

**DECLARATION OF CONDOMINIUM**  
**FOR**  
**RIVERWORKS AT EASTERN WHARF**

a Condominium Pursuant to  
the Georgia Condominium Act,  
*O.C.G.A. §44-3-70, et seq.*

**UPON RECORDING RETURN TO:**

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**DECLARATION OF CONDOMINIUM  
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RIVERWORKS AT EASTERN WHARF  
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**DECLARATION OF CONDOMINIUM  
FOR  
RIVERWORKS AT EASTERN WHARF**

THIS DECLARATION is made as of \_\_\_\_\_, 2018 by EW MFR VENTURE I LLC, a Georgia limited liability company (“**Declarant**”), having its principal place of business located at c/o Regent Partners, 3340 Peachtree Road, Suite 1400, Atlanta, Georgia 30326.

**W I T N E S S E T H**

WHEREAS, Declarant is the fee simple owner of that certain tract or parcel of land lying and being in Savannah, Chatham County, Georgia, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the “**Property**”), subject to the matters set forth on Exhibit B attached hereto (the “**Permitted Exceptions**”);

WHEREAS, Declarant has recently completed the construction of certain improvements on the Property as shown on the Plat and the Plans (as hereinafter defined);

WHEREAS, a plat of survey related to the Condominium prepared by \_\_\_\_\_ was filed in Condominium Plat Book \_\_\_\_\_ Page(s) \_\_\_\_\_, Chatham County, Georgia records (the “**Plat**”);

WHEREAS, floor plans relating to the Condominium prepared by \_\_\_\_\_ were filed in Condominium Plan Book \_\_\_\_\_ Page(s) \_\_\_\_\_, aforesaid records (the “**Plans**”); and

WHEREAS, Declarant has duly incorporated Riverworks at Eastern Wharf Condominium Association, Inc. as a nonprofit membership corporation under the laws of the State of Georgia; and

WHEREAS, the Declarant desires to submit the Property to the condominium form of ownership pursuant to the provisions of the Georgia Condominium Act, O.C.G.A. §44-3-70, *et seq.*, as amended (the “**Act**”), as the same is in effect on the date hereof, and pursuant to the terms and conditions hereinafter set out.

NOW, THEREFORE, in consideration of the premises and benefits to each of the Units provided for herein and for other good and valuable consideration, Declarant hereby declares that the Property is hereby submitted and made subject to the form of ownership set forth in the Georgia Condominium Act and is hereby subjected to all of the provisions of this Declaration. Declarant hereby establishes the joint and reciprocal covenants, conditions, restrictions and easements set forth herein, for the use, benefit and enjoyment of the respective owners and their successors-in-title to all or any portion of each of the Units. By virtue of the recording of this Declaration, the Property shall be held, sold, transferred, conveyed, used, occupied and mortgaged or otherwise encumbered subject to provisions of the Georgia Condominium Act and the covenants, conditions, restrictions, easements, assessments and liens set forth in this Declaration, which are for the purpose of protecting the value and desirability of and which shall run with the title to, the real property subject to this Declaration and shall be binding on all persons having any right, title or interest in all or any portion of the real property subject to this Declaration, their respective heirs, legal representatives, successors-in-title and assigns and shall be for the benefit of all owners of the Property subject to this Declaration.

**ARTICLE 1:  
NAME**

The name of the condominium is RIVERWORKS AT EASTERN WHARF (the "**Condominium**").

**ARTICLE 2:  
DEFINITIONS**

The terms used in this Declaration, the By-Laws, and the Articles of Incorporation shall have their normal, generally accepted meanings or the meanings given in the Act or the Georgia Nonprofit Corporation Code. Certain terms used in this Declaration, the By-Laws, and the Articles of Incorporation shall be defined as follows:

2.1. "**Act**": The Georgia Condominium Act, O.C.G.A. §44-3-70, *et seq.*, as amended from time to time.

2.2. "**Apartment(s)**": Those portions of the Apartments Unit intended as a dwelling space for individual occupancy and use, as designated on the Plans.

2.4. "**Apartments Unit**": That Unit consisting primarily of portions of Levels 1 and 2 and all of Levels Three (3) through Six (6) of the Building, including the Apartments and 4 levels of a parking garage serving the Apartments, as designated on the Plans.

2.5. "**Articles of Incorporation**": The Articles of Incorporation of Riverworks at Eastern Wharf Condominium Association, Inc., filed with the Secretary of State of Georgia, as the same may be amended from time to time.

2.6. "**Association**": Riverworks at Eastern Wharf Condominium Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

2.7. "**Board of Directors**": The elected body responsible for management and operation of the Association as further described in the By-Laws.

2.8. "**By-Laws**": The By-Laws of Riverworks at Eastern Wharf Condominium Association, Inc., attached to this Declaration as **Exhibit D** and incorporated herein by this reference.

2.9. "**Common Element(s)**": That portion of the Property subject to this Declaration which is not included within the boundaries of a Unit, as more particularly described in this Declaration and on the Plat and Plans.

2.10. "**Common Expense(s)**": The expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, including, but not limited to, (a) those expenses incurred for maintaining, repairing, replacing, and operating the Common Elements, including the Limited Common Elements; (b) expenses determined by the Association to be Common Expenses and which are lawfully assessed against Owners; (c) expenses declared to be Common Expenses by the Act or Condominium Instruments; and (d) reasonable reserves established for the payment of any of the foregoing.



2.11. “**Community-Wide Standard**”: The standard of conduct, maintenance, or other activity generally prevailing within the Condominium. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors.

2.12. “**Condominium**”: All that property described in Exhibit A attached hereto and incorporated herein by this reference, submitted to the provisions of the Act by this Declaration, together with all buildings and improvements thereon.

2.13. “**Condominium Instruments**”: This Declaration and all exhibits to this Declaration, including the By-Laws, the Articles of Incorporation, the rules and regulations of the Association, and the Plat and Plans, all as may be supplemented or amended from time to time.

2.14. “**Declarant**”: EW MFR VENTURE I LLC, a Georgia limited liability company or any successor or assign to which Declarant’s rights are transferred or assigned pursuant to the terms of Section 20.3 hereof. who holds or takes title to any portion of the property described on Exhibit A for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided however, there shall be only one (1) Person entitled to exercise the rights and powers of the “Declarant” hereunder at any time.

2.19. “**Development Period**”: The period of time commencing upon the date on which this Declaration is recorded in the Public Records and expiring as set forth in Section 20.1 hereof.

2.20. “**Eligible Mortgagee(s)**”: Those holders of first Mortgages secured by Units in the Condominium who have submitted a written request to the Association to be notified of certain items as set forth in this Declaration.

2.21. “**Limited Common Element(s)**”: A portion of the Common Elements reserved for the exclusive use of those entitled to occupy one (1) or more, but less than all, Units, as more particularly set forth in this Declaration. [**Confirm that LCEs will be identified on the plat and plans.**]

2.22. “**Majority**”: Those eligible votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

2.23. “**Master Association**”: Savannah River Landing Master Association, Inc., its successors and assigns.

2.24. “**Master Declaration**”: That certain Master Declaration of Covenants, Conditions, Restrictions and Easements for Savannah River Landing dated September 20, 2017 and recorded in the Public Records at Deed Book 1179, Page 26, as it may be amended.

2.25. “**Master Documents**”: Those governing documents, which include the Master Declaration, the by-laws, articles of incorporation, design guidelines, and rules and regulations, if any, of the Master Association, as each may be supplemented and amended from time to time.

2.26. “**Mortgage**”: Any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation.

2.27. “**Mortgagee**”: The holder of any Mortgage.

2.28. “**Occupant**”: The lessee(s) and licensees of any Unit and their respective guests, family members, tenants, and invitees, or any other Person who either lawfully or unlawfully occupies or comes upon such Unit.

2.29. “**Owner**”: Each record title holder of a Unit within the Condominium, but not including a Mortgagee.

2.30. “**Ownership Percentage**”: The percentage of votes held by each Owner as shown on Exhibit C hereto.

2.31. “**City Parking Garage Unit**”. That Unit consisting of the Basement Level and portions of Level 1 and 2 of the Condominium, as designated on the Plans.

2.32. “**Person**”: Any individual, corporation, limited liability company, firm, association, partnership, trust, or other legal entity.

2.33. “**Plans**”: The plans for the Units and other improvements, as recorded in the Public Records.

2.34. “**Plat**”: The plat of survey relating to the Condominium that has been filed in the Public Records.

2.35. “**Public Records**”: The land records in the Office of the Clerk of the Superior Court of Chatham County, Georgia or such other place which is designated as the official location for recording of deed and plats of survey and similar documents affecting title to real property in Chatham County, Georgia.

2.1. “**Retail Unit**”: That certain Unit designated on the Plans as the Retail Unit, as such Plans may from time to time be supplemented to or amended.

2.2. “**Total Eligible Association Vote**”: The total vote in the Association, less any votes that have been suspended pursuant to Section 8.3.

2.3. “**Unit**”: That portion of the Condominium intended for ownership and use, and for which a certificate of occupancy has been issued, as more particularly described in the Condominium Instruments.

### **ARTICLE 3: LOCATION, PROPERTY DESCRIPTION, PLATS AND PLANS**

The Condominium is located in Savannah, Chatham County, Georgia, and is more particularly described in (a) Exhibit A attached to this Declaration, which exhibit is specifically incorporated herein by this reference, (b) the Plat, and (c) the Plans. The Declarant or the Association shall have the right to file additional plats and plans from time to time as necessary or appropriate to further describe the Units or to comply with the Act. The Plat and Plans are incorporated herein by reference as fully as if the same were set forth in their entirety.

During the Development Period, Declarant reserves the right, but shall have no obligation, to make improvements and changes to all or part of the Common Elements and to any Units owned by Declarant (other than changes to the location of Unit boundaries except as expressly permitted herein), including, without limitation, addition and realignment of parking spaces, renovation, installation, and

changes to utility systems and facilities, rearrangement and installation of security and refuse facilities, work relating to building exteriors, and extension of drives, utility lines and pipes located on the Condominium.

#### **ARTICLE 4: UNITS AND BOUNDARIES**

The Condominium shall consist of three (3) separate Units (the Apartments Unit, the City Parking Garage Unit, and the Retail Unit), the Limited Common Elements and the Common Elements. Each Unit, together with an undivided interest in the Common Elements, shall be conveyed as a separately designated and legally described freehold estate subject to the Act and the Condominium Instruments. The Units are depicted on the Plats and Plans. Each Unit includes that part of the structure which lies within the following boundaries:

4.1. Horizontal (Upper and Lower) Boundaries. The horizontal boundaries of each Unit shall be the unfinished interior surfaces of the lowest floor(s) and the highest ceiling(s) of the Unit as delineated in the Plats and Plans.

4.2. Perimetrical (Vertical) Boundaries. The perimetrical or vertical boundaries of each Unit shall be the unfinished exterior surfaces of the outermost walls of the Unit. With respect to common walls between Units, the perimetrical or vertical boundary of the Units served thereby shall be the centerline of such wall.

4.3. Additional Information to Interpret Unit Boundaries.

(a) All exterior doors and exterior windows located within each Unit and all lath, wallboard, plasterboard, plaster, paneling, molding, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces of each Unit shall be deemed a part of such Unit; all other portions of the outside walls, floors or ceilings shall be deemed a part of the Common Elements. Except as otherwise provided herein, all space, interior partitions and other fixtures and improvements within the boundaries of a Unit shall be deemed a part of that Unit.

(b) All portions of heating and air conditioning systems serving a single Unit; including, but not limited to, the equipment and any pipes, wires, lines, and ductwork serving such systems located within or without the Unit boundaries shall be a part of the Unit.

(c) All appliances and plumbing fixtures within a Unit shall be part of the Unit; provided however, to the extent that any grease shafts, chutes, flues, ducts, conduits, wires, lines, pipes, bearing walls, bearing columns, or any other apparatus lies partially inside of the designated boundaries of the Unit, any portions thereof serving only that Unit shall be deemed a part of that Unit; all portions thereof serving more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements.

(d) In interpreting deeds and plans, the existing physical boundaries of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any deed or plan, regardless of settling or lateral movement of the building in which the Unit was located, and regardless of minor variance between the boundaries shown on the plans or in a deed and those of the Unit.

(e) The ownership of each Unit shall include, and there shall pass with each Unit as appurtenances thereto, whether or not separately described in the conveyance thereof, that percentage of the right, title and interest in the Common Elements attributable to such Unit, together with membership in the Association, and an undivided interest in the funds and assets held by the Association. Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit.

**ARTICLE 5:  
COMMON ELEMENTS**

The Common Elements consist of all portions of the Condominium not located within the boundaries of a Unit. Ownership of the Common Elements shall be by the Owners as tenants-in-common. Each Unit is allocated an equal undivided interest in the Common Elements.

Such percentages of undivided interest may be altered only by the consent of all Owners and Mortgagees (or such lesser number of Owners and Mortgagees as may hereafter be prescribed by the Act) expressed in a duly recorded amendment to this Declaration. The percentage of undivided interest of each Owner in the Common Elements is appurtenant to the Unit owned by the Owner and may not be separated from the Unit to which it appertains and such appurtenance shall be deemed to be conveyed or encumbered or to otherwise pass with the Unit whether or not expressly mentioned or described in a conveyance or other instrument describing the Unit.

The Common Elements shall remain undivided, and no Owner or any other Person shall have the right to bring any action for partition or division of the whole or any part thereof except as provided in the Act. Except as provided for Limited Common Elements or as otherwise provided herein, each Owner and the Association may use the Common Elements for the purposes for which they are intended, but no such use shall enter or encroach upon the lawful rights of the other Owners. Each Owner and Occupant shall have a right and easement of use and enjoyment in and to the Common Elements (including the right of access, ingress and egress to and from the Unit over those portions of the Condominium designated for such purpose), and such easement shall be appurtenant to and shall pass with the title to such Unit, subject to the rights of the Owners to the exclusive use of the Limited Common Elements assigned to their respective Units and to the right of the Association to control the use and enjoyment of the Common Elements as provided by the terms of this Declaration. Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit.

So long as Declarant owns any Unit, the Declarant hereby reserves for the benefit of Declarant, its successors and assigns a temporary, non-exclusive easement over, across, and under the Common Elements for the maintenance of sales and leasing offices, signs, and the reasonable use of the Common Elements for sales, leasing, marketing, and construction purposes, including, without limitation, access, ingress, and egress across, over, and under the Common Elements for the purpose of further improving the Condominium, and for purposes of marketing, leasing, and sales.

**ARTICLE 6:  
LIMITED COMMON ELEMENTS**

6.1. Designation. The Limited Common Elements are assigned in accordance with §44-3-82 of the Act and with the Plans. The Limited Common Elements and the Unit(s) to which they are permanently assigned are as follows:

(a) any lobbies, elevators, roof and roof support systems, trash chutes, mail area, fitness room, swimming pool, business center, kitchen, courtyard area, and all other Common Elements located on the residential levels of the Condominium as shown on the Plans, and any stairs, hallways, or corridors serving only the amenity and residential levels of the Condominium, are assigned as Limited Common Elements to the Apartments Unit;

(b) any entry foyers, hallways, corridors, elevators, lobbies, and stairs serving more than one (1) Unit, but less than all Units, are assigned as Limited Common Element to the Unit or Units so served;

(c) any screened/unscreened porch, deck, courtyard, patio, terrace, or balcony serving a Unit, together with any fence, railing or other enclosure therefor that is attached to or serves a Unit is assigned as a Limited Common Element to the Unit so attached or so served;

(d) any patio or terrace serving the Retail Unit is assigned as a Limited Common Element to the Retail Unit;

(e) any sidewalk, gate, doorsteps, stairways, or stoops providing access, ingress, or egress to a patio or terrace serving the Retail Unit is assigned as a Limited Common Element to the Retail Unit;

(f) any bicycle rooms, storage spaces and service rooms serving a Unit but through which no direct Unit access is available are assigned as Limited Common Elements to the benefitted Unit;

(g) any portion of the Common Elements on which there is located any portion of the mechanical, electrical, air conditioning, or heating system exclusively serving a particular Unit or Units is assigned as a Limited Common Element to the Unit or Units so served; and

(h) any utility meter which serves only one (1) Unit is assigned as a Limited Common Element to the Unit so served.

6.2. Assignment and Reassignment. The Board of Directors, without a membership vote, is hereby authorized to assign and reassign Limited Common Elements and Common Elements not previously assigned, provided that any such assignment or reassignment shall be made in accordance with the provisions of §44-3-82 of the Act. Notwithstanding anything herein to the contrary, the Board of Directors is not authorized to assign or reassign the Limited Common Elements without the consent of Declarant during the Development Period. Furthermore, during the Development Period, the Declarant shall have the right to assign and reassign Limited Common Elements, on behalf of the Association, in accordance with §44-3-82 of the Act.

6.3. Right to Relocate Certain Equipment Serving a Unit. Notwithstanding any provision to the contrary contained herein, the Board of Directors, at the sole expense of the Association, shall have the right, without need for a membership vote and without the consent of any affected Owner, to relocate any portion of the air conditioning, heating, plumbing, ventilating, exhaust or electrical system serving a particular Unit, provided that after such relocation, the system serving the Unit functions at least as efficiently and at no greater cost to the Owner as existed prior to the relocation.

**ARTICLE 7:  
ASSOCIATION MEMBERSHIP AND ALLOCATIONS**

7.1. Membership. All Owners, by virtue of their ownership of an interest in a Unit, are members of the Association and shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to this Declaration and the Act and in accordance with the By-Laws.

7.2. Votes. Subject to the provisions of the Condominium Instruments, each Owner shall be entitled to exercise the number of votes equal to its Ownership Percentage as more particularly set forth on Exhibit C and the votes shall be appurtenant to such Unit. In any situation where there is more than one (1) Owner of a Unit, the votes for such Unit shall be exercised as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's votes shall be suspended if more than one (1) Person seeks to exercise them. The membership rights of an Owner which is not a natural person may be exercised by an officer, director, member, manager, partner or trustee of such Owner or by any individual designated from time to time by such Owner in a written instrument provided to the secretary of the Association.

7.3. Allocation of Liability for Common Expenses.

(a) Except as otherwise provided below, by the Act or elsewhere in the Condominium Instruments, each Unit is hereby allocated liability for Common Expenses based on each Owner's Ownership Percentage as set forth on Exhibit C hereto.

(a) The Board of Directors shall have the power to specifically assess pursuant to this Section and to §44-3-80(b) of the Act, as in its discretion, it deems appropriate. Failure of the Board of Directors to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the right to exercise authority under this Section in the future with respect to any expenses, including an expense for which the Board of Directors has not previously exercised its authority under this Section. For purposes of this Section, non-use or abandonment of Common Elements shall not constitute a benefit to less than all Units or a significant disproportionate benefit among all Units.

(b) Any Common Expenses benefiting less than all of the Units or significantly and disproportionately benefiting certain Units may be specifically assessed equitably among all of the Units which are benefited according to the benefit received.

(c) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Units or by the Occupant(s), licensees or invitees of any such Unit or Units may be specifically assessed against such Unit or Units.

(d) In the event that the Condominium is served by any common utility meter, the Board of Directors shall have the authority, but not the obligation, to install submeters and assess individual Unit utility usage charges as specific assessments as provided herein. This shall include the

right of the Board of Directors to add a charge for the cost of overhead for such submetering against individual Units and/or to install separate utility meters for the Units only when such non-use results in an identifiable, calculable reduction in cost to the Association.

7.4. Master Association. Each Owner, by acceptance of a deed to a Unit acknowledges and agrees that, pursuant to the Master Documents, all Owners shall be members of the Master Association and shall be subject to the Master Documents. Each Owner further acknowledges that, pursuant to the Master Documents, the Condominium has been designated as a “Building Condominium” (as such term is defined in the Master Documents). If there are conflicts between the provisions of Georgia law, the Master Documents, this Declaration, the By-Laws, and the Articles of Incorporation, then the provisions of Georgia law, the Master Documents, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

## **ARTICLE 8: ASSOCIATION RIGHTS AND RESTRICTIONS**

8.1. Right of Entry. The Association shall have the right to enter into Units and any Limited Common Elements assigned thereto for maintenance, emergency, security, or safety purposes, which right may be exercised by the Association’s Board of Directors, officers, agents, employees, managers, and all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit. For purposes of the Article, and without limiting the foregoing, a water or other utility leak, fire, strong or foul odor, obvious insect/rodent infestation or sound indicating that a person or animal might be injured or sick and require immediate medical attention shall be considered emergencies justifying immediate entry into a Unit and any Limited Common elements assigned thereto. No one exercising the rights granted herein shall be liable for trespass or damages by exercising such rights. The failure to exercise the rights herein shall not create any liability to any of the above-referenced parties as no duty by any of the above-referenced parties to enter any Unit exists.

8.2. Rules and Regulations. The Association shall have the right to make and to enforce reasonable rules and regulations governing the use of the Condominium, including the Units, Limited Common Elements, and Common Elements.

8.3. Right of Enforcement.

(a) The Board of Directors may impose sanctions as provided in §44-3-76 of the Act, for violation of the Condominium Instruments, after compliance with the notice and hearing procedures set forth in **Section 3.23 of the By-Laws**. Such sanctions may include, without limitation:

(i) the imposition of monetary fines which shall constitute a lien upon the Unit of the violator. Any such fines shall be considered an assessment against the Unit and may be collected in the manner provided for collection of other assessments. In the event that any Occupant of a Unit violates the Condominium Instruments and a fine is imposed, the fine may first be assessed against the Occupant. If the fine is not paid by the Occupant within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Board of Directors;

(ii) the suspension of any services provided by the Association to the Unit or the Owner. Any suspension of utility services shall be effected in accordance with any appropriate provisions of the Act;

(iii) the suspension of an Owner's right to vote;

(iv) the suspension of any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association. The Association may not terminate any water, gas, electricity, heat, or air conditioning services being provided to a Unit or Owner by the Association unless the Association has complied with Section 9.3(e) hereof and §44-3-76 of the Act; and

(vi) the assignment of rents to the Association which are otherwise due and payable to the Owner, as set forth in Section 14.2(b)(iii).

(b) The Association, at its election, may also take the following remedial actions without the necessity of compliance with the notice and hearing procedures set forth in the By-Laws. In doing so the Association must comply with the provisions of the Act and this Declaration:

(i) the initiation of a suit at law or in equity to enjoin any violation or to recover monetary damages; and

(ii) the exercise of self-help.

(c) In pursuing any sanction or other action permitted by the Condominium Instruments and the Act, the Association may levy a specific assessment to cover all costs incurred in bringing a Unit into compliance with the terms of the Condominium Instruments, including, without limitation, reasonable attorneys' fees or other legal fees.

(d) In the event that any Occupant, invitee, tenant, or guest of a Unit violates the Condominium Instruments, the Board of Directors may sanction such Occupant, invitee, tenant, or guest, and/or the Owner of the Unit that the violator is occupying or visiting. If a fine is imposed, the fine may first be assessed against the Occupant. If the fine is not paid by the Occupant within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Board of Directors.

(e) In addition, the Board of Directors may elect to enforce any provision of the Condominium Instruments by exercising self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules, the removal of pets that are in violation of pet rules and restrictions, or the correction of any maintenance, construction or other violation of the Condominium Instruments) without the necessity of compliance with the procedures set forth in the By-Laws. The Association may levy a specific assessment to cover all costs incurred in bringing a Unit into compliance with the terms of the Condominium Instruments.

(f) Notwithstanding anything herein to the contrary, the Association may also take the following actions without the necessity of compliance with the procedures set forth in the By-Laws:

(i) elect to enforce any provisions of the Condominium Instruments by suit at law or in equity to enjoin any violation or to recover monetary damages or both; or

(ii) subject to Section 9.3(e), terminate any water, gas, electricity, heat, or air conditioning services being provided to a Unit or Owner by the Association for failure to pay assessments and other amounts due pursuant to Subsection (a) of §44-3-109 of the Act, to the fullest extent allowed by the Act and in accordance with the provisions of the Act.



(g) All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action or remedy taken by the Association to enforce the provisions of the Condominium Instruments, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, reasonable attorneys' fees and other legal fees actually incurred and court costs in the same manner as an action for collection of assessments.

(h) The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board of Directors in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board of Directors reasonably determines that the Association's position is not strong enough to justify taking enforcement action and which is not justified based upon the particular circumstances. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or prevent the Association from enforcing any other covenant, restriction, or rule.

(i) The Association, by contract or other agreement, may enforce county, city, state, and federal laws and ordinances, if applicable, and permit local and other governments to enforce laws and ordinances on the Condominium for the benefit of the Association and its members.

8.4. Permits, Licenses, Easements, Etc. The Association, acting solely through the Board of Directors, shall have the right to grant permits, licenses, utility easements, and other easements over, through and under the Common Elements without a vote of the Owners.

8.5. Right of Maintenance. The Association, acting solely through the Board of Directors or its designee, shall have the right to control, manage, operate, maintain, improve, and replace all portions of the Condominium for which the Association is assigned maintenance responsibility under this Declaration.

8.6. Property Rights. The Association, acting solely through the Board of Directors, shall have the right to acquire, hold and dispose of tangible and intangible personal property and real property.

8.7. Casualty Loss. The Association, acting solely through the Board of Directors, shall have the right to deal with the Condominium in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of the Act and this Declaration.

8.8. Governmental Entities. The Association, acting solely through the Board of Directors, shall have the right to represent the Owners in dealing with governmental entities in matters related to their ownership of a Unit in the Condominium.

8.9. Common Elements. The Association, acting solely through the Board of Directors, or, during the Development Period, the Declarant shall have the right to close temporarily any portion of the Common Elements, excluding the Limited Common Elements and any portions of the Common Elements which deny all access to any Units or Limited Common Elements, for emergency, security or safety purposes with no prior notice of such closing to the Owners for a period not to exceed [REDACTED]. Furthermore, the Association, acting solely through the Board of Directors, shall have the right to temporarily or permanently close any portion of the Common Elements, excluding the Limited Common Elements and any portions of the Common Elements which deny all access to any Units or Limited Common Elements, upon thirty (30) days' prior written notice to all Owners. Any portion of the Common Elements which has been temporarily or permanently closed may be reopened by the sole action of the Declarant during the Development Period, or by action of the Board of Directors, or by the vote of members holding a Majority of the Total Eligible Association Vote. Notwithstanding the foregoing, any

action to reopen a portion of the Common Elements which will require, in the sole discretion of the Board of Directors, the levying of a special assessment, which shall be approved in the manner set forth in Section 9.5 prior to becoming effective; and the Association may not close any portion of the Common Elements over or upon which the Declarant has an easement.

8.10. Cooperation with the Master Association and Other Associations. The Association may contract or cooperate with the Master Association or any other property, homeowners, or condominium associations or entities within Eastern Wharf (formerly known as Savannah River Landing) as convenient or necessary to provide services and privileges and to fairly allocate costs among the parties utilizing such services and privileges which may be administered by the Association or such other organizations, for the benefit of Owners, Occupants, and their guests, tenants and invitees. The costs associated with such efforts by the Association (to the extent not chargeable to other organizations) shall be a Common Expense, if for the benefit of all Owners, or shall be a specific assessment, if for the benefit of one or more, but less than all, Owners.

8.11. Powers of the Master Association Relating to the Association. The Master Association shall have the authority to veto any action taken or contemplated to be taken by the Association which the board of directors of the Master Association reasonably determines to be adverse to the interests of the Master Association or its members or inconsistent with the Community-Wide Standard of the Master Association. The Master Association shall also have the authority to require specific action to be taken by the Association in connection with its obligations and responsibilities hereunder, under the Master Documents, or under any other covenants or instruments affecting the Condominium. Without limiting the generality of the foregoing, the Master Association may require that a proposed budget include certain items and that expenditures be made thereof, and may veto or cancel any contract providing for maintenance, repair or replacement of any portion of the Condominium.

The Master Association shall give the Association written notice of any action required to be taken by the Association pursuant to this Section. Such action shall be taken within the time frame set forth in such written notice. If the Association fails to comply with the requirements set forth in the notice, the Master Association shall have the right to effect such action on behalf of the Association and shall assess Owners for their pro rata share of any expenses incurred in connection with the foregoing in the manner provided in the Master Declaration. Such assessments may be collected as a special assessment thereunder and shall be subject to all lien rights provided for therein.

Pursuant to the terms of the Master Documents, the president of the Board of Directors of the Condominium shall represent the Condominium on the board of the Master Association. For any matters requiring a vote by the Owners as members of the Master Association, such vote shall be taken by the Board of Directors of the Condominium and the president of the Board of Directors of the Condominium shall cast the votes allocated to the Condominium in correlation with the vote taken by the Board of Directors of the Condominium (e.g., if the Owners vote in favor of a matter before the members of the Master Association, then the president of the Association shall vote in favor of such matter with the board of directors of the Master Association).

## **ARTICLE 9: ASSESSMENTS**

9.1. Purpose of Assessment. The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Units in the Condominium as may be more specifically authorized from time to time by the Board of Directors.

9.2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (i) annual assessments or charges; (ii) special assessments; and (iii) specific assessments, all as provided herein. All such assessments, together with late charges, interest, costs, and reasonable attorneys' fees and other legal fees actually incurred in the maximum amount permitted by the Act shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each assessment is made. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value, and (c) the lien of the Master Association for delinquent assessments and other charges due under the Master Documents. Such lien may be enforced by suit, judgment and foreclosure in the same manner as Mortgages are foreclosed under Georgia law.

Such amounts shall also be the personal obligation of each Person who was the Owner of such Unit at the time when the assessment fell due. Each Owner and each successor-in-title to the Unit shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors; unless otherwise provided, the annual assessments shall be paid in equal monthly installments due on the first day of each calendar month. No Owner may exempt such Owner from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, non-use of the Common Elements, the Association's failure to perform its obligations required under this Declaration, or inconvenience or discomfort arising from the Association's performance of its duties. The lien provided for herein shall have priority as provided in the Act.

9.3. Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default. Accordingly, the remedies available to the Board of Directors include, without limitation, the following:

(a) If any monthly installment of annual assessments or any part thereof is not paid in full when due or if any other charge is not paid when due, a late charge equal to the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner and interest at the highest rate as permitted by the Act and adopted by resolution of the Board of Directors shall accrue from the due date.

(b) If partial payment of assessments and related charges is made, the amount received shall be applied in the following order, and no restrictive language on any check or draft, or in any related correspondence shall be effective to change the order of application:

(i) respectively, to any unpaid late charges, interest charges, and specific assessments (including, but not limited to, fines) in the order of their coming due;

(ii) to costs of collection, including reasonable attorneys' fees and other legal fees actually incurred by the Association; and

(iii) to any unpaid installments of the annual assessment or special assessments in the order of their coming due.

(c) If assessments, fines or other charges or any part thereof due from an Owner are not paid when due, a notice of delinquency may be given to that Owner stating that if the assessment, fine or charge remains delinquent for more than ten (10) days from the date of the notice of delinquency, the

Board of Directors may accelerate and declare immediately due all of that Owner's unpaid installments of the annual assessment and of any special assessment. If an Owner fails to pay all assessments and related charges currently due within ten (10) days of the date of the notice of delinquency, the Board of Directors may then accelerate and declare immediately due all installments of the annual assessment and of any special assessment, without any further notice being given to the delinquent Owner. Upon acceleration, that Owner shall lose the privilege of paying the annual assessment in monthly installments for that fiscal year.

(d) If assessments and other charges or any part thereof remain unpaid more than thirty (30) days after the assessment payments first become due and payable, the Association may take any one or all of the following actions, in addition to other remedies permitted by this Declaration:

(i) institute suit to collect all amounts due pursuant to the provisions of the Declaration, the By-Laws, the Act, and Georgia law (so long as the amount due to the Association is \$2,000.00 or more);

(ii) suspend the Owner's and/or Occupant's right to use the Common Elements (other than utilities, the suspension of which is addressed in Section 9.3 (d) (iii) below), provided, however, the Board of Directors may not limit ingress or egress to or from the Unit; and

(iii) subject to and in accordance with the provisions and prerequisites of §44-3-76 of the Act, suspend any utility services, the cost of which are a Common Expense of the Association, including, but not limited to, water, electricity, heat, air conditioning, gas and cable television, to that Unit until such time as the delinquent assessments and all costs permitted pursuant to this Article are paid in full. Any costs incurred by the Association in discontinuing and/or reconnecting any utility service, including reasonable attorneys' fees and other legal fees, shall be an assessment against the Unit and shall be collected as provided herein for the collection of assessments.

(e) The exercise by the Board of Directors of one of the remedies set forth in this Article shall not preclude the Board of Directors from exercising other forms of remedies, as the remedies set forth above are cumulative.

9.4. Computation of Operating Budget and Assessment. It shall be the duty of the Board of Directors to prepare an annual budget covering the estimated costs of operating the Condominium during the coming year. The Board of Directors shall cause the budget and notice of the assessments to be levied against each Unit for the following year to be delivered to each member at least thirty (30) days prior to the beginning of the Association's fiscal year. All budget increases shall comply with the limitations set forth by §44-3-80(g) of the Act. The budget and the assessment shall become effective unless disapproved at a duly called and constituted meeting of the Association by members holding a Majority of the Total Eligible Association Vote; provided, however, if a quorum is not obtained at such meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at the meeting.

In the event that the membership disapproves the proposed budget or the Board of Directors fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. In such case, the Board of Directors may propose a new budget at any time during the year at a special meeting of the Association. The proposed budget and assessment shall be delivered to the members at least thirty (30) days prior to the proposed effective date thereof and at least seven (7) days prior to the special meeting. The approval procedure set forth above for budgets considered at annual meetings shall also apply to budgets considered at special meetings.

9.5. Special Assessments. The Board of Directors may, at any time, and in addition to any other rights it may have, levy a special assessment against all Owners from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Special assessments shall be allocated among the Units in accordance with Section 7.3 (a). Notice of special assessments shall be sent to all Owners. Any special assessment which would cause the average total of special assessments levied in one fiscal year to exceed of one-sixth (1/6) of the annual common assessments shall require the approval of the members holding a Majority of the Total Eligible Association Vote prior to becoming effective. Additionally, during the Development Period, all special assessments must have the consent of the Declarant prior to becoming effective.

9.6. Specific Assessments. The Board of Directors shall have the power to specifically assess expenses of the Association against Units (a) receiving benefits, items, or services not provided to all Units within the Condominium that are incurred upon request of the Owner of a Unit for specific items or services relating to the Unit, or (b) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees or guests. The Association may also levy or specifically assess any Unit to reimburse the Association for costs incurred in bringing the Unit into compliance with the provisions of the Declaration, any applicable Supplemental or Amended Declaration, the Articles of Incorporation, the By-Laws, and rules, provided the Board of Directors gives prior notice to the Owner and an opportunity for a hearing as set forth in **Section 3.23** of the By-Laws.

9.7. Capital Reserve Budget and Contribution. The Board of Directors shall annually prepare a capital reserve budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board of Directors shall set the required capital reserve contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital reserve budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital reserve contribution required, if any, shall be established by the Board of Directors and included within the budget and assessment as provided in Section 9.4. A copy of the capital reserve budget shall be distributed to each member in the same manner as the operating budget.

9.8. Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Unit, or a lender considering a loan to be secured by a Unit, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Unit. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee not to exceed Ten Dollars (\$10.00), or such higher amount as may be authorized by the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Unit as of the date specified therein.

9.9. Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to or greater than two (2) months of the annual assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of such assessment. This amount shall be collected from the purchaser of the Unit at closing and disbursed to the Association in a separately designated amount. The Association may not use these funds during the period that the Declarant has the right to appoint the directors of the Association. Thereafter, the Association may use the funds to cover operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws. The working capital contribution set forth herein is in addition to the required capital reserve contribution set forth in Section 9.7.

9.10. Surplus Funds and Common Profits. Pursuant to §44-3-108 of the Act, common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the option of the Board of Directors, either be distributed to the Owners or credited to the next assessment chargeable to the Owners in proportion to the liability for Common Expenses attributable to each Unit, or added to the Association's reserve account.

9.11. Failure to Assess. Failure of the Board of Directors to establish assessment amounts or rates, or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

9.12. Master Association Assessments. To the extent required pursuant to the Master Declaration, the Association shall include all assessments and charges levied against the property within the Condominium by the Master Association in its annual budgets and shall be responsible for collecting such amounts on behalf of the Master Association. The Association shall disburse the full amount of such charges to the Master Association in accordance with the Master Declaration.

## **ARTICLE 10: INSURANCE**

10.1. Insurance. The Association shall obtain and maintain at all times, as a Common Expense, insurance as required by §44-3-107 of the Act, and as required herein. All such insurance coverage shall be written in the name of the Association as trustee for itself, each of the Owners, and the Mortgagees of Owners, if any. It shall be the duty of the Board of Directors at least every two (2) years to conduct an insurance review to determine if the policy in force is adequate to meet the needs of the Association and to satisfy the requirements of this Declaration and §44-3-107 of the Act. Such responsibility may be performed, and shall be deemed reasonably performed, by requesting the Association's insurance agent to verify that insurance policies in existence meet the needs of the Association and satisfy the requirements of this Declaration and §44-3-107 of the Act. Such insurance shall run to the benefit of the Association, the respective Owners, and their respective Mortgagees, as their interests may appear. The Association's policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance equals at least the full replacement cost.

(a) The Board of Directors shall utilize every reasonable effort to secure a master policy covering physical damage in an amount equal to full replacement costs of all standard improvements located within the Condominium that will provide the following:

(i) that the insurer waives its rights of subrogation of any claims against the Board of Directors, officers of the Association, the individual Owners, Occupants, and their respective invitees and Occupants of the Unit;

(ii) that the master policy on the Condominium cannot be canceled, invalidated, or suspended on account of the conduct of any Owner, director, officer or employee of the Association or the managing agent without a prior demand in writing delivered to the Association and to all Mortgagees of Units to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured;

(iii) that any “no other insurance” clause contained in the master policy shall expressly exclude individual Owners’ policies from its operation;

(iv) that until the expiration of thirty (30) days after the insurer gives notice in writing to the Mortgagee of any Unit, the Mortgagee’s insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Unit, the other Owners, the Board of Directors, or any of their agents, employees, Occupants, or invitees, nor be canceled for nonpayment of premiums;

(v) that the master policy may not be canceled, substantially modified, subjected to nonrenewal without at least thirty (30) days prior notice in writing to the Board of Directors and all Mortgagees of Units;

(vi) a construction code endorsement;

(vii) an agreed value endorsement and an inflation guard endorsement; and

(viii) that the deductible amount per occurrence shall not exceed such amount as determined by the Board of Directors.

(b) All policies of insurance shall be written with a company licensed to do business in the State of Georgia and holding a rating of XI or better in the Financial Category as established by A.M. Best Company, Inc., if available, or, if not available, the best rating available. The company shall provide insurance certificates to each Owner and each Mortgagee upon request.

(c) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association’s Board of Directors; provided, however, no Mortgagee having an interest in such losses shall be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees. Each Owner shall notify the Board of Directors of all structural improvements made by the Owner to his Unit. Any Owner who obtains an individual insurance policy covering any portion of the Condominium, other than improvements and betterments made by such Owner, shall file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after the purchase of such insurance. Such Owner shall also promptly notify, in writing, the Board of Directors in the event such policy is canceled.

(e) In addition to the insurance required herein above, the Board of Directors shall obtain as a Common Expense:

(i) worker’s compensation insurance if and to the extent necessary to meet the requirements of law;

(ii) public liability and insurance in amounts not less than required by §44-3-107 of the Act;

(iii) officers’ and directors’ liability insurance in such amounts as the Board of Directors may determine, but in no event less than One Million Dollars (\$1,000,000.00) per occurrence (such insurance shall contain a cross liability endorsement);

(iv) fidelity bonds, if reasonably available, covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds. Such bonds, if reasonably available, shall be in an amount which in the best business judgment of the Board of Directors reflects the estimated maximum amount of funds, including reserve funds in the custody of the Association at any time during the term of the bond, but not less than three (3) months' aggregate assessments, plus reserves on hand as of the beginning of the fiscal year and shall contain waivers of any defense based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms of expressions; provided, however, fidelity coverage herein required may be reduced based on the implementation of financial controls which take one or more of the following forms:

(A) the Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls and the bank in which the funds are deposited sends copies of the bank statements directly to the Association;

(B) the management company, if any, maintains separate records and bank accounts for each Association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or

(C) two (2) members of the Board of Directors must sign any check written on the reserve account;

(v) flood insurance, to the extent that it is required by law or the Board of Directors determines it to be necessary; and

(vi) such other insurance as the Board of Directors may determine to be necessary.

(f) Insurance carried by the Association as a Common Expense shall not be required to include any portions of Units not depicted on the original Plats and Plans, nor shall the Association include public liability insurance for individual Owners for liability arising within the Unit. Nothing contained herein gives any Owner or other party a priority over the rights of first Mortgagees as to distribution of insurance proceeds.

(g) Every Owner shall be obligated to obtain and maintain at all times casualty and liability insurance for the full replacement cost of all insurable improvements in the Owner's Unit, less a reasonable deductible, covering those portions of the Owner's Unit to the extent not insured by policies maintained by the Association. Upon request by the Board of Directors, the Owner shall furnish a copy of such insurance policy or policies to the Association within (30) days from the date of such request. In the event that any such Owner fails to obtain insurance or to provide copies of the policy or policies as required by this Article, the Association may purchase such insurance on behalf of the Owner and assess the cost thereof to the Owner, to be collected in the manner provided for collection of assessments under Article 9 hereof.

(h) In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the person or persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board of Directors among the parties suffering loss in proportion to each affected owner's portion of the total cost of repair. Notwithstanding the foregoing, subject to §44-3-94 of the Act, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Owner shall be responsible for paying the deductible pertaining to



such Owner's Unit, if any. If any Owner or Owners fail to pay the deductible when required under this Article, then the Association may pay the deductible and assess the cost to the Owner or Owners pursuant to Article 9 of this Declaration; provided, however, where the deductible is for insurance required under the Act, no Owner shall be assigned more than One Thousand Dollars (\$1,000.00), or such higher amount as authorized under the Act, as the cost of the deductible for any one occurrence.

(i) Notwithstanding anything to the contrary contained herein, in the event of an insured loss under the Association's insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner that is delinquent in the payment of assessments owed to the Association pursuant to Article 9, then the Association may retain and apply such proceeds to the delinquency. Any amount remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Owner.

(j) Nothing contained herein shall give any Owner or other party a priority over any rights of first Mortgagees as to distribution of insurance proceeds. Any insurance proceeds payable to the Owner of a Unit on which there is a Mortgagee endorsement shall be disbursed jointly to such Owner and the Mortgagee. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee.

#### **ARTICLE 11: REPAIR AND RECONSTRUCTION OF CONDOMINIUM**

In the event of damage to or destruction of all or any part of the Condominium insured by the Association as a result of fire or other casualty, unless (a) Owners entitled to cast eighty percent (80%) of the Total Eligible Association Vote and (b) Eligible Mortgagees representing at least fifty-one percent (51%) of the votes of Units subject to a Mortgage held by an Eligible Mortgagee appertain, vote not to proceed with the reconstruction and repair of the structure, the Board of Directors or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the damaged or destroyed structure.

11.1. Cost Estimates. Immediately after a fire or other casualty causing damage to the Condominium, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Unit) to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

11.2. Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board of Directors, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the additional costs shall be assessed against all Owners in proportion to each Owner's respective undivided interest in the Common Elements. This assessment shall not be considered a special assessment. If there is a surplus of funds after repair and reconstruction is completed, or if the Owner's and Eligible Mortgagees vote not to proceed with reconstruction or repair as set forth herein, such funds shall be common funds of the Association to be used as directed by the Board of Directors.

11.3. Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Condominium was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Board of

Directors. To the extent insurance proceeds are available, the Association may reconstruct or repair Owner improvements damaged as a result of fire or other casualty.

11.4. Encroachments. Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Condominium was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

11.5. Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Article to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s) and personnel performing the work or supplying materials or services for the repair and reconstruction of the Condominium as are designated by the Board of Directors.

## **ARTICLE 12: ARCHITECTURAL CONTROL**

12.1. Architectural Standards. Except for the Declarant, and except as provided herein, no Owner, Occupant, or any other Person may make any encroachment onto the Common Elements or Limited Common Elements, or make any exterior change, alteration or construction (including painting and landscaping), nor erect, place or post any object, sign, antenna, playground equipment, light (except for reasonable seasonal decorative lights), storm door or window, artificial vegetation, exterior sculpture, fountain, flag, object, or item on the exterior of the Condominium, in any windows, on any Limited Common Elements, or any other Common Elements, without first obtaining the written approval of the Board of Directors. The Board of Directors shall have exclusive jurisdiction over all construction on any portion of the Condominium.

The standard for approval by the Board of Directors of such improvements shall include, but not be limited to, aesthetic consideration, materials to be used, harmony with the external design of the existing building and the location in relation to surrounding structures and topography. Applications for approval of any such architectural modification shall be in writing and shall provide such information as the Board of Directors may reasonably require. The Board of Directors or its designated representative shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction which is not in conformance with approved plans. The Board of Directors may publish written architectural standards for exterior and Common Elements alterations or additions, and any request in substantial compliance therewith shall be approved. The architectural standards or design guidelines are not the exclusive basis for decisions of the reviewing bodies and compliance with such standards or guidelines does not guarantee approval of any application.

In the event that the Board of Directors fails to approve or to disapprove such application within forty-five (45) days after the application and all information as the Board of Directors may reasonably require have been submitted, its approval will not be required and this Article will be deemed complied with; provided, however, even if the requirements of this Article are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Condominium Instruments.

12.2. Alteration and Storage within Units. No Owner or Occupant may make any alteration within a Unit which involves connecting to Common Element pipes, lines, conduits, wires, and other apparatus for access to common utilities without prior written approval of the Board of Directors. No Owner or Occupant shall make any interior modifications to or place an excessive load on any structural or load bearing portions of a Unit without first obtaining the prior written approval of the Board of Directors. Such approval shall not be granted by the Board of Directors unless the Owner has presented to the Board of Directors a report or drawing prepared by a licensed structural engineer showing that compensating measures will be taken to ensure the structural integrity of the Unit and the Condominium. All building code requirements must be complied with and necessary permits and approvals secured for any modifications. Notwithstanding the above, Declarant shall not be required to obtain any approvals under this paragraph.

12.3. Condition of Approval. As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance of such change, modification, addition, or alteration. In the discretion of the Board of Directors, an Owner may be required to verify such condition of approval by written instrument in recordable form acknowledged by such Owner.

12.4. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the Declarant, the Association, nor the Board of Directors shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board of Directors, nor members of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

12.5. No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board of Directors may change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. Each Owner further acknowledges that the Board of Directors may adopt different architectural standards for different parts of the Condominium. The approval by the Board of Directors of any proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Board of Directors, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatsoever which are subsequently or additionally submitted for approval or consent.

12.6. Enforcement. Any construction, alteration, or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board of Directors, the Owners by or on behalf of whom any such violation is committed shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration or other work. Should an Owner fail to remove and restore as required hereunder, the Board of Directors shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorneys' fees and other legal fees, may be assessed against the Unit and collected as an assessment pursuant to this Declaration. In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce its decisions and the provisions of this Article. Any exterior change, alteration, or construction (including landscaping) upon the Common Elements made by an Owner in violation of this Declaration shall be at such Owner's sole risk and expense. The Board of Directors may require that the Owner remove the change, alteration

or construction and restore the Common Elements to its original condition, or may require that the change, alteration or construction remain on the Common Elements without reimbursement to the Owner for any expense incurred in making the change, alteration or construction.

12.7. Master Documents. The architectural review requirements set forth herein are in addition to, and not in lieu of, those requirements set forth in the Master Documents. Whenever approval of the Board of Directors is required hereunder, the granting of such approval shall not obviate the need to comply with the approval procedures set forth in the Master Documents as well. All proposed construction, modifications, alterations, and improvements shall be approved pursuant to this Declaration before being submitted for approval pursuant to the Master Documents. In addition, the Master Board of Directors (as defined in the Master Documents) shall have the authority to review and disapprove any decision of the Board of Directors which the Master Board of Directors determines, in its sole discretion, to be inconsistent with the Master Documents.

### **ARTICLE 13: USE RESTRICTIONS**

Each Owner of a Unit shall be responsible for ensuring that the Owner's invitees, guests, tenants, and Occupants comply with all provisions of the Condominium Instruments and the rules and regulations of the Association. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's invitees, guests, tenants, or Occupants, as a result of such Person's violation of the Condominium Instruments, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's invitees, guests, tenants, or Occupants. Use restrictions regarding the use of Units and the Common Elements are as set forth herein and also as may be adopted by the Board of Directors in accordance with the terms hereof and as specified in the By-Laws.

13.1. Retail Unit. The Retail Unit shall be used only for such commercial office or retail purposes permitted by applicable zoning ordinance and use restrictions, provided such commercial office or retail activity does not constitute a nuisance or hazardous or offensive use, or threaten the security or safety of other Owners or Occupants of the Condominium, as may be determined in the reasonable discretion of the Declarant during the Development Period and, thereafter, the Board of Directors. The Retail Unit may only initially receive customers and members of the public between the hours of 6:00 a.m. and 3:00 a.m. of the next morning. Notwithstanding the foregoing, the Retail Unit shall not be used for any of the following: cinema/movie theater, bowling alley, skating rink, amusement gallery, pool hall, massage parlor (except that this shall not prohibit the providing of massage in connection with a full service health spa or beauty salon), adult book store or adult video store, business which sells pornographic material, or any lewd purpose, video game room, industrial or manufacturing use, or amusement arcade. The Retail Unit may be owned and operated by the Declarant and may be subdivided or have the boundaries of the Retail Unit relocated by the Declarant pursuant to this Declaration.

Outdoor terraces or other areas that are part of the Retail Unit or assigned as a Limited Common Element to the Retail Unit may be used for outdoor dining **and shall not be used as a bar area that does not serve meals**. Such outdoor seating areas may have music at reasonable volumes so long as the total noise level of the outdoor seating area at peak hours does not exceed the number of decibels to be determined as follows: upon the completion and occupancy of the Condominium, Declarant shall have an engineer take a baseline measurement of the exterior noise level of the outdoor terrace areas of the Retail Unit (when occupied). **Such measurement shall be taken from an outdoor balcony facing** **\_\_\_\_\_**. The noise level of the outdoor areas of the Retail Unit shall not be more than ten (10) decibels higher than such baseline measurement. Notwithstanding the foregoing,

during the Development Period, Declarant shall have the authority to adjust the maximum decibel level of such outdoor areas of the Retail Unit. Such maximum decibel level shall be published to the Owners and shall become part of the books and records of the Association. This provision cannot be amended without the written consent to any such amendment by the Owner of the Retail Unit.

13.2. Apartments Unit. The Apartments Unit shall be used for residential purposes only consistent with the operation of the Apartments Unit as a commercial apartment building, including, without limitation, for the use and enjoyment of the amenities available within the Apartments Unit. No trade or business of any kind may be conducted in or from an Apartment, including business uses ancillary to the primary use, except that an Occupant of an Apartment may conduct such ancillary business activities within the Apartment so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound or smell from outside the Apartment; (b) the activity conforms to all zoning requirements for the Condominium; (c) the activity does not involve regular visitation of the Apartment by persons (including, but not limited to, clients, customers, employees, advisors, suppliers or independent contractors) coming onto the Condominium who are not Occupants of the Condominium or door-to-door solicitation of Occupants of the Condominium; (d) the activity does not increase traffic or include frequent deliveries within the Condominium other than deliveries by couriers, express mail carriers, parcel delivery services and other such delivery services; (e) the activity is consistent with the primarily residential character of the Apartments Unit and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other Occupants of the Condominium, as may be determined in the sole discretion of the Board of Directors; (f) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (g) there are no signs, advertisements or plaques of any nature whatsoever visible from the exterior of the Apartment; and (h) the business activity does not result in a materially greater use of Common Element facilities or Association services.

13.3. Apartments Unit. [DGW – I'M NOT SURE WHAT TO PUT HERE]

(a) The terms “business” and “trade” as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider’s family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

(b) Notwithstanding the above, the leasing of an Apartment shall not be considered a business or trade within the meaning of this Section. Furthermore, this Section shall not apply to any activity conducted by the Declarant or a builder approved by the Declarant with respect to its development and sale of the Condominium or portions thereof, or its use of any Units which it owns within the Condominium.

(c) No Apartment may be used as a rooming house, hostel, hotel, or for timesharing, except as may be established by Declarant. The term “timesharing” shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess all or any portion of a Unit rotates among various Persons on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time of thirty (30) consecutive calendar days or less.

(d) The maximum number of Occupants in an Apartment shall be limited to two (2) natural persons per bedroom. “Occupancy”, for purposes hereof, shall be defined as staying overnight in an Apartment for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any

calendar year. Upon written application, the Board of Directors shall grant variances to this restriction if necessary to comply with provisions of the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, *et seq.*, or any amendments thereto.

(e) No object over forty-two inches (42") in height, bicycles, laundry garments, towels, and other objects other than potted plants and patio furniture, shall be placed on a balcony or terrace of an Apartment. Penetration of a balcony or terrace of an Apartment is prohibited. Full enclosure of a balcony of an Apartment is also prohibited.

13.4. Subdivision of Units. An Owner may subdivide the Unit only in accordance with the provisions of §44-3-92 of the Act, and this Declaration. During the Development Period, the Owner of a Unit must obtain the prior written consent of the Declarant in order to subdivide the Unit. After the Development Period is terminated, an Owner must obtain the prior written consent of the Board of Directors in order to subdivide the Unit.

13.5. Outbuildings. No structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected by any Owner or Occupant on any portion of the Condominium, other than by Declarant, at any time, either temporarily or permanently, without the prior written approval of the Board of Directors.

13.6. Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept on, parked on, stored on, or removed from any part of the Common Elements without the prior written consent of the Board of Directors, except as specifically provided herein. This prohibition shall not apply to the Declarant.

13.7. Use of Limited Common Elements. Use of the Limited Common Elements is restricted exclusively to the Owners of the Unit to which such Limited Common Elements are assigned and said Owner's members, guests, invitees, and Occupants. The Limited Common Elements are reserved for exclusive use, but are a part of the Common Elements, and the restrictions applicable to the Common Elements shall also apply to the Limited Common Elements.

13.8. Prohibition of Damage, Nuisance and Noise. Unless otherwise permitted herein, nothing shall be done or kept on the Condominium, or any part thereof, which would increase the rate of insurance on the Condominium or any Unit or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirements of any governmental body, or which would increase the Common Expenses, without the prior written consent of the Board of Directors.

Noxious, destructive or offensive activity shall not be carried on upon the Condominium. No Owner or Occupant of a Unit may use or allow the use of the Unit or any portion of the Condominium at any time, in any way or for any purpose which may endanger the health or unreasonably annoy or disturb or cause embarrassment, discomfort, or nuisance to other Owners or Occupants, or in such a way as to constitute, in the sole opinion of the Board of Directors, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with the Owner's property or personal rights.

No Owner shall do any work which, in the reasonable opinion of the Board of Directors or its designee, would jeopardize the soundness or safety of the Condominium or any structure created thereon, would reduce the value thereof, or would impair any easement or other interest in real property thereto, without in every such case the unanimous, prior written consent of all members of the Association and their Mortgagees. No damage to or waste of the Common Elements, or any part thereof, or of the exterior of any building shall be permitted by any Owner, Occupants, tenants, invitees, or guests of any Owner.

Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner, Occupants, tenants, invitees, or guests of any Owner.

13.9. Firearms and Fireworks. The discharge of firearms, firecrackers and other fireworks is prohibited; however, the Board of Directors shall have no obligation to take action to prevent or stop such discharge (the term “firearms” includes, without limitation, “BB” guns, pellet guns, spud guns, and firearms of all types).

13.10. Animals and Pets. No animals shall be kept, bred or maintained for commercial purposes within the Condominium without the prior written approval of the Board of Directors. All animals within the Condominium shall be reasonably controlled by the owner of such animal whenever outside a Unit and shall be kept in such a manner as to not become a nuisance by excessively loud barking or other acts. The owners of an animal shall be responsible for all of the animal’s actions. If, in the sole opinion of the Board of Directors, any animal becomes dangerous or a nuisance in the Condominium, the owner of such animal may be fined in an amount reasonably set by the Board of Directors. If a fine is imposed, the fine may first be assessed against the Occupant which is the owner of the animal; provided, however, if the fine is not paid by the Occupant within the time period set by the Board of Directors, the Owner of the Unit in which the animal is situated shall pay the fine upon notice from the Board of Directors. This provision shall not be construed to interfere with any provision under the Americans with Disabilities Act of 1990, as amended, or any similar applicable federal, state or local law, ordinance or regulation. Service animals in active use shall be permitted on the Condominium.

13.11. Abandoned Personal Property. Personal property, other than vehicles as provided for in this Article, shall not be kept or allowed to remain for more than twenty-four (24) hours upon any portion of the Common Elements, other than on Limited Common Elements, without the prior written permission of the Board of Directors.

If the Board of Directors or its designee, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Elements or Limited Common Elements in violation of this Section, then the Board of Directors may remove and either discard or store the personal property in a location which the Board of Directors may determine. Prior to taking any such action, the Board of Directors shall place a notice on the personal property and on the front door of the owner of such property, if known, specifying the nature of the violation and stating that after two (2) days the property may be removed and either discarded or stored. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

If two (2) days after such notice is placed on the personal property and/or the front door of the owner, the violation continues or thereafter occurs again within six (6) months of such notice, the personal property may be removed in accordance with the original notice, without further notice to the owner or user of the personal property.

Notwithstanding anything to the contrary, the Board of Directors, in its discretion, may determine that an emergency situation exists, and the personal property abandoned or stored in violation of this Section may, without prior notice to the owner or user of the personal property, be removed and either discarded or stored by the Board of Directors in a location which the Board of Directors may determine; provided, however, the Board of Directors shall give to the owner, if known, notice of the removal of the property and the location of the personal property within three (3) days after the personal property is removed.

If personal property is removed in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal activity. Notwithstanding anything to the contrary herein, the Board of Directors may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

13.12. Signs. Except as may be required by legal proceedings or local ordinance, no signs, advertising posters, billboards, canopy or awnings, or any variation of the foregoing of any kind shall be erected, placed, or permitted to remain on the Condominium without the prior written consent of the Board of Directors or its designee except that one (1) professional security sign not to exceed six inches by six inches (6" x 6") in size may be displayed from within the Unit, and one (1) professionally lettered "For Rent" or "For Sale" sign not to exceed two feet by two feet (2' x 2') in size may be displayed from within a Unit being offered for sale or for lease. The Board of Directors shall have the right to erect reasonable and appropriate signs on behalf of the Association and to enact reasonable rules and regulations governing the general placement of signs on the Condominium. **[Open]**

Notwithstanding the restrictions contained in this Section, the Declarant may approve and erect signs for the purpose of carrying on business related to the development, improvement and sale of Units in the Condominium, and such signs shall not be subject to approval or regulation by the Association or by the Board of Directors.

13.13. Rubbish, Trash, and Garbage. All rubbish, trash, and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Elements or Limited Common Elements outside the Unit, temporarily or otherwise, except as provided herein. Rubbish, trash and garbage shall be disposed of in closed plastic bags and placed in proper receptacles designated by the Board of Directors for collection or shall be removed from the Condominium.

13.14. Impairment of Units and Easements. An Owner shall do no act nor any work that will impair the structural soundness or integrity of another Unit or impair any easement or other interest in real property, nor do any act nor allow any condition to exist which will adversely affect the other Units or their Owners or Occupants.

13.15. Unightly or Unkempt Conditions. The pursuit of hobbies or other activities, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any part of the Condominium. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the Unit.

13.16. Window Treatment. Unless otherwise approved in writing by the Board of Directors, all windows which are part of the Apartments Unit shall have window treatments, and any portion thereof visible from outside the Apartments Unit shall be white or off-white in color.

13.17. Antennas and Satellite Equipment. No antennas or satellite equipment are permitted on the Condominium without the prior written consent of the Board of Directors. This provision shall not, however, obligate the Board of Directors to approve any application for an antenna or satellite equipment, nor shall it prohibit the Association from constructing or maintaining a central antenna or communications system on the Condominium for the benefit of its members. Notwithstanding the foregoing, the Association shall regulate antennas, satellite dishes or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind only in strict compliance with all federal laws and regulations.



13.18. Sales. Garage sales, yard sales, tag sales, flea markets, or similar activities are prohibited, unless approved in writing by the Board of Directors.

13.19. Elevators. The Board of Directors shall have the right to promulgate rules and regulations regarding use of elevators.

13.20. Grilling. The use of outdoor grills in the Condominium is prohibited except for grills, if any, permanently located in an amenity area of a Unit. This prohibition includes, without limitation, the use of a grill on Limited Common Element porch, deck, courtyard, patio, terrace, balcony, or other Limited Common Element as designated by the Board of Directors.

#### **ARTICLE 14: LEASING**

14.1. Leasing. All leases for space within the Condominium shall provide notice to the tenant thereunder of the existence of the Master Documents and this Declaration and the tenant's obligations thereunder.

#### **ARTICLE 15: SALE OF UNITS**

An Owner intending to make a transfer or sale of a Unit or of any percentage of interest in a Unit shall give written notice to the Board of Directors of such intention within fourteen (14) days after execution of the transfer or sales documents. The Owner shall furnish the following information to the Board of Directors as part of the notice:

- (i) the name and address of the intended grantee; and
- (ii) such other information as the Board of Directors may reasonably require.

Within seven (7) days after receiving title to a Unit, the purchaser of the Unit shall give written notice to the Board of Directors of the ownership of the Unit. Upon failure of an Owner to give the required notice within the seven-day time period provided herein, the Board of Directors may levy fines against the Unit and the Owner thereof, and assess the Owner for all costs incurred by the Association in determining Owner's identity.

This Article shall not be construed to create a right of first refusal in the Association or in any third party.

#### **ARTICLE 16: MAINTENANCE RESPONSIBILITY**

16.1. By the Owner. Each Owner shall have the obligation to maintain and keep in good repair all portions of the Unit and all Limited Common Elements assigned to the Unit, except any portion of the Unit or any Limited Common Element which is expressly made the maintenance obligation of the Association as set forth in Section 16.2 below. This maintenance responsibility shall include, but not be limited to, the following: all glass surfaces (excluding exterior cleaning); windows, window frames, casings, and locks (including caulking of windows); all doors, doorways, door frames, and hardware that are part of the entry system of the Unit (except for periodic painting or staining of the exterior surface of exterior doors, and entry doors and door frames facing a hallway of the Condominium); all portions of the heating and air conditioning system, including the air conditioning compressor serving the Unit and the

fan coil; and all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit, whether located within or without a Unit's boundaries (including all gas, electricity, water, sewer, or air conditioning pipes, lines, ducts, conduits, or other apparatus serving only the Unit).

(a) Some Units may contain interior support beams which are load bearing beams. No Owner or Occupant shall do any act which jeopardizes or impairs the integrity of such beams.

(b) In addition, each Owner or Occupant shall have the responsibility:

(i) to keep in a neat, clean, and sanitary condition any Limited Common Elements serving such Unit including, without limitation, swimming pool, porch, deck, courtyard, patio, terrace, or balcony;

(ii) to perform such cleaning and maintenance in a manner so as to not unreasonably disturb other persons in other Units;

(iii) to promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible; and

(iv) to pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Owner or Occupant but which responsibility such Owner or Occupant fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, Occupants, invitees, tenants, or guests, with the cost thereof to be added to and become part of the next chargeable assessment to the affected Unit.

#### 16.2. By the Association.

(a) The Association shall maintain and keep in good repair as a Common Expense (i) all Common Elements, including any Limited Common Elements (except as otherwise expressly provided for herein); (ii) periodic cleaning and/or painting and/or staining of exterior surfaces of the Condominium building and of exterior doors and door frames, as determined appropriate by the Board of Directors; and (iii) periodic cleaning of exterior window surfaces, as determined appropriate by the Board of Directors.

(b) Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner or Occupants which is the responsibility of the Association hereunder (including, but not limited to, landscaping of Common Elements) shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

(c) The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Unit, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance, or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Unit or such Owner's Occupant, guest, invitee, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements. The Association shall not be liable to any Owner, or any Owner's Occupant, guest, invitee, or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Article where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of

assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

(d) The Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Association. As finished levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready." Components that may require repair or replacement, such as tile and trim, will be reinstated only to the extent that matching or similar materials are readily available at reasonable costs, as determined in the sole discretion of the Board of Directors. Accessibility around personal belongings for workers to perform such repairs is the responsibility of the Owner or Occupant. Removal, storage or other protective measures of personal items are also the responsibility of the Owner or Occupant. If the removal, storage, or other protective measures are not taken by the Owner or Occupant and damage occurs due to the repair process, neither the Association nor the Board of Directors will be liable for such damage. Upon completion of such repairs the Association will perform cursory cleaning, but shall not be responsible for a detailed cleaning. The Board of Directors has sole discretion in defining the reasonable level, quality and extent of the repair and subsequent cleaning. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such Persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

16.3. Failure to Maintain. If the Board of Directors determines that any Owner has failed or refused to discharge properly such Owner's obligation with regard to the maintenance, repair, or replacement of items of which such Owner is responsible hereunder, then the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors. Unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Board of Directors determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as herein provided, the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the assessment to which such Owner is subject, and shall become a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

If the Board of Directors determines that the need for maintenance, repair or replacement within the Common Elements of the Condominium is caused through the willful or negligent act of an Owner or Occupant, or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair or replacement against the Owner or Occupant, which shall become a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

16.4. Maintenance Standards and Interpretation. The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one term of the Board of Directors to another. These variances shall not constitute a waiver by the Board of Directors of the right to adopt and enforce maintenance standards under this Section. No decision or interpretation by the Board of Directors shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board of Directors. All maintenance of a Unit shall be in conformance with the Community-Wide Standard of the Association. No Owner shall perform any

maintenance which may result in a change or alteration to the exterior of the Unit without the prior written approval of the Board of Directors as provided in Article 12 hereof.

16.5. Measures Related to Insurance Coverage. The Board of Directors, upon resolution, shall have the authority to require all or any Owner(s) to do any act or perform any work involving portions of the Condominium which are the maintenance responsibility of the Owner, which will, in the Board of Directors' sole discretion, decrease the possibility of fire or other damage in the Condominium, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board of Directors in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring all Owners to turn off cut-off valves, which may now or hereafter be installed, during winter months for outside water spigots; requiring Owners to insulate pipes sufficiently or take other preventive measures to prevent freezing of water pipes; requiring Owners to install smoke detectors; requiring Owners to make improvements to the Owner's Unit; and such other measures as the Board of Directors may reasonably require so long as the cost of such work does not exceed Five Hundred Dollars (\$500.00) per Unit in any twelve (12) month period. Any requirement imposed upon the Owners that would exceed Five Hundred Dollars (\$500.00) per Unit in any twelve (12) month period shall require the approval by members holding a Majority of the Total Eligible Association Vote prior to becoming effective.

In addition to, and not in limitation of, any other rights the Association may have, if any Owner does not comply with any reasonable requirement made by the Board of Directors pursuant to this Section, the Association, upon ten (10) days' written notice (during which period the Owner may perform the required act or work without further liability), may perform such required act or work at the Owner's sole cost. Such cost shall be an assessment and a lien against the Unit as provided herein. The Association shall have all rights necessary to implement the requirements mandated by the Board of Directors pursuant to this Section, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit, except that access may be had at any time without notice in an emergency situation.

16.6. Mold, Mildew, and Water Intrusion. Mold and/or mildew may grow in any portion of the Condominium. The Association and each Owner shall make routine mold, mildew and water intrusion inspections of the portions of the Condominium which they are responsible to maintain pursuant to this Article and which are accessible without having to conduct invasive testing. Upon discovery of any mold, mildew or water intrusion, the responsible party shall, in a good and workmanlike manner, immediately repair the source of any water intrusion and remediate or replace any building materials that are affected. Remediation of mold and mildew shall be performed in accordance with industry-accepted methods in place at the time of such remediation. Notwithstanding anything to the contrary contained herein, Declarant shall have no obligation to perform any invasive testing or inspections, maintenance or repairs in accordance with this Section and shall not be held liable for any loss or damage caused by the failure of the Association or an Owner to perform their obligations herein.

## **ARTICLE 17: PARTY WALLS**

17.1. General Rules of Law to Apply. Each wall built as a part of the original construction of the Units which shall serve and separate any two (2) adjoining Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

17.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions.

17.3. Damage and Destruction. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner or Owners who have benefited by the wall may restore it, and the Association shall reimburse said Owner(s) for the cost incurred, without prejudice, however, to the Association's right to seek reimbursement from or withhold payment to the Owners or others under any rule of law or provision in this Declaration regarding liability for negligent or willful acts or omissions.

17.4. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

#### **ARTICLE 18: EMINENT DOMAIN**

In the event of a taking by eminent domain of any portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking at least seventy-five percent (75%) of the Total Eligible Association Vote shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available therefor. The provisions of Article 11, applicable to Common Elements improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

#### **ARTICLE 19: MORTGAGEE RIGHTS**

19.1. Amendments to Documents. The consent of (a) members holding at least sixty-seven percent (67%) of the Total Eligible Association Vote, (b) the Declarant, during the Development Period, and (c) Eligible Mortgagees representing at least fifty-one percent (51%) of the Total Eligible Association Vote attributable to Units subject to a Mortgage held by an Eligible Mortgagee, shall be required to materially amend any provisions of this Declaration, the By-Laws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

- (a) voting;
- (b) assessments (including any increase in the annual assessment by more than twenty-five percent (25%) of the previous year's assessment), assessment liens, or subordination of such liens;
- (c) reductions in reserves for maintenance, repair and replacement of the Common Elements;
- (d) responsibility for maintenance and repair of the Condominium;
- (e) reallocation of interests in Common Elements;
- (f) redefinition of Unit boundaries;
- (g) convertibility of Units into Common Elements or vice versa;
- (h) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium in a manner other than as provided herein;

- (i) insurance or fidelity bonds;
- (j) leasing of Units;
- (k) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer or otherwise convey the Unit;
- (l) establishment of self-management by the Association where professional management has been required by an Eligible Mortgagee;
- (m) repair or restoration of the Condominium (after damage or partial condemnation) in a manner other than as provided herein; or
- (n) any provisions included in the Declaration, By-Laws, or Articles of Incorporation which are for the express benefit of holders, guarantors or insurers of first Mortgages on Units.

19.2. Mortgagee Consent. Unless at least sixty-seven percent (67%) of the first Mortgagees and Owners other than Declarant, and the Declarant during the Development Period give their consent, the Association or the membership shall not:

- (a) by act or omission seek to abandon or terminate the Condominium;
- (b) except as provided herein and in the Act for condemnation, substantial damage and destruction, and annexation of additional property to the Condominium, change the pro rata interest or obligations of any individual Unit for the purpose of (1) levying assessments or changes or allocating distributions of hazard insurance proceeds or condemnation awards; or (2) determining the pro rata share of ownership of each Unit in the Common Elements;
- (c) partition or subdivide any Unit in any manner inconsistent with the provisions of this Declaration;
- (d) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements (the granting of easements or licenses, as authorized herein, shall not be deemed a transfer within the meaning of this clause); or
- (e) use hazard insurance proceeds for losses to any portion of the Condominium (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such portion of the Condominium.

The provisions of this Section shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Owners where a larger percentage vote is otherwise required by the Act or the Condominium Instruments for any of the actions contained in this Section.

19.3. Liability of First Mortgagees. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Unit obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be a Common Expense collectible from Owners of all the Units, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

19.4. Mortgagee Notice. Upon written request to the Association, identifying the name and address of the holder and the Unit number or address, any Eligible Mortgagee will be entitled to timely written notice of:

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

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to a first Mortgage held by such Eligible Mortgagee which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Owner of any other obligation under the Condominium Instruments which is not cured within sixty (60) days;

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

(d) any proposed action which would require the consent of a specified percentage of Eligible Mortgagee, as specified herein.

19.5. Financial Statements. Pursuant to the terms of **Section 6.6** of the By-Laws, any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

19.6. Additional Mortgagee Rights. Notwithstanding anything to the contrary herein contained, the provisions of Articles 14 and 15 governing sales and leases shall not apply to impair the right of any first Mortgagee to:

(a) foreclose or take title to a Unit pursuant to remedies contained in its Mortgage;

(b) take a deed or assignment in lieu of foreclosure; or

(c) sell, lease, or otherwise dispose of a Unit acquired by the Mortgagee.

19.7. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

19.8. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board of Directors 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 the Mortgagee within thirty (30) 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.

19.9. Construction of Article. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Georgia law for any of the acts set out in this Article.

## **ARTICLE 20: DECLARANT RIGHTS**

20.1. Right to Appoint and Remove Directors. The Declarant shall have the right to appoint and remove any member or members of the Board of Directors of the Association throughout the

Development Period, subject to such limitations as set forth below. The Development Period shall expire on the first to occur of the following:

- (a) the date on which all of the Units have been sold to third parties;
- (b) the expiration of three (3) years after the date upon which this Declaration is recorded in the Public Records; or
- (c) the date on which the Declarant voluntarily relinquishes such right by executing and recording an amendment to this Declaration, which shall become effective as specified in such amendment.

20.2. Construction and Sale Period. Notwithstanding any provisions in the Condominium instruments and any and related documents, during the Development Period, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, and a nonexclusive easement within the Condominium shall exist in favor of the foregoing, upon such portion of the Condominium as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or developer's development, construction and sales activities related to property described on Exhibit A to this Declaration, including, but without limitation, the right of entry into Units when necessary, and except in an emergency situation, only during reasonable hours after reasonable notice to the Owner or Occupant of the Unit; the right of access, ingress or egress for vehicular and pedestrian traffic over, under, on, or in the Condominium; the right to tie into any portion of the Condominium with streets, driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), install, lay, replace, relocate, maintain, and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines, and facilities constructed or installed in, on, under, and/or over the Condominium; the right to carry on sales and promotional activities in the Condominium; and the right to construct and operate business offices, signs, construction trailers, model Units, and sales offices. Declarant and any such builder or developer may use Units or offices owned or leased by Declarant or such builder or developer as model Units and sales offices. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

20.3. Transfer or Assignment. Any or all of the special rights and obligations of the Declarant, set forth in the Condominium Instruments, may be transferred or assigned in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the Act. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

## **ARTICLE 21: EASEMENTS**

21.1. Use and Enjoyment. Each Owner and Occupant shall have a right and non-exclusive easement of use and enjoyment in and to the Common Elements (including the right of access, ingress and egress to and from the Unit over those portions of the Condominium designated for such purposes), and such easement shall be appurtenant to and shall pass with the title to each Unit, subject to the rights of the Owners to the exclusive use of the Limited Common Elements assigned to their respective Units and



to the right of the Association to control the use and enjoyment of the Common Elements as provided by the terms of this Declaration including, but not limited to, the right of the Association to suspend voting and use privileges as provided herein. Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit.

21.2. Utilities. To the extent that the sprinkler system or any utility line, pipe, wire, duct, or conduit serving any Unit, Units or the Common Elements shall lie wholly or partially within the boundaries of another Unit or the Common Elements, such other Unit, Units, or the Common Elements shall be burdened with an easement for the use, maintenance, repair, and replacement of such sprinkler system, utility line, pipe, wire, or conduit, such easement to be in favor of the Unit, Units or Common Elements served by the same and the Association. It shall be the obligation of the benefited Owner to maintain, replace and repair any pipe, line, conduit, duct, or wire owned by such Owner, even if such pipe, line, conduit, duct, or wire is located in the Unit of another Owner. In such circumstance, the benefited Owner shall repair all incidental damage to any Unit or the Common Elements resulting from performance of any such work. All Owners hereby covenant and agree that as finished levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready." Components that may require repair or replacement, such as tile or trim, will be reinstated only to the extent that matching or similar materials are readily available at reasonable costs, as determined in the sole discretion of the Board of Directors.

21.3. Pest Control. The Association may, but shall not be obligated to, dispense chemicals for the extermination of insects and pests within the Units and Common Elements. In the event the Association chooses to provide such pest control, the Association and its duly authorized contractors, representatives, and agents shall have an easement to enter Units for the purpose of dispensing chemicals for the exterminating of insects and pests within the Units and Common Elements. Each Owner shall either provide access to the Unit for purpose of such entry or have someone available at such times as are designated by the Board of Directors to allow entry into the Unit for this purpose. The Association shall not be liable for any illness, damage or injury caused by the dispensing of these chemicals for this purpose.

21.4. Declarant Easements. During the Development Period, the Declarant and its duly authorized contractors, representatives, agents, and employees shall have: (a) an easement for the placement and maintenance of signs, a sales office, a business office, promotional facilities, and models on the Condominium, together with such other facilities as in the opinion of Declarant may be reasonably required, convenient or incidental to the completion, renovation, improvement, development, or sale of the Unit; and (b) a transferable non-exclusive easement on, over, through, under, and across the Common Elements and Limited Common Elements for the purpose of making improvements on the Condominium or any portion thereof, for the purpose of maintaining those facilities and carrying on those activities described in Article 19, for the purpose of making such improvements and changes as permitted in Article 3, for the purpose of installing, replacing, repairing and maintaining all utilities serving the Condominium, and for the purpose of doing all things reasonably necessary and proper in connection therewith. In addition, Declarant shall have an easement to conduct all activities and for exercising all rights set forth in Article 20 of this Declaration. In exercising its easement rights provided herein, the Declarant shall have the right to temporarily close any portion of the Common Elements (including Limited Common Elements).

21.5. Easement in Favor of the Master Association. The Declarant reserves, creates, establishes, promulgates and declares a non-exclusive, perpetual, appurtenant easement over the Condominium for the Master Association, its duly authorized successors and assigns, including without limitation, successors-in-title, agents, representatives, employees, successors, assigns, licensees for the

purpose of performing or satisfying the duties and obligations of the Master Association as set forth in the Master Documents.

21.6. City Parking Garage Unit Easements.

(a) The Declarant reserves, creates, establishes, promulgates and declares a non-exclusive, perpetual, appurtenant easement through the City Parking Garage Unit for access by the Apartments Unit Owner and its Occupants to the portion of the Condominium constituting the parking area portion of the Apartments Unit.

(b) The Declarant reserves, creates, establishes, promulgates and declares a non-exclusive, perpetual, appurtenant easement through the City Parking Garage Unit for (i) access by the Retail Unit Owner and its Occupants to and from the Retail Unit and (ii) access by the Apartments Unit Owner and its Occupants to and from the Apartments Unit. **[REVIEW PLANS TO DETERMINE NEED FOR EASEMENTS TO LOADING AND TRASH AREAS – SHOULD BE PART OF UNITS]**

**ARTICLE 22:  
GENERAL PROVISIONS**

22.1. Security. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Condominium; however, each Owner, on behalf of such Owner and the Occupants, guests, licensees, and invitees, of the Unit acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in and to the Condominium. It shall be the responsibility of each Owner to protect such Owner's persons and property and all responsibility to provide security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of safety measures undertaken.

Neither the Association nor the Declarant shall in any way be considered insurers or guarantors of security within the Condominium, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any security system or measures cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all Occupants of its Unit that the Association, its Board of Directors and Declarant are not insurers and that each Person using the Condominium assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

22.2. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the By-Laws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

22.3. Amendment. Except where a higher vote is required for action under any other provisions of this Declaration or by the Act, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding sixty-seven percent (67%) of the Total Eligible Association Vote. In addition, no amendment to this Declaration shall alter the easement rights contained in herein without the consent of the Person(s) holding such easement rights.

Notice of any meeting at which a proposed amendment will be considered shall state the facts of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the president and secretary of the Association and recorded in the Public Records.

In addition to the above, material amendments to this Declaration, as set forth in Section 19.1, must be approved by Eligible Mortgagees who represent at least fifty-one percent (51%) of the votes of Units that are subject to Mortgages held by Eligible Mortgagees. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgagee shall be deemed implied and consented to if the Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Mortgagee receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

Any action to challenge the validity of an amendment adopted under this Section must be brought within one (1) year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

22.4. Compliance. Every Owner and Occupant of any Unit shall comply with this Declaration, the By-Laws, and the rules of the Association. Failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 8.3.

22.5. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application and, to this end, the provisions of this Declaration are declared to be severable.

22.6. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article and Section to which they refer.

22.7. Notices. Notices provided for in this Declaration or the Articles of Incorporation or By-Laws shall be in writing, and shall be addressed to any Owner or Occupant at the address of the Unit and to the Declarant or the Association at the address of their respective registered agents in the State of Georgia. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association. Notices addressed as above shall be deemed delivered three business days after mailing by United States registered or certified mail, postpaid, or upon delivery when delivered in person, including delivery by Federal Express or other reputable courier service.

22.8. Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

22.9. Indemnification. To the fullest extent allowed by the Georgia Nonprofit Corporation Code, and in accordance therewith, the Association shall indemnify every current and former officer and director against any and all expenses, including, but not limited to, attorneys' fees and other legal fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of

Directors) to which such officer or director may be a party by reason of being or having been an officer or director of the Association. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer or director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

22.10. Storage Spaces. Neither the Declarant nor the Association shall be held liable for loss or damage to any property placed or kept in a storage space in the Condominium. Each Owner or Occupant with use of a storage space who places or keeps property in such storage space does so at the Owner or Occupant's own risk.

**ARTICLE 23:  
PREPARER**

This Declaration was prepared by David G. Williams, Esq. of Sheley, Hall & Williams, P.C., 303 Peachtree St., NE, Suite 4440, Atlanta, Georgia 30308.

[SIGNATURE APPEARS ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Declarant has executed this Declaration under seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**DECLARANT:**

**EW MFR VENTURE I LLC,**  
a Georgia limited liability company

Signed, sealed, and delivered  
in the presence of:

By: \_\_\_\_\_(SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

My Commission Expires:

[NOTARIAL SEAL]

**MORTGAGEE CONSENT**

[Lender] ("Lender"), beneficiary under a Deed to Secure Debt and Security Agreement dated \_\_\_\_\_, 20 \_\_, and recorded on \_\_\_\_\_, \_\_\_\_\_, in the Public Records at Deed Book \_\_\_\_\_, Page \_\_\_\_\_ (as amended from time to time, the "**Security Deed**"), for itself and its successors and assigns, approves the foregoing Declaration of Condominium for Riverworks at Eastern Wharf (the "**Declaration**"), and Lender agrees and acknowledges that, upon recordation of the Declaration, the restrictive covenants contained in the Declaration will run with the land which serves as security for the debt evidenced by the Security Deed and further agrees that any foreclosure or enforcement of any other remedy available to Lender under the Security Deed will not render void or otherwise impair the validity of the Declaration.

Dated: \_\_\_\_\_, 20\_\_\_\_.

Signed, sealed, and delivered  
in the presence of:

**LENDER:**

\_\_\_\_\_

\_\_\_\_\_  
Unofficial Witness

By: \_\_\_\_\_(SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

[CORPORATE SEAL – if applicable]

My Commission Expires:

[NOTARY SEAL]

**EXHIBIT A**

**LEGAL DESCRIPTION**

**EXHIBIT B**  
**PERMITTED EXCEPTIONS**



**EXHIBIT C**

**UNDIVIDED INTEREST IN THE COMMON ELEMENTS  
AND LIABILITY FOR EXPENSES**

<b>Unit</b>	<b>Square Footage</b>	<b>Ownership Percentage</b>
Apartments Unit	454,000	59%
City Parking Unit	278,000	36%
Retail Unit	34,000	4%

**EXHIBIT D**

**BY-LAWS OF RIVERWORKS AT EASTERN WHARF CONDOMINIUM ASSOCIATION, INC.**