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Robert T. Kelly, Director, Recorder Of Deeds

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Title of Document: Amended and Restated Declaration of Condominium for The Vogue Condominiums

Date of Document: May 28, 2015

\*Grantor(s): CML-MO HAF, LLC

\*Grantee(s): (A Declaration)

Grantee(s) Mailing Address: c/o Rialto Capital Advisors, LLC  
790 NW 107 Avenue, Suite 400  
Miami, Florida 33172

Legal Description: <sup>A-P</sup> See Exhibits to the attached Amended and Restated Declaration of Condominium for The Vogue Condominiums

Reference Book and Page(s): *Instrument No. 2008E0024088*

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**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM  
FOR  
THE VOGUE CONDOMINIUMS**

This AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR THE VOGUE CONDOMINIUMS ("Amended and Restated Declaration") is hereby made and entered into as of this 28th day of May, 2015 (the "Effective Date") by CML-MO HAF, LLC, a Florida limited liability company ("Current Declarant") and the other signatory parties hereto, each of whom currently own a Residential Unit in the Condominium (collectively "Unit Owner Signatories")

**RECITALS**

A The Original Declarant executed the Original Declaration and Original Plat (as such terms are defined in Article I, it being agreed that all capitalized terms not otherwise defined shall have the meanings ascribed to them in Article I), which submitted the Original Property to the provisions of the Act. The Original Property is currently subject to the terms and conditions of the Original Declaration and Original Plat.

B. On March 7, 2011, LRF Trustee, LLC, a Missouri limited liability company, foreclosed certain property securing a loan to the Original Declarant which was held by Current Declarant on such date (the "Foreclosed Property"). The Foreclosed Property included, among other property, (i) the Foreclosed Condominium Property, and (ii) the Parking Deck

C Under that certain Trustee's Deed (the "Trustee's Deed") Recorded as Instrument No. 2011E0023445 on March 11, 2011 ("Transfer Date"), title to the Foreclosed Condominium Property and Parking Deck was transferred to Current Declarant in the condition as the same had been constructed by Original Declarant. In accordance with Section 448.3-104.5(4) of the Act, the Trustee's Deed contained a declaration of the intention of Current Declarant to hold all special declarant rights of the Original Declarant set forth in the Original Declaration and provided for in the Act solely for transfer to another Person or for the subsequent invocation by Current Declarant.

D. As of the Effective Date, the Current Declarant and the Unit Owners Signatories constitute the Unit Owners of all of the Units in the Condominium and have determined that, due to the Inconsistencies, to effectuate the addition of the Parking Deck into the Condominium, and for other reasons, certain changes are necessary to be made at this time to the Original Declaration and Original Plat. For this purpose and pursuant to Section 448.2-117(4) of the Act, all of the Unit Owners desire to amend and restate the Original Declaration and Original Plat in their entirety.

NOW, THEREFORE, (i) the Original Declaration is hereby amended and restated in its entirety by this Amended and Restated Declaration, which entirely supersedes the Original Declaration, and (ii) the Original Plat is hereby amended and restated in its entirety by the Amended and Restated Plat, which entirely supersedes the Original Plat. Notwithstanding the foregoing, the rights, privileges, easements and restrictions set forth the Original Declaration and

Original Plat, as restated and amended by this Amended and Restated Declaration and the Amended and Restated Plat, shall have the same priority of lien as the Original Declaration and Original Plat

## ARTICLE I DEFINITIONS

The following terms, as used herein or elsewhere in any condominium documents relating to THE VOGUE CONDOMINIUMS, unless otherwise provided, shall have the meanings hereinafter set forth. In addition to defining the terms hereinafter set forth, the definitions contained in this Article I also contain substantive provisions

1.1 – Act The Uniform Condominium Act of Missouri, being Chapter 448.1-101 through 448.4-120 of the Missouri Revised Statutes, as the same may be amended from time to time. The provisions of the Act and those amendments thereto which by their terms would be applicable to this Condominium shall apply to and govern the operation of the Condominium, except to the extent that contrary provisions, not prohibited by the Act as so amended, are contained in this Declaration (including the Plats and Plans) or the By-Laws of the Association

1.2 – Association The Unit Owners Association shall be the Vogue Condominiums Owners Association, Inc., a Missouri not-for-profit corporation, or such other entity as subsequently authorized by the Unit Owners as provided in Section 448.3-101 of the Act. Membership in the Association shall be mandatory for each Unit Owner. The Association shall not be dissolved without the consent of the City, unless the maintenance responsibilities set forth herein are assigned with the consent of the City, to a person or entity with the financial, legal and administrative ability to perform such obligations.

1.3 – Amended and Restated Declaration. Shall have the meaning ascribed to it above.

1.4 – Amended and Restated Plat. Shall mean that certain plat entitled “VOGUE CONDOMINIUMS REPLAT,” a copy of which is attached hereto, and which will be Recorded simultaneously with the Recording of the Amended and Restated Declaration.

1.5 – By-Laws. The By-Laws of the Association

1.6 – City The City of Lee’s Summit, Missouri.

1.7 – Commercial Units. The four (4) Commercial Units as delineated and depicted on the Amended and Restated Plat as Units 311, 313, 315 and 317, subject to subdivision thereof as provided in Section 13.2. Any delineations or depictions with respect to the Commercial Units (or any of them) to the contrary contained in the Original Declaration and Original Plat are hereby superseded in their entirety. Each Commercial Unit has a single level

1.8 – Common Elements All portions of the Condominium shown on the Plat other than the Units as defined in the Declaration. The Common Elements include the Parking Deck and all areas that are shown on the Plat as a “Common Element” or “C.E.” or any similar

designations. The Limited Common Elements include all areas that are shown on the Plat as a "Limited Common Element" or "L.C.E." or any similar designations.

1.9 – Common Expenses Expenditures made by or financial liabilities of the Association, together with any allocations to reserves. All Unit Owners shall be liable for the costs of operation, maintenance, management, repair, replacement and improvement of the Common Elements. Except as otherwise provided in Section 7.4 hereof with respect to the Commercial Units and as otherwise specifically provided herein with respect to the allocation of expenses for certain Limited Common Elements, the costs of such maintenance shall be allocated and assessed against each of the Units in proportion to the total number of Units. Specifically, each Unit shall be allocated and assessed 1/22<sup>th</sup> of the cost of the maintenance of the Common Elements so that the sum of the fractional share of such costs allocated to each of the Units totals one (1).

1.10 – Common Expense Liability That portion of the Common Expenses and any other costs of operating, improving, insuring, maintaining, managing, repairing and replacing the Property, including, without limitation, Limited Common Elements, which is to be paid by each Unit Owner in accordance with this Declaration. The proportion so assigned may be changed as a result of an increase or decrease in the number of Units contained in the Condominium based on the total number of Units then existing.

1.11 – Condominium The Property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions.

1.12 – Current Declarant Shall have the meaning ascribed to it above.

1.13 – Declarant. Declarant means the Current Declarant and any subsequent Persons who shall become Declarant under the provisions of this Declaration and the Act. Current Declarant and any subsequent Declarant may assign their respective rights as Declarant under this Declaration to a successor Declarant, by Recording a written assignment to such effect.

1.14 – Declaration. The Original Declaration, as amended and restated in its entirety by this Declaration, and as further amended from time to time pursuant to the provisions of this Declaration and the Act.

1.15 – Declarant Control Period The period commencing on the date of recording of the Original Declaration (March 4, 2008) and continuing until the earlier of (a) the date sixty (60) days after Declarant has conveyed seventy-five percent (75%) of the maximum number of Units which may be created pursuant hereto (as set forth in Section 2.9 hereof) to Unit Owners other than any Declarant; (b) the date two (2) years after any Declarant has ceased to offer Units for sale in the ordinary course of business; (c) the date two (2) years after any development right to add new Units was last exercised; or (d) the tenth (10) anniversary of the date of recording of the Original Declaration. For the purpose of the foregoing, subdivision and resubdivision of existing Units and of new Units by the Declarant shall be deemed to be the exercise of the development right to add new Units. Within sixty (60) days after the conveyance

of twenty-five percent (25%) of the maximum number of Units which may be created (as set forth in Section 2.9 hereof) to Persons other than Declarant, at least one member of and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by the Unit Owners other than the Declarant. Not later than sixty (60) days after the conveyance of fifty percent (50%) of the maximum number of Units which may be created (as set forth in Section 2.9 hereof) to Unit Owners other than Declarant, not less than one-third (1/3) of the Executive Board shall be elected by the Unit Owners other than the Declarant. Upon the termination of the Declarant Control Period, all of the Executive Board shall be elected by the Unit Owners (including Declarant with respect to the Units owned by Declarant)

1.16 – Development Period: Development Rights. The “Development Period” is the period commencing on the date of Recording of the Original Declaration until the earlier of (a) such time as Declarant has sold and conveyed to third parties (other than Declarant), all of the Units which may be created by this Declaration, or (b) the twentieth (20<sup>th</sup>) anniversary of the date of recording of the Original Declaration. The “Development Rights” are the right or combination of rights, reserved by Declarant in the Declaration to subdivide and resubdivide Units or convert Units into Common Elements; and to withdraw the Property or any part thereof from the Condominium; and any other Development Rights as more particularly set forth in Article XIII hereof:

1.17 – Executive Board. The Board of Directors of the Association authorized to act on behalf of the Association.

1.18. – Foreclosed Condominium Property. The Units and Common Elements located on the Foreclosed Property as of the Foreclosure Date. The Foreclosed Condominium Property is legally described in Exhibit B attached hereto and is incorporated herein by reference, and represents that portion of the Original Property foreclosed by Current Declarant. As of the Transfer Date, the remaining portion of the Original Property was owned by the Unit Owner Signatories.

1.19 – Inconsistencies. The following inaccuracies and mistakes contained within the Original Plat and Original Declaration:

(A) The inclusion of provisions in the Original Declaration pertaining to “Storage Areas” (the “Storage Area Inconsistency”).

(B) The inclusion of provisions in the Original Declaration pertaining to “Outdoor Parking Areas”, “Parking Areas” and “parking spaces” (the “Parking Area Inconsistency”).

(C) The (i) creation of separate legally platted Units associated with each floor of the Residential Units, the balconies attached to such Units, and the Rooftop Outdoor Patios above such Units notwithstanding a statement in the Original Plat that the Condominium shall consist of 14 Residential Units, and (ii) the statement in the Original Plat of there being one (1) Commercial Unit, notwithstanding the depiction on the Original Plat of multiple dimensions of multiple Commercial Units and Section

5.1(b) of the Original Declaration stating that there are Initial Commercial Unit, "Suite A", Initial Commercial Unit, "Suite B", Initial Commercial Unit, "Suite C", and Initial Commercial Unit, "Suite D" within Unit 1000 (mistakenly shown as Unit 2000 on the Plat) (the "Platted Unit Inconsistencies").

1.20 – Limited Common Elements Any shutters, awning, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit (whether or not such items or areas are specifically designated as Limited Common Element on the Plat) In addition to the foregoing, the Rooftop Outdoor Patios are hereby deemed to be Limited Common Elements which are allocated exclusively to the Unit which has access to such Rooftop Outdoor Patio via a staircase in such Unit. The Limited Common Elements constitute a portion of the Common Elements.

1.21 – Occupant. Means and refers to the occupant of a Unit who shall be either the Unit Owner or a lessee pursuant to a written lease having an initial term of at least one (1) year and otherwise satisfying the requirements of Section 16.14

1.22 – Original Declarant. Hartley's Appliance and Furniture, Inc

1.23 – Original Declaration That certain "Declaration of Condominium for the Vogue Condominiums," dated February 28, 2008, and recorded in the Recorder's Office on March 4, 2008 as Instrument 2008E0024088

1.24 – Original Plat That certain Plat entitled "THE FINAL PLAT OF VOGUE CONDOMINIUMS" dated February 29, 2008 and recorded simultaneously with the Original Declaration on March 4, 2008 as Instrument No. 2008E0024087 in the Recorder's Office.

1.25 – Original Property. All the land, property and space, all improvements and structures erected, constructed and contained therein or thereon, including the buildings and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, originally submitted to the provisions of the Act by Original Declarant and described in Exhibit A

1.26 – Parking Deck. The land legally described in Exhibit C attached hereto and incorporated herein by reference, together with the parking facilities and other improvements from time to time located thereon

1.27 – Person. A natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property

1.28 – Plat The Original Plat, as amended and restated in its entirety by the Amended and Restated Plat, and as subsequently further amended from time to time in accordance with the provisions of the Declaration and the Act and each and every subsequent plat of survey of the Property submitted pursuant to the provisions the Act, which may include a plat or survey of the Units in the Property submitted to the Act, and which may consist of a three-dimensional

horizontal and vertical delineation of all such Units, and shall include any additional portions of the Property added by subsequent amendment. The Plat shall include amendments to the Plat subdividing and resubdividing Units or converting Units (or portions thereof) to Common Elements.

1.29 – Property. All the land, property and space, all improvements and structures erected, constructed and contained therein or thereon, including the buildings and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, submitted to the provisions of the Act pursuant to this Declaration and legally described in Exhibit D attached hereto and incorporated herein by reference. The Property is comprised of the Original Property and the Parking Deck, and includes Units, Common Elements, and Limited Common Elements.

1.30 – Record, Recorded. To record in the Recorder's Office; "Recorded" means that a document or instrument has been placed of record.

1.31 – Recorder's Office. The office of the Recorder of Deeds in Jackson County, Missouri.

1.32 – Residential Units. The 18 residential units depicted on the Plat which exist as of the date hereof. Each Residential Unit consists of two or more levels.

1.33 – Rooftop Outdoor Patios. The areas designated as such on the Amended and Restated Plat, which shall be Limited Common Elements as provided in Section 1.19 hereof. The Rooftop Outdoor Patio shall include the pavers thereon.

1.34 – Special Declarant Rights. Rights reserved in the Declaration (including without limitation, Section 13.2) for the benefit of Declarant to complete improvements indicated on the Plat, to exercise the Declarant Rights, to maintain sales offices, management offices, signs advertising the Condominium, and models, to use easements through the Common Elements for the purpose of making improvements within the Condominium, to make the Condominium subject to a master association; or to appoint or remove any officer of the Association or any master association, or any Executive Board member during the Declarant Control Period.

1.35 – Unit. A physical portion of the Condominium designated for separate ownership or occupancy. Each Unit is designated and delineated on the Plat, and is designated by this Declaration for separate ownership. The boundaries of a Unit, both as to vertical and horizontal planes, are shown on the Amended and Restated Plat, and are (i) with respect to the Commercial Units, the undecorated surfaces of the perimeter walls facing the interior of the Commercial Unit, the undecorated surfaces of the ceiling facing the interior of the Commercial Unit, and the top most surfaces of the subflooring or concrete floor, and (ii) with respect to each Residential Unit, the undecorated surfaces of the perimeter walls facing the interior of the Residential Unit, the undecorated surfaces of the ceiling facing the interior of such Residential Unit which is located on the highest floor thereof, and the top most surfaces of the subflooring or concrete floor on the lowest floor of such Residential Unit. Each Unit includes the decoration on the surfaces of such perimeter walls, ceilings and subflooring, including, without limitation, all

paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated surfaces thereof, and also includes all spaces, interior partitions and other fixtures and improvements within such boundaries, and also includes heating, hot water and air conditioning equipment within a Unit and/or which exclusively serves such Unit, even though located outside of the Unit

1.36 – Unit Owner. The Person or Persons, individually or collectively, who have taken fee simple ownership of a Unit. Each Unit Owner at the time of purchase shall be furnished with a copy of the Declaration.

1.37 – Votes. Each Unit shall have one (1) Vote, such Vote to be exercised as provided in the Declaration and By-Laws. In no event shall more than one vote be cast with respect to ownership of any Unit.

## ARTICLE II SUBMISSION OF THE PROPERTY TO THE ACT

2.1 – Submission Each of Declarant and the Unit Owner Signatories hereby submits the Property to the Act and this Declaration.

2.2 – Name The Property shall hereafter be known as THE VOGUE CONDOMINIUMS.

2.3 – Division of Property Into Separate Owned Units Notwithstanding anything to the contrary contained in the Original Declaration and Original Plat, Declarant, pursuant to the Act, and to reestablish a plan of condominium ownership for the Units, does hereby redivide the Property into separate Units and does hereby designate such Units for separate ownership as shown on the Amended and Restated Plat. The re-designation of the Units as shown on the Amended and Restated Plat shall operate to fully and automatically correct the Platted Unit Inconsistencies. Each of the Unit Owners hereby consent to the foregoing and agree to take such further action(s) as shall be reasonably necessary to correct the Platted Unit Inconsistency with respect to their Unit, including execution of the Amended and Restated Plat, the execution and Recording of any corrective deeds, and the execution and Recording any other documents necessary to effectuate the foregoing.

2.4 – Identification of Units. The Units (including Limited Common Elements allocated to such Units) in the buildings located on the Property have been legally described on the Plat. Each Unit constitutes a fee simple legal estate in the portion of the Property encompassed by the Unit. The Unit Owner of a Unit holds and owns fee simple title to the particular Unit. Every deed, lease, mortgage or other instrument may legally describe a Unit by its identifying number or symbol as shown on the Plat, and as set forth in the Declaration, and every such description shall be deemed good and sufficient, and shall be deemed to convey, transfer, encumber or otherwise affect the owner's interest, even though the same is not expressly mentioned or described therein. The description of each Unit shall include all rights and privileges of said Unit, along with the Limited Common Elements appurtenant thereto.



2.5 – Ownership of Certain Items No Unit Owner shall own any pipes, wires, conduits, public utility lines, sanitary sewer lines or structural components, elements or members running through his Unit and serving or supporting more than his Unit.

2.6 – Limited Common Elements. The Limited Common Elements, if any, serving or designed to serve each respective Unit are hereby allocated solely and exclusively to each Unit, as defined in Section 448.2-102 of the Act. The inclusion of the Rooftop Outdoor Patios and balconies as Limited Common Elements shall operate to correct the Platted Unit Inconsistency. Each of the Unit Owners hereby consent to the foregoing and agree to take such further action(s) as shall be reasonably necessary to correct the Platted Unit Inconsistency with respect to their Unit, including execution of the Amended and Restated Plat, the execution and Recording of any corrective deeds, the execution and Recording any other documents necessary to effectuate the foregoing

2.7 – Covenants Against Partition. As provided in Section 448.2-107(5) of the Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated, is void. Nothing contained herein shall prevent partition of a Unit between co-owners, if a co-owner has legal right thereto, except that any such partition shall not be in kind.

2.8 – No Right of First Refusal. This Declaration does not contain any provisions for right of first refusal to purchase, option to purchase, or similar restrictions. Each owner may freely convey and transfer his Unit, subject only to the terms and conditions of this Declaration, the Plat, the By-Laws, and the applicable zoning ordinances.

2.9 – Maximum Number of Units The maximum number of Units to be included in the Condominium shall be twenty two (22), consisting of eighteen (18) Residential Units and four (4) Commercial Units (subject to subdivision of the Commercial Units into a total of not more than eight (8) Commercial Units as provided in Section 13.2, which would thereby increase the total number of Units to not more than 26)

### ARTICLE III COMMON ELEMENTS

3.1 – Common Elements. The Common Elements include.

(a) The Property, excepting the Units, and including without limitation, the Parking Deck, gardens, lawns and sidewalks.

(b) All electrical wiring throughout the Property, except that within Units (other than as provided in Section 2.5), all pipes, wires, cables and conduits throughout the Property, except that within Units (other than as provided in Section 2.5); all utility installations, sanitary sewer facilities, laundry facilities and connections for gas, sanitary sewer, electricity, light, water and plumbing, except those within Units. Notwithstanding the foregoing, any such installation exclusively serving only one Unit, whether such installation is located wholly or partially within

or outside said Unit, shall be considered as being "within" and being a part of said Unit which is exclusively served by such installation. In addition, any heating, hot water and air conditioning equipment exclusively serving only one such Unit, whether such equipment is located wholly or partially within or outside said Unit, shall be considered as being "within" and being a part of said Unit which is exclusively served by such equipment.

(c) The foundations, exterior walls and interior walls separating Units (excluding all wall coverings and glass surfaces), roofs (subject to the provisions hereof with respect to the Rooftop Outdoor Patios), gutters, downspouts, and all other common portions of the Property not included within Units.

(d) Any other structures and facilities which may at any time be situated on the Property excepting the Units.

3.2 – Ownership and Taxes. The undivided interests in the Common Elements are hereby vested in the Unit Owners. Each Unit Owner shall own an undivided interest in the Common Elements as a tenant in common with all the other Unit Owners. The Association shall pay all taxes for the Common Elements.

3.3 – Repair and Maintenance. The Association shall manage, repair, maintain, replace, improve, and operate the Common Elements and keep them, and all improvements thereon, in good condition.

3.4 – Nuisance Abatement. In the event that any condition of the Common Elements is determined to be a nuisance or in disrepair in violation of any provision of the Lee's Summit Property Maintenance Code, and such disrepair or nuisance is abated pursuant to procedures otherwise provided in the Lee's Summit Property Maintenance Code, the costs to abate the nuisance created by the failure to maintain the Common Elements shall be assessed proportionally against the individual Units within the Property, in an equal amount per individual Unit, pursuant to the tax bill provisions of the Lee's Summit Property Maintenance Code, and the amount caused by the Finance Director to be assessed annually by tax bill shall not exceed five percent (5%) of the assessed valuation per individual Unit.

3.5 – Permanence This Declaration pertaining to the Common Elements shall be permanent.

3.6 – Acceptance of Condition of Common Elements. Each of the Unit Owners hereby accept the Common Elements in their current condition and state "as is—where is", without any obligation on the part of Current Declarant or any successor Declarant to make any repairs thereto, replacements thereof or to cure any defects therein or errors in design or construction. Each of the Unit Owners acknowledges and agrees that (i) the Original Declarant constructed the Common Elements and that they were not constructed by the Current Declarant, and (ii) Current Declarant and any successor Declarant shall have no liability arising from or out of any such defects or errors in design or construction.

## ARTICLE IV EASEMENTS

4.1 – Encroachment. Through construction, settlement or shifting of any building, should any part of the Common Elements encroach upon any part of a Unit, or should any part of a Unit encroach upon any part of the Common Elements or upon any other Unit, easements for the maintenance of any such encroachment and for the use of the space required thereby are hereby established and shall exist for the benefit of the Unit Owner or the Common Elements, as the case may be, for as long as encroachment exists, PROVIDED, HOWEVER, that no easement shall be created in the event the encroachment is due to the willful conduct or misconduct of the Unit Owners

4.2 – Easements to Unit Owners. Perpetual easements are hereby established for all Unit Owners at the Property, their families, tenants, guests, invitees and servants, for use and enjoyment of all Common Elements. In addition, each Unit Owner hereby is granted a perpetual non-exclusive easement through the common hallways of the Common Elements for ingress and egress to and from, and for access to, the Unit owned by such Unit Owner. In addition thereto, each Unit Owner is hereby granted an exclusive perpetual easement to use and occupy any portion of any Rooftop Outdoor Patio, balcony, porch, exterior doorway, or terrace which adjoins his Unit and to which he has sole access, PROVIDED, HOWEVER, that no Unit Owner shall enlarge, modify, improve, decorate or landscape any such balcony, porch or terrace without the prior written consent of the Executive Board

4.3 – Easements in Gross Each Unit Owner shall have an easement in common with the owners of the other Units to use all pipes, wires, ducts, cables, conduits, public utility lines, structural components and other Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the owners of other Units to use the pipes, wires, ducts, cables, conduits, public utility lines, structural components and other Common Elements located in such Unit and serving other Units. The Executive Board, its appointees, employees or agents, shall have the right of access to each Unit to inspect same and remove violations therefrom and to inspect, maintain, repair or replace the Common Elements contained wholly or partially therein. The Property shall be subject to a perpetual easement to the Association, its appointees, employees or agents, for ingress and egress to perform its obligations and duties required by this Declaration and By-Laws. Should it be necessary to enter a Unit to inspect and remove a violation or to inspect, maintain, repair or replace any Common Element, the appointees, employees or agents of the Executive Board shall be entitled to entrance by exhibiting to the Unit Owner or Occupant an order from the Board. Each Unit Owner and/or Occupant of a Unit shall not unreasonably interfere with such necessary entry. Forced entry, deemed necessary by the Executive Board, shall not subject the Executive Board, its appointees, employees or agents to trespass, but any damage to the Unit as a result of forced entry or as a result of any repair of a Common Element from within the Unit shall be repaired by the Executive Board as part of the Common Expense. In the event any Unit Owner or Occupant shall fail to provide access to the Unit as herein provided, the Executive Board may (in addition to exercising other lawful remedies) obtain an order of court for such access, and the costs and reasonable attorney fees shall be taxed against the Unit Owner or Occupant.

4.4 – Utility Easements. Easements shown on the Plat or as may be subsequently granted by Declarant or the Executive Board, are established and dedicated for sanitary and storm sewers, electricity, gas, water, and telephones and for all other public utility purposes, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, drainage, gas mains, telephone wires and equipment and electrical conduits and wires over, under, along and on the portions of the Common Elements

4.5 – Effect of Easements. All easements and rights herein established shall run with the land and inure to the benefit of and be binding upon the Declarant, its successors or assigns, and any Unit Owner, purchaser, mortgagee or other person having an interest in any portion of the Property herein described, whether or not such easements are mentioned or described in any deed of conveyance.

## ARTICLE V UNIT OWNERS' RIGHTS AND RESTRICTIONS

The use of the Units and Common Elements is restricted as follows:

### 5.1 – Use Restrictions

(a) Residential Units. Each of the Residential Units are hereby restricted to single-family residential use. For all purposes of this Section 5.1 and this Declaration, “residential use” of a Unit includes Home Business Uses. “Home Business Use” means use of a Residential Unit for any occupation, business or commercial activity carried on, at or in a Residential Unit by the Unit Owner, member of the immediate family of the Unit Owner, any tenant of the Unit Owner residing at the Residential Unit, or other occupant of such Residential Unit, which occupation, business or activity employs in the Residential Unit no more than one (1) nonrelated employee, and which use of the Residential Unit is otherwise in strict compliance with all applicable laws, ordinances and occupancy permit requirements relating to home businesses and home occupations applicable to property zoned residential, including (without limitation) the applicable City Zoning Ordinances and Occupancy Permit Requirements for residential property, provided, however, that, the following business uses are not Home Business Uses, and are forbidden in the Residential Units: (a) Dog grooming; (b) Provision of care, instruction or training of more than five (5) children or adults, at one time, not including the Occupants of the Residential Unit, whether or not for profit; (c) Any wholesale, jobbing or retail business, unless it is conducted entirely by telephone and/or mail; (d) Any manufacturing business; (e) A clinic or hospital; (f) A barber shop or beauty parlor; (g) A stable, animal hospital, dog kennel or dovecote; (h) A restaurant; (i) Any activity that produces substantial noise, or noxious odors or other emanations, or employs or produces flammable matter or hazardous materials; and (j) Any occupation which involves the use of any mechanical equipment other than what is usual for purely domestic or hobby purposes, or what is usual for a small business, professional or medical office.

(b) Commercial Units. The Commercial Units are restricted to retail, office and other commercial uses. Except as expressly restricted by Section 5.1(c) hereof, the permitted commercial uses of the Commercial Units expressly includes any and all commercial uses permitted under the zoning applicable to the Commercial Units.

(c) Additional Restrictions on Use and Occupancy of Commercial Units

(1) Nuisances. The Commercial Units may not be used or occupied directly or indirectly for any of the following uses or purposes, to-wit: a theatre, an auditorium or meeting hall, a dance hall; an off-track betting business; a billiard or pool hall; a bingo parlor; a facility for any other games of chance; a massage parlor, a game arcade, a bowling alley, a skating rink, an automobile sales facility; a car wash, car repair or car rental facility or agency; a night club; an adult book, adult video tape or adult novelty store; an adult theatre, a second hand store, a flea market; or a liquidation store. In addition, users of the Commercial Units may not store or handle any hazardous materials or substances that could create any hazard or danger to the Residential Units and the Occupants thereof.

(2) Hours of Retail Business Operations. With respect to any Commercial Units that are used and operated as retail business establishments open to the general public for retail business, the hours of operation thereof shall be restricted as follows – such retail business establishments shall be closed for business to the general public between the hours of 1:30 a.m. each morning to 6:00 a.m. on the same morning, and may be open for business to the general public only from 6:00 a.m. each morning, until 1:30 a.m. on the next succeeding day; provided, however, that so long as the business establishment is in fact closed for business to the general public between the hours of 1:30 a.m. each morning to 6:00 a.m. on the same morning, then other incidental activities business (such as deliveries, stocking, cleaning, office activities, etc.) may take place and be conducted commencing at 5:00 a.m. each morning, and may continue to 2:30 a.m.

5.2 – Ownership by Entity. In the event that other than a natural person is a Unit Owner, said entity shall, prior to the purchase of such Unit, designate the person who is to be the permanent Occupant of such Unit. Such entity shall not thereafter have the right to designate other persons as the Occupants of such unit, whether in substitution of or in addition to the persons initially designated, except with the prior written approval of the Executive Board. All provisions of this instrument shall apply to such designated Occupants as though they had title to such Unit and the entity owning such Unit shall be bound thereby. The provisions hereof shall not be applicable to any business entity formed or controlled by Declarant.

5.3 – Compliance With Declaration, By-Laws and Rules and Regulations. Each Unit Owner and Occupant shall comply with all applicable provisions of the Act, this Declaration, the By-Laws, and such rules and regulations as from time to time are promulgated by the Executive Board or the Association, as amended from time to time, and failure to comply with any such provisions and rules and regulations shall be grounds for an action by the Association, an aggrieved Unit Owner, or any person or class of persons adversely affected, for appropriate relief, including recovery of damages, injunctive relief, or both.

5.4 – Obstructions. There shall be no obstructions on any portions of the Common Elements, or any storage in the Common Elements, without prior written consent of the Executive Board. No clothes, laundry or other articles shall be hung or exposed in any portion

of the Common Elements or on or about the balconies, Rooftop Patio Areas, patios, windows or exteriors of any Unit or Building.

5.5 – Maintenance of Units. Each Unit Owner shall maintain and keep his Unit in good order and repair and shall be responsible, at his own expense, for all furnishing and decorating within the Unit and shall do nothing which will prejudice the structural integrity or will increase the rate of insurance on the building in which his Unit is situated or which would be a violation of law

5.6 – Maintenance, Repair and Replacement of Limited Common Elements. It is understood and agreed that the Association shall be responsible for the maintenance, repair and replacement of all Limited Common Elements (which are intended for use primarily by one Unit Owner). The Association shall assess the cost of the maintenance, repair and replacement of any Limited Common Elements solely to the Unit Owner to which such Limited Common Elements are exclusively allocated, and such Unit Owner shall have the obligation to pay the same. Notwithstanding the foregoing, each Unit Owner shall, at his sole cost and expense, keep the exterior windows on his Unit clean and be responsible for periodic window washing as needed.

5.7 – Animals. No animals shall be raised, bred or kept in any Unit or the Common Elements, except for dogs and cats (but not more than two (2) animals per Unit), or birds and fish of the Unit Owner, provided said animals are of a breed or variety commonly kept as household pets, are not kept or bred for any commercial purpose, are not allowed to run loose on the Property, are kept in strict accordance with such other rules and regulations relating to household pets as may be from time to time adopted or approved by the Executive Board, and do not, in the judgment of the Executive Board, constitute a nuisance to others. Each Unit Owner and each Occupant shall be responsible for picking up after any animal kept in such Unit Owner's or Occupant's respective Unit, including, without limitation, removing any waste deposited by such animal anywhere on the Common Elements or anywhere on the Property. Any pet creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Property upon written notice from the Association. Any Unit Owner permitting its pet to do so shall be fined in an amount to be determined by the Board from time to time, and upon repeated violations, shall be prohibited from keeping pets in his Unit. The Association may designate, from time to time, pet walking and "no pet permitted" areas on the Property and the Common Elements, and other pet related restrictions such as lease requirements.

5.8 – Nuisances. No noxious or offensive activity as determined by regulations issued by the Executive Board shall be carried on in any Unit or in the Common Elements, nor shall anything be done which will become an annoyance or a nuisance to other owners or Occupants, including, without limitation, any noises arising from the use of the balconies or Rooftop Outdoor Patios or emanating from a Unit that can be heard within another Unit and disturbing the Owner or Occupant of such other Unit. No trucks, trailers, campers, recreational vehicles or other large vehicles may be kept or parked upon any portion of the Property, except upon prior written approval of the Executive Board. No junk or derelict vehicles, or other vehicles on which current registration plates are not displayed, shall be kept or parked upon any portion of the Property. Vehicle repairs, other than ordinary light maintenance, are not permitted on any portion of the Property.

5.9 – Business Use No business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any of the Residential Units, except that Home Business Uses are and shall be permitted uses of the Residential Units

5.10 – Use Not to Increase Insurance; No Waste. Nothing shall be done to or kept in any Unit or the Common Elements, and no Unit Owner shall do anything in any Unit or the Common Elements, that will increase any rate of insurance maintained with respect to the Condominium or which would be in violation of law, without the prior written consent of the Executive Board. No Unit Owner or Occupant shall permit anything to be done or to be kept in his Unit or the Common Elements that will result in the cancellation of insurance maintained with respect to the Condominium, or that would be in violation of any law, or that will result in the commission of waste (damage, abuse or destruction) to or in his Unit or the Common Elements.

5.11 – No Alterations Each Unit Owner is prohibited from making any alterations, installations, removals, reconstruction or repair to his Unit or Units which will impair the structural integrity of the building within which such Unit is located, or which will impair any mechanical or electrical system of such building, or which will adversely affect either the thermal or acoustical character of said Unit or building, or which will lessen the support of any portion of the Unit or building, or which will violate any applicable law, ordinance or governmental rule, regulation or order

5.12 – Heating and Air Conditioning Exclusively Serving Units. Each Unit Owner shall, at his sole cost and expense, maintain, repair and replace all heating and air conditioning equipment exclusively serving his Unit. All such equipment not located within the actual physical boundaries of his Unit (e.g. located on a roof of any building within the Condominium or elsewhere outside the Unit) shall be maintained, repaired and replaced only by a reputable contractor reasonably approved by the Executive Board of the Association in advance. The date, time and manner of such contractor's access to such equipment shall also require the advance reasonable approval of the Executive Board. Any damage caused to any Common Elements in connection with the maintenance, repair and replacement of any such equipment may be repaired by the Association at the sole cost and expense of such Unit Owner, and shall constitute a Specially Allocated Expense (as defined in Section 7.1)

5.13 – Rules and Regulations. In addition to the foregoing restrictions, conditions and covenants concerning the use of the Condominium, reasonable rules and regulations not in conflict therewith and supplementary thereto may be promulgated and amended from time to time by the Executive Board or the Association, as more fully provided in the By-Laws.

## ARTICLE VI RESTRICTIONS ON USE

The use of Units and Common Elements is restricted as follows.

6.1 – Leases. All leases, rental and occupancy arrangements shall only be valid if the requirements therefor set forth in Section 16.14 are satisfied as determined by the Association.

6.2 – Modifications. No Unit Owner shall have the right to make any modifications or change to the exterior color or design of the buildings housing such Unit.

6.3 – Signs, Draperies, Blinds, Etc No signs shall be (i) hung or displayed on any Common Element, the interior or exterior of windows (including any window panes in exterior doors), or the exterior of any exterior door, or (ii) placed on walls of any building, or (iii) placed on any fences, and no awnings, canopy, shutter, radio antenna, television antenna, satellite dish, or any other item or fixture of any kind shall be affixed to or placed upon an exterior wall or roof without prior written consent of the Executive Board. Without prior written authorization from the Executive Board, no “For Sale” or “For Rent” signs shall be displayed by any person, firm or corporation other than Declarant or Declarant’s Agent, or any person, firm or corporation who had been the holder of a deed of trust against any Unit and who acquired ownership through foreclosure, or the agent of any of them.

6.4 – Trash Trash, garbage and other waste shall be kept only in sanitary containers, and shall be disposed of in a clean and sanitary manner as prescribed from time to time by the Rules and Regulations of the Association.

6.5 – Appliances and Machines. No Unit Owner shall overload the electric wiring in the building or operate any machines, appliances, accessories or equipment in such a manner to cause, in the sole judgment of the Executive Board, an unreasonable disturbance to others, or connect any machines, appliances, accessories or equipment to the heating or air conditioning systems or plumbing system, without the prior written consent of the Executive Board.

6.6 – Charcoal Burners and Other Open Flame Cooking Devices. There shall be no use of gas grills, charcoal burners, open flame devices or any other open flame cooking devices in any part of the Common Elements, including Limited Common Elements; provided, however, if and to the extent permitted by City ordinance(s) applicable to the Condominium, a single gas grill may be used by a Unit Owner on either of the balcony or Rooftop Outdoor Patio exclusively serving his Unit but only in strict compliance with such ordinance(s) and only if such use shall not increase the rate of any insurance to be maintained by the Association pursuant to Article 9 of this Declaration.

## ARTICLE VII ASSESSMENTS

7.1 – Assessment Liens. The Executive Board shall levy assessments against the Units for Common Expense Liability in accordance with the provisions of this Declaration and as established in the annual budget for operation of the Condominium. Without limiting the foregoing, the Executive Board shall levy assessments against the particular Units for Common Expense Liability that are expressly allocated to the particular Units pursuant to the provisions of this Declaration (“Specially Allocated Expenses”). All such assessments shall be a lien on the Units against which they are assessed, and if any payment thereof becomes delinquent, the lien may be foreclosed and the Unit sold, or a money judgment obtained against the persons liable therefor, all as set forth in the Act. Assessments against a Unit (together with all



applicable interest charges, late charges, administrative charges, costs and attorney's fees) shall be the personal obligation of the Unit Owner of the Unit at the time the assessment is levied. Assessments hereunder shall be levied and assessed against all of the Units hereunder from that date which is the date of the first conveyance of any Unit by Declarant to a purchaser.

7.2 – Prohibition of Exemption from Liability for Contributions Towards Common Expenses. No Unit Owner may exempt himself from liability for his share of the Common Expense Liability assessed by the Association by waiver of the use of enjoyment of any of the Common Elements or by abandonment of his Unit

7.3 – Capital Contribution Upon Each Purchase; Additional Fees. Upon each and every sale of a Unit following the Effective Date, the purchaser thereof shall pay a one-time capital contribution of Two Hundred Fifty and no/100ths Dollars (\$250.00) to the Association, to be used by the Executive Board as it shall determine for the benefit of the Association; provided, however, the foregoing fee shall not apply to the holder, legal owner or beneficiary of any deed of trust encumbering a Unit (or any affiliate thereof) (a "Security Holder") who becomes the owner of a Unit by reason of the foreclosure of such deed of trust or deed given in lieu thereof or the exercise of any remedy or right under the deed of trust, but shall apply to the subsequent purchaser of such Unit from the Security Holder (or its affiliate).

7.4 – Commercial Units. It is acknowledged that the Common Elements, as a whole, provide greater service and benefit to the Residential Units than to the Commercial Units. Accordingly, notwithstanding anything to the contrary contained in this Declaration, each of the Commercial Units shall bear no less than 85% but no more than 95%, as such percentage is established from time to time by the Executive Board, of what the annual Common Expenses allocated to the Commercial Units would have been if the Common Expenses (excluding all Specially Allocated Expenses) were allocated to each of the Commercial Units in proportion to the total number of Units (Residential and Commercial) in the Condominium, and the amount not so allocated to the Commercial Units which is less (varying between 85% and 95%, as above provided) than their proportionate share shall be assessed equally against all the Residential Units. Additionally, as provided above, the Commercial Units shall be assessed their respective Specially Allocated Expenses.

## ARTICLE VIII

### MANAGEMENT, MAINTENANCE, REPAIRS, ALTERATIONS AND IMPROVEMENTS

8.1 – Common Elements by the Association. The management, maintenance, repair, alteration and improvement of the Common Elements shall be the responsibility of the Association, and the cost thereof shall be a Common Expense, subject, however, to the special allocations contained in Section 7.1 hereof. All incidental damage caused to a Unit by any work on or to the Common Elements done by or for the Association shall be repaired by the Association, and the cost thereof shall be a Common Expense

8.2 – Waiver of Claims Anything herein to the contrary notwithstanding, the Association agrees that it shall make no claim against a Unit Owner or Occupant, and each Unit Owner and Occupant agrees that he shall make no claim against the Association, the member of the Executive

Board, officers of the Association, or employees or agents of any thereof, or against any manager retained by the Executive Board or such manager's officers, directors, employees or agents, or other Unit Owners or Occupants, for any loss or damage to any of the Property, or to a Unit or personal property therein, even if caused by the act or neglect of any one or more of such persons, due to a peril insured against by property insurance purchased by the Association or by any Unit Owner or Occupant to the extent of the insurance proceeds recovered under all such policies of insurance, and all such claims, to the extent of such recovery, are hereby waived and released, provided, however, that this waiver shall not apply to vandalism or malicious mischief and shall apply only during such time as the applicable policy or policies shall contain a clause or endorsement to the effect that any such waiver and release shall not adversely affect or impair said recovery thereunder. The Association and each Unit Owner and Occupant agree that their respective insurance policies shall contain such a clause or endorsement, and, upon demand of the Executive Board of the Association, each Unit Owner and Occupant shall furnish evidence of the existence of such a clause or endorsement.

## ARTICLE IX INSURANCE

9.1 – Insurance. The Executive Board in its own name for the use and benefit of the Unit Owners shall be required to purchase and maintain “blanket” or “master” property insurance in an amount not less than one hundred percent (100%) of the then current replacement cost of the Units (including any fixtures and equipment within the Units which are customarily encumbered by residential first mortgages, but otherwise not including the contents of the Units or any improvements or betterments added by the Unit Owner), the Common Elements (including the Parking Deck), the Limited Common Elements, and common fixtures, equipment and personalty, any other real property and improvements thereon and personal property owned by the Association; with such insurance to be obtained based upon said replacement cost at the time the insurance is purchased, and at each renewal date, and such cost being exclusive of land, excavations, foundations and other items normally excluded from property policies. The Executive Board shall also obtain a comprehensive general public liability insurance policy, which policy of insurance shall (i) cover all of the Common Elements, commercial space owned and leased by the Association, if any, and public ways of the Condominium and (ii) insure the members of the Executive Board, their agents and employees and the owners of all Units, against any liability, including medical payments, to the public or to the owners, their invitees, tenants and any other persons who may be on the Property for any reason whatsoever, in the use of any Common Elements, the liability under which insurance shall be not less than One Million Dollars (\$1,000,000) for any one person injured, One Million Dollars (\$1,000,000) for any one accident, and Fifty Thousand Dollars (\$50,000) for property damage. The Executive Board is further authorized to purchase any other insurance coverage and policies in such reasonable amounts as the Executive Board shall deem desirable. Premiums for all such insurance shall be included in the Common Expenses and constitute Common Expense Liability. The property insurance shall be written in the name of the Executive Board as Trustees for each of the Units. Insurance maintained under this Section 9.1 shall cover the Units, but (except for any fixtures and equipment within the Units which are customarily financed by first mortgages) not the contents thereof and not improvements and betterments installed by Unit Owners.

9.2 – Insurance Certificate. Each insurer issuing an insurance policy under Section 9.1 shall issue a certificate of insurance to the Association, and upon written request shall issue a certificate of insurance to any Unit Owner, mortgagee or beneficiary under a deed of trust of No insurer issuing any such policy may cancel or refuse to renew the its policy until thirty (30) day after notice of the proposed cancellation or nonrenewal shall be mailed to the Executive Board, and each Unit Owner and each mortgagee or beneficiary under a deed of trust to whom a certificate of insurance has been issued at their respective last known addresses. THE POLICIES, HOWEVER, SHALL NOT INSURE THE CONTENTS OF ANY UNIT OR ANY IMPROVEMENTS OR FIXTURES ADDED TO A UNIT BY A UNIT OWNER

9.3 – Appointment of Trustee. The Unit Owners, do hereby, on behalf of themselves, and the future Unit Owners of this Condominium, irrevocably constitute and appoint the Executive Board, the true and lawful insurance trustee to receive the proceeds of all property insurance losses and does herewith require of the Executive Board that the said Board, on purchasing any property coverage policy or policies, shall notify the insurance carriers in writing to make all loss proceeds payable to the said trustee. The said trustee shall have full power and authority to adjust and collect all losses and to reimburse itself for reasonable expenses for such adjustment or collection. The trustee may, but shall not be required to, consult with the Unit Owners. The trustee shall have full power and authority to execute all documents necessary on its own behalf and on behalf of the named insureds and to endorse all checks and drafts on its own behalf and on behalf of the name insureds. The trustee shall hold the insurance proceeds in trust for Unit Owners and lienholders as their interests may appear. Subject to the provisions of Article X hereof, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and Unit Owners and lienholders are not entitled to receive payment of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Condominium is terminated. The trustee may disburse funds pursuant to Section 10.1 (in the event proceeds are sufficient for reconstruction), but notwithstanding the provisions thereof, the trustee shall have the right (but not the obligation) to require the funds to be disbursed pursuant to disbursement escrows or to be disbursed only against surety bonds, completion guarantees, or such other assurances as may satisfy the trustee. In the event the trustee is of the reasonable opinion that the property insurance is insufficient to cover the replacement value of the improvements required to be insured, it may (but shall not be required to) increase the insurance coverage and send the bill for the premium therefor to the Association for the payment thereof as a Common Expense Liability, as provided in Section 8.1 hereof, and remit the amount of the premium to the party entitled thereto. Nothing herein contained shall impose any liability on the trustee for failing to increase the coverage or failing to increase the coverage sufficiently or for selecting any particular insurance company. The trustee shall have the right to resign or appoint a trustee as successor trustee with full power of substitution as a successor trustee with like powers. In the event that the trustee fails to appoint a successor trustee, then the Executive Board shall appoint said successor. All handling of insurance proceeds shall be at no expense to the trustee, except that the cost of security bonds, completion guarantees, title escrow distribution charges, if any, shall be at the expense of the Association. Under no circumstances shall the trustee be liable for any act or omission except for fraud, gross negligence or lack of reasonable and ordinary care. All insurance shall be placed with companies licensed in the State of Missouri.

9.4 – Unit Owner Insurance. Each Unit Owner shall be required to obtain and maintain his own “walls-in” insurance (HO-6) on the contents of his Unit including floors, walls, ceiling covers, carpeting, floor coverings, wall coverings, cabinets and fixtures, and on any additions, betterments and improvements to the Unit, and obtain and maintain his own insurance on any personal property belonging to him; and the Association shall have no obligation or responsibility to obtain and maintain any such insurance.

9.5 – Additional Insurance Requirements Notwithstanding anything to the contrary contained in this Declaration, and in addition to the insurance elsewhere herein provided, it shall be the responsibility of the Association and the Unit Owners to maintain hazard, flood, fidelity, liability and other insurance as required of them by the Act, local laws and the regulations and requirements of the United States Department of Housing and Urban Development (“HUD”) and the Federal Housing Administration (“FHA”) governing condominium insurance (including, without limitation, those pertaining to the initial and ongoing qualification of the Condominium for HUD or FHA financing) as the same may be modified and amended from time to time (collectively, “Condominium Insurance Requirements”) The cost of any such insurance required of the Association shall be a Common Expense and the cost of any such insurance required to be maintained by a Unit Owner shall be borne by the Unit Owners individually. It is the intent of this Declaration to comply with the Condominium Insurance Requirements, and to the extent any provision of this Declaration shall be construed as being not in compliance, the same shall be deemed automatically modified in order to comply with the Condominium Insurance Requirements,

## ARTICLE X DAMAGE, DESTRUCTION, REPAIR AND TERMINATION

10.1 – General. Any portion of the Condominium for which insurance is required under Section 9.1 which is damaged or destroyed shall be repaired or replaced promptly by the Association unless, (a) the Condominium is terminated, or (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (c) eighty percent (80%) of the Unit Owners, including every owner of a Unit or assigned Limited Common Element which will not be rebuilt, vote not to rebuild pursuant to Section 10.2 hereof. The cost of repair or replacement in excess of insurance proceeds and reserves shall be a Common Expense Liability. If the entire Condominium is not repaired or replaced, then: (x) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium, (y) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, and (z) the remainder of the proceeds shall be distributed to all the Unit Owners or lienholders, as their interests may appear, in proportion to the Common Element interests of all Units. In the event any damage is caused by the negligence or willful conduct of any Unit Owner(s), such Unit Owner(s) shall pay any insurance deductible paid by the Association to repair such damage. If the Unit Owners vote not to rebuild any Unit, that Unit’s interest is automatically reallocated upon the vote as if the Unit had been condemned under Article XI hereof, and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocation. Notwithstanding the provisions of this Section 10.1,

Section 10.2 hereof governs the distribution of insurance proceeds if the Condominium is terminated.

10.2 – Termination.

(a) The Condominium may be terminated only by (1) agreement of Unit Owners of Units to which at least eighty percent (80%) of the Votes in the Association are allocated, and (2) approval by holders of first mortgages on Units to which at least sixty-seven percent (67%) of the Votes in the Association are allocated.

(b) An agreement to terminate shall be evidenced by the execution of a termination agreement or ratifications thereof (collectively, the "Termination Agreement"), in the same manner as a deed, by the requisite number of Unit Owners. The Termination Agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A Termination Agreement and ratifications thereof shall be recorded in the Recorder's Office and is effective only upon recordation.

(c) The Termination Agreement may provide for the sale of all of the Common Elements and Units of the Condominium following termination in accordance with and subject to the provisions of the Act.

(d) The Association, on behalf of the Unit Owners, may contract for the sale of real estate in the Condominium, but the contract is not binding on the Unit Owners until approved pursuant to Section 10.2(a) and Section 10.2(b). If any real estate in the Condominium is to be sold following termination, title to that real estate, upon termination, vests in the Association as trustee for the holders of all interests in the Units. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Unit Owners and lienholders as their interests may appear, in proportion to the respective interests of the Unit Owners. Unless otherwise specified in the Termination Agreement, as long as the Association holds title to the Property, each Unit Owner and his successors in interest have an exclusive right to occupancy of the portion of the Property that formerly constituted his Unit. During the period of that occupancy, each Unit Owner and his successors in interest remain liable for all assessments and other obligations imposed on Unit Owners by the Act, this Declaration and the By-Laws.

(e) If the Property constituting this Condominium is not to be sold following termination, title to the Common Elements and, if this Condominium contains only Units having horizontal boundaries described in the Declaration, title to all the Property in the Condominium vests upon termination in the Unit Owners as tenants in common in proportion to their interest as provided in Section 10.2(g) and liens on the Units shift accordingly. While the tenancy in common exists, each Unit Owner and his successors in interest have an exclusive right of occupancy of the portion of the Property that formerly constituted his Unit.

(f) Following termination of this Condominium, the proceeds of any sale of real estate, together with the assets of the Association, are held by the Association as trustee for Unit Owners

and holders of liens on the Units as their interests may appear. Following termination, creditors of the Association holding liens on the Units, which were recorded prior to termination, may enforce such liens in the same manner as any lienholder. Any other creditors of the Association shall be treated as if they had perfected liens on the Unit immediately prior to termination.

(g) The respective interests of Unit Owners referred to in Section 10.1, Section 10.2(d) and Section 10.2(e) are as follows:

(1) Except as provided in Section 10.2(g)(2), the respective interests of Unit Owners are the fair market values of their Units, Limited Common Elements and Common Elements interests immediately before the termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the Unit Owners and becomes final unless disapproved within thirty (30) days after distribution by Unit Owners of Units to which twenty-five percent (25%) of the Votes in the Association are allocated; and

(2) If any Unit or any Limited Common Element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all Unit Owners are their respective ownership interests immediately before the termination

10.3 – Waiver of Subrogation. Each Unit Owner hereby waives and releases any and all claims which he/she/it may have against any other Unit Owner, the officers and members of the Executive Board, and the Declarant, and their respective employees and agents, for damage to the Common Elements, the Units, or to any personal property located in the Units or Common Elements, caused by fire or other casualty, to the extent that such damage is covered by fire or other form of property insurance.

10.4 – Damage Caused by Unit Owner, Not Covered by Insurance. If, due to the act or neglect of a Unit Owner, or of a member of his family or household pet or of a guest or other authorized Occupant or visitor of such Unit Owner, damage shall be caused to the Common Elements (including the Limited Common Elements) or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required arising from such act or neglect which would otherwise be a Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Executive Board, to the extent not covered by insurance. If insurance is available (in whole or in part), then, to the extent that the insurance is made available, the Unit Owner is not responsible for such damage, maintenance, repairs and replacements.

## ARTICLE XI CONDEMNATION

### 11.1 – Condemnation.

(a) In the event it shall become necessary for any public agency to acquire all or any part of any of the Units or the Common Elements of the Condominium for any public purpose,

the Executive Board is hereby appointed as attorney-in-fact and is hereby authorized to negotiate with such public agency for such acquisition and to execute such instruments as may be necessary for conveyance to any such public agency. Should acquisition by eminent domain become necessary, only the Executive Board need be made party, and monies, damage payments or condemnation award shall be held by the Executive Board for the benefit of the owners of the Units subject hereto.

(b) If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award shall compensate the Unit Owner for his Unit and his interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, that Unit's interest is automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the Association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this Section 11.1 is thereafter a Common Element.

(c) Except as provided in Section 11.1(b), if part of a Unit is acquired by eminent domain, the award shall compensate the Unit Owner for the reduction in value of the Unit and his share of Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, (1) that Unit's allocated interests are reduced in proportion to the reduction in the size of the Unit, or on any other basis specified in the declaration, and (2) the portion of the allocated interests divested from the partially acquired Unit are automatically reallocated to that Unit and the remaining Units in proportion to the respective allocated interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced allocated interests.

(d) If part of the Common Elements is acquired by eminent domain, the portion of the award attributable to the Common Elements taken shall be paid to the Association. Any portion of the award attributable to the acquisition of a Limited Common Element shall be equally divided among the owners of the units to which that Limited Common Element was allocated at the time of acquisition.

## ARTICLE XII DECLARANT AUTHORITY

12.1 – Right of Declarant to Vote. Declarant shall have the right to exercise the Votes allocated to Units which Declarant then owns.

## ARTICLE XIII SPECIAL DECLARANT RIGHTS

13.1 – Exercise of Special Declarant Rights. Current Declarant is the holder of the Special Declarant Rights as recited in paragraph C of the Recitals hereof, and is the "Declarant" for all purposes described in this Declaration, subject to the right of Current Declarant to assign its rights to a successor Declarant as provided in this Declaration.

13.2 – Special Declarant Rights. The following rights constitute “Special Declarant Rights” (in addition to any other “special declarant rights” provided for in the Act which are set forth in this Declaration):

A. Within ten (10) years after the date of this Declaration, the right (but not the obligation) to subdivide any of the Commercial Units or two or more Commercial Units from time to time, but not more than a total of eight (8) Commercial Units shall result as a result of all such subdivisions (such subdivided Commercial Units are sometimes referred to as the “Additional Units”), and to add additional Common Elements (the “Additional Common Elements”) to the Condominium in one or more stages by filing an amendment, or amendments, to this Declaration in compliance with Section 448.2-110 of the Act, and by filing additional Plats and plans (as defined in the Act, the “Plans”) in compliance with Section 448.2-109 of the Act. The foregoing right includes a reservation of the following rights:

(i) The right to add the Additional Units and the Additional Common Elements to the Condominium all at one time or at several different times. The Additional Units and the Additional Common Elements as added from time to time shall become part of the Condominium upon the recording of a Plat filed in connection therewith. The Additional Units and the Additional Common Elements shall be substantially completed prior to being added to the Condominium and will be consistent with the then existing Units in terms of quality of construction. If Declarant (or its successors and assigns) elects to add portions of the Additional Units and the Additional Common Elements at different times, no assurance is given as to the order in which they may be added.

(ii) The right to permit the Unit Owners of the Additional Units to have the use of all of the Common Elements which are a part of the Condominium

(iii) In connection with the Additional Common Elements, the right to require the Unit Owners whose Units are contained within the Condominium to accept them.

(iv) The right to amend or supplement the Plats and Plans, and to amend or supplement this Declaration, by any necessary means or methods in order to more fully and accurately describe any Additional Unit completed pursuant to the special declarant rights set forth in this Section. Such amending or supplementing documents shall be prepared, executed, and recorded by Declarant (or its successors and assigns).

The maximum number of Additional Units which may be added to the Condominium shall be four, if the existing four (4) Commercial Units are subdivided into the maximum total of eight (8) Units as provided in this Section 13.2. Upon each subdivision of the Commercial Units as provided in this Section 13.2, the allocated interests of the Condominium Units in the Common Elements as they existed immediately prior to the



subdivision of the Commercial Unit shall be reallocated such that the Common Expenses allocated to the Commercial Units shall be allocated in accordance with the formula set forth in Section 7.4 hereof.

B. The right to maintain in any Unit owned by Declarant (or its successors and assigns), upon the Common Elements, or upon the Limited Common Elements exclusively serving a Unit owned by Declarant, one or more sales or leasing offices, management offices, signs advertising the Condominium, or models

13.3 – Development Rights Notwithstanding any provision hereof to the contrary, at all times and from time to time, until the expiration of the Development Period, Declarant (and its successors, assigns and mortgagees) shall have the following Development Rights: (a) the right to construct, reconstruct, erect, develop, redevelop, demolish, rebuild, repair and relocate all or any portion of the Property, including structural and foundations components of the Property, demising walls, mechanical systems, HVAC systems, electrical systems, plumbing systems, elevators and any other improvements now or hereafter existing on the Property, (b) the right to create Additional Units and Additional Common Elements within the Condominium; (c) the right to subdivide and resubdivide Units owned by Declarant or convert such Units into Common Elements; (d) the right to convert Units owned by Declarant or Common Elements (or portions thereof) to Limited Common Elements, and the right to convert Limited Common Elements to Common Elements, and (e) the right to withdraw the Property then owned by Declarant or any part thereof from the Condominium. If any Development Right is exercised in any portion of the Property, Declarant shall not be required to exercise that Development Right in any other portion of the remainder of the Property.

13.4 – Advertising and Sales Activity by the Declarant. Notwithstanding any provision hereof to the contrary, at all times and from time to time, until the expiration of the Development Period, Declarant (and its successors, assigns and mortgagees) shall have the following Special Declarant Rights, to-wit: the right and privilege (a) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales Units in this Condominium; (b) to maintain Units as sales models or management and business offices; and (c) to maintain and locate tools and equipment within the Property. Said model Units or Units may be used for business or management purposes, and shall consist of not more than ten (10) Units at any given time, each designated by the Declarant. Declarant hereby reserves the right and privilege for itself (and its successors, assigns and mortgagees) to conduct the activities enumerated in this Section 13.4 until the expiration of the Development Period.

#### 13.5 – Parking Area Inconsistency, Parking Deck

(A) Pursuant to the Original Declaration and Original Plat, the Parking Deck did not constitute a part of the Property nor was the Parking Deck shown on the Original Plat. Accordingly, the Parking Deck was not made a part of the Condominium pursuant to the Original Declaration and Original Plat, and the Unit Owners did not have the right to use the Parking Deck. Each of the Unit Owners hereby acknowledges and agrees that all references in the Original Declaration to the “Outdoor Parking Area” and other references to parking therein

are hereby deleted in their entirety (but this shall not affect any provisions expressly set forth in this Amended and Restated Declaration pertaining to the Parking Deck)

(B) Current Declarant and the City are parties to that certain Development Agreement dated as of January 23, 2015 (the "Development Agreement"), pursuant to which, among other things (1) Current Declarant (as the owner of the Parking Deck as of the date the Development Agreement was signed) agreed to correct certain deficiencies in the construction of the Parking Deck and bring the Parking Deck in compliance with the City Code; (2) City agreed to reimburse Current Declarant for a portion of the construction costs incurred by Current Declarant in completing the construction of the Parking Deck and of correcting the construction deficiencies; and (3) City and Current Declarant agreed that, no later than the issuance of a certificate of occupancy for the Parking Deck, the City and Current Declarant (or the then fee owner of the Parking Deck) would enter into a Parking License Agreement (the "Parking License") in substantially the form attached to the Development Agreement as Exhibit B thereto, which provides for the use of certain spaces in the Parking Deck by the general public and the payment, by the City, of certain fees in exchange for the use of the Parking Deck, all as set forth more fully in the Parking License

(C) Concurrently with the execution and recording of this Amended and Restated Declaration and the Amended and Restated Plat, Current Declarant has conveyed the Parking Deck to the Association and the Parking Deck is part of the Condominium. In connection with such conveyance, and pursuant to that certain Temporary Construction Easement being entered into by the Association and Current Declarant concurrently with the execution of this Amended and Restated Declaration, Association has agreed to allow Current Declarant access in, to, over and across the Property in order to perform its obligations under the Development Agreement with respect to the completion of the Parking Deck. Upon the issuance of a certificate of occupancy for the Parking Deck, Current Declarant shall have no further rights with respect to the Parking Deck, except to the extent it has an undivided interest in the Parking Deck (as a Common Element) as an owner of a Unit within the Condominium. Notwithstanding anything contained herein to the contrary, in no event shall Current Declarant be liable to the Association or any other Unit Owners for any claims, losses, damages, or liabilities of any kind (i) arising out of Current Declarant's performance of its obligations under the Development Agreement, or (ii) in any way related to the Parking Deck.

(D) It is contemplated that at all times each of the Owners of Units 105, 106, 107, 108, 109, 110, 201, 202, 203, 204, 205, 206, 207 and 208 shall have the exclusive right to park in one (1) parking space designated by the Association for the exclusive use of such Residential Unit Owner in the Parking Deck. The Association shall, from time to time, designate twenty (20) parking spaces in the Parking Deck as parking spaces "Reserved" for the exclusive use of the Residential Unit Owners (including the right, from time to time, to designate a specific assignment of one specific parking space for the benefit of the Owners of the aforementioned Units), in the locations within the Parking Deck as the Association deems appropriate in its sole discretion. During the term of the Parking License, the general public shall have the right to park in those parking spaces in the Parking Deck that are not designated as "Reserved" for the exclusive use of the Residential Unit Owners.

(E) Each of Current Declarant and the Unit Owner Signatories (and their respective successors and assigns) acknowledge and agree that the Association, as the fee owner of the Parking Deck as of the Effective Date, shall enter into the Parking License (and a memorandum thereto) in accordance with the terms of the Development Agreement, and shall collect the fees described therein as reimbursement for the expenses associated with the Association's ownership of the Parking Deck and the general public's use of certain parking spaces in the Parking Deck pursuant to the terms of the Parking License.

All rights afforded Declarant under this Article XIII shall inure to the benefit of any mortgage holder acquiring title to any Unit hereunder by, through or under Declarant, and to any successor declarant to whom Declarant assigns its rights as Declarant, by written assignment instrument recorded in the Recorder's Office.

#### ARTICLE XIV AMENDMENTS

##### 14.1 – Amendments

(a) During the Declarant Control Period and the Development Period, Declarant may modify and amend this Declaration, the By-Laws and the Plat, in connection with and in furtherance of Declarant's exercise of the Special Declarant Rights.

(b) The Unit Owners (acting by and through the Association), upon the affirmative Vote of Unit Owners of Units to which are allocated at least sixty-seven percent (67%) of the Votes in the Association, may modify and amend this Declaration and By-Laws by satisfying Section 448.2-117 of the Act; provided that (1) during the Declarant Control Period and during the Development Period, this Declaration may not be amended by the Unit Owners, except with the written agreement of the Declarant, such agreement not to be unreasonably withheld, (2) the amendment complies with Section 14.1(c) below, and (3) all additions and amendments to this Declaration and the By-Laws by the Unit Owners must be approved by the holders of first mortgages on Units to which at least fifty-one percent (51%) of the Votes in the Association are allocated.

(c) With respect to any amendments made by the Declarant, the Declarant may prepare, execute, certify and record amendments to this Declaration. With respect to any amendments made by the Unit Owners (acting by and through the Association), the president, treasurer, secretary or assistant secretary of the Association may prepare, execute, certify and record amendments to this Declaration on behalf of the Unit Owners and the Association. Each such modification and amendment must be duly recorded in the Recorder's Office; provided, however, that this Declaration and By-Laws shall at all times contain the minimum requirements imposed by the Act, and, in particular, with insurance maintained as required by Section 448.3-113 of the Act.

(d) In the event the Act subsequently provides a different method of amendments by the Unit Owner, then provisions of the Act shall supersede the applicable provisions of this Article XIV, provided that: (1) during the Development Period, this Declaration may not be

amended by the Unit Owners, except with the written agreement of the Declarant, such agreement not to be unreasonably withheld; (2) the amendment complies with Section 14.1(e) below, (3) the affirmative Vote of Unit Owners of Units to which at least sixty-seven percent (67%) of the Votes in the Association are allocated, is first had and obtained; and (4) the consent of the holders of first mortgages on Units to which at least fifty-one percent (51%) of the Votes in the Association are allocated, is first had and obtained

(e) Notwithstanding anything to the contrary contained in this Declaration or contained in the foregoing provisions of this Section 14.1, (1) the Common Expense Liability of the Commercial Unit(s) and the provisions of Section 5.1, Section 7.4, Section 8.2 and Section 16.14 hereof as applicable to the Commercial Unit(s), may not be amended or altered or changed except with the written agreement of the Owners of all of the Commercial Unit(s); (2) this Section 14.1 may not be amended or altered or changed except with the written agreement of the Owners of all of the Commercial Units; (3) no amendment to the Declaration may impose any use restrictions on the use of the Commercial Units not set forth in this Declaration, except with the written agreement of the Owners of all of the Commercial Units; and (4) no amendment to the Declaration may change, alter or amend the rights, privileges, duties, liabilities or obligations of the Commercial Units, or of the Owners of the Commercial Units, except with the written agreement of the Owners of all of the Commercial Units, such agreement not to be unreasonably withheld.

#### ARTICLE XV RULES AND REGULATIONS

15.1 – Rules and Regulations The Executive Board may make such reasonable rules and regulations as the Executive Board may determine pertaining to the Condominium, including, without limitation, rules and regulations pertaining to (i) the use of balconies, Rooftop Outdoor Patios and other recreational facilities (if any), Common Elements, and Limited Common Elements; (ii) the right to admit non-residents as guests on a fee basis; (iii) matters of safety, deportment, dress, hours, children, pets and disciplining measures against unruly members and children; (iv) the storage of vehicles or repair of vehicles, and (v) the prohibition of trucks, boats, trailers, campers, motor bikes or other vehicles which the Executive Board may in its discretion determine objectionable. The Executive Board may bring such legal actions as it may deem appropriate against persons violating its rules and regulations and, upon the Executive Board prevailing, the costs and attorney's fees shall be taxed against such party.

#### ARTICLE XVI GENERAL PROVISIONS

16.1 – Captions. The captions of the various Articles and Sections are for purposes of reference only and are not deemed to have any substantive effect

16.2 – Notice to Association. Upon request, each Unit Owner shall be obligated to furnish to the Association the name and address of (i) the holder, insurer or guarantor of any security interest encumbering such Unit Owner's Unit; and (ii) any tenant leasing a Unit owned by such Unit Owner.

16.3 – Mortgagee's Rights Unless provided to the contrary in a Unit Owner's deed of trust, the holder of a first deed of trust of the such Unit Owner's Unit (including a holder, insurer or guarantor of a first deed of trust on a Unit in the Condominium which has requested notice in accordance with the provisions of Section 16.3 of this Declaration) shall be entitled to the following rights:

(a) Any restoration or repair of the Condominium after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the provisions hereof and the original plans and specifications unless the approval of the eligible holders of first mortgages or deeds of trust on Units to which at least fifty-one percent (51%) of the Votes of Units subject to deeds of trust held by such eligible holders are allocated, is obtained.

(b) Any election to terminate the Condominium after substantial destruction or a substantial taking in condemnation of the Condominium must also require the approval of the eligible holders of first deeds of trust on Units to which at least fifty-one percent (51%) of the Votes of Units subject to deeds of trust held by such eligible holders are allocated.

(c) No reallocation of interests in the Common Elements resulting from a partial condemnation or partial destruction of the Condominium may be effected without the approval of the eligible holders of first deeds of trust on Units to which at least fifty-one percent (51%) of the Votes of Units subject to deeds of trust held by such eligible holders are allocated.

16.4 – Notice to Mortgagees. Upon written request to the Executive Board, the holder of any duly recorded deed of trust against any Unit shall thereafter be given copies of any and all notices permitted or required by this Declaration to be given to the Unit Owner or Owners whose Unit Ownership is subject to such deed of trust (such written request to state the name and address of such holder, insurer or guarantor and the Unit number). Notices shall be given to mortgagees under the following conditions.

(a) Any proposed amendment of the Declaration effecting a change in (1) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (2) the interests in the Common Elements or Limited Common Elements appertaining to any Unit or the liability for Common Expenses appertaining thereto, (3) the number of Votes of Unit Owners appertaining to any Unit, or (4) the purposes to which any Unit or the Common Elements are restricted, except as to those amendments permitted in Article XI hereof,

(b) Any proposed termination of the Condominium,

(c) Any condemnation loss or any casualty loss which affects a material portion of the Condominium or which affects any Unit on which there is a first deed of trust held, insured or guaranteed by such eligible holder;

(d) Any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the deed of trust of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of 60 days,

(e) Any lapse, cancellation or material modification of any insurance policy maintained by the Executive Board

Any mortgagee of a Unit who receives a written request from the Executive Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from such mortgagee within sixty (60) days of the date of the Association's request, provided such request is delivered to the mortgagee by certified or registered mail, return receipt requested.

16.5 – Responsibility of Mortgagees for Assessments. Notwithstanding anything contained in this Declaration, any mortgagee who obtains title to a Unit pursuant to the remedies contained in the deed of trust or through foreclosure shall not be liable for more than six (6) months of such Unit's unpaid regularly budgeted dues or charges accrued before acquisition of the title to such Unit by the mortgagee.

16.6 – Manner of Giving Notice. Notices required to be given to the Executive Board may be delivered to any member of the Executive Board either personally or by certified mail addressed to such member or officer at his Unit, return receipt requested. Notice required to be given to the Current Declarant shall be given by certified mail, return receipt requested at:

CML-MO HAF, LLC  
c/o Rialto Capital Advisors, LLC  
790 NW 107<sup>th</sup> Avenue, Suite 400  
Miami, FL 33172  
Attention: Asset Manager

16.7 – Notice in Event of Death. Notices required to be given any devisee or personal representative of a deceased Unit Owner may be delivered either personally or by certified mail, return receipt requested, to such party at his or its address appearing in the records of the court wherein the estate of such deceased Unit Owner is being administered

16.8 – Acceptance by Grantee Each of the Unit Owners and each grantee thereof by the acceptance of a deed of conveyance of each subsequent purchaser, accepts the same subject to all restrictions, conditions, covenants, reservations, options, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration or to which this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any persons having at any time any interest or estate in said property and shall inure to the benefit of such Unit Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

16.9 – No Waiver. No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any

failure to enforce the same, irrespective of the number of violations or breaches which may occur.

16.10 – Saving Clause. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration or any part of the same shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

16.11 – Interpretation The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first-class Condominium development. The use of personal pronouns shall be construed to apply to masculine, feminine or neuter gender as the context may require. Should any provision of this instrument be deemed to violate the Rule against Perpetuities and is not subject to Section 448.2-103(2) of the Act, then such provision shall not be stricken but shall be deemed to continue in force and effect for the longest time permitted under Missouri law or for the life or lives in being plus twenty-one (21) years and ten (10) months thereafter. If any provision is deemed to be invalid, then the elimination of such provision shall not affect the remaining provisions.

16.12 – Bonds. Before any Unit Owner shall become a member of and serve on the Executive Board, he shall be able to be bonded. The Executive Board shall procure a blanket fidelity bond on each member of the Executive Board, each officer of the Association, all employees of the Association and all other persons handling or responsible for funds administered by the Association in an amount not less than the greater of (“Bond Minimum Amount”): (i) the estimated maximum of funds, including reserve funds in the custody of the Executive Board at any given time during the term of each bond, or (ii) three months aggregate assessments for Common Expenses on all Units plus reserve funds. The bond shall be written only by a bonding company approved to write fidelity bonds for Executors and Administrators by the Jackson County Probate Court. The cost of premiums for such blanket bond shall be Common Expenses and shall not be borne by the individual members of the Executive Board. The bond shall contain waiver of all defenses based upon the exclusion of persons serving without compensation from the definition “employee” or similar terms or expressions. The bond shall provide that it may not be cancelled or substantially modified (including cancellation for non-payment of premium) without 10 days prior written notice to Executive Board. If the Association engages the services of a management company, the Association shall require the management company to maintain a fidelity bond/fidelity insurance (sometimes also known as Employee Dishonesty or a Crime Policy) for its officers, employees and agents handling or responsible for funds of, or administered or behalf of, the Association, which shall name the Association as an obligee and be in amount at least equal to the Bond Minimum Amount.

16.13 – Operative Effect This Declaration shall be of full force and effect upon the recordation in the Recorder’s Office.

16.14 – Leases of Units. Each Unit Owner shall have the right to lease the Unit so owned subject to the following requirements:

(a) Each Residential Unit may be leased, used and occupied only for residential use, and each Unit Owner shall be required to notify the Association of the name and contact information of any tenant occupying such Unit Owner's Unit

(b) Each Commercial Unit may be leased, used and occupied only for retail, office and other commercial uses

(c) Every lease shall be in writing and shall be subject to all provisions of this Declaration and By-Laws. Further, said lease shall incorporate the Rules and Regulations of the Condominium by reference thereto and shall include the provision that any violation of said rules and regulations or covenants and provisions of the lease, other than non-payment of rent, shall be additional basis for termination of the lease by the Executive Board.

(d) Every lease shall be submitted to the Executive Board for review so as to assure compliance with this Declaration. No Unit may be leased, or renewed or extended, unless and until (1) the lease of such Unit has been submitted to the Executive Board for review so as to assure compliance with this Declaration, (2) in the case of renewals or extensions of Leases, the instrument of extension or renewal of the lease of such Unit has been submitted to the Executive Board for review so as to assure compliance with this Declaration; and (3) the Unit Owner has paid to the Association the applicable "Lease Review Fee" (if any) set forth in Section 16.14(h) below. The review of the applicable lease by the Association is strictly limited to verifying and assuring that the applicable lease complies with the requirements of the Declaration. The Association shall be required to approve an applicable lease, so long as the applicable lease complies with the requirements of this Declaration, and so long as the applicable Unit Owner has paid to the Association the applicable Lease Review Fee (if any). The parties to the lease shall have the right to "black-out" the economic provisions of the lease.

(e) Every lease shall appoint the Executive Board to act as agent and attorney-in-fact for the Unit Owner for the purposes of enforcing the terms, covenants and conditions of said lease, other than the non-payment of rent. If any such violation is not cured within 30 days or such shorter time as may be provided for in the lease, the Executive Board, as attorney-in-fact, shall have the right of action to evict or otherwise terminate the lease or the tenants in possession of the Unit, and the Executive Board shall have no liability to the Unit Owner or tenant on account of any action taken pursuant to this Declaration and By-Laws. The provisions of this Section 16.14 shall not be applicable to the Declarant during the Declarant Control Period and during the Development Period.

(f) Every lease shall have minimum initial and renewal terms of one (1) year each and no such lease shall be on a month-to-month or hold-over basis. Every lease shall prohibit the assignment thereof, except upon the consent of the lessor, and shall prohibit the subletting of the demised premises, except upon the consent of the lessor.

(g) The Executive Board shall have the right, in its discretion, to declare terminated any lease of a Unit which violates any of the provisions of this Section 16.14 of this Declaration. Further, in the event that the Executive Board incurs any legal fees, costs or other expenses in connection with enforcing any of the terms of this Section 16.14 or in the



exercise of any of its rights under this Section 16.14, then the applicable Unit Owner shall be responsible for said legal fees, costs and expenses, and upon demand shall pay same to the Executive Board, and if same shall remain unpaid, then the same shall constitute an assessment against and a lien upon the Unit, which lien shall be enforceable the same as other assessment liens hereunder.

(h) Lease Review Fees

(1) Residential Units. For the Residential Units, the Lease Review Fee shall be as follows: (A) for new leases, the Lease Review Fee shall be \$200.00; (B) for renewals of existing leases on identical terms (other than fixed rent) as the original lease, \$25.00, and (C) for renewals of existing leases on new terms, \$200.00 (and the Unit Owner shall provide a comparison draft between the existing lease and the new lease for the Association's review).

(2) Exemption From Lease Review Fees for Certain Leases of Residential Units. A lease of a Residential Unit by the Unit Owner thereof to a Family Member of the Unit Owner shall be exempt from the Lease Review Fees. A "Family Member" of the Unit Owner is defined as: (A) for Units owned by individuals, the spouse, parent, grandparent, child, grandchild, brother or sister of any individual Unit Owner of the applicable Unit; or (B) for Units owned by entities, the spouse, parent, grandparent, child, grandchild, brother or sister of any individual owning an ownership interest in the entity Unit Owner of the applicable Unit; or (C) for Units owned by grantor trusts, the spouse, parent, grandparent, child, grandchild, brother or sister of any individual who is a grantor of the grantor trust Unit Owner of the applicable Unit.

(3) Commercial Units. For the Commercial Units, the Lease Review Fee shall be as follows: (A) the Lease Review Fee for the lease shall be \$250.00 (regardless of the length of the term of the lease), and (B) for renewals of leases; the Lease Review Fee shall be \$50.00 (regardless of the length of the renewal term).

(i) Owner Occupancy Requirement. In no event shall the maximum number of rental units in the Condominium exceed the then current FHA and HUD condominium project owner-occupancy requirement.

16.15 – Financial Statement of Association. Upon the written request to the Executive Board from any of the persons or parties hereinafter described, the Executive Board shall (within a reasonable time after receipt of such request) furnish and provide to the requesting person or party a true and correct copy of the financial statement of the Association for the immediately preceding fiscal year in a form reasonably determined by the Executive Board. Each and all of the following persons or parties shall be entitled, upon written request as aforesaid, to receive such copy of said financial statement of the Association, to-wit: any Unit Owner, any holder of a first deed of trust filed against a Unit, any prospective purchaser of a Unit, any prospective first deed of trust lender to a Unit Owner, any agency, instrumentality or corporation acting for or in behalf of any such first deed of trust holder or prospective first deed of trust lender.

16.16 – Contracts During the Declarant Control Period. All of the hereinafter described

contracts or agreements entered into by or in behalf of the Association during the Declarant Control Period shall provide that such contracts or agreements are terminable by the Association without penalty at any time after the termination of the Declarant Control Period upon not more than ninety (90) days written notice to the other party to such contract or agreement. The foregoing provision shall apply to: (a) all management contracts, all employment contracts, and all leases of recreational areas or facilities, and (b) all contracts and all leases, including franchises and licenses, to which Declarant or any Affiliate of Declarant (as defined in the Act) is a party.

16.17 – Lease Restrictions Not Applicable To Mortgage Lenders Purchasing Residential Units The lease restrictions and provisions of Section 16.14 of the Declaration do not apply to any deed of trust lender who has purchased a Residential Unit either upon foreclosure of the deed of trust encumbering the applicable Residential Unit held by such lender, or by deed in lieu of foreclosure with respect to such Residential Unit; and during such lender's period of ownership of such Residential Unit, such lender shall be exempted from the restrictions, limitations and provisions of this Section 16.14 of the Declaration with respect to the Residential Unit so purchased and owned by such mortgage lender.

16.18 – Waiver and Acknowledgment. EXCEPT AS OTHERWISE PROVIDED BY THE ACT AND TO THE FULLEST EXTENT PERMITTED BY LAW AND IN RECOGNITION OF THE FACT THAT THE CONDOMINIUM WAS CONSTRUCTED BY THE ORIGINAL DECLARANT, THE UNIT OWNERS HEREBY WAIVE, DISCHARGE, AND RELEASE FOREVER ALL EXISTING RIGHTS, CLAIMS, DEFENSES, COUNTERCLAIMS, LIENS OR CAUSES OF ACTION, KNOWN OR UNKNOWN, NOW EXISTING, WHETHER DISCOVERED HEREAFTER OR NOT, AGAINST CURRENT DECLARANT OR ANY FUTURE DECLARANT, IN RESPECT OF ANY DEFECTS OR ANY OTHER MATTERS RELATING TO CONSTRUCTION OF THE CONDOMINIUM OR ANY PART THEREOF, PROVIDED, HOWEVER, THE FOREGOING WAIVER, DISCHARGE AND RELEASE SHALL NOT APPLY TO ANY CONSTRUCTION WHICH CURRENT DECLARANT OR ANY FUTURE DECLARANT ACTUALLY PERFORMS IN THE CONDOMINIUM EXCEPT AS MAY OTHERWISE BE PROVIDED IN ANY SEPARATE WRITING BETWEEN ANY UNIT OWNER AND THE CURRENT DECLARANT OR ANY FUTURE DECLARANT.

## ARTICLE XVII STORM WATER FACILITIES

17.1 – Abatement. In the event it is determined that the maintenance of any storm water conveyance facility(ies) located on the Common Elements fails to meet any standard set forth in the Amended and Restated Plat, and such failure is abated by the City pursuant to the procedures of the City's Unified Property Ordinance, upon completion of the work and certification by the Director of Public Works that the deficiency has been abated, the Director of Public Works shall certify all costs of such abatement, including enforcement costs and expenses of staff time incurred in the remediation of the deficiency, to the City's Director of Finance who shall cause a special tax bill therefore, or add the costs thereof to the annual real estate tax bill, at the Finance Director's option, proportionally against the individual

Units within the development, in an equal amount per Unit, the amount caused by the Finance Director to be assessed annually by tax bill shall not exceed five percent (5%) of assessed valuation per individual Unit, the tax bill from the date of its issuance shall be a first lien on the property until paid and shall be prima facie evidence of the recitals therein and of its validity and no mere clerical error or informality in the same, or in the proceedings leading up to the issuance shall be a defense thereto, each special tax bill shall be issued by the City Clerk and delivered to the City Finance Director on or before the first day of June of each year, and such tax bill, if not paid when due, shall bear interest at the rate of eight percent (8%).

17.2 – Third Party Beneficiary. The City shall be a third-party beneficiary of all provisions herein pertaining to the assessment of costs for maintenance of storm water conveyance, retention, or detention facilities on the Common Elements, and such provisions shall not be modified or amended without the written consent of the City

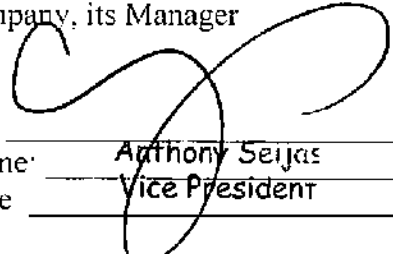
IN WITNESS WHEREOF, the parties have executed this Declaration as of the date first hereinabove stated

CML-MO HAF, LLC

By MULTIBANK 2009-1 CML-ADC  
VENTURE, LLC, a Delaware  
limited liability company

By RL CML 2009-1 Investments, LLC,  
a Delaware limited liability company,  
as Manager

By Rialto Capital Advisors, LLC,  
a Delaware limited liability  
company, its Manager

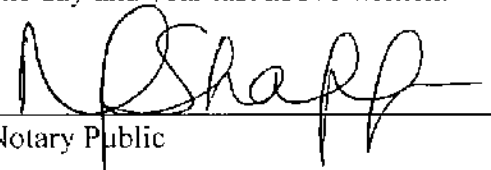
By   
Name Anthony Seijas  
Title Vice President

State of Florida,  
Miami,  
County of Dade

On this 4<sup>th</sup> day of May, 2015, before me, appeared Anthony Seijas, to me personally known, who being duly sworn did say he is V.P. of Rialto Capital Advisors, LLC, a Delaware limited liability company, the manager of RL CML 2009-1 Investments, LLC, Manager of Multibank 2009-1 CML-ADC Venture, LLC, a Delaware limited liability company, Sole Member of CML-MO HAF, LLC, and Anthony Seijas acknowledges said instrument to be his free act and deed as V.P. of said limited liability company

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office in Miami, FL, ~~Missouri~~, the day and year last above written.



  
Notary Public

  
STEPHEN P. BRANDON

State of Missouri

County of Jackson

On this 30th day of April, 2015, before me, appeared STEPHEN P. BRANDON, to me personally known, and he acknowledges said instrument to be his free act and deed

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office in Kansas City, Missouri, the day and year last above written

  
Notary Public

TARA A. POST  
NOTARY PUBLIC-NOTARY SEAL  
STATE OF MISSOURI-COUNTY OF CLAY  
MY COMMISSION EXPIRES AUGUST 18, 2018  
COMMISSION #11386563

Justin Clark  
JUSTIN CLARK

State of Missouri

County of Jackson

On this 30th day of April, 2015, before me, appeared JUSTIN CLARK, to me personally known, and he acknowledges said instrument to be his free act and deed

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office in Kansas City, Missouri, the day and year last above written

Tara A. Post  
Notary Public

TARA A. POST  
NOTARY PUBLIC-NOTARY SEAL  
STATE OF MISSOURI-COUNTY OF CLAY  
MY COMMISSION EXPIRES AUGUST 18, 2016  
COMMISSION #11386563

  
JOHN ERPELDING

State of Missouri  
County of Jackson

On this 30th day of April, 2015, before me, appeared JOHN ERPELDING, to me personally known, and he acknowledges said instrument to be his free act and deed

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office in Kansas City, Missouri, the day and year last above written.

  
Notary Public

TARA A. POST  
NOTARY PUBLIC-NOTARY SEAL  
STATE OF MISSOURI-COUNTY OF CLAY  
MY COMMISSION EXPIRES AUGUST 18, 2015  
COMMISSION #11386563

  
RACHEL ERPELDING

State of Missouri  
County of Jackson

On this 30th day of April, 2015, before me, appeared RACHEL ERPELDING, to me personally known, and she acknowledges said instrument to be her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office in Kansas City, Missouri, the day and year last above written

  
Notary Public

TARA A. POST  
NOTARY PUBLIC-NOTARY SEAL  
STATE OF MISSOURI-COUNTY OF CLAY  
MY COMMISSION EXPIRES AUGUST 18, 2015  
COMMISSION #11386563

## **EXHIBIT A**

### **Legal Description of Original Property**

All that part of the tract described in Document 2007E0038378, more particularly described as follows: BEGINNING at the Southwest corner of Lot 9, Block 20, WB HOWARDS FIRST ADDITION TO THE TOWN OF STROTHER, said point also being on the Northeast right-of-way of Douglas Street as established; thence North 28 degrees 43 minutes 01 seconds West along the Southwesterly line of said lot and also the Southwesterly line of Lot 8, Block 20 of said subdivision, said line also being said Northeasterly right-of-way, a distance of 141.18 feet; thence North 61 degrees 24 minutes 09 seconds East, a distance of 30.27 feet, thence South 28 degrees 35 minutes 51 seconds East, a distance of 5.50 feet; thence North 61 degrees 24 minutes 09 seconds East, a distance of 75.30 feet; thence South 73 degrees 35 minutes 51 seconds East, a distance of 7.07 feet; thence South 28 degrees 35 minutes 51 seconds East, a distance of 130.46 feet to a point on the Southeasterly line of said Lot 9, said line also being on the Northwesterly line of an Alley, as established by said subdivision; thence South 61 degrees 16 minutes 59 seconds West along the Southeasterly line of said lot, said line also being the Northwest line of said alley, a distance of 110.27 feet to the POINT OF BEGINNING.



## **EXHIBIT B**

### **Legal Description of Foreclosed Condominium Property**

#### **TRACT I**

Units 1105 through 1109, both inclusive, Unit 2000; Units 2105 through 2109, both inclusive, Units 3105 through 3109, both inclusive, Units 3105A, 3106A, 3109A, 3110A, and 3201; Units 3203 through 3207, both inclusive; Unit 4201, Units 4203 through 4207, both inclusive, Units 5105 through 5109, both inclusive; Unit 5201, Units 5203 through 5207, both inclusive, all in VOGUE CONDOMINIUMS, a subdivision in Lee's Summit, Jackson County, Missouri, together with an undivided interest in the common elements as set forth in the Condominium Declaration recorded March 4, 2008 as Document No. 2008E0024088

#### **TRACT II**

Lots 1 through 5, both inclusive, VOGUE CONDOMINIUMS, a subdivision in Lee's Summit, Jackson County, Missouri.

The above described property is also known and described as follows:

All property platted as VOGUE CONDOMINIUMS, a subdivision in Lee's Summit, Jackson County, Missouri, except the following described property: Units 1110, 2110, 3110, 3202, 3208, 4202, 4208, 5110, 5202, and 5208, VOGUE CONDOMINIUMS, a subdivision in Lee's Summit, Jackson County, Missouri, together with an undivided interest in the common elements as set forth in the Condominium Declaration recorded March 4, 2008 as Document No. 2008E0024088

**EXHIBIT C**

**Legal Description of Parking Deck**

LOT 2, HARTLEY BLOCK – LOTS 1 AND 2, a subdivision in Lee's Summit, Jackson County, Missouri

## **EXHIBIT D**

### **Legal Description of the Property**

#### **Original Property:**

All that part of the tract described in Document 2007E0038378, more particularly described as follows: BEGINNING at the Southwest corner of Lot 9, Block 20, WB HOWARDS FIRST ADDITION TO THE TOWN OF STROTHER, said point also being on the Northeast right-of-way of Douglas Street as established; thence North 28 degrees 43 minutes 01 seconds West along the Southwesterly line of said lot and also the Southwesterly line of Lot 8, Block 20 of said subdivision, said line also being said Northeasterly right-of-way, a distance of 141.18 feet; thence North 61 degrees 24 minutes 09 seconds East, a distance of 30.27 feet, thence South 28 degrees 35 minutes 51 seconds East, a distance of 5.50 feet; thence North 61 degrees 24 minutes 09 seconds East, a distance of 75.30 feet; thence South 73 degrees 35 minutes 51 seconds East, a distance of 7.07 feet; thence South 28 degrees 35 minutes 51 seconds East, a distance of 130.46 feet to a point on the Southeasterly line of said Lot 9, said line also being on the Northwesterly line of an Alley, as established by said subdivision; thence South 61 degrees 16 minutes 59 seconds West along the Southeasterly line of said lot, said line also being the Northwest line of said alley, a distance of 110.27 feet to the POINT OF BEGINNING

#### **Parking Deck:**

LOT 2, HARTLEY BLOCK – LOTS 1 AND 2, a subdivision in Lee's Summit, Jackson County, Missouri.

**The foregoing legal description of the Property is now, with the recording of this Amended and Restated Declaration and the Amended and Restated Plat, legally described as follows:**

Units 101 through 110, both inclusive, Units 201-208, both inclusive; Units 311, 313, 315 AND 317, all in VOGUE CONDOMINIUMS REPLAT, a subdivision in Lee's Summit, Jackson County, Missouri, together with an undivided interest in the common elements as set forth in the Amended and Restated Declaration of Condominium for the Vogue Condominiums recorded *JUNE 1,* 2015 as Document No 2015E0046158.