental insurance coverage pertaining to the Property or a Unit as the Owner of such Unit may request, in addition to that insurance coverage already obtained and maintained by the Association for the benefit of the Units. The incremental premium increase, if any, for such supplemental insurance coverage will be specifically assessed to the Unit or Units that requested the supplemental insurance coverage as an Individual Assessment.

14.3. **Worker's Compensation**. The Association may maintain worker's compensation insurance if and to the extent necessary to meet the requirements of Applicable Law or if the Board so chooses.

14.4. **Fidelity Coverage**. The Association may maintain blanket fidelity coverage for any Person who handles or is responsible for funds held or administered by the Association, whether or not the Person is paid for his services. The policy should be for an amount that exceeds the greater of: (i) the estimated maximum funds, including reserve funds, that will be in the Association's custody at any time the policy is in force; or (ii) an amount equal to three (3) months of Regular Assessments on all Units. A management agent that handles Association funds should be covered for its own fidelity insurance policy with the same coverages.

14.5. **Directors and Officers Liability**. The Association may maintain directors and officers liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

14.6. **Mortgagee Required Policies**. Unless coverage is not available or has been waived in writing, the Association will maintain any insurance and bond required by an Underwriting Lender for condominium developments as long as an Underwriting Lender is a Mortgagee or an Owner.

14.7. **Other Policies**. The Association may maintain any insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association or as may be required by the Act.

14.8. **Characteristics of Insurance Maintained by the Association**. All insurance coverage maintained or obtained by the Association pursuant to this Article 14 shall:

(i) be issued by responsible insurance companies licensed to do business in the State of Tennessee and shall be rated by Best's Insurance Guide (or any successor publication of comparable standing) as "A-VI" or better;

(ii) contain standard mortgagee clauses, if applicable;

(iii) waive any right to claim by way of subrogation against Declarant, the Board, any manager, the Owners and their respective agents and employees;

(iv) provide that insurance trust agreements shall be recognized;

(v) waive any right to claim invalidity arising from the acts of the insured; and

(vi) state that such policy is primary insurance if at the time of a loss under the policy any Owner has other insurance covering the same property covered by the policy.

14.9. **Insurance Trustee**. Notwithstanding anything in this Declaration to the contrary, if physical damage to the Regime occurs, the proceeds of the policy maintained by the Association pursuant to this Declaration shall be paid to the Association, acting as the insurance trustee for the Regime, and the insurance trustee shall perform all of the duties and obligations otherwise imposed on the Board (except any decision not to repair or reconstruct the improvements). The fees of the insurance trustee shall be a Common Expense.

14.10. **Other Insurance Requirements.**

(i) Neither the Association, Declarant nor any Owner shall be liable for failure to obtain any insurance coverage required by this Declaration or for any loss or damage resulting from such failure, if such failure is because such insurance coverage is not reasonably available.

(ii) Neither the Association nor any Owner shall obtain any policy of insurance where: (a) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Owner or Mortgagee or become a lien against the Regime; (b) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders or members; or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Association, Owners or Mortgagees from collecting the insurance proceeds.

(iii) The insurance purchased by the Association and the other Owners pursuant to this *Article 14* shall not cover claims against any other Owner or its designees due to accidents occurring within that other Unit, or casualty, theft or loss to the contents of that other Unit.

(iv) Each Owner and their Occupants waive any claim they might have against the other Owners, Occupants, the members of the Board, any manager or the Association, and the members of the Board, any manager, and the Association waive any claim they might have against an Owner and their Occupants, for: (i) any damage to or theft, destruction, loss or loss of use of any property; or (ii) any damage due to personal or bodily injury, to the extent the same is insured against under any insurance policy of the types described in this Declaration that covers the Regime, such Owner's, Occupant's, or the Association's fixtures, personal property, improvements, or business, or is required to be insured against under the terms of this Declaration, REGARDLESS OF WHETHER THE NEGLIGENCE OF THE OTHER OWNER, ITS TENANTS, OR THEIR RESPECTIVE OCCUPANTS, ANY MEMBER OF THE BOARD, ANY MANAGER OR THE ASSOCIATION (AS APPLICABLE) CAUSED SUCH: (1) DAMAGE TO OR THEFT, DESTRUCTION, LOSS OR LOSS OF USE OF, ANY PROPERTY OR INCONVENIENCE; OR (2) DAMAGE TO THE PERSON OR PERSONS DESCRIBED IN THIS SECTION. Each Owner shall cause its respective insurance carrier to endorse all applicable policies waiving each such carrier's rights of recovery under subrogation or otherwise against the other Owners and their Occupants, the members of the Board, any manager and the Association and the members of the Board, any manager, and the Association shall cause their respective insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the Owners and their Occupants.

ARTICLE 15
RECONSTRUCTION OR REPAIR AFTER LOSS

15.1. **Subject to Act**. The Association's response to damage or destruction of the Property will be governed by Section 66-27-413(h) of the Act. The following provisions apply: (i) to the extent the Act is silent; and (ii) if, and only if, the Association receives any "Restoration Funds" (as defined below).

15.2. **Restoration Funds**. For purposes of this Article, "Restoration Funds" include insurance proceeds, condemnation awards, Deficiency Assessments, Individual Assessments, and other funds received on account of or arising out of injury or damage to the Units or Common Elements. All funds paid to the Association for purposes of repair or restoration will be deposited in a financial institution in which accounts are insured by a federal agency. Withdrawal of Restoration Funds requires the signatures of at least two Board members or an agent duly authorized by the Board.

15.2.1. Sufficient Proceeds. If Restoration Funds obtained from insurance proceeds or condemnation awards are sufficient to repair or restore the damaged or destroyed Units and/or Common Elements, then the Association, as trustee for the Owners, will promptly apply the funds to the repair or restoration.

15.2.2. Insufficient Proceeds. If Restoration Funds are not sufficient to pay the estimated or actual costs of restoration as determined by the Board, then the Board may levy a Deficiency Assessment against the Owners to fund the difference.

15.2.3. Surplus Funds. If the Association has a surplus of Restoration Funds after payment of all costs of repair and restoration, then the surplus will be applied as follows: (i) if Deficiency Assessments were a source of Restoration Funds, the surplus will be paid to Owners in proportion to their contributions resulting from the Deficiency Assessment levied against them; provided that no Owner may receive a sum greater than that actually contributed by said Owner, and further provided that any Delinquent Assessments owed by the Owner to the Association will first be deducted from the surplus; and (ii) any surplus remaining after the disbursement described in (i) above will be common funds of the Association to be used as directed by the Board in the Board's sole and absolute discretion.

15.3. **Costs and Plans.**

15.3.1. Cost Estimates. Promptly after the loss, the Board will obtain reliable and detailed estimates of the cost of restoring the damaged property. Costs may include premiums for bonds and fees for the services of professionals, as the Board deems necessary, to assist in estimating and supervising the repair.

15.3.2. Plans and Specifications. Common Elements will be repaired and restored substantially as they existed immediately prior to the damage or destruction. Units will be repaired and restored substantially in accordance with original construction plans and specifications, unless the Association insures betterments and Improvements made by Owners, in which case the Units will be repaired and restored substantially as they existed immediately prior to the damage or destruction. Alternate plans and specifications for repair and restoration of either Common Elements or Units must be approved by at least eighty percent (80%) of the votes in the Association and by certain Mortgagees if so required by the Mortgagee Protection article of this Declaration.

15.4. **Owner's Duty to Repair**.

15.4.1. Uninsured Loss. Within sixty (60) days after the date of damage, the Owner will begin repair or reconstruction of any portion of such Owner's Unit not covered by the Association's blanket insurance policy or any applicable insurance obtained by the Association, subject to the right of the Association to supervise, approve, or disapprove repair or restoration during the course thereof.

15.4.2. Insured Loss. If the loss to a Unit is covered by the Association's insurance policy, then the Owner will begin repair or restoration of damage on receipt of the insurance proceeds or any portion thereof from the Association, subject to the rights of the Association to supervise, approve, or disapprove the repair or restoration during

the course thereof. This *Section 15.4.2* shall in no event be interpreted to require that insurance proceeds received by the Association be provided to a Unit Owner, it being understood and agreed that Restoration Funds are received and administered by the Association.

15.4.3. Failure to Repair. If an Owner fails to repair or restore damage as required by this Section, then the Association may cause the necessary repairs and levy an Individual Assessment against the Owner and Unit for the cost thereof, after giving an Owner of the Unit reasonable notice of the Association's intent to do so.

15.5. **Owner's Liability for Insurance Deductible**. If repair or restoration of Common Elements or Units is required as a result of an insured loss, the Board may levy an Individual Assessment, in the amount of the insurance deductible, against the Owner or Owners who would be responsible for the cost of the repair or reconstruction in the absence of insurance.

ARTICLE 16
TERMINATION AND CONDEMNATION

16.1. **Association as Trustee**. Each Owner hereby irrevocably appoints the Association, acting through the Board, as trustee to deal with the Regime in the event of damage, destruction, obsolescence, condemnation, or termination of all or any part of the Property. As trustee, the Association will have full and complete authority, right, and power to do all things reasonable and necessary to effect the provisions of this Declaration and the Act, including, without limitation, the right to receive, administer, and distribute funds, awards, and insurance proceeds; to effect the sale of the Property as permitted by this Declaration or by the Act; and to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner.

16.2. **Termination**. Termination of the terms of this Declaration and the condominium status of the Property will be governed by Section 66-27-318 of the Act and Section 17.4 below.

16.3. **Condemnation**. The Association's response to condemnation of any part of the Property will be governed by Section 66-27-207 of the Act. On behalf of Owners, but without their consent, the Board may execute and Record an amendment of this Declaration to reallocate the Common Interest Allocation following condemnation and to describe the altered parameters of the Regime. If the Association replaces or restores Common Elements taken by condemnation by obtaining other land or constructing additional Improvements, the Board may, to the extent permitted by Applicable Law, execute and Record an amendment without the prior consent of Owners to describe the altered parameters of the Regime and any corresponding change of facilities or Improvements.

16.4. **Mortgagee Priority**. Notwithstanding anything in this Declaration to the contrary, no provision of the Documents is intended, or shall be interpreted, to provide a Unit Owner or any other party with priority over a Mortgagee with respect to the payment of: (i)

insurance proceeds paid pursuant to casualty, condemnation or termination of the Regime; or (ii) any other proceeds pursuant to casualty, condemnation or termination of the Regime..

ARTICLE 17
MORTGAGEE PROTECTION

17.1. **Introduction**. This Article is supplemental to, not a substitution for, any other provision of the Documents. In case of conflict, this Article controls.

17.2. **Notice of Mortgagee**. As provided in this Article 17, the Association is required to provide each Mortgagee with written notice upon the occurrence of certain actions as described in Section 17.8, or to obtain the approval of Mortgagees in the event of certain amendments to this Declaration as described in Section 17.9 or the termination of this Declaration as described in Section 17.4. To enable the Association to provide the notices and obtain such approval, each Owner must provide to the Association the complete name and address of such Owner's Mortgagee, including the loan number and such additional information concerning the Owner's Mortgagee as the Association may reasonably require. In the event an Owner fails to provide the Association with the information required by this Section 17.2 after the expiration of thirty (30) days after the Association's written request, the Owner's failure to provide such information will be considered a violation of the terms and provisions of this Declaration. The Association's obligation to Mortgagees under the Documents extends only to those Mortgagees known to the Association. The Association may rely on the information provided by Owners and Mortgagees.

17.3. **Amendment**. This Article establishes certain standards for the benefit of Underwriting Lenders, and is written to comply with their requirements and guidelines in effect at the time of drafting. If an Underwriting Lender subsequently changes its requirements, then the Board, without approval of Owners or Mortgagees, may amend this Article and other provisions of the Documents, as necessary, to meet the requirements of the Underwriting Lender.

17.4. **Termination**. Termination of the terms of this Declaration and the condominium status of the Regime will be governed by Section 66-27-318 of the Act. Any election to terminate this Declaration and the condominium status of the Regime shall require the consent of: (i) Owners representing at least eighty percent (80%) of the total votes in the Association; (ii) Declarant during the Development Period; (iii) the Owner of the Commercial Unit(s); and (iv) eighty percent (80%) of Mortgagees.

17.5. **Implied Approval**. The approval of a Mortgagee is implied when the Mortgagee fails to respond within sixty (60) days after receiving the Association's written request for approval of a proposed amendment, provided the Association's request was delivered by certified or registered mail, return receipt requested.

17.6. **Other Mortgagee Rights.**

17.6.1. Inspection of Books. The Association will maintain current copies of the Documents and the Association's books, records, and financial statements. Mortgagees may inspect the Documents and Association records, by appointment, during normal business hours.

17.6.2. Financial Statements. A Mortgagee may have an audited statement prepared at its own expense.

17.6.3. Attendance at Meetings. A representative of a Mortgagee may attend and address any meeting which an Owner may attend.

17.6.4. Right of First Refusal. This Declaration does not establish a right of first refusal in favor of any party.

17.7. **Insurance Policies**. If an Underwriting Lender that holds a mortgage on a Unit or desires to finance a Unit has requirements for insurance of condominiums, then the Association must try to obtain and maintain the required coverages, to the extent reasonably available, and must try to comply with any notifications or processes required by the Underwriting Lender.

17.8. **Notice of Actions**. The Association will send timely written notice to Mortgagees of the following actions:

(i) Any condemnation or casualty loss that affects a material portion of the Property or the mortgaged Unit and any eminent domain proceeding affecting the General Common Elements which would result in a loss of more than ten percent (10%) of the estimated operational and reserve expenses as reflected on the then-current annual budget of the Association.

(ii) Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of the mortgaged Unit.

(iii) A lapse, cancellation, or material modification of any insurance policy maintained by the Association.

(iv) Any proposed action that requires the consent of a specified percentage of Mortgagees.

(v) Any proposed amendment of a material nature, as provided in this Article.

(vi) Any proposed termination of the condominium status of the Regime or dissolution of the Association at least 30 days prior to the proposed termination or dissolution.

17.9. **Amendments of a Material Nature Affecting Mortgagees**. A Document amendment with a material adverse nature to mortgagees must be approved by Owners representing at least eighty percent (80%) of the votes in the Association, and by at least fifty-one percent (51%) of Mortgagees. THIS APPROVAL REQUIREMENT DOES NOT APPLY TO AMENDMENTS EFFECTED BY THE EXERCISE OF A DEVELOPMENT RIGHT RESERVED IN THIS DECLARATION OR AS PROVIDED IN APPENDIX "A" ATTACHED HERETO. A change to any of the provisions of the Documents governing the following would be considered material:

(i) Voting rights.

(ii) Assessment liens, or the priority of assessment liens.

(iii) Reductions in reserves for maintenance, repair, and replacement of Common Elements.

(iv) Responsibility for maintenance and repairs.

(v) Reallocation of interests in the General Common Elements or Limited Common Elements, or rights to their use; except that when Limited Common Elements are reallocated by agreement between Owners (only those Owners and only the Mortgagees holding mortgages against those Units need approve the action).

(vi) Redefinitions of boundaries of Units, except that when boundaries of only adjoining Units are involved, then only those Owners and the Mortgagees holding mortgages against the Unit or Units need approve the action.

(vii) Convertibility of Units into Common Elements or Common Elements into Units.

(viii) Expansion or contraction of the Property, or the addition, annexation, or withdrawal of property to or from the Regime.

(ix) Property or fidelity insurance requirements.

(x) Imposition of any restrictions on the leasing of Units.

(xi) Imposition of any restrictions on Owners' right to sell or transfer their Units.

(xii) Restoration or repair of the Property, in a manner other than that specified in the Documents, after hazard damage or partial condemnation.

(xiii) Any provision that expressly benefits mortgage holders, insurers, or guarantors.

ARTICLE 18
AMENDMENTS

18.1. **Consents Required**. As permitted by the Act or by this Declaration, certain amendments to this Declaration may be executed by Declarant acting alone, or by certain Owners acting alone, or by the Board acting alone. Except as otherwise provided in this Declaration, amendments to this Declaration must be approved by Owners representing at least eighty percent (80%) of the votes in the Association. Notwithstanding any provisions in this Declaration to the contrary, no amendment to this Declaration shall modify, alter, abridge or delete any: (i) provision of this Declaration that benefits Declarant; (ii) rights, privileges, easements, protections, or defenses of Declarant; or (iii) rights of the Owners or the Association in relationship to Declarant, without the written consent of Declarant attached to and Recorded with such amendment. In addition, no amendment to this Declaration shall modify, alter, abridge or delete any: (a) permissible use of a Unit absent the consent of the Owner(s) of the Unit affected by the change in permissible use; or (b) any license, easement or other contractual rights contained in this Declaration, including, without limitation, any easement, right and license benefiting or in favor of Declarant.

18.2. **Method of Amendment**. This Declaration may be amended by any method selected by the Board from time to time and as permitted by Applicable Law, provided the method gives the Owner of each Unit the substance if not exact wording of the proposed amendment, a description in layman's terms of the effect of the proposed amendment, and an opportunity to vote for or against the proposed amendment. For amendments requiring the consent of Mortgagees, the Association will send each Mortgagee the exact wording of any proposed amendment.

18.3. **Effective**. To be effective, an amendment must be in the form of a written instrument: (i) referencing the name of the Regime, the name of the Association, and the Recording data of this Declaration and any amendments hereto; (ii) signed and acknowledged by a representative of the Association, certifying the requisite approval of Owners and, if required, Mortgagees; provided, however, this subsection (ii) will not apply for amendments which may be unilaterally prosecuted by Declarant pursuant to any rights reserved by Declarant under this Declaration or Appendix "A"; and (iii) Recorded.

18.4. **Declarant Provisions**. Declarant has an exclusive right to unilaterally amend this Declaration for the purposes stated in Appendix "A". An amendment that may be executed by Declarant alone is not required to name the Association or to be signed by an officer of the Association. No amendment may affect Declarant's rights under this Declaration or the Act without Declarant's written and acknowledged consent, which must be part of the Recorded amendment instrument. This Article 18 may not be amended without Declarant's written and acknowledged consent.

18.5. **Consent Required by Owner(s) of Commercial Unit(s)**. Notwithstanding any provision to the contrary contained in this Declaration, no amendment affecting the use or operation of the Commercial Unit(s) shall be effective unless approved in writing by the Owner of the Commercial Unit(s). Additionally, the written consent of the Owner of the Commercial Unit(s) shall be required prior to the adoption or modification of any Rules by the Association if such Rules specifically affect the use or operation of the Commercial Unit(s).

ARTICLE 19
DISPUTE RESOLUTION

This Article 19 is intended to encourage the resolution of disputes involving the Property. A dispute regarding the Units, Common Elements, and/or Improvements can create significant financial exposure for the Association and its Members, interfere with the resale and refinancing of Units, prevent or jeopardize approval of the Units by Underwriting Lenders, and increase strife and tension among the Owners, the Board and the Association's management. Since disputes may have a direct effect on each Owner's use and enjoyment of their Unit and the Common Elements, this Article 19 requires Owner transparency and participation in certain circumstances. Transparency means that the Owners are informed in advance about a dispute, the proposed arrangement between the Association and a law firm or attorney who will represent the Association in the dispute, the proposed arrangement between the Association and any inspection company who will prepare the Inspection Report (as defined below) or perform any other investigation or inspection of the Common Elements, Units and/or Improvements related to the dispute, and that each Owner will have an opportunity to participate in the decision-making process prior to initiating the dispute resolution process.

For the avoidance of doubt, nothing in this Article 19 is intended to limit the Association's right or obligation to obtain inspection services related to the maintenance, repair and physical condition of the Regime pursuant to Section 8.2 of this Declaration provided that such inspection services are not commissioned by the Association in conjunction with a Construction Claim.

19.1. **Introduction and Definitions**. The Association, the Owners, Declarant, all Persons subject to this Declaration, and each person not otherwise subject to this Declaration who submits to this Article 19 by written instrument delivered to the Claimant, which may include, but is not limited to, a general contractor, sub-contractor, design professional, or other person who participated in the design or construction of Common Elements, Units or any Improvement within, serving, or forming a part of the Regime (individually a "Party" and collectively, the "Parties"), agree to encourage the resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, except as set forth immediately below, each Party hereby covenants and agrees that this Article 19 applies to all Claims as hereafter defined. Notwithstanding the foregoing and except as may be set forth in the contracts between Declarant and a Party, Claims brought by Declarant against Parties that have entered into a contract with Declarant to provide services or work related to the design or construction of the Regime, or against sub-contractors or sub-

consultants of any tier of such Parties, shall not be required to comply with the procedures and provisions set forth in this Article 19. The foregoing includes, without limitation, Claims brought by the Declarant as it relates to any Units owned by Declarant (including, but not limited to, Residential Units and Commercial Units) against consultants, construction managers, contractors, subcontractors, suppliers, and design professions of every tier who have contracted to provide services (including consultation, design, observation, and/or inspection services) or work (including labor, materials, supplies, and/or equipment) related to the design or construction of the Regime. This Article 19 may only be amended with the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding one-hundred percent (100%) of the votes in the Association. As used in this Article 19 only, the following words, when capitalized, have the following specified meanings:

(i) "**Claim**" means:

(A) Claims relating to the rights and/or duties of Declarant or the Association under the Documents or the Act;

(B) Claims relating to the acts or omissions of the Declarant or the Board during its control and administration of the Association and/or Regime, any claim asserted against the Architectural Reviewer, and any claims asserted against the Declarant, the Board or a Person serving as a Board member or officer of the Association, or the Architectural Reviewer;

(C) Claims relating to the design or construction of the Units, Common Elements or any Improvement located within, serving, or forming a part of the Regime; and

(D) Claims relating to any repair or alteration of the Units, Common Elements, or any Improvement located within, serving, or forming a part of the Regime.

(ii) "**Claimant**" means any Party having a Claim against any other Party.

(iii) "**Common Element Construction Claim**" means a Claim relating to: (i) the design or construction of the Common Elements, any Improvement located thereon, or any portion of the Building the Association is required to maintain in accordance with this Declaration; or (ii) any repair or alteration of the Common Elements, any Improvement located thereon, or any portion of the Building the Association is required to maintain in accordance with this Declaration.

(iv) "**Construction Claim**" means a Claim defined in *Section 19.1(i)(C)*

or *Section 19.1(i)(D)*.

(v) "**Respondent**" means any Party against which a Claim has been asserted by a Claimant.

(vi) "**Unit Construction Claim**" means a Claim relating to: (i) the design or construction of a Unit (whether one or more) or any Improvement located thereon, with the exception of a Claim pertaining to any portion of the Building the Association is required to maintain in accordance with this Declaration; or (ii) any repair or alteration of a Unit (whether one or more), or any Improvement located thereon, with the exception of a Claim pertaining to any portion of the Building the Association is required to maintain in accordance with this Declaration.

19.2. **Mandatory Procedures: All Claims**. Claimant may not initiate any proceeding before any judge, jury, arbitrator or any other judicial or administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the mandatory procedures of this Article 19. As provided in Section 19.9 below, a Claim must be resolved by binding arbitration.

19.3. **Mandatory Procedures: Construction Claims**. Failure of a Claimant to comply with the procedures of this Article 19 for a Construction Claim may result in significant expenses incurred by the Respondent to respond to a Construction Claim that would not have been otherwise incurred had the Claimant followed the procedures and dispute resolution process set forth herein, including attorney fees, court costs and other administrative expenses (the "Response Costs"). Notwithstanding any provision contained herein to the contrary, failure by a Claimant to comply with any of the procedural or dispute resolution requirements for a Construction Claim set forth in this Article 19 shall constitute a material breach of this Declaration, entitling the Respondent to recover, from the Claimant, all actual and reasonable Response Costs incurred by Respondent. Moreover, strict compliance with the procedural and dispute resolution requirements of this Article 19 shall be a condition precedent to any recovery for a Construction Claim.

19.4. **Construction Claim by the Association**. No Unit Owner shall have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for: a Common Element Construction Claim. Each Unit Owner, by accepting an interest in or title to a Unit, hereby grants to the Association the exclusive right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for: a Common Element Construction Claim. To the extent this Article 19 requires the consent of a certain percentage of votes in the Association prior to taking any action or entering into any agreement as a precondition to asserting or proceeding with a Common Element Construction Claim or a Unit Construction Claim if the claim pertains to the Commercial Unit, the consent of the Commercial Unit Owner must be obtained for the purpose of meeting the precondition. Notwithstanding any provision in this Article 19 or the Declaration to the contrary, the Association may not assert a Common Element Construction Claim, or a Unit Construction

Claim if the claim pertains to the Commercial Unit, without the consent of the Commercial Unit Owner. In the event the Association asserts a Construction Claim, as a precondition to providing the Notice defined in Section 19.6, initiating the mandatory dispute resolution procedures set forth in this Article 19, or taking any other action to prosecute a Construction Claim, the Association must:

19.4.1. Obtain Owner Approval of Law Firm, Attorney and Inspection Company.

The requirements related to Owner approval set forth in this Section 19.4.1 are intended to ensure that the Association and the Owners approve and are fully informed of the financial arrangements between the Association and a law firm and/or attorney engaged by the Association to prosecute a Construction Claim, and any financial arrangements between the Association and the Inspection Company (defined below) or a law firm and/or attorney and the Inspection Company. The agreement between the Association, the law firm or attorney, and/or the Inspection Company may include requirements that the Association pay costs, fees, and expenses to the law firm, attorney, or the Inspection Company which will be paid through Assessments levied against Owners. The financial agreement between the Association, the law firm or attorney, and/or the Inspection Company may also include obligations related to payment, and the conditions and circumstances when the payment obligations arise, if the relationship between the Association, the law firm or attorney, and/or the Inspection Company is terminated, the Association elects not to engage the law firm or attorney or Inspection Company to prosecute or assist with the Construction Claim, or if the Association agrees to settle the Construction Claim. In addition, the financial arrangement between the Association, the law firm or attorney, and/or the Inspection Company may include additional costs, expenses, and interest charges. These financial obligations can be significant. The Board may not engage or execute an agreement with a law firm or attorney to investigate or prosecute a Construction Claim, or engage or execute an agreement between the Association and a law firm or attorney for the purpose of preparing an Inspection Report or performing any other investigation or inspection of the Common Elements, Units or other Improvements related to a Construction Claim unless the law firm or attorney and the financial arrangements between the Association and the law firm or attorney are approved by the Owners in accordance with this Section 19.4.1. In addition, the Board may not execute an agreement with an Inspection Company to prepare the Inspection Report or perform any other investigation or inspection of the Common Elements, Units or other Improvements related to a Construction Claim, unless the Inspection Company and the financial arrangements between the Association and the Inspection Company are approved by the Owners in accordance with this Section 19.4.1. For the purpose of the Owner approval required by this Section 19.4.1, an engagement, agreement or arrangement between a law firm or attorney and an Inspection Company, if such engagement, agreement or arrangement could result in any financial obligations to the

Association, irrespective of whether the Association and law firm or attorney have entered into an engagement or other agreement to prosecute a Construction Claim, must also be approved by the Owners in accordance with this Section 19.4.1. An engagement or agreement described in this paragraph is referred to herein as a "Claim Agreement".

Unless otherwise approved by Members holding sixty-seven percent (67%) of the votes in the Association, the Association, acting through its Board, shall in no event have the authority to enter into a Claim Agreement if the Claim Agreement includes any provision or requirement that would obligate the Association to pay any costs, expenses, fees, or other charges to the law firm or attorney and/or the Inspection Company, including but not limited to, costs, expenses, fees, or other charges payable by the Association: (i) if the Association terminates the Claim Agreement or engages another firm or third-party to assist with the Construction Claim; (ii) if the Association elects not to enter into a Claim Agreement; (iii) if the Association agrees to settle the Construction Claim for a cash payment or in exchange for repairs or remediation performed by the Respondent or any other third-party; (iv) if the Association agrees to pay interest on any costs or expenses incurred by the law firm or attorney or the Inspection Company; and/or (v) for consultants, expert witnesses, and/or general contractors hired by the law firm or attorney or the Inspection Company. For avoidance of doubt, it is intended that Members holding sixty-seven percent (67%) of the votes in the Association must approve the law firm and attorney who will prosecute a Construction Claim and the Inspection Company who will prepare the Inspection Report or perform any other investigation or inspection of the Common Elements, Units or other Improvements related to a Construction Claim, and each Claim Agreement. All Claim Agreements must be in writing. The Board shall not have the authority to pay any costs, expenses, fees, or other charges to a law firm, attorney or the Inspection Company unless the Claim Agreement is in writing and approved by the Owners in accordance with this *Section 19.4.1*.

The approval of the Members required under this *Section 19.4.1* must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of Member meeting will be provided pursuant to the Bylaws but the notice must also include: (a) the name of the law firm and attorney and/or the Inspection Company; (b) a copy of each Claim Agreement; (c) a narrative summary of the types of costs, expenses, fees, or other charges that may be required to be paid by the Association under any Claim Agreement; (d) the conditions upon which such types of costs, expenses, fees, or other charges are required to be paid by the Association under any Claim Agreement; (e) an estimate of the costs, expenses, fees, or other charges that may be required to be paid by the Association if the conditions for payment under the Claim Agreement occur, which estimate may be expressed as a range for each type of cost, expense, fee, or other charge; and (f) a description of the process the law firm, attorney and/or the Inspection Company will use to evaluate the Construction Claim and whether destructive testing will be required (i.e., the removal of all or portions of the Building, Structure, Systems, Common Elements, Units, or Improvements). If destructive

testing will be required or is likely to occur, the notice shall include a description of the destructive testing, likely locations of the destructive testing, whether the Owner's use of their Units or the Common Elements will be affected by such testing, and if the destructive testing occurs the means or method the Association will use to repair the Building, Structure, Systems, Common Elements, Units, or Improvements affected by such testing, the estimated costs thereof, and an estimate of Assessments that may be levied against the Owners for such repairs, if any. The notice required by this paragraph must be prepared and signed by a person other than the law firm or attorney who is a party to the proposed Claim Agreement. In the event Members holding sixty-seven percent (67%) of the votes in the Association approve the law firm and/or attorney who will prosecute the Construction Claim, and the Inspection Company who will prepare the Inspection Report or perform any other investigation or inspection of the Common Elements, Units or other Improvements related to a Construction Claim, and the Claim Agreement(s), the Board shall have the authority to engage the law firm and/or attorney, and the Inspection Company, and enter into the Claim Agreement approved by the Members. No modifications or changes may be made to a Claim Agreement approved by the Members unless such modification or change is approved in the same manner as the original Claim Agreement.

19.4.2. Provide Notice of the Investigation or Inspection.

As provided in *Section 19.4.3* below, an Inspection Report is required which is a written inspection report issued by the Inspection Company. Before conducting an investigation or inspection that is required to be memorialized by the Inspection Report, the Association must have provided at least thirty (30) days prior written notice of the date on which the investigation or inspection will occur to each Respondent which notice shall identify the Inspection Company preparing the Inspection Report, the specific Units, Common Elements or Improvements to be investigated or inspected, and the date and time the investigation or inspection will occur. Each Respondent may attend the investigation or inspection, personally or through an agent.

19.4.3. Obtain an Inspection Report.

The requirements related to the Inspection Report set forth in this Section 19.4.3 are intended to provide assurance to the Claimant, Respondent, and the Owners that the substance and conclusions of the Inspection Report and recommendations are not affected by influences that may compromise the professional judgement of the party preparing the Inspection Report, and to avoid circumstances which would create the appearance that the professional judgment of the party preparing the Inspection Report is compromised.

Obtain a written independent third-party report for the Units, Common Elements or Improvements (the "**Inspection Report**") from a professional engineer licensed by the Tennessee Board of Architectural and Engineering Examiners with an office located in Davidson County, Tennessee (the "**Inspection Company**"). The Inspection Report must include: (i) a description with photographs of the Units,

Common Elements or Improvements subject to the Construction Claim; (ii) a description of the present physical condition of the Units, Common Elements or Improvements subject to the Construction Claim; (iii) a detailed description of any modifications, maintenance, or repairs to the Units, Common Elements or Improvements performed by the Association, a Unit Owner, or a third-party, including any Respondent; and (iv) specific and detailed recommendations regarding remediation and/or repair of the Units, Common Elements or Improvements subject to the Construction Claim. For the purpose of subsection (iv) of the previous sentence, the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Inspection Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located in Davidson County, Tennessee, and each such contractor providing the estimate must hold all necessary or required licenses from the Tennessee Board for Licensing Contractors or otherwise required by Applicable Law for the work to which the cost estimate relates.

The Inspection Report must be obtained by the Association. The Inspection Report will not satisfy the requirements of this Section and is not an "independent" report if: (a) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney who represents or will represent the Association in the Construction Claim; (b) the costs and expenses for preparation of the Inspection Report are not required to be paid directly by the Association to the Inspection Company at the time the Inspection Report is finalized and delivered to the Association; or (c) the law firm or attorney who represents or will represent the Association in the Construction Claim has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Association's agreement with the law firm or attorney) the Association for the costs and expenses for preparation of the Inspection Report. For avoidance of doubt, an "independent" report means that the Association has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Association will directly pay for the report at the time the Inspection Report is finalized and delivered to the Association.

19.4.4. Provide a Copy of the Inspection Report to all Respondents and Owners. Upon completion of the Inspection Report, and in any event no later than five (5) days after the Association has been provided a copy of the Inspection Report, the Association will provide a full and complete copy of the Inspection Report to each Respondent and to each Owner. The Association shall maintain a written record of each Respondent and Owner who was provided a copy of the Inspection Report which will include the date the report was provided. The Inspection Report shall be delivered to each Respondent by hand-delivery and to each Owner by mail.

19.4.5. Provide a Right to Cure Defects and/or Deficiencies Noted on Inspection Report. Commencing on the date the Inspection Report has been completed and continuing for a period of one hundred and eighty (180) days thereafter, each Respondent shall have the right to: (i) inspect any condition identified in the Inspection Report; (ii) contact the Inspection Company for additional information necessary and required to clarify any information in the Inspection Report; and (iii) correct any condition identified in the Inspection Report. As provided in *Section 3.10* above, the Declarant has an easement throughout the Property for itself, and its successors, assigns, architects, engineers, other design professionals, builders, and general contractors that may be utilized during such one hundred and eighty (180) day period and any additional period needed thereafter to correct a condition identified in the Inspection Report.

19.4.6. Hold Owner Meeting and Obtain Approval. In addition to obtaining approval from Members for the terms of any Claim Agreement, the Association must obtain approval from Members holding sixty-seven percent (67%) of the votes in the Association to provide the Notice described in *Section 19.6*, initiate the mandatory dispute resolution procedures set forth in this *Article 19*, or take any other action to prosecute a Construction Claim, which approval from Members must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws but the notice must also include: (i) the nature of the Construction Claim, the relief sought, the anticipated duration of prosecuting the Construction Claim, and the likelihood of success; (ii) a copy of the Inspection Report; (iii) a copy of any Claim Agreement between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the Construction Claim; (iv) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which the Association may be liable as a result of prosecuting the Construction Claim; (v) a summary of the steps previously taken by the Association to resolve the Construction Claim; (vi) a statement that initiating the lawsuit or arbitration proceeding to resolve the Construction Claim may affect the market value, marketability, or refinancing of a Unit while the Construction Claim is prosecuted; and (vii) a description of the manner in which the Association proposes to fund the cost of prosecuting the Construction Claim. The notice required by this paragraph must be prepared and signed by a person who is not (a) the attorney who represents or will represent the Association in the Construction Claim; (b) a member of the law firm of the attorney who represents or will represent the Association in the Construction Claim; or (c) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent the Association in the Construction Claim. In the event Members approve providing the Notice described in *Section 19.6*, or taking any other action to prosecute a Construction Claim, the Members holding a Majority of the votes in the Association, at a meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Construction Claim.

19.5. **Unit Construction Claim by Owners**. Class action proceedings are prohibited, and no Unit Owner shall be entitled to prosecute, participate, initiate, or join any litigation, arbitration or other proceedings as a class member or class representative in any such proceedings under this Declaration. In the event an Owner asserts a Unit Construction Claim, as a precondition to providing the Notice defined in Section 19.6, initiating the mandatory dispute resolution procedures set forth in this Article 19, or taking any other action to prosecute a Unit Construction Claim, the Owner must:

19.5.1. Provide Notice of the Investigation or Inspection.

As provided in *Section 19.5.2* below, a Unit Report is required which is a written inspection report issued by the Inspection Company. Before conducting an investigation or inspection that is required to be memorialized by the Unit Report, the Owner must have provided at least thirty (30) days prior written notice of the date on which the investigation or inspection will occur to each Respondent which notice shall identify the Inspection Company preparing the Unit Report, the Unit and areas of the Unit to be investigated or inspected, and the date and time the investigation or inspection will occur. Each Respondent may attend the investigation or inspection, personally or through an agent.

19.5.2. Obtain a Unit Report.

The requirements related to the Unit Report set forth in this Section 19.5.2 are intended to provide assurance to the Claimant and Respondent that the substance and conclusions of the Unit Report and recommendations are not affected by influences that may compromise the professional judgement of the party preparing the Unit Report, and to avoid circumstances which would create the appearance that the professional judgment of the party preparing the Unit Report is compromised.

Obtain a written independent third-party report for the Unit (the "**Unit Report**") from an Inspection Company. The Unit Report must include: (i) a description with photographs of the Unit and portions of the Unit subject to the Unit Construction Claim; (ii) a description of the present physical condition of the Unit; (iii) a detailed description of any modifications, maintenance, or repairs to the Unit performed by the Owner or a third-party, including any Respondent; (iv) specific and detailed recommendations regarding remediation and/or repair of the Unit. For the purpose of subsection (iv) of the previous sentence, the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Unit Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located in Davidson County, Tennessee, and each such contractor providing the estimate must hold all necessary or required licenses from the Tennessee Board for Licensing Contractors or otherwise required by Applicable Law for

the work to which the cost estimate relates.

The Unit Report must be obtained by the Owner. The Unit Report will not satisfy the requirements of this Section and is not an "independent" report if: (a) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney who represents or will represent the Unit Owner in the Unit Construction Claim; (b) the costs and expenses for preparation of the Unit Report are not directly paid by the Owner to the Inspection Company no later than the date the Unit Report is finalized and delivered to the Owner; or (c) the law firm or attorney who represents or will represent the Unit Owner in the Unit Construction Claim has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Owner's agreement with the law firm or attorney) the Owner for the costs and expenses for preparation of the Unit Report. For avoidance of doubt, an "independent" report means that the Owner has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Owner will directly pay for the report no later than the date the Unit Report is finalized and delivered to the Owner.

19.5.3. Provide a Copy of Unit Report to all Respondents. Upon completion of the Unit Report, and in any event no later than five (5) days after the Owner has been provided a copy of the Unit Report, the Owner will provide a full and complete copy of the Unit Report to each Respondent. The Owner shall maintain a written record of each Respondent who was provided a copy of the Unit Report which will include the date the report was provided. The Unit Report shall be delivered to each Respondent by hand-delivery and to each Owner by mail.

19.5.4. Right to Cure Defects and/or Deficiencies Noted on Unit Report. Commencing on the date the Unit Report has been completed and continuing for a period of one hundred and eighty (180) days thereafter, each Respondent shall have the right to: (i) inspect any condition identified in the Unit Report; (ii) contact the Inspection Company for additional information necessary and required to clarify any information in the Unit Report; and (iii) correct any condition identified in the Unit Report. As provided in *Section 3.10* above, the Declarant has an easement throughout the Property for itself, and its successors, assigns, architects, engineers, other design professionals, builders, and general contractors that may be utilized during such one hundred and eighty (180) day period and any additional period needed thereafter to correct a condition identified in the Unit Report.

19.5.5. Common Element Construction Claim. Pursuant to *Section 19.4* above, a Unit Owner does not have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for: (i) a Common Element Construction Claim; (ii) a Unit Construction Claim affecting all Units; and/or (iii) if the

Association elects to assert, a Unit Construction Claim affecting less than all the Units. In the event that a court of competent jurisdiction or arbitrator determines that a Unit Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for: (i) a Common Element Construction Claim; (ii) a Unit Construction Claim affecting all Units; and/or (iii) if the Association elects to assert, a Unit Construction Claim affecting less than all the Units, such Unit Owner shall be required, since a Common Element Construction Claim or Unit Construction Claim could affect other Owners, as a precondition to providing the Notice defined in *Section 19.6*, initiating the mandatory dispute resolution procedures set forth in this *Article 19*, or taking any other action to prosecute such claim, to comply with the requirements imposed by the Association in accordance with *Section 19.4.2* (Provide Notice of Inspection), *Section 19.4.3* (Obtain an Inspection Report), *Section 19.4.4* (Provide a Copy of Inspection Report to all Respondents and Owners), *Section 19.4.5* (Provide Right to Cure Defects and/or Deficiencies Noted on Inspection Report), *Section 19.4.6* (Owner Meeting and Approval), and *Section 19.6* (Notice).

19.6. **Notice**. Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Documents or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this Section 19.6. If a Construction Claim is subject to Section 66-36-103 of the Tennessee Code Annotated, the Claimant and Respondent are advised, in addition to compliance with Section 19.7, to comply with the terms and provisions of Section 66-36-103 of the Tennessee Code Annotated. Section 19.7 does not modify or extend the time period set forth in Section 66-36-103 of the Tennessee Code Annotated. Failure to comply with the time periods or actions specified in Section 66-36-103 of the Tennessee Code Annotated could affect a Construction Claim. The one hundred and twenty (120) day period for mediation set forth in Section 19.8 below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to Section 19.8 is required without regard to the monetary amount of the Claim.

If the Claimant is the Association and for a Construction Claim, the Notice will also include: (a) a true and correct copy of the Inspection Report, and any and all other reports, studies, analyses, and recommendations obtained by the Association related to the Common Elements, Units or other Improvements subject to the Construction Claim; (b) a copy of any Claim Agreement; (c) if the Claim is a Construction Claim, reasonable and credible evidence confirming that Members holding sixty-seven percent (67%) of the votes in the Association approved the law firm and attorney and the written agreement between the Association and the law firm and/or attorney in accordance with *Section 19.4.1*; (d) a true and correct copy of the meeting notice provided to Members in accordance with *Section 19.4.6* above; and (e) reasonable and credible evidence confirming that Members holding sixty-seven percent (67%) of the votes

in the Association approved providing the Notice. If the Claimant is not the Association and instead a Unit Owner, the Notice will also include a true and correct copy of the Unit Report.

19.7. **Negotiation**. Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (60) days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually acceptable place and time to discuss the Claim. If the Claim involves all or any portion of the Property, then at such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the Property that is subject to the Claim for the purposes of inspecting the Property.

19.8. **Mediation**. If the parties negotiate but do not resolve the Claim through negotiation within one hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the thirty (30) day period, Respondent will submit the Claim to mediation in accordance with this Section 19.8. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, Respondent or Claimant may initiate arbitration proceedings in accordance with Section 19.9.

19.9. **Binding Arbitration - Claims**. All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this Section 19.9.

19.9.1. Governing Rules. If a Claim has not been resolved by mediation in accordance with *Section 19.8*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 19.9* and the American Arbitration Association (the "**AAA**") Construction Industry Arbitration Rules and Mediation Procedures and, if applicable, the rules contained in the AAA Supplementary Procedures for Consumer Related Disputes, as each are supplemented or modified by AAA (collectively, the Construction Industry Arbitration Rules and Mediation Procedures and AAA Supplementary Procedures for Consumer Related Disputes are referred to herein as the "**AAA Rules**"). In the event of any inconsistency between the AAA Rules and this *Section 19.9*, this *Section 19.9* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal (except as otherwise expressly provided in Section 19.9.4 below for vacation or modification of an award), but may be reduced to judgment in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) "Qualified" arbitrators, to be chosen as follows: (i) one (1) "Qualified" arbitrator shall be selected by

the Respondent, in its sole and absolute discretion; (ii) one (1) "Qualified" arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and (iii) one (1) "Qualified" arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion. For purposes hereof, a "Qualified" arbitrator must be a person who has been licensed to practice law in the state of Tennessee continuously for a period of at least ten (10) years and whose license to practice law is currently in good standing and who has no material business dealings with any party to the arbitration (other than to serve as an arbitrator or mediator in this or other proceedings).

19.9.2. Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 19.9* will limit the right of Claimant or Respondent, and Claimant and Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party, to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

19.9.3. Statute of Limitations. All statutes of limitations that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 19.9*.

19.9.4. Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the Applicable Law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this *Section 19.9* and subject to *Section 19.10;* **provided, however, attorney's fees and costs may not be awarded by the arbitrator to either Claimant or Respondent**. In addition, for a Construction Claim, or any portion of a Construction Claim governed by Section 66-36-103 of the Tennessee Code Annotated, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Section 66-36-103 of the Tennessee Code Annotated, **except that the arbitrator may not award attorney's fees and/or costs to either Claimant or Respondent**. In all arbitration proceedings, the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on: (i) factual findings that are not sufficiently supported by a preponderance of the evidence consistent with the standard of review for bench trials pursuant to Tenn.R.App.P.13(d); (ii) conclusions of law that are erroneous; (iii) an error of Applicable Law; or (iv) a cause of action or remedy not expressly provided under Applicable Law. **In no event may an**

arbitrator award speculative, special, exemplary, treble or punitive damages for any Claim.

19.9.5. Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration. Arbitration proceedings hereunder shall be conducted in Davidson County, Tennessee. To the fullest extent allowed by Applicable Law, it is expressly understood and agreed that the parties to an arbitration shall have the right, but not the obligation, to join in such proceeding any other party whose work or services on or in connection with the Project may be at issue or whose claims(s) involve the design or construction of the Project, provided such joinder can be accomplished without material delay to the arbitration and the party joined agrees to be bound by any proceedings (including the selection of arbitrator(s) and decisions rendered by the arbitrators and agreements made by the parties in connection with the arbitration) prior to the joinder. Notwithstanding the foregoing, two or more Unit Construction Claims brought by individual Unit Owners shall not be consolidated in a single arbitration proceeding without the written consent of each Respondent and Claimant to the Claims to be consolidated. Unless otherwise provided by this *Section 19.9*, the arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Tennessee Rules of Civil Procedure and Applicable Law. Claimant and Respondent agree to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by Applicable Law. In no event shall Claimant or Respondent discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

19.10. **Allocation of Costs**. Notwithstanding any provision in this Declaration to the contrary, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

19.11. **General Provisions**. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim.

19.12. **Period of Limitation.**

19.12.1.For Actions by an Owner or Occupant of a Unit. The exclusive period of limitation for any of the Parties to bring any Claim shall be the earliest of: (i) for a Unit Construction Claim, one (1) year and one (1) day from the date that the Owner or Occupant discovered or reasonably should have discovered evidence of the Claim; (ii)

for Claims other than Unit Construction Claims, one (1) year and one (1) day from the date that the Owner or Occupant discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In the event that a court of competent jurisdiction determines that a Unit Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for: (i) a Common Element Construction Claim; (ii) a Unit Construction Claim affecting all Units; and/or (iii) if the Association elects to assert, a Unit Construction Claim affecting less than all the Units, the exclusive period of limitation for such Claim, shall be the earliest of: (a) one (1) year and one (1) day from the date that the Owner or the Association discovered or reasonably should have discovered evidence of the Claim; or (b) the applicable statute of limitations for the Claim. In no event shall this *Section 19.12.1* be interpreted to extend any period of limitations.

19.12.2. For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim shall be the earliest of: (i) for a Construction Claim, one (1) year and one (1) day from the date that the Association or its manager, board members, officers, or agents discovered or reasonably should have discovered evidence of the Construction Claim; (ii) for Claims other than a Construction Claim, one (1) year and one (1) day from the date that the Association or its manager, board members, officers, or agents discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In no event shall this *Section 19.12.2* be interpreted to extend any period of limitations.

19.13. **Funding the Resolution of Claims**. The Association must levy a Special Assessment to fund estimated costs to resolve a Common Element Construction Claim or a Unit Construction Claim affecting all Units pursuant to this Article 19, or in the event of a Unit Construction Claim affecting less than all Units, an Individual Assessment against the affected Unit Owners. The Association may not use its annual operating income or reserve funds to fund the costs to resolve a Construction Claim unless the Association has previously established and funded a dispute resolution fund.

ARTICLE 20
DISCLOSURES

20.1. **Contract Services**. In connection with construction of the Building, the Units may have been wired or fitted for one or more services to be provided by vendors to the individual Unit Owners on a contract basis, such as intrusion monitoring and cable television. In exchange for such installations, Declarant may have contracted on behalf of the Owners for a period of service to all Units. In that event, whether or not an Owner chooses to use the service, the Owner is required to pay the Unit's share of the contract for the contract period. The Association may serve as the conduit for the service fees and payments, which may be considered Regular Assessments or Individual Assessments. However, the Association is not the service provider and has no responsibility or liability for the availability or quality of the

service, or for the maintenance, repair, or replacement of the wires, conduits, equipment, or other fittings relating to the contract service.

20.2. **Sprinklers**. If the Building is equipped with a sprinkler system the system may include sprinkler heads that intrude into the Units. All such pipes, heads and other parts of the sprinkler system shall be a part of the General Common Elements (whether located within or outside of Unit boundaries) and shall be maintained, repaired and replaced, as necessary, by the Association. Sprinkler heads, caps, and assemblies may not be painted or caulked over or otherwise covered in any manner. If an Owner or Occupant causes the sprinkler system to be activated (except in the case of a fire) or damages or destroys any part of the sprinkler system, the Owner of the Unit shall be responsible for any costs the Association incurs in repairing the system and for all other losses or damages resulting from such actions, including, without limitation, damages to any portion of the Common Elements or other Units.

20.3. **Leasing Restrictions**. Leasing of a Residential Unit shall be permitted only in accordance with this Declaration if the Owner obtains a "Leasing Permit" or "Hardship Leasing Permit". See Article 11 of this Declaration for a description of lease restrictions and the "Leasing Permit" program.

20.4. **Budgets**. Any budget provided by the Association is based on estimated expenses only without consideration for the effects of inflation and may increase or decrease significantly when the actual expenses become known. Accordingly, if the actual expenses exceed estimated expenses, the Assessments or charges levied to discharge such expenses will be different from the estimated amounts.

20.5. **Adjacent Thoroughfares**. The Property is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.

20.6. **Natural Light and Views**. The natural light available to and views from a Unit can change over time due to among other things, additional development and the removal or addition of landscaping. NATURAL LIGHT AND VIEWS ARE NOT PROTECTED.

20.7. **Adjacent Property**. No representations are made regarding the zoning of the adjacent property to the Regime, or that the category to which the adjacent property is zoned may not change in the future.

20.8. **Schools**. No representations are being made regarding which schools may now or in the future serve the Unit.

20.9. **Neighborhood Conditions**. Since in every neighborhood there are conditions that different people may find objectionable, it is acknowledged that there may be conditions outside of the Property that an Owner or Occupant may find objectionable, and it shall be the sole responsibility of an Owner or Occupant to become acquainted with neighborhood conditions that could affect the Property.

20.10. **Urban Environment**. The Property is located in an urban environment and contains both residential and commercial uses. Sound and vibrations may be audible and felt from such things as sirens, whistles, horns, the playing of music, people speaking loudly, trash being picked up, deliveries being made, equipment being operated, dogs barking, construction activity, building and grounds maintenance being performed, automobiles, buses, trucks, ambulances, airplanes, trains and other generators of sound and vibrations typically found in an urban area. In addition to sound and vibration, there may be odors (from restaurants, food being prepared and dumpsters) and light (from signs, streetlights, other buildings, car headlights and other similar items) in urban areas and these things are part of the reality and vibrancy of urban living.

20.11. **Sound Transmission**. The Units are not soundproof or free from vibrations. Sounds and vibrations can also be generated from sources located within a particular Unit or the other portions of the Building, including elevator motors, heating and air conditioning equipment, pump rooms, other mechanical equipment, dogs barking and the playing of certain kinds of music. Concrete and hardwood surfaces within a Unit may transmit noise, and such noise shall not be deemed to constitute a use of a Unit that interferes with or causes disruption to the use and quiet enjoyment of another Unit or any portion thereof by its respective Owner and/or Occupant.

20.12. **Depiction of Parking Spaces**. Location, alignment and striping of parking spaces assigned to the Unit may vary from the depiction on the floor plans, which are approximate and may not precisely conform to as-built conditions.

20.13. **Mold/Mildew**. Mold and/or mildew can grow in any portion of the Property that is exposed to elevated levels of moisture.

20.14. **Condensation**. The Units may trap humidity created by general use and occupancy. As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not property maintained by Owners and Occupants, the condensation may increase resulting in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and potentially, mildew and/or mold.

20.15. **Flat Roof Systems**. Portions of the Building may include flat roof systems. Rain water and refuse may accumulate on various portions of the Building's roof system and should be anticipated by the Owners.

20.16. **Compliance with Plans and Specifications**. The Building was constructed pursuant to plans and specifications prepared by licensed professionals and permits issued by the City of Nashville and Davidson County, Tennessee. During the course of the construction of the Building, variations from the original plans and specifications, some of which add scope,

some of which reduce scope, and some of which alter scope, are inevitable and can and do occur as a matter of intention and/or as a matter of necessity

20.17. **Noise and Odor**. Noise and odor related to retail service and other businesses may emanate from the retail and commercial spaces located in the Building.

20.18. **Encroachments**. Improvements may have been constructed on adjoining lands that encroach onto the Property. Declarant gives no representations or warranties as to property rights, if any, created by such any such encroachments.

20.19. **Erosion/Flooding**. While the drainage system for surface water runoff on the Property will be constructed in accordance with applicable governmental standards, the Property may still be subject to erosion and/or flooding during unusually intense or prolonged periods of rain.

20.20. **Large Vehicles**. Trucks, sports utility vehicles, vans, minivans, large sedans, or any other vehicles other than compact passenger vehicles may not fit into parking spaces. The height clearance for vehicles in the parking facilities is limited and certain vehicles may be too large to enter. Declarant makes no representations or warranties that any trucks, sports utility vehicles, vans, minivans, large sedans, or any other vehicles other than compact passenger vehicles will actually fit into any parking spaces, including any parking space(s) to be assigned to the Unit.

20.21. **Elevators**. Elevators serving the Building may malfunction from time to time and become stuck between levels for temporary periods. Neither Declarant nor the Association will be liable for any such malfunctions.

20.22. **Photography of the Property**. Declarant retains the right to obtain and use photography of the Property for publication and advertising purposes.

20.23. **Changes to Street Names and Unit Addresses**. Declarant retains the right to change, in its sole discretion, the Property name and the street names and Unit numbering or addresses in or within the Property.

20.24. **Heating and Cooling**. The performance and methods and practices of operating heating and cooling systems can be directly affected by the orientation and location of a room or Unit in relation to the sun.

20.25. **Upgrades**. The cost of upgrades to a Unit may not necessarily result in a commensurate increase in the value of the Unit.

20.26. **System Performance**. No representations are made that the systems in the Unit including, by way of example only, heating and air conditioning and electrical systems will operate or perform at a level or standard greater than the minimum specifications of the manufacturer.

20.27. **Dryer Vents**. Certain Units in the Building may require long vents for the dryer. Each Owner is responsible for determining whether such a vent is required for any dryer to be located in the Unit. The failure to utilize the appropriate dryer vent may create a fire hazard for which Owner shall be responsible. To the extent that Owner desires to modify any such vent, Owner is hereby advised that such modifications will be at Owner's sole cost and expense, which expense may include changes to neighboring vents to which Owner's vent is connected, and, in any event, will be subject to the architectural review process provided for pursuant to this Declaration.

20.28. **Media Equipment**. Declarant makes no representations or warranties regarding any electronic media equipment located in the Common Elements. Such equipment may need repairs or replacement in the future, and Declarant shall not be responsible for such repairs or replacement under any circumstances.

20.29. **Moisture in Parking Facilities**. Water may drip onto any vehicle parked within the parking facilities. The water could include mineral deposits that cause damage to the vehicle. Damage to a vehicle may be limited if the owner of the vehicle immediately washes off any mineral deposits. Declarant shall not be held liable for any loss or damage resulting from water damage or spotting. Additionally, the parking facilities are serviced by dewatering pumps to remove water from the parking facility interior and the soil around the perimeter of the parking facilities. The pumps may lose power, or the discharge piping in the City's storm pipes may be full and negatively effect the pumps ability to dewater the parking facilities. Declarant shall not be held liable for any loss or damage resulting from loss of power of backflow from the City's storm pipes.

20.30. **Collection of Water**. Water may pond on various portions of the Property having impervious surfaces, such as the parking area and balconies, as applicable.

20.31. **Railings**. Railings attached to balconies may "hum" in windy conditions.

20.32. **Location of Facilities**. Declarant makes no representation as to the location of mailboxes, utility boxes, street lights, fire hydrants or storm drain inlets or basins.

20.33. **Light Emission**. Light may emit from structures located on adjacent properties. THIS DECLARATION DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE LEVEL OF GLARE THAT MAY AFFECT PORTIONS OF THE REGIME, AND EACH OWNER HEREBY WAIVES AND EXPRESSLY RELEASES ANY SUCH WARRANTY AND CLAIM FOR LOSS OR DAMAGES RESULTING FROM ANY SUCH GLARE. Additionally, sunlight will penetrate through the windows into the Units and such sunlight could lead to the deterioration or fading of items contained in the Units and an increase in the temperature of the Unit and the Common Elements. THIS DECLARATION DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE LEVEL OF SUNLIGHT THAT MAY PENETRATE THE WINDOWS OF THE UNITS, AND EACH OWNER HEREBY WAIVES AND EXPRESSLY RELEASES ANY SUCH WARRANTY AND CLAIM FOR LOSS OR DAMAGES

RESULTING FROM ANY SUCH PENETRATION AND SHALL BE SOLELY RESPONSIBLE FOR PROTECTING SUCH OWNER'S UNIT AND THE ITEMS CONTAINED THEREIN FROM SUNLIGHT AND FOR MAINTAINING A PROPER TEMPERATURE IN SUCH OWNER'S UNIT.

20.34. **Window Noise**. The window system contracts and expands as the weather warms and cools and this may result in "popping noises".

20.35. **Wood Variation**. Natural wood has considerable variation due to its organic nature. There may be shades of white, red, black or even green in areas. In addition, mineral streaks may also be visible. Grain pattern or texture will vary from consistent to completely irregular; wood from different areas of the same tree can also have variations in pattern or texture. It is these variations in wood that add to its aesthetic appeal. These variations in grain will in turn accept stain in varying amounts, which will show throughout the wood products from one door to the next, one panel to the next or one piece of wood to the next. Also, cabinet finishes (including gloss and/or matte finishes) will not be entirely consistent and some minor irregularities will be apparent. Additionally, wood and wood products may be subject to warping, splitting, swelling and/or delamination.

20.36. **Concrete**. Minor cracks in poured concrete, including foundations, garage floors, sidewalks, driveways and patios, are inevitable as a result of the natural movement of soil (expansion and contraction), shrinkage during the curing of the concrete, and settling of the Building. Certain Units may have exposed concrete floors. Concrete is not as forgiving as wood or sheetrock. In deciding whether, when, and how to fill cracks in exposed concrete floors, an Owner is hereby made aware that the color and texture of the fill material may not match the rest of the concrete floor. On some exposed concrete floors, fill materials make minor cracks more noticeable than if the cracks had been left in their natural state. In addition, for any specification for "polished" concrete means that the concrete will be polished to a high degree of light reflectivity. Polished does not mean being able to actually see his or her reflection in the floor. Exposed concrete surfaces in portions of the Building are subject to cracking.

20.37. **Variations in Stone and other Materials**. Veins and colors of any marble, slate, synthetic stone, or other materials in the Unit, if any, may vary drastically from one piece of material to another. Each piece is different. Marble, granite, slate, synthetic stone and other materials can also have chips and shattering veins, which look like scratches. The thickness of the joints between marble, granite, slate, synthetic stone and other materials against which they have been laid will vary and there will be irregularities in surface smoothness. Marble, granite, slate, synthetic stone and other material finishes may be dangerously slippery and Declarant assumes no responsibility for injuries sustained as a result of exposure to or use of such materials. Periodic use of professionally approved and applied sealant is needed to ensure proper maintenance of the marble, granite, slate, synthetic stone and other materials and it is the Owner's responsibility to properly maintain these materials. Marble, granite, slate, synthetic stone and other material surfaces may scratch, chip or stain easily. Such substances, as part of their desirable noise attenuating properties, may flex or move slightly in order to

absorb impacts. Such movement may in turn cause grout to crack or loosen or cause some cracking in the flooring which may need to be repaired as part of normal home maintenance. Granite is a natural stone, subject to staining and may contain inclusions.

20.38. **Chemicals**. The Building contains products that have water, powders, solids and industrial chemicals, which will be used in construction. The water, powders, solids and industrial chemicals will and do contain mold, mildew, fungus, spores and chemicals that may cause allergic or other bodily reactions in certain individuals. Leaks, wet flooring and moisture will contribute to the growth of molds, mildew, fungus or spores. Declarant is not responsible for any illness or allergic reactions that a Person may experience as a result of mold, mildew, fungus or spores. It is the responsibility of the Owner to keep the Unit clean, dry, well ventilated and free of contamination.

20.39. **Paint**. Due to the large quantity of paint used in the project, Owner should be aware that slight variations in paint shade may exist from Unit to Unit. Due to the properties within today's paints, Owner should expect paint to yellow somewhat with time. This is a normal occurrence and is therefore not covered as a warranty issue. Avoid washing or scrubbing painted walls. Lightly soiled areas may be cleaned using a sponge with water and lightly wiping over the soiled areas.

20.40. **Plumbing Fixtures**. Certain materials used for fixtures in the Unit (including, but not limited to, brass/chrome plumbing fixtures, brass/chrome bathroom accessories and brass/chrome light fixtures) are subject to discoloration and/or corrosion over time.

20.41. **Advertising Materials**. Any advertising materials, websites, brochures, renderings, drawings, and the like, furnished by Declarant or any Person (including brokers and sales agents) acting on behalf of Declarant to an Owner or prospective Owner which purport to depict the Unit to be constructed or any portion thereof, are merely approximations and do not necessarily reflect the actual as-built conditions of the same. Due to the unique nature of the construction process and site conditions, room dimensions, size and elevations may vary from Unit to Unit.

20.42. **Sales Center/Model Units**. Declarant's use of a sales center and/or model Units or reference to other construction by Declarant is intended only to demonstrate the quality of finish detail, the basic floor plans and styles of the units available for purchase. The Unit may not conform, except as herein noted, to any model unit in any respect, or contain some or all of the amenities featured, such as furnishings and appliances. Likewise, any model residence is intended only to demonstrate the size and basic architectural features of the project. The project, as completed, may not conform to the model of the project displayed by Declarant. Declarant may have shown an Owner or prospective Owner model homes, finish boards, floorplans, sketches, drawings, renderings, and scale models of Units or the Regime (collectively, "Promotional Aids"). Each Owner and prospective Owner understands and agrees that the Promotional Aids are conceptual, subject to change, for display purposes only, and may not be incorporated into the Regime or Unit.

20.43. **Declarant's Participation in Construction**. Declarant will be constructing portions of the Regime and engaging in other construction activities related to the construction of the Building. Such construction activities may, from time to time, produce certain conditions on the Regime, including, without limitation: (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (ii) smoke; (iii) noxious, toxic or corrosive fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) unusual fire or explosion hazards; (vii) temporary interruption of utilities; and/or (viii) other conditions that may threaten the security or safety of Persons on the Regime. Notwithstanding the foregoing, all Owners and Occupants agree that such conditions on the Regime resulting from construction activities shall not be deemed a nuisance and shall not cause Declarant and its agents to be deemed in violation of any provision of this Declaration.

20.44. **Commercial Spaces**. The commercial spaces located throughout the Building may be permitted to erect signage, advertising posters, political placards, billboards, speakers, lighting, awnings, canopies or shutters on the exterior facades of the Buildings that are associated with the uses of such spaces.

20.45. **Waiver of Environmental Conditions. Declarant, together with its general partner(s), partners, directors, managers, officers, employees, agents, contractors, sub-contractors, design consultants, architects, advisors, brokers, sales personnel and marketing agents (collectively, the "Declarant Parties"), and the Association, together with its directors, managers, employees and agents (collectively, the "Association Parties") shall not in any way be considered an insurer or grantor of environmental conditions or indoor air quality within the Regime**. Neither shall the Declarant Parties nor the Association Parties be held liable for any loss or damage by reason of or failure to provide adequate indoor air quality or any adverse environmental conditions. The Declarant Parties and the Association Parties do not represent or warrant that any construction materials, air filters, mechanical, heating, ventilating or air conditioning systems and chemicals necessary for the cleaning or pest control of the Regime will prevent the existence or spread of biological organisms, cooking odors, animal dander, dust mites, fungi, pollen, tobacco smoke, dust or the transmission of interior or exterior noise levels. The Declarant Parties and the Association Parties are not an insurer and each Owner and Occupant assumes all risks for indoor air quality and environmental conditions and acknowledges that the Declarant Parties and the Association Parties have made no representations or warranties nor have the Declarant Parties and the Association Parties, any Owner or Occupant, relied upon any representations or warranties, expressed or implied, including any warranty or merchantability or fitness for any particular purpose, relative to the air quality within the Regime.

20.46. **Audited Financial Statements**. The Association may have an audited financial statement for the preceding full fiscal year of the Association prepared. In the event the Association has an audited financial statement prepared, it will be made available to Owners upon request.

20.47. **Electric Vehicle Charging**. Certain parking spaces within the Property may be equipped with electric service (the "Electric Service") intended for use to charge an electric vehicle. Declarant makes no representation or warranty regarding the suitability of any parking space for Electric Service, and the installation of Electric Service is subject to Building electrical capacity and structural limitations. The Declarant during the Development Period, and the Association thereafter, reserves the right to designate and assign certain parking spaces with Electric Service. The Declarant during the Development Period, and the Association thereafter, may enter into third-party contracts for the provision of electric vehicle charging services.

ARTICLE 21
GENERAL PROVISIONS

21.1. **Parking Spaces and Vehicles**. Neither Declarant nor the Association shall be held liable for any loss or damage arising from theft, vandalism, malicious mischief, or any loss or damage resulting from water or acid damage to any property placed or kept in any parking space in the Regime. Each Owner or Occupant with use of a parking space who places or keeps a vehicle and/or any personal property in the vehicle or parking space does so at his or her own risk.

21.2. **Use of Names**. The name "Fulton Condominiums" is not a tradename. Notwithstanding the foregoing, no Person shall use the name "Fulton Condominiums" or any derivative of such name in any printed or promotional materials without Declarant's prior written consent. However, Owners may use the name "Fulton Condominiums" or derivations thereof in printed or promotional materials prepared in connection with the sale or rental of their respective Unit where such term is used solely to specify that such Unit is located within the Regime, and the Association shall be entitled to use the words "Fulton Condominiums" in its name. The Association shall not use any name, web site domain, mark, symbol or any deviation of the foregoing (collectively, the "Intellectual Property") of Declarant or its affiliates without the owner of such Intellectual Property's prior written consent. Any use by the Association of Intellectual Property shall inure to the benefit of Declarant or such affiliate and shall be subject to periodic review for quality control. The Association shall enter into license agreements with Declarant or its affiliates, terminable with or without cause and in a form specified by Declarant in its sole discretion, with respect to any permissive use of any such Intellectual Property.

21.3. **Notices**. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either by electronic mail, personally or by mail. Such notice shall be deemed delivered at the time of personal or electronic delivery, and if delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Person at the address given by such Person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such Person to the Association.

21.4. **Compliance**. The Owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Documents and Applicable Laws, regulations, and ordinances, as same may be amended from time to time, of any governmental or quasigovernmental entity having jurisdiction over the Association or Property.

21.5. **Higher Authority**. The Documents are subordinate to federal and State law, and local ordinances. Generally, the terms of the Documents are enforceable to the extent they do not violate or conflict with Applicable Law. If a conflict exists between the provisions of the Documents, then such documents shall control in the following order:

(i) this Declaration;

(ii) the Charter;

(iii) the Bylaws; and

(iv) the Rules.

21.6. **Interpretation**. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Regime and of promoting and effectuating the fundamental concepts of the Regime set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Tennessee.

21.7. **Duration**. Unless terminated or amended by Owners as permitted herein, the provisions of this Declaration run with and bind the Property, and will remain in effect perpetually to the extent permitted by Applicable Law.

21.8. **Captions**. In all Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. Boxed notices are inserted to alert the reader to certain provisions and are not to be construed as defining or modifying the text.

21.9. **Construction**. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections, or articles hereof. Throughout this Declaration there appears text enclosed by a box. This text is used to aid in the reader's comprehension of certain provisions of this Declaration. In the event of a conflict between the text enclosed by a box and any provision of this Declaration, the provision of this Declaration will control.

21.10. **Appendix / Exhibits**. The following appendixes and exhibits are attached to this Declaration and are incorporated herein by reference:

Exhibit "A"	Property
Exhibit "B"	Plat and Plans
Exhibit "C"	Common Interest Allocation, Residential LCE Allocation and Commercial LCE Allocation
Exhibit "D"	Guide to Association's Examination of Common Elements
Exhibit "E"	Summary of Maintenance Obligations
Exhibit "F"	Guide to Association's Major Management and Governance Functions
Appendix "A"	Declarant Reservations and Representations

[SIGNATURE PAGE FOLLOWS]

EXECUTED on this 9 day of September, 2026.

DECLARANT:

MONROE GERMANTOWN LLC, a Tennessee limited liability company

By: Monroe Germantown Holdings LLC, a Tennessee limited liability company, its Sole Member

By: AC Equity Manager LLC, a Delaware limited liability company its Manager

By: _____
Printed Name: Matthew Grodin
Title: Authorized Signatory

THE STATE OF New York §
§
COUNTY OF Westchester §

This instrument was acknowledged before me this 9th day of September, 2026, by Matthew Grodin, an Authorized Signatory of AC Equity Manager LLC, a Delaware limited liability company, the Manager of Monroe Germantown Holdings LLC, a Tennessee limited liability company, the sole member of **MONROE GERMANTOWN LLC,** a Tennessee limited liability company, on behalf of said entities.

(SEAL)

_____
Notary Public Signature

STEVEN SCHWEITZER
Notary Public, State of New York
No. 01SC5048110
Qualified in Westchester County
Commission Expires August 14, 2029

MORTGAGEE CONSENT:

PRP-PEAK V, LLC,
a Delaware limited liability company

By: _____
Name: Jeff Padden
Title: Manager
Date: Sep. 29, 2026

STATE OF Arizona)
COUNTY OF Maricopa)

Before me, Rachael Drake, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Jeff Padden, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the Manager of **PRP-PEAK V, LLC**, a Delaware limited liability company, the within named bargainor, and that he as such Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the banking association by himself as the Manager of PRP-Peak V, LLC.

WITNESS my hand and seal at office in Scottsdale, Az, on this the 29 day of September, 2026.

_____
Notary Public

My Commission Expires:
7/29/2028

RACHAEL DRAKE
Notary Public, State of Arizona
Maricopa County
Commission # 672075
My Commission Expires
July 29, 2028

EXHIBIT "A"

PROPERTY

Lots 25 & 26 of the Hugh McGavock Addition, as of record in Plat Book 17, Page 640, at the Register's Office of Davidson County, Tennessee.

Being the same property conveyed to Monroe Germantown, LLC in Instrument Number 20211012-0137128, at the Register's Office of Davidson County, Tennessee.

EXHIBIT "B"

CONDOMINIUM PLAT AND PLANS

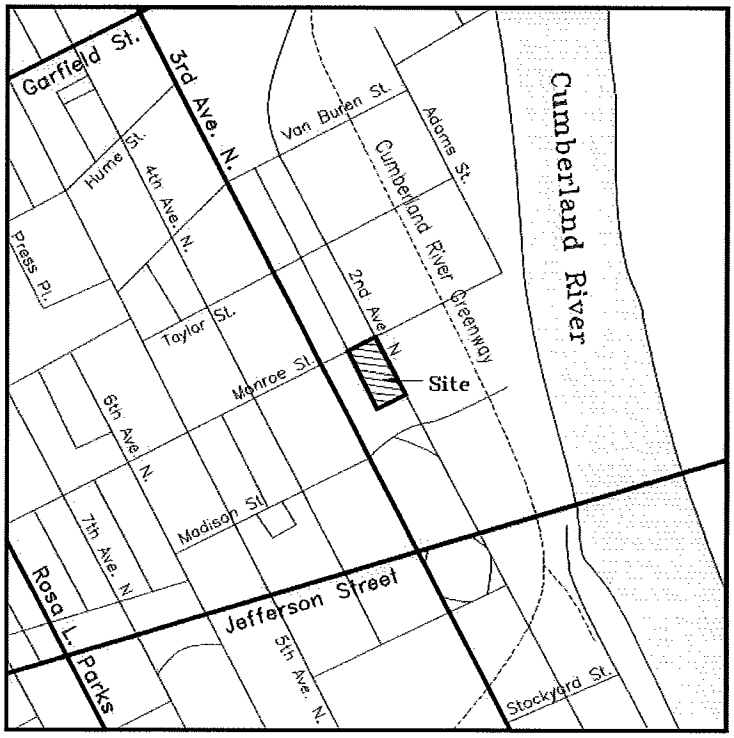
The plat and plans are attached hereto as Attachment 1.

ATTACHMENT 1

[ATTACHED]

EXHIBIT "B"

DECLARATION OF CONDOMINIUM REGIME
FOR FULTON CONDOMINIUMS



Vicinity Map Not to Scale

MICHAEL H. CHARETTE
TENNESSEE NO. 2048
1-12-26

Michael H. Charette R.L.S. # 2048

CHERRY LAND SURVEYING, INC.
622 WEST IRIS DRIVE
NASHVILLE, TENNESSEE 37204
(615)269-3972 FAX:(615)269-9345
E-MAIL: cherryls@comcast.net

Scale:	N/A
Date:	Jan. 12, 2026
Job #:	20046CON-S1
Drawn By:	CW

CLS SHEET 1 OF 5

CONDOMINIUM PLAT & PLANS FOR THE THE FULTON CONDOMINIUMS

EXHIBIT FOR

MONROE GERMANTOWN, LLC

19TH COUNCIL DISTRICT

NASHVILLE, DAVIDSON COUNTY, TENNESSEE

Surveyor's Declaration

I, Michael H. Charette, hereby certify that to the best of my knowledge and belief, the CLS sheets 1-5 of the Condomunium Plat and Plans complu with Section 66-27-309 of the Tennessee Condominium Act of 2008.

By: _____ Date: 1-12-26

Michael H. Charette



Michael H. Charette R.L.S. # 2048

CLS SHEET 2 OF 5

CHERRY LAND SURVEYING, INC.
622 WEST IRIS DRIVE
NASHVILLE, TENNESSEE 37204
(615)269-3972 FAX:(615)269-9345
E-MAIL: cherryls@comcast.net

Scale:	N/A
Date:	Jan. 12, 2026
Job #:	20046CON-52
Drawn By:	CW

CONDOMINIUM PLAT & PLANS FOR THE THE FULTON CONDOMINIUMS

EXHIBIT FOR

MONROE GERMANTOWN, LLC

19TH COUNCIL DISTRICT

NASHVILLE, DAVIDSON COUNTY, TENNESSEE

General Notes

1) All improvements and land reflected on the Condominium Map are designated as General Common Elements, save and except portions of the regime designated as Limited Common Elements or Units (I) in the Declaration of Condominium Regime for The Fulton Condominiums (The "Declaration") or (II) on the Condominium Plat and Plans of the Regime.

2) Ownership and use of Condominium Units are subject to the terms and provisions of the declaration.

3) The Regime is subject to Special Rights Reserved by the declarant as provided in the declaration.

Known Exceptions

A portion of this property is subject to Terms, conditions, provisions, obligations and rights, as of record in Instrument Number: 20050211-0016037, at the Register's Office for Davidson County, Tennessee. Said terms are blanket in nature.

This property is subject of an Agreement for Dedication of Public Right-of-Way, as of record in Instrument Number: 20211109-0149367, at the Register's Office for Davidson County, Tennessee. Said right-of-way is as shown hereon.

Plat Reference

This property is Lots 25 & 26 of the Hugh McGavock Addition, as of record in Plat Book 17, Page 640, at the Register's Office for Davidson County, Tennessee.

Deed Reference

Deed reference for this property is Instrument Number: 20211012-0137128, at the Register's Office for Davidson County, Tennessee. Owner of record being: Monroe Germantown, LLC

Legend

WATER VALVE	⊠	PROPERTY LINE	——— — — ———
FIRE HYDRANT	♂	EDGE OF PAVEMENT	——— ——— ———
GAS VALVE	⊗	EDGE OF CONC.	———
IRON ROD OLD	○ IR(O)	WALL	▨
PK NAIL NEW	● PK(N)	CURB	═══
PK NAIL OLD	○ PK(O)	FENCE	——— x ——— x ———
GUARD POST	○ GP	OVERHEAD	——— OH ——— OH ———
SIGN POST	⊸	WATER LINE	——— W ——— 6" ———
CURB INLET	▤	SEWER LINE	——— SA ——— 8" ———
MANHOLE	◎	GAS LINE	——— G ——— 4" ———
UTILITY POLE	⊟		
LIGHT POLE	□⊗		

MICHAEL H. CHARETTE — TENNESSEE NO. 2048 — 1-12-26

Michael H. Charette R.L.S. # 2048

CHERRY LAND SURVEYING, INC.
622 WEST IRIS DRIVE
NASHVILLE, TENNESSEE 37204
(615)269-3972 FAX:(615)269-9345
E-MAIL: cherryls@comcast.net

Scale:	N/A
Date:	Jan. 12, 2026
Job #:	20046CON-S3
Drawn By:	CW

CONDOMINIUM PLAT & PLANS FOR THE THE FULTON CONDOMINIUMS

EXHIBIT FOR

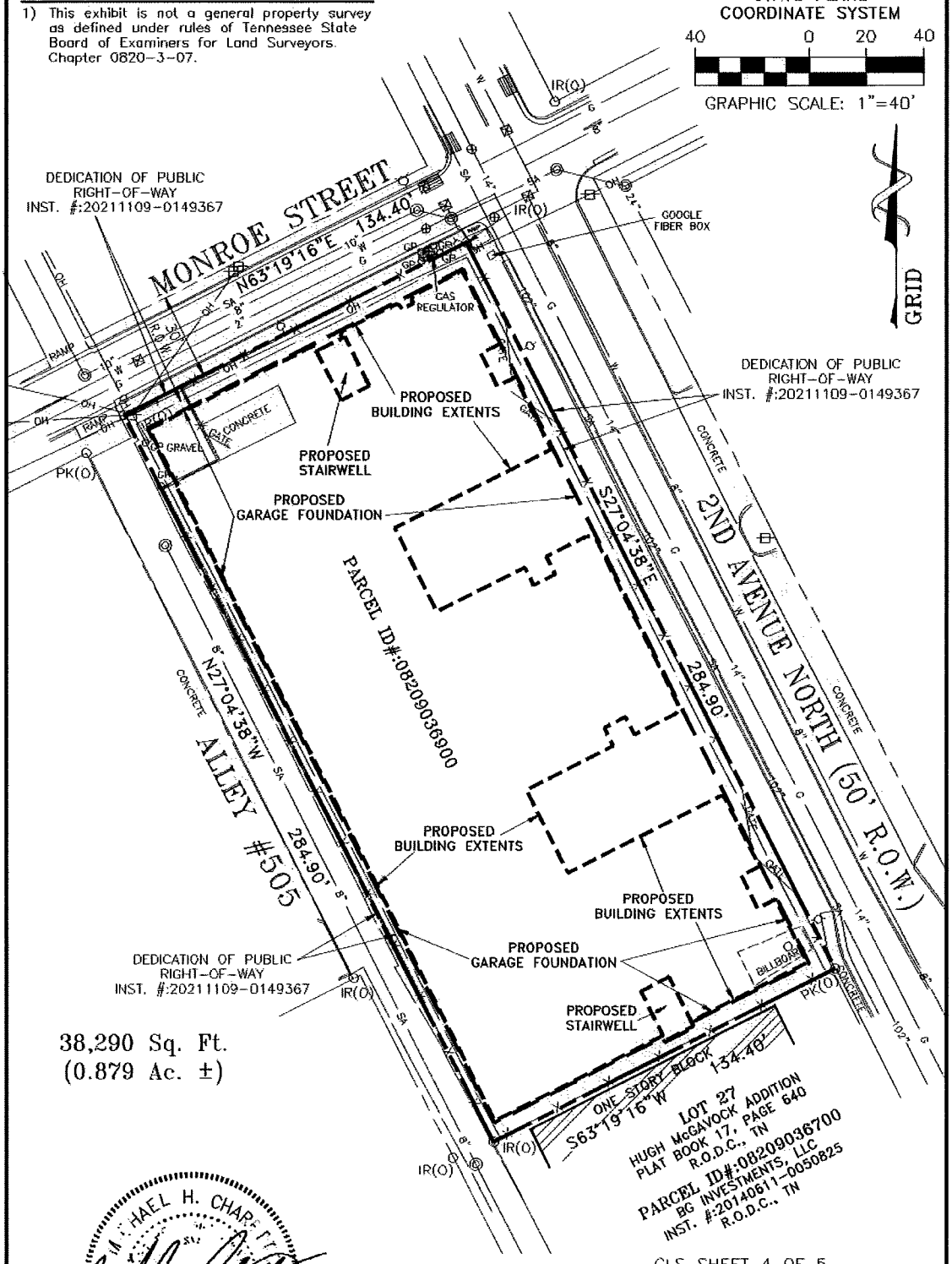
MONROE GERMANTOWN, LLC

19TH COUNCIL DISTRICT

NASHVILLE, DAVIDSON COUNTY, TENNESSEE

General Notes

1) This exhibit is not a general property survey as defined under rules of Tennessee State Board of Examiners for Land Surveyors. Chapter 0820-3-07.



CLS SHEET 4 OF 5

MICHAEL H. CHARETTE
1-12-26
TENNESSEE NO. 2048

Michael H. Charette R.L.S. # 2048

CHERRY LAND SURVEYING, INC.
622 WEST IRIS DRIVE
NASHVILLE, TENNESSEE 37204
(615)269-3972 FAX:(615)269-9345
E-MAIL: cherryls@comcast.net

Scale:	1"=50'
Date:	Jan. 12, 2026
Job #:	20046CON-S4
Drawn By:	CW

CONDOMINIUM PLAT & PLANS FOR THE THE FULTON CONDOMINIUMS

EXHIBIT FOR

MONROE GERMANTOWN, LLC

19TH COUNCIL DISTRICT

NASHVILLE, DAVIDSON COUNTY, TENNESSEE

Property Description

Being a tract of land lying in Nashville, Davidson County, Tennessee, also being Lots 25 & 26 of the Hugh McGavock Addition, as of record in Plat Book 17, Page 640, at the Register's Office for Davidson County, Tennessee, and being more particularly described as follows;

Beginning at an existing iron rod at the intersection of the southerly right-of-way line of Monroe Street, and the easterly right-of-way line of Alley #505;

Thence leaving the easterly right-of-way line of Alley #505, with the southerly right-of-way line of Monroe Street, North 63 deg 19 min 16 sec East, 134.40 feet to the intersection with the westerly right-of-way line of 2nd Avenue North;

Thence leaving the southerly right-of-way line of Monroe Street, with the westerly right-of-way line of 2nd Avenue North, South 27 deg 04 min 38 sec East, 284.90 feet to an existing pk nail, at a corner common with Lot 27 of Hugh McGavock Additions, also being the property of BG Investments, LLC, as of record in Instrument Number: 20140611-0050825, at the Register's Office for Davidson County, Tennessee;

Thence leaving the westerly right-of-way line of 2nd Avenue North, with the northerly property line of said Lot 27, South 63 deg 19 min 16 sec West, 134.40 feet to an existing iron rod, in the easterly right-of-way line of Alley #505;

Thence with the easterly right-of-way line of Alley #505, North 27 deg 04 min 38 sec West, 284.90 feet to the POINT OF BEGINNING. Containing 38,290 square feet or 0.879 acres more or less.

Being the same property conveyed to Monroe Germantown, LLC, as of record in Instrument Number: 20211012-0137128, at the Register's Office for Davidson County, Tennessee.



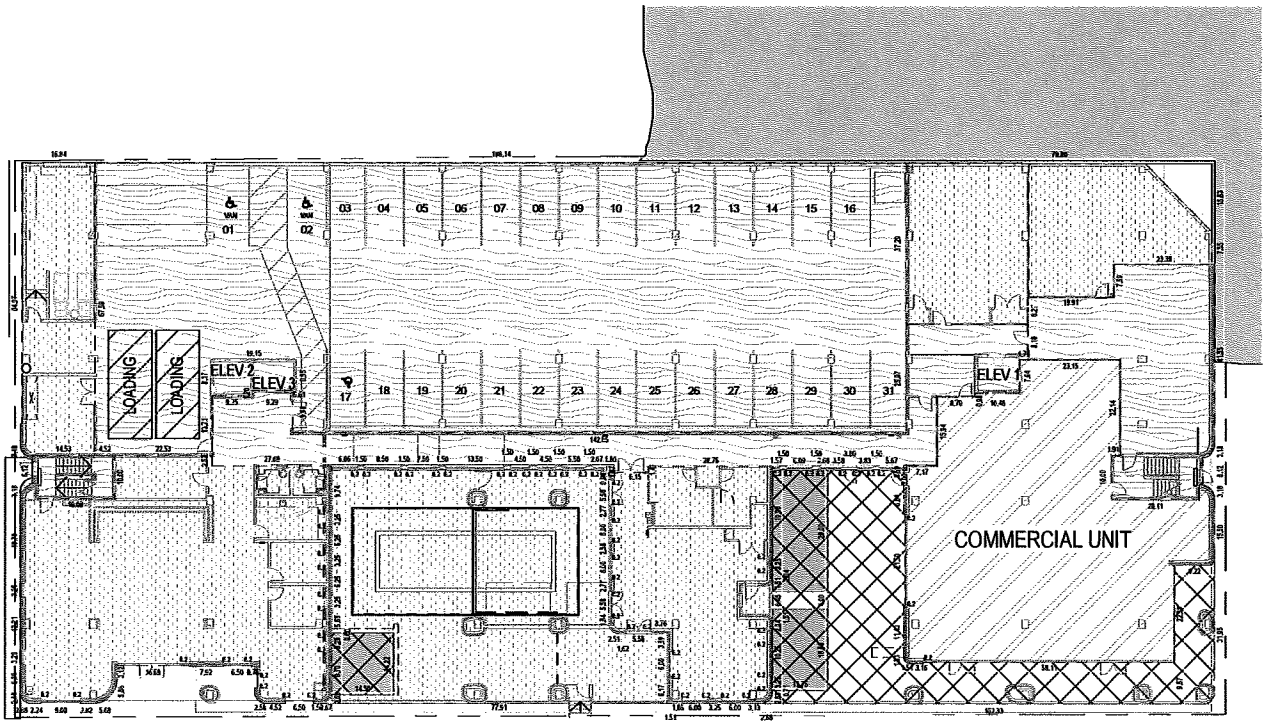
Michael H. Charette R.L.S. # 2048

CHERRY LAND SURVEYING, INC.
622 WEST IRIS DRIVE
NASHVILLE, TENNESSEE 37204
(615)269-3972 FAX:(615)269-9345
E-MAIL: cherryls@comcast.net

Scale:	N/A
Date:	Jan. 12, 2026
Job #:	20046CON-55
Drawn By:	CW

CLS SHEET 5 OF 5

CONDOMINIUM PLAT
& PLANS FOR THE
# THE FULTON CONDOMINIUMS
EXHIBIT FOR
MONROE GERMANTOWN, LLC
19TH COUNCIL DISTRICT
NASHVILLE, DAVIDSON COUNTY, TENNESSEE



1 FIRST FLOOR PLAN

SCALE, 1" = 40'-0"

COMMERCIAL UNIT

RESIDENTIAL UNIT

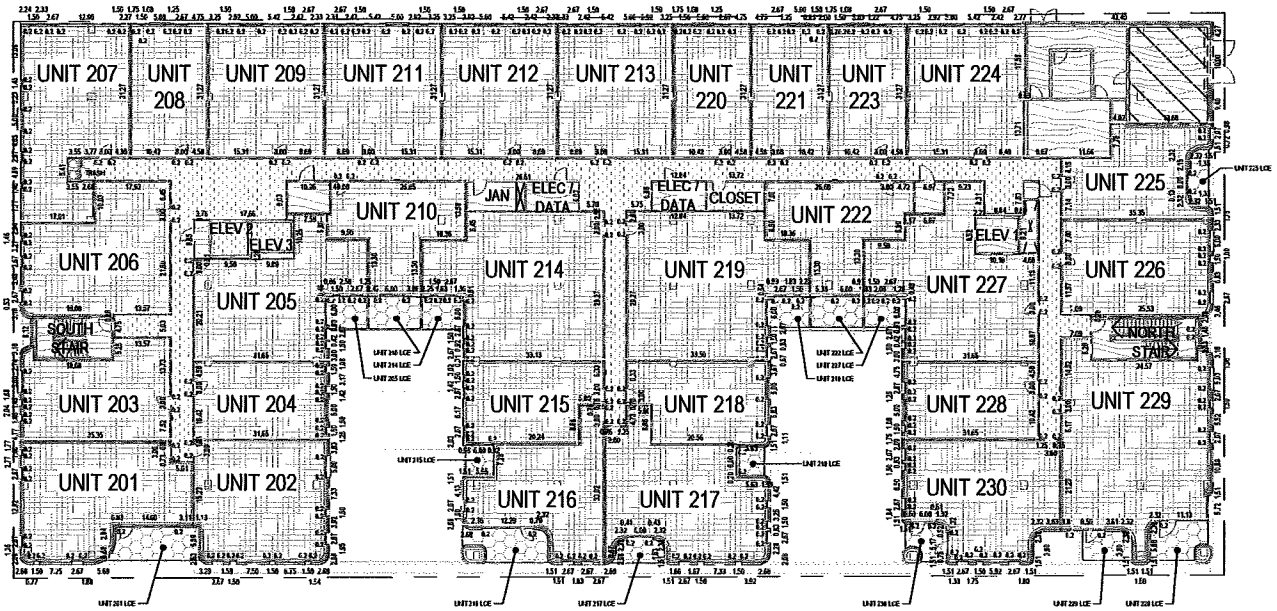
LIMITED COMMON ELEMENT

GENERAL COMMON ELEMENT

RESIDENTIAL LCE

COMMERCIAL LCE

202610080092314



1 SECOND FLOOR PLAN

SCALE, 1" = 40'-0"

COMMERCIAL UNIT

RESIDENTIAL UNIT

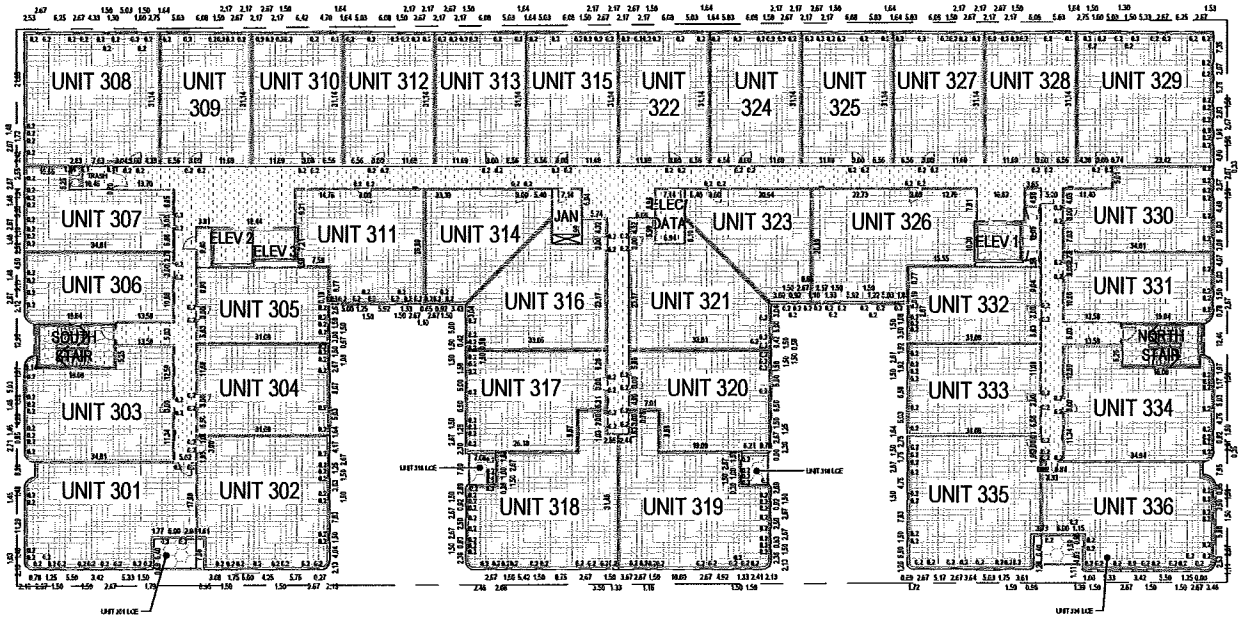
LIMITED COMMON ELEMENT

GENERAL COMMON ELEMENT

RESIDENTIAL LCE

COMMERCIAL LCE

202610080092314



1 THIRD FLOOR PLAN

SCALE, 1" = 40'-0"

COMMERCIAL UNIT

RESIDENTIAL UNIT

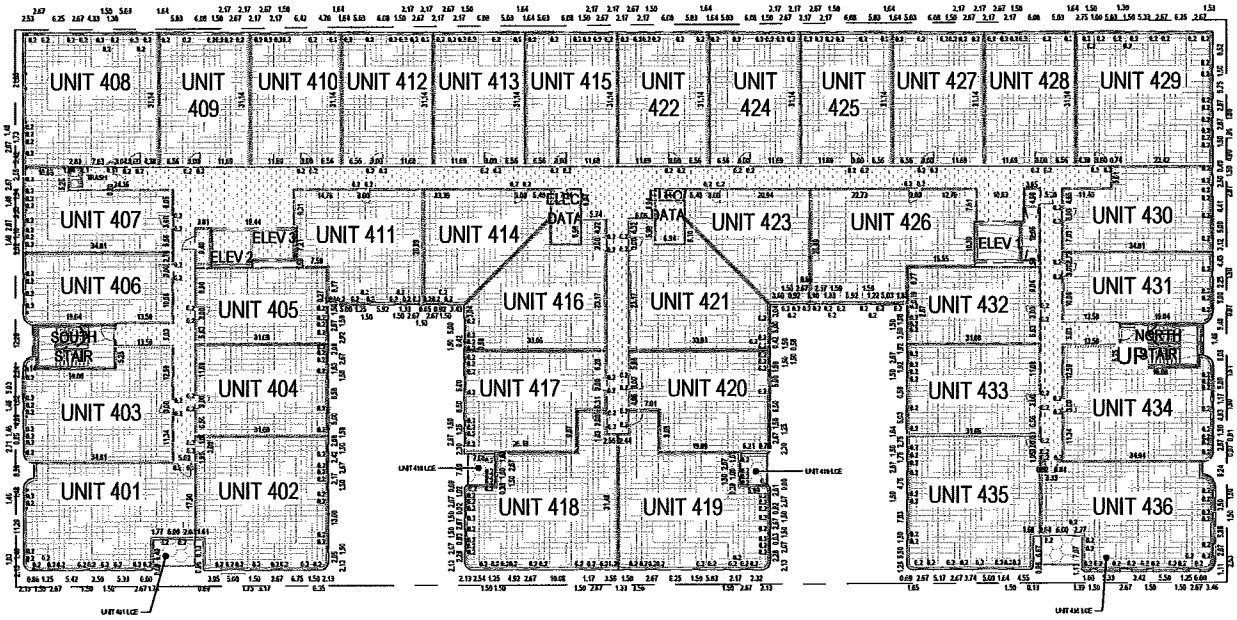
LIMITED COMMON ELEMENT

GENERAL COMMON ELEMENT

RESIDENTIAL LCE

COMMERCIAL LCE

202610080092314



1 FOURTH FLOOR PLAN

SCALE, 1" = 40'-0"

COMMERCIAL UNIT

RESIDENTIAL UNIT

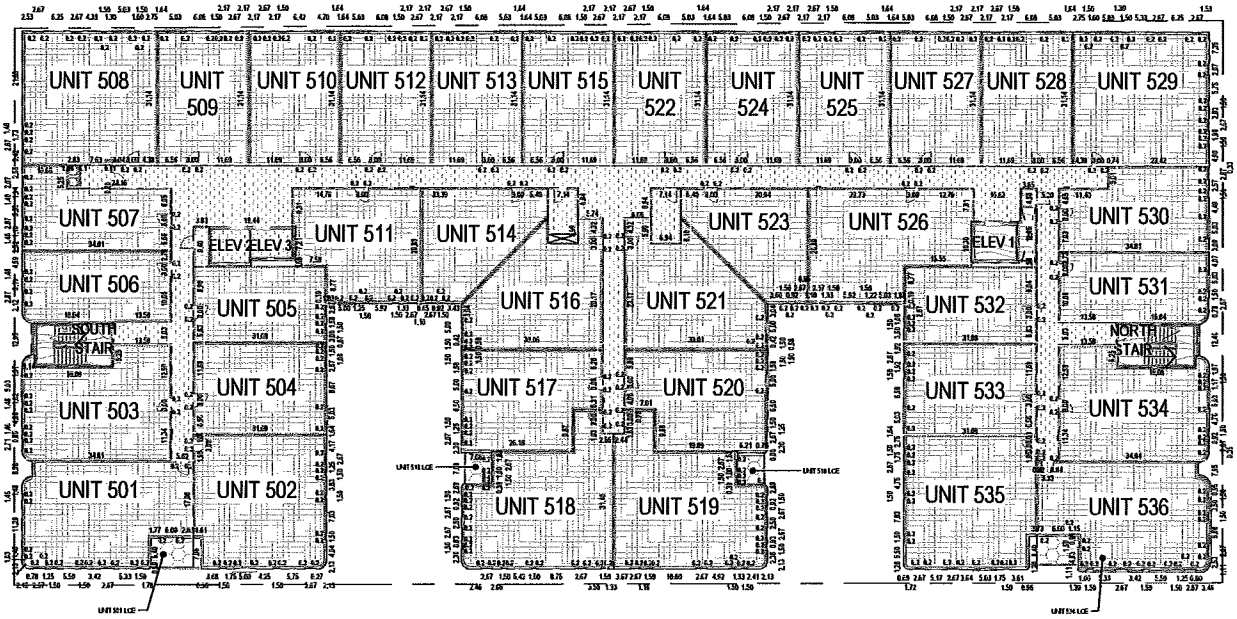
LIMITED COMMON ELEMENT

GENERAL COMMON ELEMENT

RESIDENTIAL LCE

COMMERCIAL LCE

202610080092314



1 FIFTH FLOOR PLAN

SCALE, 1" = 40'-0"

COMMERCIAL UNIT

RESIDENTIAL UNIT

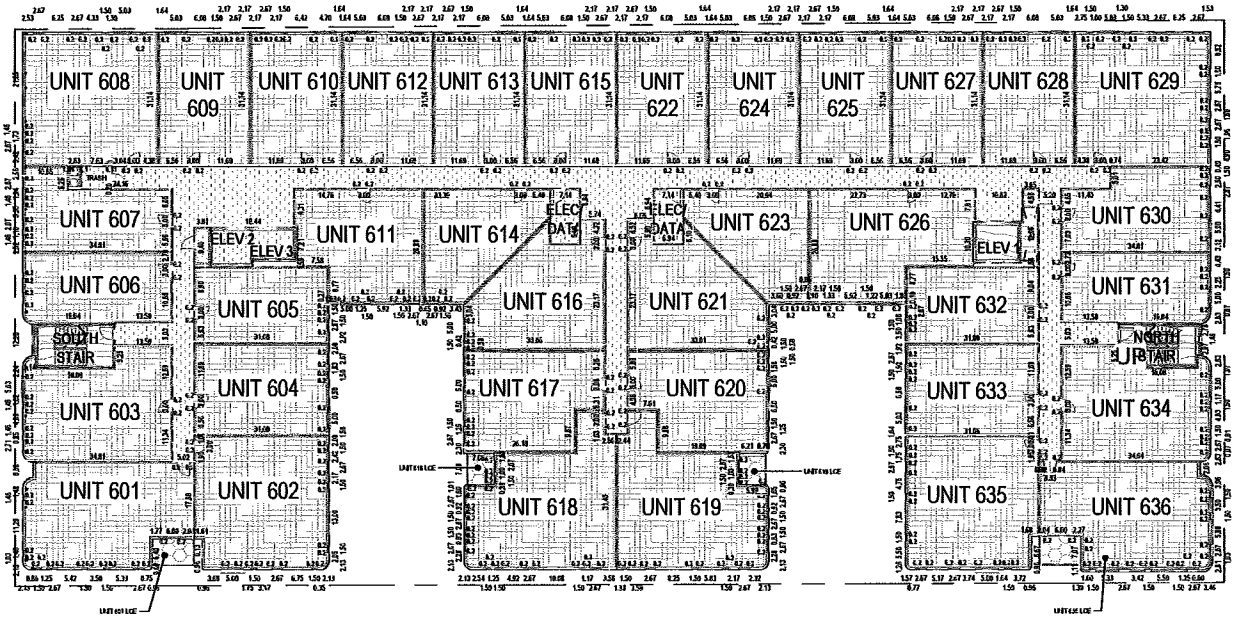
LIMITED COMMON ELEMENT

GENERAL COMMON ELEMENT

RESIDENTIAL LCE

COMMERCIAL LCE

202610080092314



1 SIXTH FLOOR PLAN

SCALE, 1" = 40'-0"

COMMERCIAL UNIT

RESIDENTIAL UNIT

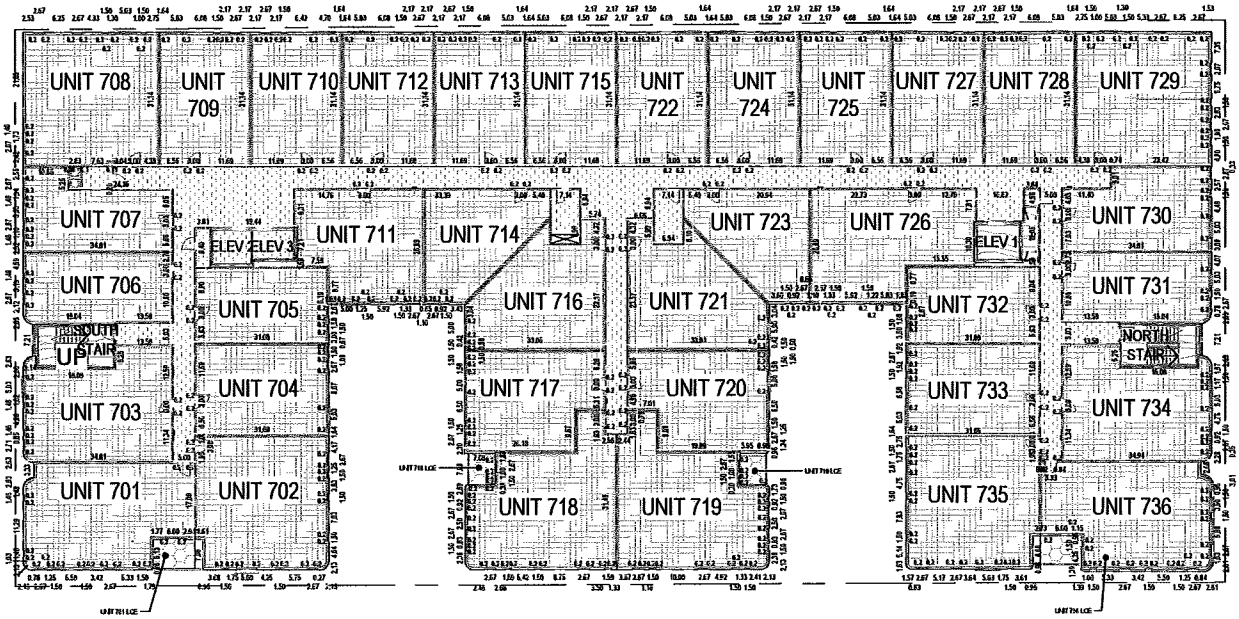
LIMITED COMMON ELEMENT

GENERAL COMMON ELEMENT

RESIDENTIAL LCE

COMMERCIAL LCE

202610080092314



1 SEVENTH FLOOR PLAN

SCALE, 1" = 40'-0"

COMMERCIAL UNIT

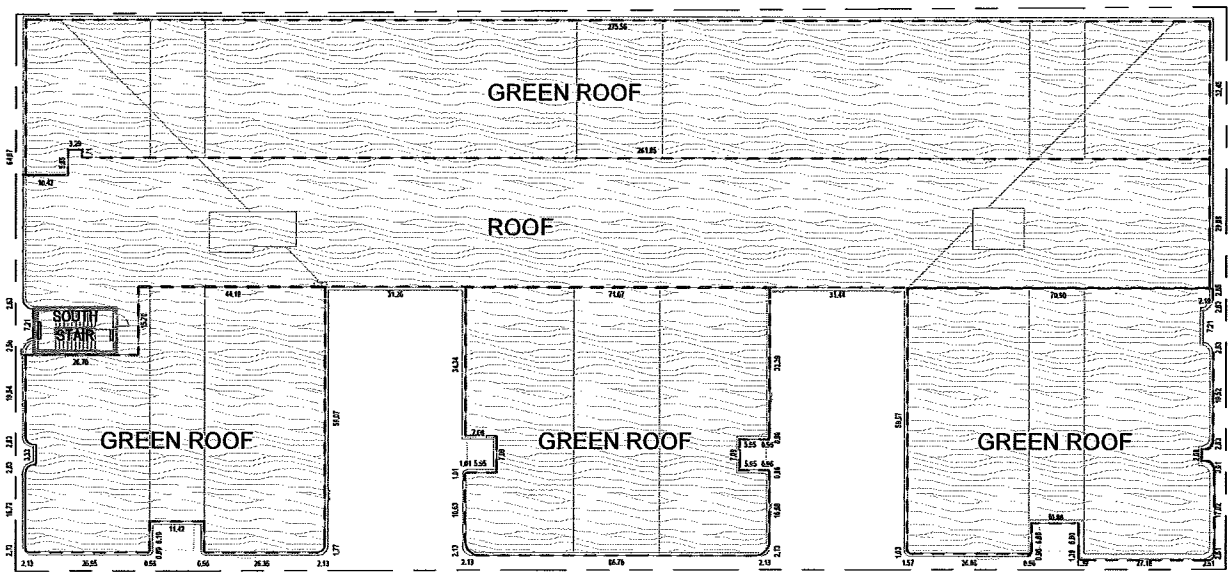
RESIDENTIAL UNIT

LIMITED COMMON ELEMENT

GENERAL COMMON ELEMENT

RESIDENTIAL LCE

COMMERCIAL LCE



1 ROOF PLAN

SCALE, 1" = 40'-0"

COMMERCIAL UNIT

RESIDENTIAL UNIT

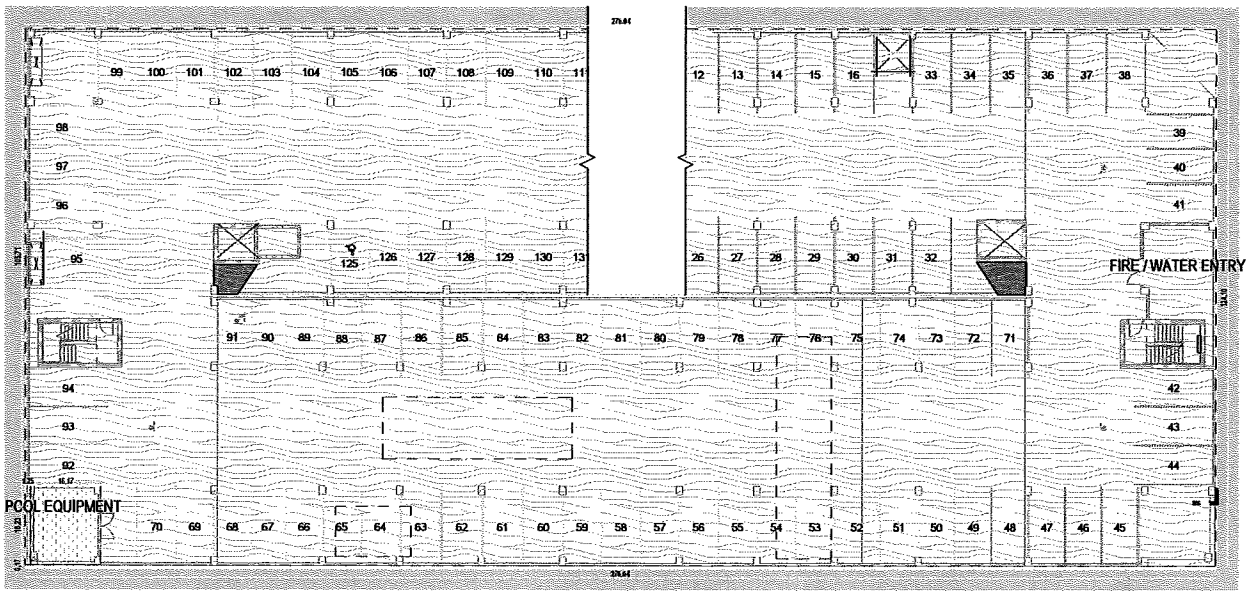
LIMITED COMMON ELEMENT

GENERAL COMMON ELEMENT

RESIDENTIAL LCE

COMMERCIAL LCE

202610080092314



1 PARKING LEVEL 1

SCALE, 1" = 40'-0"

COMMERCIAL UNIT

RESIDENTIAL UNIT

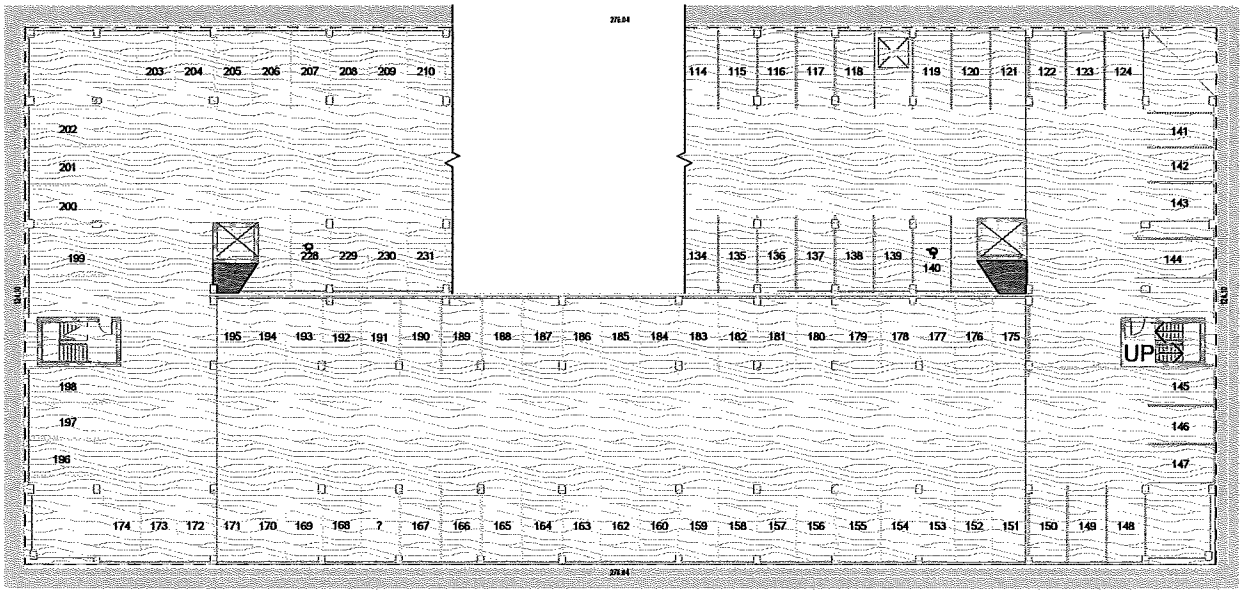
LIMITED COMMON ELEMENT

GENERAL COMMON ELEMENT

RESIDENTIAL LCE

COMMERCIAL LCE

202610080092314



1 PARKING LEVEL 2

SCALE, 1" = 40'-0"

COMMERCIAL UNIT

RESIDENTIAL UNIT

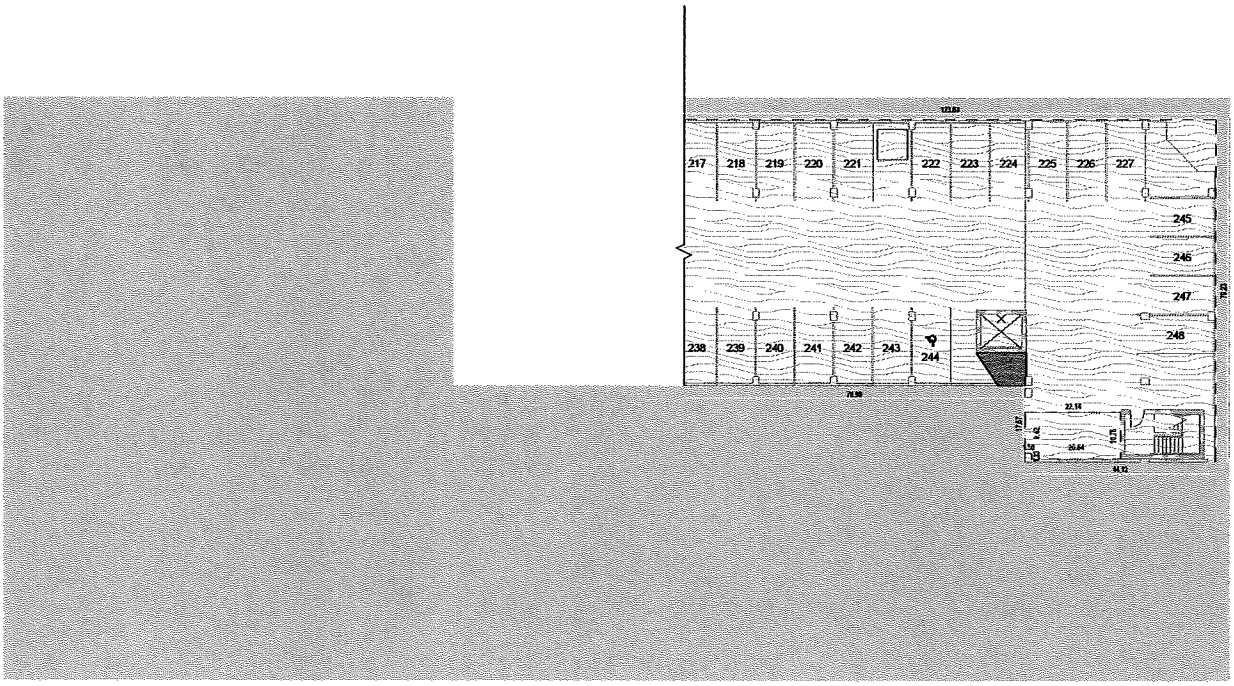
LIMITED COMMON ELEMENT

GENERAL COMMON ELEMENT

RESIDENTIAL LCE

COMMERCIAL LCE

202610080092314



1 PARKING LEVEL 3

SCALE, 1" = 40'-0"

COMMERCIAL UNIT

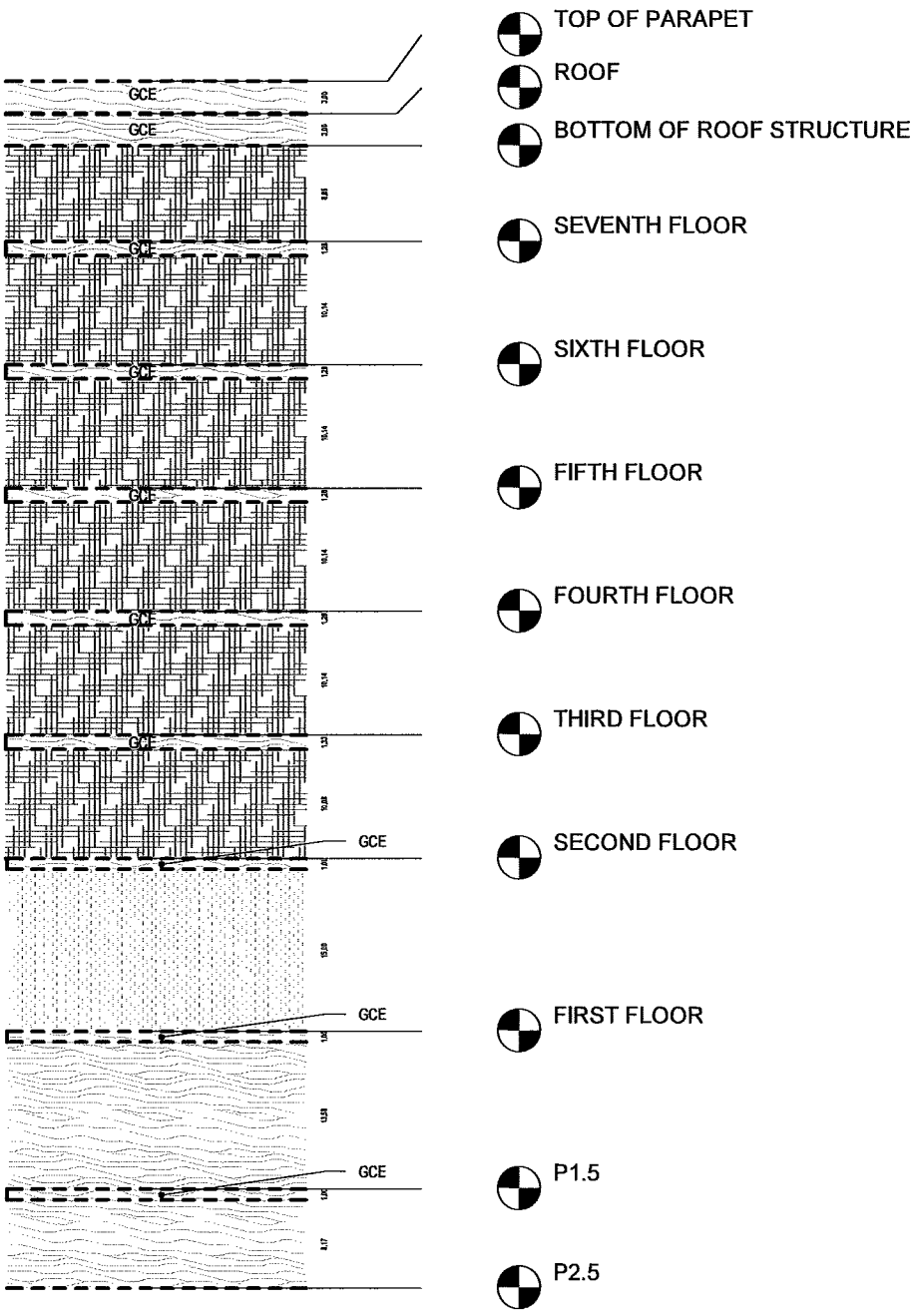
RESIDENTIAL UNIT

LIMITED COMMON ELEMENT

GENERAL COMMON ELEMENT

RESIDENTIAL LCE

COMMERCIAL LCE



VERTICAL UNIT AT LOBBY

SCALE, 1/16" = 1'-0"

COMMERCIAL UNIT

RESIDENTIAL UNIT

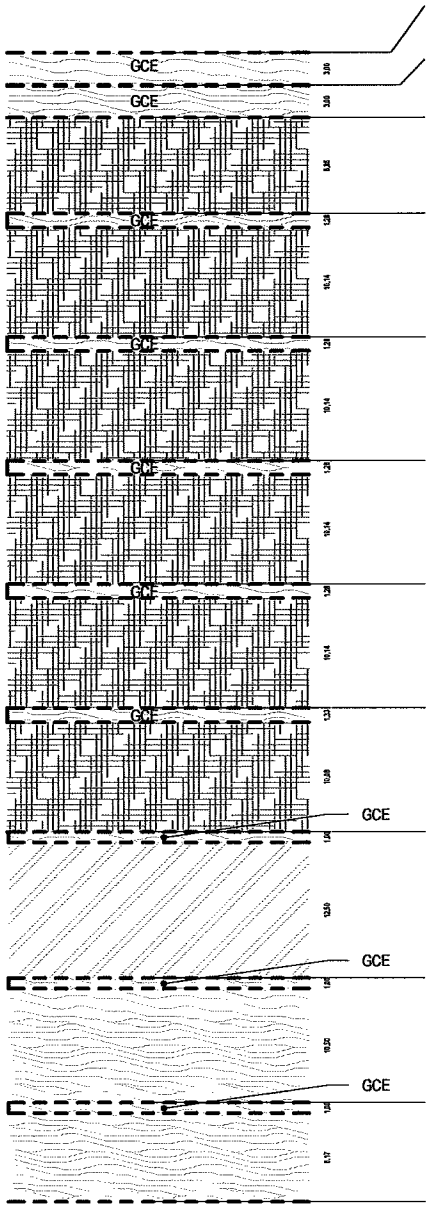
LIMITED COMMON ELEMENT

GENERAL COMMON ELEMENT

RESIDENTIAL LCE

COMMERCIAL LCE

202610080092314



TOP OF PARAPET

ROOF

BOTTOM OF ROOF STRUCTURE

SEVENTH FLOOR

SIXTH FLOOR

FIFTH FLOOR

FOURTH FLOOR

THIRD FLOOR

SECOND FLOOR

UPPER RETAIL

P1

P2

VERTICAL UNIT AT COMMERCIAL

SCALE, 1/16" = 1'-0"

COMMERCIAL UNIT

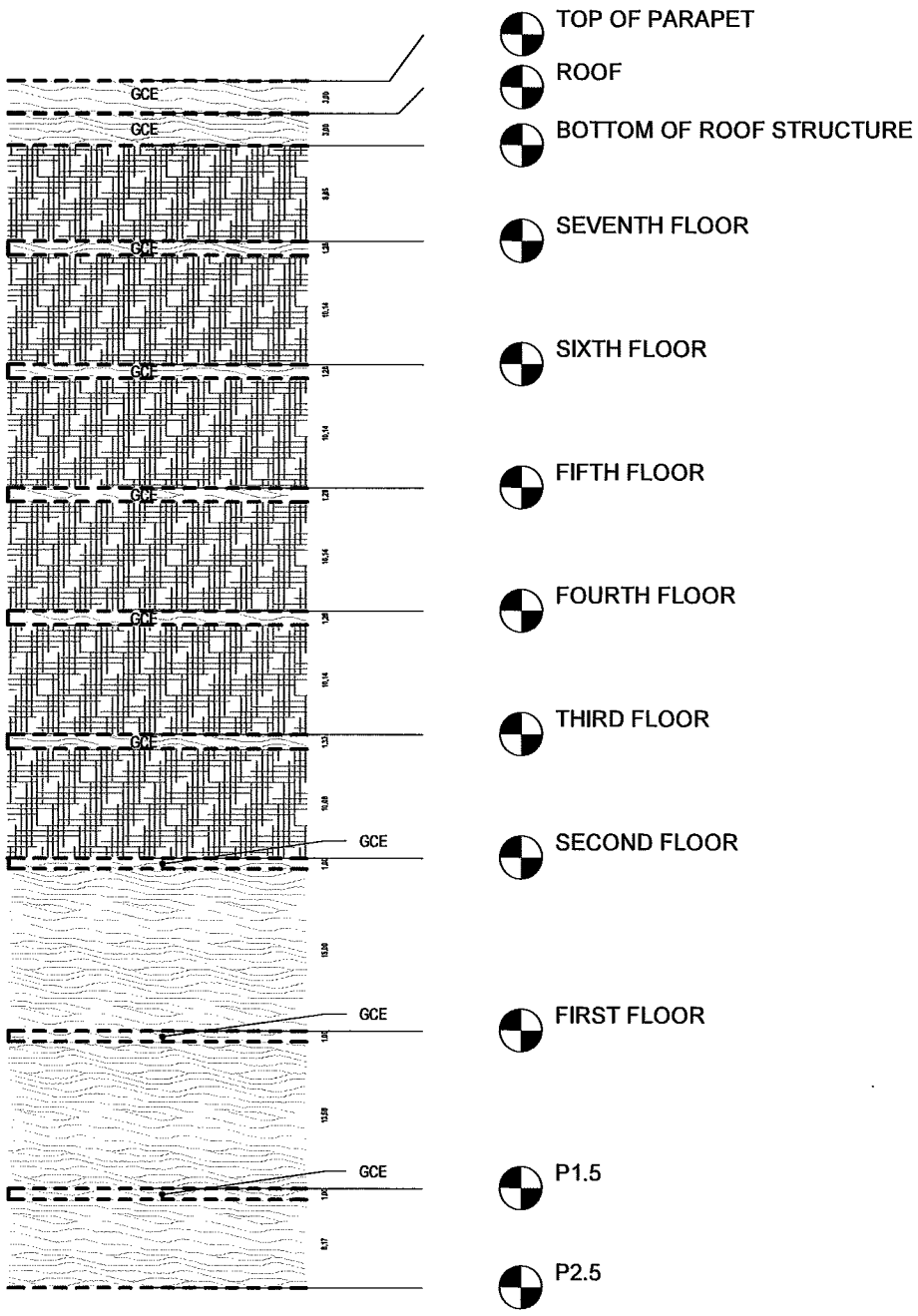
RESIDENTIAL UNIT

LIMITED COMMON ELEMENT

GENERAL COMMON ELEMENT

RESIDENTIAL LCE

COMMERCIAL LCE



VERTICAL UNIT AT PARKING

SCALE, 1/16" = 1'-0"

COMMERCIAL UNIT

RESIDENTIAL UNIT

LIMITED COMMON ELEMENT

GENERAL COMMON ELEMENT

RESIDENTIAL LCE

COMMERCIAL LCE

EXHIBIT "C"

COMMON INTEREST ALLOCATION, RESIDENTIAL LCE ALLOCATION AND COMMERCIAL LCE ALLOCATION

Any obligations or rights, including assessment charges or credits calculated or determined based on the Common Interest Allocation, Residential LCE Allocation or Commercial LCE Allocation which are not allocable to a particular Unit due to a rounding error, will be equally apportioned among all Units within the Regime.

THE COMMON INTEREST ALLOCATION, RESIDENTIAL LCE ALLOCATION AND COMMERCIAL LCE ALLOCATION ASSIGNED TO A PARTICULAR UNIT WILL CHANGE IF ADDITIONAL UNITS ARE CREATED AND ADDED TO THE REGIME BY DECLARANT.

Unit Number	Common Interest Allocation	Residential LCE Allocation	Commercial LCE Allocation
201	0.5932%	0.6076%	N/A
202	0.5596%	0.5732%	N/A
203	0.4502%	0.4611%	N/A
204	0.3544%	0.3630%	N/A
205	0.6057%	0.6203%	N/A
206	0.5684%	0.5821%	N/A
207	0.6287%	0.6439%	N/A
208	0.3544%	0.3630%	N/A
209	0.5248%	0.5375%	N/A
210	0.3669%	0.3758%	N/A
211	0.5248%	0.5375%	N/A
212	0.5248%	0.5375%	N/A
213	0.5248%	0.5375%	N/A
214	0.7910%	0.8101%	N/A
215	0.3694%	0.3783%	N/A
216	0.4782%	0.4898%	N/A
217	0.6225%	0.6375%	N/A
218	0.3694%	0.3783%	N/A
219	0.7910%	0.8101%	N/A
220	0.3544%	0.3630%	N/A
221	0.3544%	0.3630%	N/A
222	0.3669%	0.3758%	N/A
223	0.3544%	0.3630%	N/A
224	0.5248%	0.5375%	N/A

225	0.3868%	0.3961%	N/A
226	0.4788%	0.4904%	N/A
227	0.6896%	0.7063%	N/A
228	0.3544%	0.3630%	N/A
229	0.8793%	0.9006%	N/A
230	0.5634%	0.5770%	N/A
301	0.5914%	0.6057%	N/A
302	0.5939%	0.6082%	N/A
303	0.5037%	0.5159%	N/A
304	0.4117%	0.4216%	N/A
305	0.3563%	0.3649%	N/A
306	0.3495%	0.3579%	N/A
307	0.3495%	0.3579%	N/A
308	0.6106%	0.6254%	N/A
309	0.4117%	0.4216%	N/A
310	0.4117%	0.4216%	N/A
311	0.4589%	0.4700%	N/A
312	0.4117%	0.4216%	N/A
313	0.4117%	0.4216%	N/A
314	0.3532%	0.3617%	N/A
315	0.4117%	0.4216%	N/A
316	0.4738%	0.4853%	N/A
317	0.4409%	0.4515%	N/A
318	0.6162%	0.6311%	N/A
319	0.6162%	0.6311%	N/A
320	0.4409%	0.4515%	N/A
321	0.4738%	0.4853%	N/A
322	0.4117%	0.4216%	N/A
323	0.3532%	0.3617%	N/A
324	0.4117%	0.4216%	N/A
325	0.4117%	0.4216%	N/A
326	0.5478%	0.5611%	N/A
327	0.4117%	0.4216%	N/A
328	0.4117%	0.4216%	N/A
329	0.6106%	0.6254%	N/A
330	0.3905%	0.4000%	N/A
331	0.3495%	0.3579%	N/A
332	0.3563%	0.3649%	N/A
333	0.4117%	0.4216%	N/A
334	0.5037%	0.5159%	N/A
335	0.5939%	0.6082%	N/A

336	0.5914%	0.6057%	N/A
401	0.5914%	0.6057%	N/A
402	0.5939%	0.6082%	N/A
403	0.5037%	0.5159%	N/A
404	0.4117%	0.4216%	N/A
405	0.3563%	0.3649%	N/A
406	0.3495%	0.3579%	N/A
407	0.3495%	0.3579%	N/A
408	0.6106%	0.6254%	N/A
409	0.4117%	0.4216%	N/A
410	0.4117%	0.4216%	N/A
411	0.4589%	0.4700%	N/A
412	0.4117%	0.4216%	N/A
413	0.4117%	0.4216%	N/A
414	0.3532%	0.3617%	N/A
415	0.4117%	0.4216%	N/A
416	0.4738%	0.4853%	N/A
417	0.4409%	0.4515%	N/A
418	0.6162%	0.6311%	N/A
419	0.6162%	0.6311%	N/A
420	0.4409%	0.4515%	N/A
421	0.4738%	0.4853%	N/A
422	0.4117%	0.4216%	N/A
423	0.3532%	0.3617%	N/A
424	0.4117%	0.4216%	N/A
425	0.4117%	0.4216%	N/A
426	0.5478%	0.5611%	N/A
427	0.4117%	0.4216%	N/A
428	0.4117%	0.4216%	N/A
429	0.6106%	0.6254%	N/A
430	0.3905%	0.4000%	N/A
431	0.3495%	0.3579%	N/A
432	0.3563%	0.3649%	N/A
433	0.4117%	0.4216%	N/A
434	0.5037%	0.5159%	N/A
435	0.5939%	0.6082%	N/A
436	0.5914%	0.6057%	N/A
501	0.5914%	0.6057%	N/A
502	0.5939%	0.6082%	N/A
503	0.5037%	0.5159%	N/A
504	0.4117%	0.4216%	N/A

505	0.3563%	0.3649%	N/A
506	0.3495%	0.3579%	N/A
507	0.3495%	0.3579%	N/A
508	0.6106%	0.6254%	N/A
509	0.4117%	0.4216%	N/A
510	0.4117%	0.4216%	N/A
511	0.4589%	0.4700%	N/A
512	0.4117%	0.4216%	N/A
513	0.4117%	0.4216%	N/A
514	0.3532%	0.3617%	N/A
515	0.4117%	0.4216%	N/A
516	0.4738%	0.4853%	N/A
517	0.4409%	0.4515%	N/A
518	0.6162%	0.6311%	N/A
519	0.6162%	0.6311%	N/A
520	0.4409%	0.4515%	N/A
521	0.4738%	0.4853%	N/A
522	0.4117%	0.4216%	N/A
523	0.3532%	0.3617%	N/A
524	0.4117%	0.4216%	N/A
525	0.4117%	0.4216%	N/A
526	0.5478%	0.5611%	N/A
527	0.4117%	0.4216%	N/A
528	0.4117%	0.4216%	N/A
529	0.6106%	0.6254%	N/A
530	0.3905%	0.4000%	N/A
531	0.3495%	0.3579%	N/A
532	0.3563%	0.3649%	N/A
533	0.4117%	0.4216%	N/A
534	0.5037%	0.5159%	N/A
535	0.5939%	0.6082%	N/A
536	0.5914%	0.6057%	N/A
601	0.5914%	0.6057%	N/A
602	0.5939%	0.6082%	N/A
603	0.5037%	0.5159%	N/A
604	0.4117%	0.4216%	N/A
605	0.3563%	0.3649%	N/A
606	0.3495%	0.3579%	N/A
607	0.3495%	0.3579%	N/A
608	0.6106%	0.6254%	N/A
609	0.4117%	0.4216%	N/A

610	0.4117%	0.4216%	N/A
611	0.4589%	0.4700%	N/A
612	0.4117%	0.4216%	N/A
613	0.4117%	0.4216%	N/A
614	0.3532%	0.3617%	N/A
615	0.4117%	0.4216%	N/A
616	0.4738%	0.4853%	N/A
617	0.4409%	0.4515%	N/A
618	0.6162%	0.6311%	N/A
619	0.6162%	0.6311%	N/A
620	0.4409%	0.4515%	N/A
621	0.4738%	0.4853%	N/A
622	0.4117%	0.4216%	N/A
623	0.3532%	0.3617%	N/A
624	0.4117%	0.4216%	N/A
625	0.4117%	0.4216%	N/A
626	0.5478%	0.5611%	N/A
627	0.4117%	0.4216%	N/A
628	0.4117%	0.4216%	N/A
629	0.6106%	0.6254%	N/A
630	0.3905%	0.4000%	N/A
631	0.3495%	0.3579%	N/A
632	0.3563%	0.3649%	N/A
633	0.4117%	0.4216%	N/A
634	0.5037%	0.5159%	N/A
635	0.5939%	0.6082%	N/A
636	0.5914%	0.6057%	N/A
701	0.5914%	0.6057%	N/A
702	0.5939%	0.6082%	N/A
703	0.5037%	0.5159%	N/A
704	0.4117%	0.4216%	N/A
705	0.3563%	0.3649%	N/A
706	0.3495%	0.3579%	N/A
707	0.3495%	0.3579%	N/A
708	0.6106%	0.6254%	N/A
709	0.4117%	0.4216%	N/A
710	0.4117%	0.4216%	N/A
711	0.4589%	0.4700%	N/A
712	0.4117%	0.4216%	N/A
713	0.4117%	0.4216%	N/A
714	0.3532%	0.3617%	N/A

715	0.4117%	0.4216%	N/A
716	0.4738%	0.4853%	N/A
717	0.4409%	0.4515%	N/A
718	0.6162%	0.6311%	N/A
719	0.6162%	0.6311%	N/A
720	0.4409%	0.4515%	N/A
721	0.4738%	0.4853%	N/A
722	0.4117%	0.4216%	N/A
723	0.3532%	0.3617%	N/A
724	0.4117%	0.4216%	N/A
725	0.4117%	0.4216%	N/A
726	0.5478%	0.5611%	N/A
727	0.4117%	0.4216%	N/A
728	0.4117%	0.4216%	N/A
729	0.6106%	0.6254%	N/A
730	0.3905%	0.4000%	N/A
731	0.3495%	0.3579%	N/A
732	0.3563%	0.3649%	N/A
733	0.4117%	0.4216%	N/A
734	0.5037%	0.5159%	N/A
735	0.5939%	0.6082%	N/A
736	0.5914%	0.6057%	N/A
Commercial Unit	2.3630%	N/A	100%

EXHIBIT "D"

GUIDE TO THE ASSOCIATION'S EXAMINATION OF COMMON ELEMENTS

This Guide provides information to assist the Board in conducting an examination of the Common Elements for the purpose maintaining replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the General Common Elements maintained by the Association. The examination is required by *Section 8.2* of the Declaration and is a necessary prerequisite to establishing sufficient reserves as required by *Section 5.13* of the Declaration. Additional information on conducting the examination may be obtained from the Community Associations Institute and their publication, *The National Reserve Study Standards of the Community Associations Institute*. See www.caionline.org. In addition, the Community Associations Institute provides certification for qualified preparers of reserve studies, known as a "Reserve Professionals Designation" (R.S.). Neither this Declaration nor current law requires that the Board engage an individual holding a Reserve Professional Designation for the purpose of conducting the annual examination of the Common Elements. Because laws and practices change over time, the Board should not use this Guide without taking into account applicable changes in law and practice.

Developing a Plan

In developing a plan, the age and condition of Common Elements maintained by the Association must be considered. The possibility that new types of material, equipment, or maintenance processes associated with the repair and/or maintenance of Common Elements should also be taken into account. The individual or company who prepares the examination calculates a suggested annual funding amount and, in doing so, may consider such factors as which components are included, estimated replacement costs of the components, useful lives of the components, inflation, and interest on reserve account balances or other earnings rates. Annual contributions to the replacement fund from annual assessments are based on this examination or reserve study. A reserve study generally includes the following:

- Identification and analysis of each major component of Common Elements maintained by the Association
- Estimates of the remaining useful lives of the components
- Estimates of the costs of replacements or repairs
- A cash flow projection showing anticipated changes in expenditures and contributions over a time period generally ranging between 20 and 30 years
- The "Funding Goal" which is generally one of the following:
  - Component Full Funding: Attaining, over a period of time, and maintaining, once the initial goal is achieved, a cumulative reserve

account cash balance necessary to discharge anticipated expenditures at or near 100 percent; or

— Threshold Funding: Maintaining the reserve account cash balance above a specified dollar or percent funded amount.

Note that Threshold Funding will increase the likelihood that special assessments will be required to fund major repairs and replacements. For example, one study has shown that a Threshold Funding goal of 40 to 50% results in an 11.2% chance that the Association will be unable to fund repairs and replacement projects in the next funding year. See "Measuring the Adequacy of Reserves", *Common Ground*, July/August 1997. The same study found that Component Full Funding reduces this likelihood to between .09 and 1.4%.

Finding Common Element Component Replacement Information

Common Element component replacement information may be obtained from contractors, suppliers, technical specialists (IT, cable, fiber optics, etc.), and a "Reserve Study" specialist or from using tables in technical manuals on useful lives of various components. The Board must reevaluate its funding level each year based upon changes to the Common Elements as well as changes to replacement costs and component conditions. The specific components of Common Elements include, but are not limited to, roofing, electrical systems, plumbing, information technology equipment, floor coverings, air conditioning systems, heating and hot water equipment, roads, recreational facilities, and furniture and equipment owned or maintained by the Association. Components covered by maintenance contracts may be excluded if the contracts include maintenance and replacement of the components. The Board must also include within their overall budget a deferred maintenance account for those components requiring periodic maintenance which does not occur annually. Typically, the deferred maintenance account would include such components as painting, staining, and caulking.

EXHIBIT "E"

SUMMARY OF MAINTENANCE OBLIGATIONS

Set forth below is a summary of the maintenance obligations imposed upon the Association and each Owner generally as described more fully in this Declaration. Please note that the information set forth in this Exhibit "E" is a summary only and is not intended to modify any of the provisions of this Declaration. Accordingly, in the event of a conflict between the summary set forth in this Exhibit "E" and any provision set forth in this Declaration, the provision set forth in this Declaration will control. "All aspects" includes maintenance, repair, and replacement, as needed.

COMPONENT OF REGIME	ASSOCIATION RESPONSIBILITY	OWNER RESPONSIBILITY
Interior spaces within the Unit and all personal property located therein.	None.	All aspects.
Windows.	Maintaining, repairing and replacing, as necessary, all windows.	Periodic cleaning of exterior window surfaces bounded by a balcony within the Owner's Unit.
Balconies.	Maintaining, repairing and replacing, as necessary, structural components.	Routine cleaning.
Common egress corridors and elevators.	All aspects.	None.
Heating and air conditioning systems, duct work, appliances and plumbing fixtures serving any portion of the Property.	All aspects.	None.
Chutes, flues, ducts, conduits, wires, pipes, chases or other apparatus located in the Common Elements.	All aspects.	None.

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EXHIBIT "F"
GUIDE TO ASSOCIATION'S MAJOR MANAGEMENT AND GOVERNANCE FUNCTIONS

This Guide lists several of the major management and governance functions of a typical residential development with a mandatory owners association. The Association's Board may, from time to time, use this Guide to consider what functions, if any, to delegate to one or more managers, managing agents, employees, or volunteers. Because laws and practices change over time, the Association and/or the Board should not use this Guide without taking account of applicable changes in law and practices.

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	PERFORMED BY ASSOCIATION OFFICERS OR DIRECTORS	DELEGATED TO ASSOCIATION EMPLOYEE OR AGENT
FINANCIAL MANAGEMENT		
To adopt annual budget and levy assessments and collect certain charges and fees, per Declaration.		
Prepare annual operating budget, periodic operating statements, and year-end statement.		
Identify components of the property the Association is required to maintain. Estimate remaining useful life of each component. Estimate costs and schedule of major repairs and replacements, and develop replacement reserve schedule. Annually update same.		
Collect assessments and maintain Association accounts.		
Pay Association expenses and taxes.		
Obtain annual audit and income tax filing.		
Maintain fidelity bond on whomever handles Association funds.		

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	PERFORMED BY ASSOCIATION OFFICERS OR DIRECTORS	DELEGATED TO ASSOCIATION EMPLOYEE OR AGENT
Report annually to members on financial status of Association.		
PHYSICAL MANAGEMENT Inspect, maintain, repair, and replace, as needed, all components of the property for which the Association has maintenance responsibility. Contract for services, as needed to operate or maintain the property. Prepare specifications and call for bids for major projects. Coordinate and supervise work on the property, as warranted.		
ADMINISTRATIVE MANAGEMENT Receive and respond to correspondence from owners, and assist in resolving owners' problems related to the Association. Conduct hearings with owners to resolve disputes or to enforce the governing documents. Obtain and supervise personnel and/or contracts needed to fulfill Association's functions. Schedule Association meetings and give owners timely notice of same. Schedule board meetings and give directors timely notice of same.		

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	PERFORMED BY ASSOCIATION OFFICERS OR DIRECTORS	DELEGATED TO ASSOCIATION EMPLOYEE OR AGENT
Enforce the governing documents. Maintain insurance and bonds as required by the governing documents or state law, or as customary for similar types of property in the same geographic area. Maintain Association books, records, and files. Maintain Association's corporate charter and registered agent & address.		
OVERALL FUNCTIONS Promote harmonious relationships within the community. Protect and enhance property values in the community. Encourage compliance with governing documents and Applicable Laws and ordinances. Act as liaison between the community of owners and governmental, taxing, or regulatory bodies. Protect the Association and the property from loss and damage by lawsuit or otherwise.		

EXHIBIT "G"

ENCUMBRANCES

1. Subject to all matters shown on the plan of record in Plat Book 17, Page 640, in the Register's Office of Davidson County, Tennessee.
2. Easement(s) granted Metropolitan Government of Nashville and Davidson, County, Tennessee, by Consent Order of record in Book 6880, Page 363, in the Register's Office of Davidson County, Tennessee.
3. Subject to the terms and provisions of unrecorded lease, as evidenced by Memorandum of Lease Agreement by and between Brad S. Procter, Lessor, and The Lamar Companies, Lessee, of record in Instrument No. 20050211-0016037, in the Register's Office of Davidson County, Tennessee.
4. Declaration of Restrictions and Covenants for Stormwater Facilities and Systems of record in Instrument Number 20210813-0109329, in the Register's Office for Davidson County, Tennessee.
5. Agreement for Dedication of Public Right-of-Way of record in Instrument Number 20211109-0149367, in the Register's Office for Davidson County, Tennessee.

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APPENDIX "A"

DECLARANT RESERVATIONS AND REPRESENTATIONS

A.1. General Provisions.

A.1.1. Introduction. Declarant intends this Declaration to be perpetual and understands that provisions pertaining to the initial development, construction, marketing, and control of the Regime will become obsolete upon expiration or termination of the Development Period. As a courtesy to future users of this Declaration, who may be frustrated by then-obsolete terms, Declarant is compiling Declarant-related provisions in this Appendix.

A.1.2. General Reservation and Construction. Notwithstanding other provisions of the Documents to the contrary, nothing contained therein may be construed to, nor may any Mortgagee, other Owner, or the Association, prevent or interfere with the rights contained in this Appendix which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of a conflict between this Appendix "A" and any other Document, this Appendix "A" controls. This Appendix may not be amended without the prior written consent of Declarant. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Regime.

A.1.3. Purpose of Development and Declarant Control Periods. This Appendix gives Declarant certain rights during the Development Period and Declarant Control Period to ensure a complete and orderly sellout of Units, which is ultimately for the benefit and protection of Owners and Mortgagees. The "**Development Period**", as specifically defined in the *Section 1.18* of this Declaration, means the seven (7) year period beginning on the date this Declaration is Recorded, unless such period is earlier terminated by Declarant's Recordation of a notice of termination. "**Declarant Control Period**" is defined in *Section 1.16* of this Declaration.

A.2. Declarant Control Period Reservations. For the benefit and protection of Owners and Mortgagees, and for the purpose of ensuring a complete and orderly build-out and sellout of the Units, Declarant will retain control of the Association, subject to the following:

A.2.1. Duration. The duration of Declarant Control Period is from the date this Declaration is Recorded until the earlier of either: (i) one hundred twenty (120) days after seventy-five percent (75%) of the total number of Units have been conveyed to purchasers of Units other than Declarant, or (ii) seven (7) years have elapsed from the conveyance of the first Unit to a purchaser other than Declarant.

A.2.2. Budgets. During the Declarant Control Period, Declarant and the Declarant-appointed Board will establish projected budgets for the Units as a fully developed, fully constructed, and fully occupied residential community with a level of services and maintenance commensurate with those provided in similar types of developments, using cost estimates that are current for the period in which the budget is prepared. The budgets may not include enhancements voluntarily provided by Declarant to facilitate the marketing of Units.

A.2.3. Officers and Directors. During the Declarant Control Period, the Board may consist of three Persons. Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be members or owners, and each of whom is indemnified by the Association as a "Leader," subject to the following limitation: within one hundred twenty (120) days after twenty-five percent (25%) of the number of Units that may be created under this Declaration have been conveyed to Owners other than Declarant, at least one member of the Board must be elected by Owners other than Declarant.

A.2.4. Obligation for Assessments. For each Unit owned by Declarant, Declarant is liable for Regular Assessments, Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments in the same manner as any Owner.

A.2.5. General Common Elements. At or prior to termination of Declarant Control Period, if title or ownership to any General Common Element is capable of being transferred, Declarant will convey title or ownership to the Association. At the time of conveyance, the General Common Element will be free of encumbrance except for the property taxes, if any, accruing for the year of conveyance and liens established to secure assessments and charges under this Declaration. Declarant's conveyance of title or ownership is a ministerial task that does not require and is not subject to acceptance by the Association or the Owners.

A.3. Development Period Rights; Representations & Reservation. Declarant makes the following representations and reservations regarding Declarant's development of the Regime:

A.3.1. Leasehold. No part of the Regime is a leasehold condominium, as defined by the Act.

A.3.2. Annexation. The Property is subject to expansion during the Development Period. During the Development Period, Declarant may annex additional property into the Regime, and subject such property to this Declaration and the jurisdiction of the Association by Recording an amendment or supplement of this Declaration, executed by Declarant, with the Register of Deeds of Davidson County, Tennessee.

A.3.3. Creation of Units. When created, the Property includes two hundred and ten (210) Residential Units and one (1) Commercial Unit; however, Declarant reserves the right to create up to two hundred thirty (230) Units. Declarant's right to create Units is for a term of years and does not require that Declarant own a Unit at the time or times Declarant exercises its right of creation. The instrument creating additional units must include a revised schedule of Common Interest Allocation.

A.3.4. Changes in Development Plan. During the Development Period, Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Modifications may include, without limitation, the subdivision or combination of Units, changes in the sizes, styles, boundaries, configurations, materials, and appearances of Units, and Common Elements.

A.3.5. Architectural Control. During the Development Period, Declarant has the absolute right of architectural control.

A.3.6. Transfer Fees. During the Development Period, Declarant will not pay transfer-related and resale certificate fees.

A.3.7. Website & Property Name. During the Development Period, Declarant has the unilateral right to approve or disapprove uses of any website purporting to serve the Property or the Association, all information available on or through the Property or Association website, if any, and all uses of the property name by the Association.

A.3.8. Statutory Development Rights. As permitted by the Act, Declarant reserves the following Development Rights which may be exercised during the Development Period: (i) to add real estate to the Regime; (ii) to create Units, General Common Elements, and Limited Common Elements within the Property; (iii) to reallocate General Common Elements as Limited Common Elements (including Residential LCE or Commercial LCE); (iv) to grant licenses for parties who are not Unit Owners to use portions of the General Common Elements or Limited Common Elements, subject to an obligation to pay an equitable share of the Common Expenses attributable to the licensed General Common Elements or Limited Common Elements; (v) to subdivide Units or convert Units into Common Elements; and (vi) to withdraw from the Regime any portion of the real property marked on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights," provided that no Unit in the portion to be withdrawn has been conveyed to an Owner other than Declarant.

A.3.9. Development Rights Reserved. Regarding portions of the real property shown on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights," if any, Declarant makes no assurances as to whether Declarant

will exercise its Development Rights, the order in which portions will be developed, or whether all portions will be developed. The exercise of Development Rights as to some portions will not obligate Declarant to exercise them as to other portions.

A.3.10. Amendment. During the Development Period, Declarant may amend this Declaration and the other Documents, without consent of other Owners or any mortgagee, for the following limited purposes:

(i) To meet the requirements, standards, or recommended guidelines of an Underwriting Lender to enable an institutional or governmental lender to make or purchase mortgage loans on the Units.

(ii) To correct any defects in the execution of this Declaration or the other Documents.

(iii) To add real property to the Regime, in the exercise of statutory Development Rights. In conjunction with adding real property to the Regime, the Declarant may impress use restrictions upon the Common Elements of the additional real property which may limit the right to access additional or existing amenities within the Property.

(iv) To create Units, General Common Elements, and Limited Common Elements in the exercise of statutory Development Rights.

(v) To subdivide, combine, reconfigure Units or convert Units into Common Elements, in the exercise of statutory Development Rights.

(vi) To reallocate General Common Elements as Limited Common Elements (including Residential LCE or Commercial LCE).

(vii) To withdraw from the Regime any portion of the real property marked on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights" in the exercise of statutory Development Rights.

(viii) To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.

(ix) To change the name or entity of Declarant.

A.4. Special Declarant Rights. As permitted by the Act, Declarant reserves the below described Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, during the Development Period. Unless terminated earlier by an amendment to this Declaration executed by Declarant, any Special Declarant Right may be exercised by Declarant so long as Declarant holds a Development Right to create additional

Units or Common Elements or Declarant owns a Unit, whichever ceases last. Earlier termination of certain rights may occur by statute.

(i) The right to complete or make Improvements indicated on the Plat and Plans.

(ii) The right to exercise any Development Right permitted by the Act and this Declaration.

(iii) The right to use Units owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of any Unit

(iv) For purposes of promoting, identifying, and marketing the Regime, Declarant reserves an easement and right over and across the Regime: (A) for the placement and maintenance of signs, banners, decorations, marketing materials, a sales office, a leasing office, a business office, promotional facilities and model Units, together with such other facilities as in the opinion of Declarant may be reasonably required, convenient or incidental to the completion, renovation, improvement, development, sale or lease of any Unit; and (B) for marketing events, promotional events and activities. In connection with the hosting of promotional events and activities, Declarant shall be permitted to have live entertainment and any noise created therefrom shall not be deemed a nuisance and shall not cause Declarant and its representatives, agents, associates, employees, tenants and guests to be deemed in violation of any provision of the Documents.

(v) The right to make the Property part of a larger condominium or planned community.

(vi) The right to make the condominium subject to a master association.

(vii) Declarant has an easement and right of ingress and egress in and through the Property for the placement or installation of signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping, including items and locations that are prohibited to other Owners and Occupants.

(viii) Declarant has an easement and right of ingress and egress in and through the Common Elements and Units owned or leased by Declarant for purposes of constructing, maintaining, managing, and marketing the

Units, and for discharging Declarant's obligations under the Act and this Declaration.

(ix) The right to appoint or remove any Declarant-appointed officer or director of the Association during the Declarant Control Period consistent with the Act.

A.5. Additional Easements and Rights. Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, for the duration of the Development Period:

(i) An easement and right to erect, construct, and maintain on and in the Units owned or leased by Declarant and the Common Elements whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, and marketing of the Units.

(ii) The right to sell or lease any Unit owned by Declarant. Units owned by Declarant are not subject to leasing or occupancy restrictions or prohibitions contained elsewhere in this Declaration or the other Documents.

(iii) The right of entry and access to all Units to perform work, if any, for the benefit of the Unit being entered, adjoining Units, or Common Elements. Requests for entry must be made in advance for a time reasonably convenient for the Owner who may not unreasonably withhold consent.

(iv) An easement and right to make structural changes and alterations on Common Elements and Units used by Declarant as models and offices, as may be necessary to adapt them to the uses permitted herein.

(v) An easement over the entire Property, including the Units, to inspect the Common Elements and all Improvements thereon and related thereto to evaluate the maintenance and condition of the Common Element Improvements.

(vi) The right to provide a reasonable means of access for the public through the gated entrance, if any, in connection with the active marketing of Units by Declarant, including the right to require that the gates be kept open during certain hours or on certain days.

Tennessee Certification of Electronic Document

I, Heath Pennington, do hereby make oath that I am a licensed attorney and/or the custodian of the original version of the electronic document tendered for registration herewith and that this electronic document is a true and exact copy of the original document executed and authenticated according to law on September 9, 2026 (date of document).

Affiant Signature

9/30/26
Date

State of TEXAS

County of TRAVIS

Sworn to and subscribed before me this 30TH day of SEPTEMBER, 2026.

Notary's Signature

MY COMMISSION EXPIRES: 8-28-2027

NOTARY'S SEAL

Jarrett Frank Hayman
Notary Public, State of Texas
Notary ID 13214959-3
My Commission Exp. 08-28-2027

Tennessee Certification of Electronic Document

I, Heath Pennington, do hereby make oath that I am a licensed attorney and/or the custodian of the original version of the electronic document tendered for registration herewith and that this electronic document is a true and exact copy of the original document executed and authenticated according to law on September 9, 2026 (date of document).

Affiant Signature

9/30/26
Date

State of TEXAS

County of TRAVIS

Sworn to and subscribed before me this 30TH day of SEPTEMBER, 2026.

Notary's Signature

MY COMMISSION EXPIRES: 8-28-2027

NOTARY'S SEAL

Jarrett Frank Hayman
Notary Public, State of Texas
Notary ID 13214959-3
My Commission Exp. 08-28-2027