



Condominium Resale Certificate

(To be furnished by unit owner to Buyer before execution of any contract for sale
or before conveyance of a unit)

This Condominium Resale Certificate concerning Condominium Unit_____, (the “Unit”) in Building_____, of_____, a condominium project, located at_____, (Address), City of_____, _____ County, Missouri, is provided on behalf of the condominium owners association (the “Association”) by the Association’s governing body (the “Board”).

A. The Association ☐ does ☐ does not have a right of first refusal or other restraint on the free alienability of the Unit. If a right of first refusal or other restraint on the free alienability exists, see section(s) _____ of the declaration of condominium applicable to the Unit (the “Declaration”).

B. The monthly common expense assessment for the Unit is \$_____per month. The Association ☐ has ☐ has not approved an increase in such assessment. If an increase has been approved, the new assessment will be \$_____per month and the effective date will be _____, 20_____.

C. There ☐ is ☐ is not a common expense or special assessment due and unpaid by the current Unit owner(s) to the Association. If so, the amount of any unpaid common expense or special assessment currently due and payable is \$_____and is for _____.

D. Other fees ☐ are ☐ are not payable by the Unit owners. If so, the amount is \$_____and is for _____ and is payable to_____.

E. There ☐ are ☐ are not any capital expenditures anticipated by the Association for the current and two next succeeding fiscal years. If so, the amount is \$_____for the current year, and \$_____for the two next succeeding fiscal years, and is for_____.

F. The amount of reserves for capital expenditures are \$_____as of _____, 20_____, and \$_____of the reserves has been allocated by the Association for specified projects.

G. The most recent regularly prepared balance sheet and income and expense statement, if any, of the Association are attached.

H. The current operating budget of the Association is attached.

I. There ☐ are ☐ are no unsatisfied judgments against the Association. If so, the nature and amount of the unsatisfied judgment is _____ and the status of any pending suit is_____.

J. The Association ☐ has ☐ has not purchased and provided insurance coverage for the benefit of the Unit owners. If so, a statement describing the coverage is attached.

K. The condominium project ☐ is ☐ is not on leased land. If so, the remaining term is_____years. A portion of the common element facilities ☐ is ☐ is not leased to others. If so, the remaining term is_____. The provisions governing any extension or renewal of any leasehold estate affecting the condominium project are attached.

L. The Board ☐ has ☐ has no knowledge that any alterations or improvements to the Unit, or to the limited common element assigned to the Unit, violate any provisions of the Declaration. If so, they are_____

Reference (e.g., Seller & Buyer)_____

37 **REQUIRED ATTACHMENTS:**

- 38 **1. A copy of the Declaration**
39 **(other than the plats and plans)**
40 **2. The Bylaws**
41 **3. The Rules or Regulations**
42 **4. Most Recent Balance Sheet and Income**
43 **and Expense Statement, if any, of the**
44 **Association.**

- 5. Operating Budget**
6. Insurance Statement
7. Leasehold Statement

45 The undersigned Buyer(s) acknowledges receipt
46 hereof from Unit Owner:

Information hereby provided and included by:

(Name of Condominium Owners Association)

47 **Buyer** _____

By _____

48 Printed Name: _____

Printed Name: _____

49 Date: _____

Title: _____

50 **Buyer** _____

Date: _____

51 Printed Name: _____

52 Date: _____

50 _____

51 _____

52 (Buyer's mailing address)

(Condominium Association's mailing address)

53 E-Mail: _____

E-Mail: _____

54 Phone Number: _____

Phone Number: _____

Approved by legal counsel for use exclusively by members of the Missouri REALTORS®, Columbia, Missouri. No warranty is made or implied as to the legal validity or adequacy of this Certificate, or that it complies in every respect with the law or that its use is appropriate for all situations. Local law, customs and practice, and differing circumstances in each transaction, may each dictate that amendments to this Certificate be made. **Last revised 12/31/14.**

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Balance Sheet

As of 10/18/2021, Cash Basis

Kansas City Property Solutions
PO Box 25364 Kansas City, MO
64119
816-285-6531

Bellevista Condominiums Association

Assets

Current Asset

Bellevista HOA	411,171.10
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Total Current Asset	\$411,171.10
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Total Assets	\$411,171.10
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Liabilities

Total Liabilities	\$0.00
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Equity

Retained Earnings	0.00
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Net Income	411,171.10
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Total Equity	\$411,171.10
---------------------	---------------------

Total Liabilities & Equity	\$411,171.10
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Income Statement

1/1/2021 - 10/18/2021, By Quarter, Cash basis

Kansas City Property Solutions
PO Box 25364 Kansas City, MO
64119
816-285-6531

Bellevista Condominiums Association

Account	Q1-2021	Q2-2021	Q3-2021	10/01/2021 - 10/18/2021
Income				
Association Dues/Fees Income	5,072.45	37,432.05	40,439.72	6,229.77
Association LATE&OTHER Fee Income		527.00	90.00	40.00
Rent Income				260.71
Total Income	\$5,072.45	\$37,959.05	\$40,529.72	\$6,530.48
Expense				
Grounds Care EXPENSE		8,872.81	10,605.53	
HOA Board Approved Reimbursable Expenses		367.00		
HOA Room Rental Expense			70.00	
Insurance EXPENSE		5,781.57	34,657.32	5,525.44
Licenses and Permits EXPENSE		11.25		
Management Fees EXPENSE	288.00	1,728.00	1,728.00	
Office Supplies & Postage Expense	50.01		142.72	
Repairs & Maintenance EXP		4,793.65	2,044.16	(597.69)
Services & Supplies EXPENSE		1,200.00	1,629.74	(279.74)
Taxes Expense			300.00	
Trash Expense		1,540.00	1,185.00	395.00
Utilities PROPERTY Expense		3,911.40	5,839.46	1,851.65
Total Expense	\$338.01	\$28,205.68	\$58,201.93	\$6,894.66
Net Operating Income	\$4,734.44	\$9,753.37	(\$17,672.21)	(\$364.18)
Non-operating Income				
Special Assessment Income		29,614.79	4,141.20	1,045.39
Total Non-operating Income	\$0.00	\$29,614.79	\$4,141.20	\$1,045.39
Non-operating Expense				
Insurance Claim Income & Expenses			(379,918.30)	
Total Non-operating Expense	\$0.00	\$0.00	(\$379,918.30)	\$0.00
Net Non-operating Income	\$0.00	\$29,614.79	\$384,059.50	\$1,045.39
Net Income	\$4,734.44	\$39,368.16	\$366,387.29	\$681.21

Account	Total
Income	



EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)

07/14/21

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY TIM PRESKO INSURANCE AGENCY 7817 N Oak Trafficway Kansas City, MO 64118		PHONE (A/C, No, Ext): (816)436-6000		COMPANY Great American Insurance Company (Property) #MAC221162909 Scottsdale Insurance Company (Liability) #CPS7252273	
FAX (A/C, No): (816)436-0032		E-MAIL ADDRESS: tim@tpreskoins.com			
CODE:		SUB CODE:			
AGENCY CUSTOMER ID #:					
INSURED Santa Fe Place Condominium c/o FirstService Residential MO 11125 NW Ambassador Drive #200 Kansas City, MO 64153		LOAN NUMBER		POLICY NUMBER See above	
		EFFECTIVE DATE 10/12/20		EXPIRATION DATE 10/12/21	
				<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED	
		THIS REPLACES PRIOR EVIDENCE DATED: 10/12/20			

PROPERTY INFORMATION

LOCATION/DESCRIPTION 2525 Main Street, KCMO 64108 1 building / 110 units **covers walls in back to builder grade** **separation of insureds**		10 days cancellation notice	
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.			

COVERAGE INFORMATION

PERILS INSURED			BASIC	BROAD	SPECIAL	AMOUNT OF INSURANCE	DEDUCTIBLE
COVERAGE / PERILS / FORMS							
Building	Replacement Cost	Agreed Value				20,662,900	5,000
Water deductible							10,000
Flood						1,000,000	25,000
Earthquake						10,000,000	25,000
Building Ordinance Or Law Coverage							
Liability	Occurrence					1,000,000	500
Aggregate						2,000,000	
Fidelity (NOVA #WIB CI100000 12 04) Mgt. included						800,000	2,500
Directors & Officers (AIX #WBZ GL20000728-00)						1,000,000	1,000
Umbrella (Greenwich #PPP7470111L20A-01)						25,000,000	

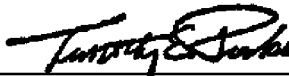
REMARKS (Including Special Conditions)

Arvest Bank ISAOA, ATIMA Mortgage Division P O Box 163289 Fort Worth, TX 76161-3289

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

NAME AND ADDRESS Botts, Jerry L 2525 Main St 616 Kansas City, MO 64108 Loan# 0775266711 mosimmons@arvest.com	ADDITIONAL INSURED	LENDER'S LOSS PAYABLE	LOSS PAYEE
	<input checked="" type="checkbox"/> MORTGAGEE		
	LOAN #		
AUTHORIZED REPRESENTATIVE 			

Condominium Project Questionnaire – Full Form

Instructions

Lender: Complete the first table below and enter the date on which the form should be returned to you.

Homeowners' Association (HOA) or Management Company: This form has been sent to you on behalf of an individual seeking mortgage financing to purchase or refinance a unit in this project. The mortgage lender needs this information to determine the eligibility of the project for mortgage financing purposes. Complete and return this form by *(enter date)* _____ to the lender listed below. Questions about this form should be directed to the lender contact.

Lender Name		Lender Phone Number	
Contact Name		Lender Fax Number	
Lender Address		Lender Email Address	

I: Basic Project Information

1	Project Legal Name	
2	Project Physical Address	
3	HOA Management Address	
4	HOA Name <i>(if different from Project Legal Name)</i>	
5	HOA Tax ID #	
6	HOA Management Company Tax ID #	
7	Name of Master or Umbrella Association <i>(if applicable)</i>	
8	Does the project contain any of the following <i>(check all that apply)</i> :	
a	<input type="checkbox"/>	Hotel/motel/resort activities, mandatory or voluntary rental-pooling arrangements, or other restrictions on the unit owner's ability to occupy the unit
b	<input type="checkbox"/>	Deed or resale restrictions
c	<input type="checkbox"/>	Manufactured homes
d	<input type="checkbox"/>	Mandatory fee-based memberships for use of project amenities or services
e	<input type="checkbox"/>	Non-incidental income from business operations
f	<input type="checkbox"/>	Supportive or continuing care for seniors or for residents with disabilities

Provide additional detail here, if applicable (*optional*):

II: Project Completion Information

1. Is the project 100% complete, including all construction or renovation of units, common elements, and shared amenities for all project phases? ☐ Yes ☐ No If No, complete the table below:

		Yes	No
a	Is the project subject to additional phasing or annexation?	<input type="checkbox"/>	<input type="checkbox"/>
b	Is the project legally phased?	<input type="checkbox"/>	<input type="checkbox"/>
c	How many phases have been completed?		
d	How many total phases are legally planned for the project?		
e	How many total units are planned for the project?		
f	Are all planned amenities and common facilities fully complete?	<input type="checkbox"/>	<input type="checkbox"/>

2. Has the developer transferred control of the HOA to the unit owners?

☐ Yes, date transferred: ☐ No, estimated date the transfer will occur:

III: Newly Converted or Rehabilitated Project Information

1. Is the project a conversion within the past 3 years of an existing structure that was used as an apartment, hotel/resort, retail or professional business, industrial or for other non-residential use? If Yes, complete the table below:

		Yes	No
a	In what year was the property built? _____		
b	In what year was the property converted? _____		
c	Was the conversion a full gut rehabilitation of the existing structure(s), including replacement of all major mechanical components?	<input type="checkbox"/>	<input type="checkbox"/>
d	Does the report from the licensed engineer indicate that the project is structurally sound, and that the condition and remaining useful life of the project's major components are sufficient?	<input type="checkbox"/>	<input type="checkbox"/>
e	Are all repairs affecting safety, soundness, and structural integrity complete?	<input type="checkbox"/>	<input type="checkbox"/>
f	Are replacement reserves allocated for all capital improvements?	<input type="checkbox"/>	<input type="checkbox"/>
g	Are the project's reserves sufficient to fund the improvements?	<input type="checkbox"/>	<input type="checkbox"/>

IV: Financial Information

1. How many unit owners are 60 or more days delinquent on common expense assessments? _____
2. In the event a lender acquires a unit due to foreclosure or a deed-in-lieu of foreclosure, is the mortgagee responsible for paying delinquent common expense assessments? ☐ Yes ☐ No

If Yes, for how long is the mortgagee responsible for paying common expense assessments? (*select one*)

- ☐ 1 to 6 months ☐ 7 to 12 months ☐ more than 12 months

3. Is the HOA involved in any active or pending litigation? ☐ Yes ☐ No

If Yes, attach documentation regarding the litigation from the attorney or the HOA. Provide the attorney's name and contact information:

Name:

Phone:

V: Ownership & Other Information

1. Complete the following information concerning ownership of units:

	Entire Project	Subject Legal Phase (in which the unit is located) If Applicable
Total number of units		
Total number of units sold and closed		
Total number of units under bona-fide sales contracts		
Total number of units sold and closed or under contract to owner-occupants		
Total number of units sold and closed or under contract to second home owners		
Total number of units sold and closed or under contract to investor owners		
Total number of units being rented by developer, sponsor, or converter		
Total number of units owned by the HOA		

2. Complete the following table if more than one unit is owned by the same individual or entity.

Individual / Entity Name	Developer or Sponsor (Yes or No)	Number of Units Owned	Percentage Owned of Total Project Units	Number Leased at Market Rent	Number Leased under Rent Control
	<input type="checkbox"/> Yes <input type="checkbox"/> No		%		
	<input type="checkbox"/> Yes <input type="checkbox"/> No		%		
	<input type="checkbox"/> Yes <input type="checkbox"/> No		%		
	<input type="checkbox"/> Yes <input type="checkbox"/> No		%		

3. Do the unit owners have sole ownership interest in and the right to use the project amenities and common areas?

☐ Yes ☐ No

If No, explain who has ownership interest in and rights to use the project amenities and common areas:

4. Are any units or any part of the building used for non-residential or commercial space? ☐ Yes ☐ No

If Yes, complete the following table:

Type of Commercial or Non-Residential Use	Name of Owner or Tenant	Number of Units	Square Footage	% Square Footage of Total Project Square Footage
				%
				%
				%
				%

5. What is the total square footage of commercial space in the building that is separate from the residential HOA?

Include above and below grade space used for commercial purposes, such as public parking facilities, retail space, apartments, commercial offices, and so on.

total square footage of commercial space

VI: Insurance Information & Financial Controls

1. Are units or common elements located in a flood zone? ☐ Yes ☐ No

If Yes, flood coverage is in force equaling (***select only one option below***):

- ☐ 100% replacement cost
- ☐ maximum coverage per condominium available under the National Flood Insurance Program
- ☐ some other amount (enter amount here)

2. Check all of the following that apply regarding HOA financial accounts:

- ☐ HOA maintains separate accounts for operating and reserve funds.
- ☐ Appropriate access controls are in place for each account.
- ☐ The bank sends copies of monthly bank statements directly to the HOA.
- ☐ Two members of the HOA Board of Directors are required to sign any check written on the reserve account.
- ☐ The Management Company maintains separate records and bank accounts for each HOA that uses its services.
- ☐ The Management Company does not have the authority to draw checks on, or transfer funds from, the reserve account of the HOA.

3. Supply the information requested below. Do NOT enter "contact agent."

Type of Insurance	Carrier/Agent Name	Carrier/Agent Phone Number	Policy Number
Hazard			
Liability			
Fidelity			
Flood			

VII: Contact Information

Name of Preparer	
Title of Preparer	
Preparer's Company Name	
Preparer's Phone	
Preparer's Email	
Preparer's Company Address	
Date Completed	

Income Statement

1/1/2021 - 10/18/2021, By Quarter, Cash basis

Kansas City Property Solutions
PO Box 25364 Kansas City, MO
64119
816-285-6531

Account	Total
Association Dues/Fees Income	89,173.99
Association LATE&OTHER Fee Income	657.00
Rent Income	260.71
Total Income	\$90,091.70
Expense	
Grounds Care EXPENSE	19,478.34
HOA Board Approved Reimbursable Expenses	367.00
HOA Room Rental Expense	70.00
Insurance EXPENSE	45,964.33
Licenses and Permits EXPENSE	11.25
Management Fees EXPENSE	3,744.00
Office Supplies & Postage Expense	192.73
Repairs & Maintenance EXP	6,240.12
Services & Supplies EXPENSE	2,550.00
Taxes Expense	300.00
Trash Expense	3,120.00
Utilities PROPERTY Expense	11,602.51
Total Expense	\$93,640.28
Net Operating Income	(\$3,548.58)
Non-operating Income	
Special Assessment Income	34,801.38
Total Non-operating Income	\$34,801.38
Non-operating Expense	
Insurance Claim Income & Expenses	(379,918.30)
Total Non-operating Expense	(\$379,918.30)
Net Non-operating Income	\$414,719.68
Net Income	\$411,171.10

RECORDER'S CERTIFICATION
JACKSON COUNTY, MISSOURI

02/14/2008 02:50:07 PM

INSTRUMENT TYPE: MISC FEE: \$189.00 57 Pages



INSTRUMENT NUMBER/BOOK & PAGE:

2008E0016873



ROBERT T. KELLY, DIRECTOR, RECORDER OF DEEDS

Space above Line Reserved for Recorder's Use

1. **Title of Document:** Declaration of Condominium and Bylaws of 41 Penn Condominium
2. **Date of Document:** January 8, 2007
3. **Grantor(s):** 41 Penn, LLC
4. **Grantee(s):** 41 Penn, LLC
5. **Statutory Mailing Address(es):**
Grantee's Mailing address: 420 West 42nd Street
Suite 12
Kansas City, MO 64111
6. **Legal description:** See attached Exhibit A, page 35
7. **Reference(s) to Book and Page(s):** Condominium Plat Recorded
in Book _____ at Page(s) _____

Note: The terms "grantor" and "grantee" as used in this Cover Page are for recording and indexing purposes only. The instrument itself refers to the parties by other designations.

DECLARATION OF CONDOMINIUM AND BYLAWS
OF 41 PENN. CONDOMINIUM

This **DECLARATION OF CONDOMINIUM AND BYLAWS OF 41 PENN. CONDOMINIUM** (this "**Declaration**") is made and entered into as of the 8th day of January, 2008, by **41 PENN, LLC**, a Missouri limited liability company (the "**Declarant**"), whose mailing address is 420 West 42nd Street, Suite 12, Kansas City, Missouri 64111.

WITNESSETH

WHEREAS, Declarant is the owner of certain real property situated in the City of Kansas City, State of Missouri, hereinafter more particularly described in **Exhibit A** to this Declaration, as depicted on the Plat that is described in **Exhibit B** to this Declaration, which real property is subject to all restrictions of record and all applicable laws and regulations.

WHEREAS, it is the desire and intention of Declarant to enable said real property, together with the building and all other structures, improvements and other permanent fixtures of whatsoever kind now or hereafter thereon, and all rights and privileges belonging or in anywise pertaining thereto (hereinafter constituting a part of the "**Property**," as hereinafter defined) to be owned by Declarant and by each successor in interest of Declarant under that certain type of ownership commonly known as condominium ownership.

WHEREAS, the Declarant desires, intends and does hereby submit and impose upon such parcel and Property in conformity with Act, the provisions, rights, options, privileges, terms and conditions of said Act and as set forth in this Declaration.

WHEREAS, Declarant is further desirous of establishing for its own benefit and for the mutual benefit of all future owners or occupants of the Property, or any part thereof, which shall be known as "41 Penn Condominium", certain easements, interests and rights in, over and upon said premises and certain mutually beneficial restrictions, options and obligations with respect to the proper use, conduct and maintenance thereof.

WHEREAS, Declarant desires and intends that the several owners, mortgagees, occupants and other Persons hereafter acquiring any interest in said Property, shall at all times enjoy the benefit of, and shall hold their interests subject to the rights, options, easements, privileges and restrictions as set forth in said Act and in this Declaration.

NOW, THEREFORE, Declarant hereby declares that the real property described herein and such additions thereto as may hereafter be made pursuant hereto is and shall be held, transferred, sold, conveyed and occupied subject to the protective conditions, covenants, restrictions, reservations, easements, charges, liens, bylaws, rules and regulations, and assessments hereinafter set forth.

ARTICLE 1 – DEFINITIONS

1.1 – Definitions. The words and phrases hereinafter set forth, when used in this Declaration and in the Bylaws, shall have the meanings hereinafter set forth, unless the context shall prohibit or shall clearly indicate or require otherwise. This **Section 1.1** and the following definitions also contain substantive terms, conditions and provisions of this Declaration. In the event of a conflict between or among any of the terms, provisions, conditions and definitions of this **Section 1.1**, on the one hand, and any of the terms, provisions, conditions and definitions of the other Sections of this Declaration, or any of the terms, provisions, conditions and definitions of the Bylaws, on the other hand, then in all such events the terms, provisions, conditions and definitions of this **Section 1.1** shall apply, govern, control and prevail, and the terms, provisions, conditions and definitions of the other Sections of this Declaration, and the terms, provisions, conditions and definitions of the Bylaws, shall be construed and amended to implement the intent of the terms, provisions, conditions and definitions of this **Section 1.1**; unless the context shall clearly indicate that the terms, provisions, conditions and definitions of the other Sections of this Declaration, and/or the terms, provisions, conditions and definitions of the Bylaws, are intended to prevail.

0926040.04

- (1) "Act" means the Uniform Condominium Act of 1983, Chapter 448 of the Revised Statutes of Missouri, as amended.
- (2) "Allocated Interest" means the interest attributed and allocated to each Unit in the aggregate interest of the undivided ownership of the Common Elements and Common Expense Liability. The Allocated Interest percentage interest attributed and allocated to each Unit is set forth in Exhibit C annexed hereto and incorporated herein by this reference.
- (3) "Association" means 41 Penn Condominium Association, Inc., a Missouri non-profit corporation owned by the Owners and organized pursuant to and in accordance with the Act to manage and preserve the Property, Building and Improvements.
- (4) "Balcony LCE" means any balcony of a Residential Unit that is allocated and assigned as Residential LCE to such Residential Unit. Balcony LCE areas are identified or labeled on the Plat as a Balcony LCE or similar designation. The Plat designates and depicts the Balcony LCE areas and the Unit or Units to which each such Balcony LCE area is allocated and assigned. Each Balcony LCE area is reserved for the exclusive use and benefit of the Residential Unit to which each such Balcony LCE area is allocated and assigned.
- (5) "Board of Directors" means those individuals designated as directors of the Association, said Board of Directors being authorized to act on behalf of the Association.
- (6) "Boundaries" means the boundaries of each Unit, both as to vertical and horizontal planes, as configured on the Plat and as further described in this Declaration.
- (7) "Building" means the Building located on the Property as depicted on the Plat.
- (8) "Building Maintenance & Insurance" means construction, maintenance, repair, replacement, operating (including, without limitation, lighting, providing security, providing HVAC, and providing electricity and other utilities), cleaning and insuring of the Common Elements of the Building.
- (9) "Building Maintenance & Insurance Expense" means those Common Expenses incurred by the Association that are all costs, expenses, expenditures and financial liabilities for the performance of the Building Maintenance & Insurance.
- (10) "Bylaws" means those Bylaws of the Association attached hereto as Exhibit J as the same may be amended from time to time in accordance herewith and in accordance with the Act.
- (11) "Commercial Common Expense" means expenditures made by or other financial liabilities of the Association for the Commercial LCE, together with any allocations of reserves therefore.
- (12) "Commercial Common Expense Liability" means the liability for Commercial Common Expense allocated to each Owner of a Commercial Unit according to such Owner's Commercial Unit Sub-Allocated Interest in the Commercial LCE.
- (13) "Commercial LCE" means all Limited Common Elements that are allocated for the exclusive use and benefit of any one or more of the Commercial Units (and the Owners thereof and their respective tenants and subtenants and their respective contractors, agents and invitees). The Commercial LCE expressly includes the 1st floor of the Building, other than the Units and the portions of such building that are designated as a Common Element, together with and specifically including: (a) the floor joists or slabs and support beams separating a Unit from the foundation or basement or from another Unit; (b) the HVAC, electrical, mechanical and other utility systems located in or on, or for the use of the Commercial Units and servicing more than one Commercial

Unit; and (c) any other areas that are identified or labeled on the Plat as Commercial LCE or similar designation. All Commercial Limited Common Expense incurred for the construction, maintenance, repair, replacement, operating (including, without limitation, lighting, providing security, providing HVAC, and providing electricity and other utilities) and cleaning of, and any separate insurance of, the Commercial LCE shall be borne solely by the Owners of the Commercial Units, in accordance with the Commercial Unit Sub-Allocated Interests that are set forth in Exhibit D annexed hereto.

- (14) "Commercial Storage Area" means any area that is identified or labeled on the Plat as a Commercial Storage Area or similar designation. Any Commercial Storage Areas which are identified on the Plat as being Commercial LCE are for the exclusive use and benefit of the Commercial Units
- (15) "Commercial Sub-Allocated Interest" means the interest attributed and allocated to each Commercial Unit of the undivided ownership of the Commercial LCE and Commercial Common Expense Liability. The Commercial Sub-Allocated Interest percentage interest attributed and allocated to each Commercial Unit is set forth in Exhibit D annexed hereto and incorporated herein by this reference. The Commercial Sub-Allocated Interest percentage interest attributed and allocated to each Commercial Unit has been determined on the basis of the ratio of the actual square footage of each Commercial Unit to the total square footage of all of the Commercial Units of the Condominium.
- (16) "Commercial Trash Area" means any area of the Building that is identified or labeled on the Plat as a Commercial Trash Area or similar designation. The Commercial Trash Areas are Commercial LCE.
- (17) "Commercial Trash Equipment" means any trash compactor or other trash handling equipment or apparatus which is located on or within a Commercial Trash Area, or which exclusively serves or functions as part of the trash disposal system for the Commercial Units. The Commercial Trash Equipment hereby is established, allocated and assigned as Commercial LCE.
- (18) "Commercial Unit" means the Commercial Units as designated on the Plat.
- (19) "Commercial Unit Maintenance & Insurance" means construction, maintenance, repair, replacement, operating (including, without limitation, lighting, providing security, providing HVAC, and providing electricity and other utilities), cleaning and insuring of the Commercial LCE.
- (20) "Commercial Unit Maintenance & Insurance Expense" means those Limited Common Expenses incurred by the Association that are all costs, expenses, expenditures and financial liabilities for the performance of the Commercial Unit Maintenance & Insurance.
- (21) "Commercial Unit Owner" means the party or parties owning a leasehold interest in a Commercial Unit.
- (22) "Commercial Use" means any lawful commercial use of the Commercial Units and of any Commercial LCE that is permitted under applicable zoning and by this Declaration.
- (23) "Common Element" means all portions of the Property other than the Building, together with and specifically including any other areas that are identified or labeled on the Plat as a Common Element or similar designation. Portions of the Common Elements are Residential LCE and Commercial LCE.
- (24) "Common Expense" means expenditures made by or financial liabilities of the Association for the Common Elements, together with any allocations of reserves therefor. The Common Expenses

shall include all expenditures made by or financial liabilities of the Association and for the construction, maintenance, repair, replacement, operating (including, without limitation, lighting, providing security, providing HVAC, and providing electricity and other utilities), cleaning and insuring of the Common Elements. The Common Expenses expressly excludes all Commercial Unit Maintenance and Insurance, Commercial Unit Maintenance and Insurance Expense, Residential Unit Maintenance and Insurance, and Residential Unit Maintenance and Insurance Expense.

- (25) "Common Expense Liability" means the liability for Common Expense allocated to and borne by each Owner according to such Owner's Allocated Interest in the Common Elements. The Common Expense Liability shall include, without limitation, all expenses incurred for the construction, maintenance, repair, replacement, operating (including, without limitation, lighting, providing security, providing HVAC, and providing electricity and other utilities), cleaning and insuring of the Common Elements. Provided, however, that:
- (a) All Residential Common Expense and Residential Common Expense Liability incurred by the Association shall be borne solely by the Owners of Residential Units according to such Owner's Residential Sub-Allocated Interests.
 - (b) All Commercial Unit Common Expense and Commercial Unit Common Expense Liability incurred by the Association shall be borne solely by the Owners of Commercial Units according to such Owner's Commercial Sub-Allocated Interests.
 - (c) All expenses incurred for the construction, maintenance, repair, replacement, operating (including, without limitation, lighting, providing security, providing HVAC, and providing electricity and other utilities) and cleaning of, and any separate insurance of, the Residential LCE or Commercial LCE shall be borne solely by the Owner or Owners of the Unit or Units to which such Residential LCE or Commercial LCE is allocated or assigned.
- (26) "Condominium" means the condominium development and regime established upon all of the Property by this Declaration and the Plat, portions of which are the Units that are designated for separate ownership, and the remainder of which is the Common Element, the Residential LCE and the Commercial LCE.
- (27) "Condominium Member" means all Persons who are members of the Association. Each Unit Owner shall be a Condominium Member with respect to the Unit owned by such Unit Owner. Where more than one Person owns a Unit, all such Persons together shall be and constitute one (1) Condominium Member with respect to the Unit owned by such Persons.
- (28) "Declarant" means 41 Penn, LLC, a Missouri limited liability company, having an address of 420 West 42nd Street, Suite 12, Kansas City, Missouri 64111, or any successor Declarant to which said Declarant transfers its entire interests in the Property, the Building, the Improvements and the rights and duties of the Declarant under this Declaration.
- (29) "Declarant Control Period" means the period commencing with the Recording of this Declaration and ending on the date that Declarant first deeds and conveys any Unit or Sub-Unit to a third-party, or otherwise as provided under the Act.
- (30) "Declaration" means this Declaration of Condominium of 41 Penn Condominium, as the same may be amended from time-to-time.
- (31) "Director" means a member of the Board of Directors of the Association.
- (32) "Dispute Resolution" means a binding arbitration conducted in accordance with the then

applicable rules of the American Arbitration Association (Commercial Real Estate Industry Rules) including selection of the arbitrator if the parties are unable to agree on the arbitrator, with payment of the costs and expenses of the arbitrator to be assessed by the arbitrator in conjunction with the award.

- (33) "Entrance & Lobby Area" means the entrance, hallway and lobby area on the first (1st) floor of the Building that is identified or labeled on the Plat as the Entrance & Lobby Area. The Entrance & Lobby Area is a Common Element.
- (34) "Executive Board" means the Board of Directors of the Association.
- (35) "Hazardous Material" means any asbestos, flammable substances, explosives, radioactive materials, PCB-laden oil, hazardous materials, hazardous waste, pollutants, contaminants, toxic substances, under any federal, state or local laws, ordinances, rules, regulations or policies governing use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of such materials, including without limitation, Section 9601 of Title 42 of the United States Code.
- (36) "Improvements" means all structures erected on the Property, including but not limited to, the Building and fixtures and all other structures of any type or kind, whether located above or below ground, including both the original and all later changes and/or additions thereto.
- (37) "Individual Dwelling Unit" means a portion of the Residential Units that is a separate individual residential dwelling unit.
- (38) "Limited Common Element" means any portion of the Common Element that is allocated, or designed or designated to serve or benefit exclusively any one or more Units, but fewer than all of the Units. The Limited Common Element is hereby allocated exclusively to the Unit or Units for which such Limited Common Element is allocated, designed or designated to serve and benefit, for the exclusive use of the Owner of such Unit or Units and their respective tenants and subtenants, and their respective employees, contractors, agents and invitees. All areas that are identified or labeled on the Plat as Residential LCE, Commercial LCE or similar designation allocated to a particular Unit or Units, or that this Declaration designates as Residential LCE or Commercial LCE allocated to a particular Unit or Units, hereby are established as Limited Common Element for the exclusive use of the owner of the applicable Unit or Units, and their tenants and subtenants and their respective employees, contractors, agents and invitees. All expenses incurred for the construction, maintenance, repair, replacement, operating (including, without limitation, lighting, providing security, providing HVAC, and providing electricity and other utilities), cleaning, and any separate insurance, of the Limited Common Elements shall be borne solely by the Owner or Owners of the Unit or Units to which such Limited Common Elements are allocated or assigned, including but not limited to the Commercial Unit Maintenance and Insurance, the Commercial Unit Maintenance and Insurance Expense, the Residential Unit Maintenance and Insurance, and the Residential Unit Maintenance and Insurance Expense.
- (39) "Majority of the Owners" means the Owners owning more than fifty percent (50%) in the aggregate of the Allocated Interests in the Common Elements. Any specified percentage of the Owners means Owners owning such percentage in the aggregate of the Allocated Interests in the Common Elements.
- (40) "Material Condominium Amendment" means, with respect to an applicable Unit and the applicable Owner of such Unit, any amendment to the Declaration or the Plat which, if enacted, would: (a) result in a change in the permitted uses of such Unit, or a change in the size or configuration or location of the Unit or of any Residential LCE or Commercial LCE allocated to such Unit; (b) adversely affect the structural integrity of or impair access to the Unit or the Residential LCE or Commercial LCE allocable to the Unit; (c) adversely affect the functionality of any of the utilities or operating systems serving the Unit or the Residential LCE or Commercial

LCE allocable to the Unit; (d) increase the cost to be incurred by the Owner of the Unit of maintaining, operating (including lighting, providing security, providing HVAC, and providing electricity and other utilities), or insuring the Unit or the Residential LCE or Commercial LCE allocable to the Unit (other than increases in Common Expense Liabilities that are shared by the Owners of all of the Units in accordance with the respective Allocated Interests in the Common Elements allocated to the Units); (e) increase the Allocated Interest of Common Expense Liabilities payable by the Owner of the Unit, or increase the Residential Sub-Allocated Interest of Residential Unit Common Expense Liabilities payable by the Owner of the Unit, or increase the Commercial Sub-Allocated Interest of Commercial Unit Common Expense Liabilities payable by the Owner of the Unit; (f) grant to the Association or to the Owner of any other Unit any additional easements or other rights, or enlarge or expand any existing easements or other rights, to enter upon, use or occupy the Unit or any of the Residential LCE or Commercial LCE allocated to the Unit; (g) amend or modify any of Article 11 or Article 13 hereof; (h) amend or modify any of the provisions of this Declaration that govern or apply to amendments to this Declaration; (i) change or alter the Vote or Voting rights to which the Owner of such Unit is entitled; or (j) enable the Association or the Owners of the other Units to act unilaterally to cause an occurrence under any of the foregoing clauses (a) through (i) above. The Owner of a Unit shall have the absolute right to disapprove any amendment to the Declaration or the Plat which, if enacted, would, with respect to the applicable Unit owned by the applicable Unit Owner, be a Material Condominium Amendment to the Declaration or the Plat. In all events, a Unit Owner's subdivision solely of the original Unit owned by such Unit Owner into Sub-Units (including conversion of portions of the original Unit to CE and LCE) pursuant to and in accordance with Article 11 hereof, shall not constitute and shall not be deemed to be a Material Condominium Amendment with respect to any other Unit or any other Unit Owner.

- (41) "Owner" means the party or parties owning fee title to a Residential Unit or leasehold title to a Commercial Unit.
- (42) "Owner's Reserved Right" means the right of the Owner of a Unit to disapprove any amendment to the Declaration or the Plat which, if enacted, would be a Material Condominium Amendment with respect to the applicable Unit owned by the applicable Unit Owner. With respect to any Unit that has been subdivided into Sub-Units, the Owner's Reserved Right shall be exercised by Owners of the Sub-Units derived from such Unit, upon the written direction and instruction of Sub-Unit Owners owning at least fifty-one percent (51%) of the aggregate square footage of the Sub-Units derived from such Unit.
- (43) "Parcel" means the Property submitted to the provisions of the Act.
- (44) "Permitted Home Business Use" means use of an Individual Dwelling Unit for any occupation, business or commercial activity carried on, at or in an Individual Dwelling Unit by the resident or occupant of the Individual Dwelling Unit, or by a member of the immediate family of the resident or occupant residing at the Individual Dwelling Unit, which occupation, business or activity employs in the Individual Dwelling Unit no more than one (1) nonrelated employee, and which use of the Individual Dwelling Unit is otherwise in strict compliance with all applicable laws, ordinances and occupancy permit requirements relating to home businesses and home occupations applicable to property zoned residential, including (without limitation) the applicable City of Kansas City Zoning Ordinances and Occupancy Permit Requirements for residential property; excepting and provided, however, that, the following business uses are not Permitted Home Business Uses, and are forbidden in the Residential Units: (a) dog grooming; (b) any wholesale, jobbing or retail business, unless it is conducted entirely by telephone, computer transmission and/or mail; (c) any manufacturing business; (d) a clinic or hospital; (e) a barber shop or beauty parlor; (f) a stable, animal hospital, dog kennel or doveote; (f) a restaurant; (h) any activity that produces substantial noise, noxious odors or other emanations or employs, produces or uses Hazardous Materials or flammable matter; or (i) any occupation which involves the use of any mechanical equipment other than what is usual for purely domestic or hobby purposes, or what is usual for a small business or professional office.

- (45) "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property. "Natural Person" means a natural individual.
- (46) "Plat" means the record plat of 41 Penn Condominium, which is described in and attached hereto as Exhibit B.
- (47) "Property" means the real property described in Exhibit A to this Declaration and any additions thereto, and all buildings, structures, improvements and other permanent fixtures now or hereafter thereon, which are subject to this Declaration, as amended from time to time. The Property includes the Units, the Common Elements, the Residential LCE and the Commercial LCE.
- (48) "Record" means to record in the real property records for Jackson County, Missouri, which is the recording office for the jurisdiction in which the Property is located.
- (49) "Residential Common Expense" means expenditures made by or financial liabilities of the Association for the Residential LCE, together with any allocations of reserves therefor.
- (50) "Residential Common Expense Liability" means the liability for Residential Common Expenses allocated to each Owner of a Residential Unit according to such Owner's Residential Sub-Allocated Interest in the Residential LCE.
- (51) "Residential Elevator" means any elevator that is identified or labeled on the Plat as a Residential Elevator or similar designation. The Residential Elevators (together with all mechanical and electrical equipment that exclusively serve the Residential Elevators) are Residential LCE.
- (52) "Residential Elevator Shaft" means any elevator shaft that is identified or labeled on the Plat as a Residential Elevator Shaft or similar designation. The Residential Elevator Shafts are Residential LCE.
- (53) "Residential LCE" means all Limited Common Elements that are allocated for the exclusive use and benefit of any one or more of the Residential Units (and the Owners thereof and their respective tenants, subtenants, contractors, agents and invitees). The Residential LCE expressly includes the Residential Community Rooms, the Residential Elevators, all mechanical and electrical equipment that exclusively serve the Residential Elevators, the Residential Elevator Shafts, the Residential Fitness/Spa, the Residential Parking, the Residential Stairwells, and all mechanical and electrical equipment that exclusively serve the Residential Stairwells. All Residential Common Expenses incurred for the construction, maintenance, repair, replacement, operating (including, without limitation, lighting, providing security, providing HVAC, and providing electricity and other utilities) and cleaning of, and any separate insurance of, the Residential LCE shall be borne solely by the Owners of the Residential Units to which such Residential LCE is allocated and assigned, in accordance with the Residential Sub-Allocated Interests that are set forth in Exhibit E annexed hereto.
- (54) "Residential Parking" means the areas of the Building's sub-surface parking garage that are identified or labeled on the Plat as Residential Parking or similar designation. Any Residential Parking identified on the Plat as being a Residential LCE for a particular Residential Unit is for the exclusive use and benefit of said Residential Unit. Any other Residential Parking which is identified on the Plat is for the joint and common use and benefit of the Residential Units, and said joint and common use Residential Parking is Residential LCE.
- (55) "Residential Stairwell" means any stairwell (including the stairs therein) that is identified or labeled on the Plat as a Residential Stairwell or similar designation. The Residential Stairwells (together with all mechanical and electrical equipment that exclusively serve the Residential Stairwells) are Residential LCE.

- (56) "Residential Storage Area" means any area, including the lockers in the sub-surface parking garage that is identified or labeled on the Plat as a Residential Storage Area or similar designation. Any Residential Storage Area identified on the Plat as being Residential LCE for a particular Residential Unit, is for the exclusive use and benefit of such Residential Unit.
- (57) "Residential Sub-Allocated Interest(s)" means the interest attributed and allocated to each Residential Unit in the aggregate interest of the undivided ownership of the Residential LCE and Residential Common Expense Liability. The Residential Sub-Allocated Interest percentage interest attributed and allocated to each Residential Unit is set forth on Exhibit E annexed hereto and incorporated herein by this reference. The Residential Sub-Allocated Interest attributed and allocated to each Residential Unit has been determined on the basis of the ratio of the actual square footage of each Residential Unit to the total square footage of all of the Residential Units of the Condominium.
- (58) "Residential Unit" means the Residential Units as designated on the Plat.
- (59) "Residential Unit Owner" means the party or parties owning fee title to a Residential Unit.
- (60) "Residential Use" means the lawful residential use and occupancy permitted for any of the separately demised portions of the Residential Units, and any supporting compatible uses within the Residential Units or within any Residential LCE, such as hallways, entrances, lobbies, stairways, elevators, community rooms, clubhouse, gym or fitness area, janitorial rooms, mechanical & electrical rooms, utility rooms, supply rooms and cabinets, residential apartment leasing and management offices, and the like, located within the Residential Units or within any Residential LCE. Residential Use includes any Permitted Home Business Use.
- (61) "Security Holder" means the holder, legal owner or beneficiary of any Security Interest encumbering a Unit or a Sub-Unit.
- (62) "Security Interest" means any mortgage or deed of trust encumbering a Unit or a Sub-Unit.
- (63) "Special Declarant Rights" means the rights reserved by the Declarant pursuant to Section 12.4 hereof.
- (64) "Sub-Unit" means, as the case may be, either: (a) a separate portion of one of the Commercial Units under this Declaration, that has been created and established by the subdivision of one of said Commercial Units under this Declaration pursuant to and in accordance with the terms, conditions and provisions of Article 11 hereof; or (b) a separate portion of a previously created Sub-Unit, that has been created and established by the subdivision of a previously created Sub-Unit, pursuant to and in accordance with the terms, conditions and provisions of Article 11 hereof. Each Sub-Unit is a physical portion of the applicable Commercial Unit or applicable Sub-Unit from and out of which it is subdivided, that is designated for separate ownership or occupancy. Each Sub-Unit includes all spaces, interior partitions, fixtures, heating, hot water, air conditioning mechanical equipment and other improvements within the boundaries of the Sub-Unit; provided, however, that a Sub-Unit excludes all Common Elements and Commercial LCE that are located within the boundaries of the Sub-Unit.
- (65) "Sub-Unit Owner" means the party or parties owning a leasehold interest in a Sub-Unit.
- (66) "Surface Parking" means the areas outside of the Building that are identified or labeled on the Plat as Surface Parking or similar designation. The Surface Parking is Common Element.
- (67) "Unit" means the Commercial Units and the Residential Units, as the case may be. Each Unit is a

physical portion of the Condominium designated for separate ownership or occupancy. Each Unit is designated and delineated on the Plat, and is designated by this Declaration for separate ownership. The boundaries of each Unit, both as to vertical and horizontal planes, are shown on the Plat. Each Unit includes all spaces, interior partitions, fixtures, heating, hot water, air conditioning, mechanical equipment and other improvements within the boundaries of the Unit; provided, however, that a Unit excludes all Common Elements, Residential LCE and Commercial LCE that are located within the boundaries of the Unit.

- (68) “Unit Owner” means the party or parties owning fee title to a Residential Unit or leasehold title to a Commercial Unit.
- (69) “Vote” means, as the context indicates “to vote”, or “the vote” that is allocated and assigned to a Unit. Each of the Residential Units and the Commercial Units shall have the number of Votes that is assigned to each such Unit as set forth in Exhibit F annexed hereto and incorporated herein by this reference. The Votes shall be exercised as provided in this Declaration and the Bylaws.

ARTICLE 2 – SUBMISSION OF THE PROPERTY TO THE ACT

2.1 – Submission. Declarant hereby submits the Property to the Act and this Declaration.

2.2 – Name. The Property shall hereafter be known as: 41 PENN CONDOMINIUM.

2.3 – Division of Property Into Separate Owned Units and Common Elements. Declarant, pursuant to the Act and to establish a plan of condominium ownership for the Units does hereby divide the Property into separate Units and Common Elements (including Residential LCE and Commercial LCE), and does hereby designate such Units for separate ownership. The Units are contained in the Building shown on the Plat.

2.4 – Identification of Units. Units (including Residential LCE and Commercial LCE, if any, allocated to such Units) in the Building located on the Property have been legally described on the Plat. Each Residential Unit constitutes a fee simple legal estate in the portion of the Property encompassed by the Residential Unit. Each Commercial Unit constitutes a leasehold estate in the portion of the Property encompassed by such Commercial Unit. The Owner of a Residential Unit holds and owns fee simple title to the particular Unit. The Owner of a Commercial Unit holds and owns leasehold title to the particular Unit. Every deed, lease, mortgage or other instrument may legally describe a Unit by its identifying number or symbol as shown on the Plat, and as set forth in the Declaration, and every such description shall be deemed good and sufficient for the purposes, and shall be deemed to convey, transfer, encumber or otherwise affect the Owner’s corresponding Allocated Interest, Commercial Sub-Allocated Interest and Residential Sub-Allocated Interest, as the case may be, even though the same is not expressly mentioned or described therein. The description of each Unit shall include all rights and privileges of said Unit, along with Residential LCE and Commercial LCE, if any. Each Unit Owner shall be entitled to the Allocated Interest appurtenant to his Unit as computed and set forth in this Declaration.

2.5 – Ownership of Certain Items. No Unit Owner shall own any Common Elements or Limited Common Element located within the boundaries of his Unit or otherwise running through his Unit, except to the extent of his Allocated Interest.

2.6 – Limited Common Elements. The Limited Common Elements are as defined and established in Section 1.1 hereof. In addition to the Common Elements as defined Section 1.1 hereof, the Limited Common Elements shall also include the items set forth as Limited Common Elements in and pursuant to Section 448.2-102 of the Act. The Limited Common Elements, if any, serving, designed to serve, allocated or attributed to each respective Unit are hereby allocated solely and exclusively to each such Unit.

2.7 – Covenants Against Partition. As provided in Section 448.2-107.5 of the Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated, is

void. Nothing contained herein shall prevent partition of a Unit between co-owners, if a co-owner has legal right thereto, except that any such partition shall not be in kind.

2.8 – Condominium Ordinances. The Condominium is not subject to any ordinances of the City of Kansas City, Missouri, which is not also imposed upon physically similar developments under different forms of ownership. This statement is made pursuant to Section 448.1-106 of the Act for the purpose of providing marketable title to the Units of the Condominium.

2.9 – Location. Condominium is located in the City of Kansas City, Missouri.

2.10 – Unit Allocations.

(a) The Allocated Interests of the Units in the Common Elements and in the Common Expenses of the Association allocated and attributed to the Units are set forth in Exhibit C attached hereto and hereby made a part hereof; subject, however, to the terms and provisions of Section 1.1 hereof, Sections 2.10(b) and (c) hereof, and Section 6.1 hereof, as pertain to Commercial Common Expenses and Residential Common Expenses. The Allocated Interest attributed and allocated to each Unit has been determined by the Declarant based on the ratio of the square footage of each of the Units to the total square footage of all of the Units in the Condominium.

(b) The Commercial Sub-Allocated Interests of the Commercial Units in the Commercial Common Expenses of the Association allocated and attributed to the Commercial Units are set forth in Exhibit D attached hereto and hereby made a part hereof. The Commercial Sub-Allocated Interest percentage interest attributed and allocated to each Commercial Unit has been determined on the basis of the ratio of the actual square footage of each Commercial Unit to the total square footage of all of the Commercial Units of the Condominium.

(c) The Residential Sub-Allocated Interests of the Residential Units in the Residential Common Expenses of the Association allocated and attributed to the Residential Units are set forth in Exhibit E attached hereto and hereby made a part hereof. The Residential Sub-Allocated Interest attributed and allocated to each Residential Unit has been determined on the basis of the ratio of the actual square footage of each Residential Unit to the total square footage of all of the Residential Units of the Condominium.

2.11 – Number of Units. The Declarant has created thirty-seven (37) Units in the Building upon the Property, all of which thirty-seven (37) Units are and shall be created on the date of Recording of this Declaration, and all of which thirty-seven (37) Units are shown on the Plat. The thirty-seven (37) Units created upon the Recording of this Declaration shall consist of thirty-two (32) Residential Units and five (5) Commercial Units. Provided, however, that the Declarant and/or any successor Owner of any of the Commercial Units that are shown on the Plat has and shall have the absolute right to subdivide the Commercial Unit owned by such Owner into separate individual condominium Sub-Units comprised of individual commercial spaces, pursuant to and in accordance with Article 11 hereof.

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

ARTICLE 3 – COMMON ELEMENTS

3.1 – Common Elements. The Common Elements are the Common Elements as defined in Section 1.1 hereof, including (without limitation):

- (a) All of the Property (excepting the Units and the Residential Parking).
- (b) The Surface Parking
- (c) The Entrance and Lobby Area.

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(d) All electrical wiring throughout the Property (except that within Units); all pipes, wires, cables and conduits throughout the Property (except those within Units); all utility installations, sanitary sewer facilities, laundry facilities and connections for gas, sanitary sewer, electricity, light, water and plumbing (except those within Units). Any such installation exclusively serving only one Unit, whether such installation is located wholly or partially within or outside said Unit, shall be considered as being "within" and being a part of said Unit which is exclusively served by such installation. In addition, any heating, hot water and air conditioning equipment exclusively serving only one such Unit, whether such equipment is located wholly or partially within or outside said Unit, shall be considered as being "within" and being a part of said Unit which is exclusively served by such equipment.

(e) The foundations, exterior walls and interior walls separating Units (excluding all wall coverings and glass surfaces), roofs, gutters, downspouts, common hallways to basements with access from common hallways and all other common portions of the Property not included within Units.

(f) Auxiliary buildings, if any, and any other structures and facilities which may at any time be situated on the Property.

3.2 – Windows, Window Frames, Doors and Door Frames. The windows, window frames, doors and door frames (along with any hardware, sashes, coverings or similar associated items) abutting any Unit are a part of the applicable Unit to which they physically abut. Any other windows, window frames, doors and door frames (along with any hardware, sashes, coverings or similar associated items) are a part of the interior Common Element areas to which they abut. In the event that any such windows, window frames, doors and door frames (along with any hardware, sashes, coverings or similar associated items) abut an interior Common Element area which is Residential LCE or Commercial LCE, then the applicable windows, window frames, doors and door frames (along with any hardware, sashes, coverings or similar associated items) are a part of the Residential LCE or Commercial LCE, as applicable.

ARTICLE 4 – EASEMENTS

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

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

4.3 – Easements in Gross. Each Unit Owner shall have an easement in common with the owners of the other Units to use all pipes, wires, ducts, cables, conduits, public utility lines, structural components and other Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the owners of other Units to use the pipes, wires, ducts, cables, conduits, public utility lines, structural components and other Common Elements located in such Unit and serving other Units. The Executive Board, its appointees, employees or agents, shall have the right of access to each Unit to inspect same and remove violations therefrom and to inspect, maintain, repair or replace the Common Elements contained wholly or partially therein. The Property shall be subject to a perpetual easement to the Association, its appointees, employees or agents, for ingress and egress to perform its obligations and duties required by this Declaration and Bylaws. Should it be necessary to enter a Unit to inspect and remove a violation or to inspect, maintain, repair or replace any Common Element, the appointees, employees or agents

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of the Executive Board shall be entitled to entrance by exhibiting to the Unit Owner or occupant an order from the Board. Each Unit Owner and/or occupant of a Unit shall not unreasonably interfere with such necessary entry. Forced entry, deemed necessary by the Executive Board, shall not subject the Executive Board, its appointees, employees or agents to trespass, but any damage to the Unit as a result of forced entry or as a result of any repair of a Common Element from within the Unit shall be repaired by the Executive Board as part of the Common Expense. In the event any Unit Owner or occupant shall fail to provide access to the Unit as herein provided, the Executive Board may (in addition to exercising other lawful remedies) obtain an order of court for such access, and the costs and reasonable attorneys' fees shall be taxed against the Unit Owner or occupant.

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

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

4.6 – Existing Easements, Building Lines, Restrictions and Other Title Matters of Record. The Property presently is subject to the existing easements, building lines, restrictions and other title matters of record described in **Exhibit G** annexed hereto and incorporated herein by this reference.

4.7 – Miscellaneous Additional Easements. In the event of a fire or casualty, or in the event of any other bona fide emergency, the Unit Owners of the Commercial Units (and their respective tenants, subtenants, employees, contractors, agents and invitees) are hereby granted a limited right of use of, access to and entry upon the Residential Stairwells, for the purpose of egress from the Building. In the event of a fire or casualty, or in the event of any other bona fide emergency, the Unit Owners of the Residential Units (and their respective guests, families, tenants, subtenants, contractors, agents and invitees) are hereby granted a limited right of use of, access to and entry upon the Commercial Units, for the purpose of egress from the Building.

ARTICLE 5 – UNIT OWNERS' RIGHTS AND RESTRICTIONS

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

5.1 – Residential Units. Each Residential Unit is hereby restricted to Residential Use. Notwithstanding anything to the contrary contained in this Declaration, Permitted Home Business Uses are and shall be permitted uses of the Individual Dwelling Units.

No business, trade, occupation or profession of any kind shall be conducted, maintained or permitted in any of the Residential Units, provided, however, that Permitted Home Business Uses are and shall be permitted uses of the Individual Dwelling Units.

5.2 – Commercial Units.

(a) Each Commercial Unit is hereby restricted to Commercial Use. Except as expressly restricted by **Section 5.2(b) and (c)** hereof, the permitted Commercial Uses of the Commercial Units expressly include any and all lawful commercial uses permitted under the zoning applicable to the Commercial Units.

(b) **Nuisances.** The Commercial Units may not be used or occupied directly or indirectly for any of the following uses or purposes: a theatre (motion picture or live performance), an auditorium or meeting hall, a dance hall, a billiard or pool hall, a bingo parlor, a facility for any other games of chance, an off track betting facility or gaming facility, a payday loan, check-into-cash or similar business, a beeper/pager or pre-paid cell phone/phone card business (excluding, however, any business like Cingular, Verizon Wireless, T-Mobile or a similar business in which such sales

0926040.04

comprise a small portion of such business activities), an adult book, adult video tape or adult novelty store, an adult theatre, a gun store, a massage parlor, a game arcade, a bowling alley, a skating rink, an automobile/truck sales facility, a car/truck wash, car/truck repair/service station or car/truck rental facility or agency, a gasoline station, warehouse, storage or for any assembling, manufacturing, distilling, refining, smelting or similar operation, a tire sales and service, oil and lube shop, and paint and/or body shop, a mortuary, an industrial or manufacturing facility, a second hand store, a flea market or liquidation store, any establishment which stocks, displays, sells, rents or offers for sale or rent any merchandise or material commonly used or intended for use with or in consumption of any narcotic, dangerous drug or other controlled substance, including without limitation, any hashish pipe, waterpipe, bong, cilium, pipe screens, rolling papers, rolling devices, coke spoons or roach clips, a Tattoo parlor; Church, day care center or related religious facility or religious reading room; medical or office uses; use, or permit to be used, the sidewalks adjacent to any tenant's space, or any other portion of the Condominium for the sale or display of any merchandise or for any other business, occupation, or undertaking; provided, however, the foregoing restrictions shall not be deemed to limit or restrict (a) outdoor restaurant seating, (b) occasional outdoor seasonal sales by a grocery store or supermarket, or (c) subject to the Board's prior approval, occasional outdoor promotional events.

(c) **Hours of Business Operations.** With respect to any Commercial Units that are used and operated as restaurants, bars, retail business establishments or other commercial business that are open to the general public, the hours of operation thereof shall be restricted as follows:

Closed for Business: Such business establishments shall be closed for business to the general public during the following hours (the "Closed Hours"):

- (1) 1:01 am Monday morning, to 6:00 am on the same morning (Monday);
- (2) 1:01 am Tuesday morning, to 6:00 am on the same morning (Tuesday);
- (3) 1:01 am Wednesday morning, to 6:00 am on the same morning (Wednesday);
- (4) 1:01 am Thursday morning, to 6:00 am on the same morning (Thursday);
- (5) 1:01 am Friday morning, to 6:00 am on the same morning (Friday);
- (6) 1:01 am Saturday morning, to 6:00 am on the same morning (Saturday); and
- (7) 1:01 am Sunday morning, to 6:00 am on the same morning (Sunday).

Open for Business: Such business establishments may be open for business to the general public only during the following hours:

- (1) 6:00 am each Monday morning, until 1:01 am on the next succeeding day (Tuesday morning);
- (2) 6:00 am each Tuesday morning, until 1:01 am on the next succeeding day (Wednesday morning);
- (3) 6:00 am each Wednesday morning, until 1:01 am on the next succeeding day (Thursday morning);
- (4) 6:00 am each Thursday morning, until 1:01 am on the next succeeding day (Friday morning);
- (5) 6:00 am each Friday morning, until 1:01 am on the next succeeding day (Saturday morning);
- (6) 6:00 am each Saturday morning, until 1:01 am on the next succeeding day (Sunday morning); and
- (7) 6:00 am each Sunday morning, until 1:01 am on the next succeeding day (Monday morning).

Incidental Business Activities: So long as the business establishment is in fact closed for business to the general public during the applicable Closed Hours, then other incidental business activities (such as deliveries, stocking, cleaning, office activities, etc.) may take place and be conducted during the applicable Closed Hours.

5.4 – All Units -- Hazardous Materials.

(a) Each Unit Owner (for itself and its tenants, subtenants, employees, agents, successors and assigns) covenants, promises and agrees that it will not use, manufacture, store, treat, transport, refine, handle, produce or dispose of any Hazardous Materials in, at, on, under, upon or from the Unit owned by such Unit Owner or any Common Elements. Each Unit Owner (for itself and its tenants, subtenants, employees, agents, successors and assigns) further covenants, promises and agrees that it will not discharge, deposit, inject, dump, leak, spill, place or allow escape of any Hazardous Materials in, at, on, under, upon or from the Unit owned by such Unit Owner or the Common Elements, or into the sewer system serving the Unit owned by such Unit Owner or the Common Elements. Each Unit

0926040.04

Owner agrees to and shall indemnify, defend and hold the other Unit Owners and the Association harmless from and against any and all claims, demands, liabilities, damages, suits, actions, judgments, fines, penalties, losses, removal and/or remedial costs and/or charges, costs and expenses (including attorneys' fees) arising or resulting from, or suffered, sustained or incurred by any of the other Unit Owners or the Association as a result of any breach by such Unit Owner of any of its covenants in this Section 5.4(a).

(b) Notwithstanding the foregoing provisions of Section 5.4(a), each Unit Owner may use and store minimal quantities of substances in the Unit owned by such Unit Owner which technically could be considered Hazardous Materials; provided, however, that: (1) such substances are of a type and are held only in a quantity normally used in connection with the use, occupancy or operation of comparable premises (such as cleaning fluids and supplies normally used in the day to day operation of homes, restaurants and business offices), (2) such substances are being held, stored and used in complete and strict compliance with all applicable environmental laws, (3) the indemnity contained in Section 5.4(a) shall always apply to such substances, and (4) it shall be and continue to be the responsibility of the Unit Owner to take all remedial actions required under and in accordance with this Section 5.4(a) in the event of any unlawful release of any such substance.

5.5 – All Units – Telecommunications Facilities.

(a) For the purposes hereof, “Large Telecommunications Facility” means any telecommunications transmission or receiving tower, antenna, dish or other facility that has a height of more than twenty-four (24) inches or a dish width of more than twenty-four (24) inches. For the purposes hereof, “Other Telecommunications Facility” means any other telecommunications transmission or receiving tower, antenna, dish or other facility, other than a Large Telecommunications Facility.

(b) No Large Telecommunications Facilities shall be located, placed, installed, erected, constructed or maintained on the exterior of any of the Units, on any exterior wall or roof of the Buildings, or on any other portion of the Common Elements; excepting in all events upon the prior written consent and approval of the Association; but subject to and except as may otherwise be provided under applicable federal, state and local law.

(c) No Other Telecommunications Facilities shall be located, placed, installed, erected, constructed or maintained on the exterior of any of the Units, on any exterior wall or roof of the Building, or on any other portion of the Common Elements; excepting in all events upon the prior written consent and approval of the Association, such consent not to be unreasonably, withheld, delayed or conditioned; and subject to and except as may otherwise be provided under applicable federal, state and local law. All such Other Telecommunications Facilities to which the Association consents shall be subject to such reasonable rules, regulations and requirements as the Association enacts regarding the location, placement, installation, erection, construction or maintenance of Other Telecommunications Facilities.

5.6 – Notification of Occupants of Units. Each Unit Owner shall from time-to-time notify the Executive Board of the entity(ies) and/or Person(s) who are to be the occupant(s) of the Unit owned by such Unit Owner. All provisions of this Declaration shall apply to such designated occupants the same as if the occupants owned the Unit.

5.7 – Compliance With Declaration, Bylaws and Rules and Regulations. Each Unit Owner and occupant shall comply with all applicable provisions of the Act, this Declaration, the Bylaws, and such rules and regulations as from time to time are promulgated by the Executive Board or the Association, as amended from time to time, and failure to comply with any such provisions and rules and regulations shall be grounds for an action by the Association, an aggrieved Unit Owner, or any Person or class of Persons adversely affected, for appropriate relief, including recovery of damages, injunctive relief, or both. If a Declarant or any other person subject to the Act fails to comply with any provision of the Act or this Declaration or the Bylaws, any person or class of persons adversely affected by such failure to comply has a claim for appropriate relief. Punitive damages may be awarded in the case of willful, wanton and malicious failure to comply with any provision of the Act. The court, in an appropriate case, may award reasonable attorneys' fees.

5.8 – Obstructions. There shall be no obstructions on any portions of the Common Elements or any storage in the Common Elements without prior written consent of the Executive Board.

0926040.04

5.9 – Maintenance of Units. Each Unit Owner shall maintain and keep his Unit in good order and repair.

5.10 – Signs, Windows, Laundry, Articles, Etc. No signs shall be hung or displayed on any Common Element or the insides or outside of windows, patio doors or placed on the walls of the Building or on any fences, and no awnings, canopy or shutter, shall be affixed to or placed upon an exterior wall or roof of a Residential Unit without prior written consent of the Executive Board. No clothes, laundry or other articles shall be hung or exposed in any portion of the Common Elements, the Residential LCE, the Commercial LCE, or on or about the exteriors of the Building. All signage shall be subject to such rules, regulations and requirements as the Association, in its sole and absolute discretion, enacts.

5.11 – Animals. No animals, reptiles, birds, rabbits, livestock, fowl or poultry of any kind shall be kept, raised or bred in any portion of the Property, except that, either:

(a) two (2) dogs, with a weight limit of seventy-five (75) pounds per dog, and a combined weight limit of one hundred (100) pounds for both dogs (e.g., one (1) Labrador Retriever weighing seventy (70) pounds and one Cocker Spaniel weighing thirty (30) pounds, but not two (2) Labrador Retrievers, each weighing seventy (70) pounds); or

(b) three (3) cats; or

(c) two (2) cats and one (1) dog, with a weight limit of seventy-five (75) pounds for the dog;

may be kept as pets in an Individual Dwelling Unit, subject to the rules and regulations of the Executive Board and applicable law of the jurisdiction wherein said Condominium is located. In addition, up to two (2) caged birds may be kept as pets in an Individual Dwelling Unit, subject to the rules and regulations of the Executive Board and applicable law of the jurisdiction wherein said Condominium is located. Pit Bulls or other household pets with vicious propensities, or restricted by local ordinances or of an exotic type or breed are specifically prohibited. As used herein, the term "Pit Bulls" shall mean Pit Bull Terriers, Staffordshire Bull Terriers, American Pit Bull Terriers, American Staffordshire Bull Terriers, or any combination of those breeds and dogs that have the appearance and characteristics of the breed. In the event that the City of Kansas City, Missouri should adopt an ordinance or resolution that is in any way more restrictive than the prohibition set forth concerning Pit Bulls herein, the more restrictive portion or portions of such ordinance shall control in all respects. Fish and reptiles that are maintained in a household aquarium shall not be deemed to be "animals" as defined herein. Any pet creating a nuisance or unreasonable disturbance or noise (in the sole judgment of the Executive Board) shall be permanently removed from the property upon written notice from the Executive Board. Any pet owner shall be responsible for complying with all regulations relating to pets established by the Executive Board.

5.12 – Nuisances. No noxious or offensive activity as determined by regulations issued by the Executive Board shall be carried on in any Unit or in the Common Elements, nor shall anything be done which will become an annoyance or a nuisance to other owners or occupants. No trucks, trailers, campers, recreational vehicles or other large vehicles may be kept or parked upon any portion of the Property, except upon prior written approval of the Executive Board. Vehicle repairs are not permitted on any portion of the Property. The Association shall enact reasonable rules and regulations regarding delivery trucks and deliveries, and regarding use of loading dock areas.

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

5.14 – No Alterations. Each Unit Owner is prohibited from making any alterations, installations, removals, reconstruction or repair to his Unit or Units which will impair the structural integrity of the Building within which such

0926040.04

Unit is located, or which will impair any mechanical or electrical system of the Building, or which will adversely affect either the thermal or acoustical character of said Unit or the Building, or which will lessen the support of any portion of the Unit or the Building, or which will violate any applicable law, ordinance or governmental rule, regulation or order.

5.15 – Rules and Regulations. In addition to the foregoing restrictions, conditions and covenants concerning the use of the Condominium, reasonable rules and regulations not in conflict therewith and supplementary thereto may be promulgated and amended from time to time by the Executive Board or the Association, as more fully provided in Section 15.2 hereof and the Bylaws.

ARTICLE 6 -- ASSESSMENTS

6.1 -- Assessment for Common Expenses.

(a) **Common Expenses (All Units).** The Association (acting by and through the Executive Board) shall levy assessments against all of the Units for Common Expense Liability for Common Expenses as established in the annual budget or any supplemental budget, for operation of the Condominium, in accordance with the Allocated Interests of the Units; subject, however, to the terms, conditions and provisions of Section 1.1(25) hereof and Sections 6.1(b), (c) and (d) hereof.

(b) **Commercial Common Expenses (Commercial Units).** The Association (acting by and through the Executive Board) shall levy assessments against the Commercial Units for Commercial Common Expense Liability for Commercial Common Expenses as established in the annual budget or any supplemental budget, for operation of the Condominium, in accordance with the Commercial Unit Sub-Allocated Interests of the Commercial Units.

(c) **Residential Common Expenses (Residential Units).** The Association (acting by and through the Executive Board) shall levy assessments against the Residential Units for Residential Common Expense Liability for Residential Common Expenses as established in the annual budget or any supplemental budget, for operation of the Condominium, in accordance with the Residential Sub-Allocated Interests of the Residential Units.

(d) **Expenses for Assigned Residential LCE and Commercial LCE.** The Association (acting by and through the Executive Board) shall levy assessments against the Unit or Units to which Residential LCE or Commercial LCE is allocated or assigned, for the Residential Common Expense or Commercial Common Expense incurred for the construction, maintenance, repair, replacement, operating (including, without limitation, lighting, providing security, providing HVAC, and providing electricity and other utilities) and cleaning of, and any separate insurance of, the applicable Residential LCE or Commercial LCE.

(e) **Liens for Assessments.** Such assessments shall be a lien on the Units against which they are assessed, and if any payment thereof becomes delinquent, the lien may be foreclosed and the Unit sold, or a money judgment obtained against the Persons liable therefor, all as set forth in this Declaration and the Bylaws. Assessments against a Unit (together with all applicable interest charges, late charges, administrative charges, costs and attorneys' fees) shall be the personal obligation of the Unit Owner of the Unit at the time the assessment is levied. The Association may charge any Unit Owner, against which it has to enforce such lien, an administrative charge of \$150.00.

6.2 -- Prohibition of Exemption from Liability for Contributions Towards Common Expenses. No Unit Owner may exempt himself from liability for his share of the Common Expense Liability, of the Commercial Common Expense Liability or of the Residential Common Expense Liability, levied and assessed by the Association against the Unit owned by such Unit Owner, by waiver of the use of enjoyment of any of the Common Elements or by abandonment of his Unit.

6.3 – Operating Reserve Fund. Each Unit Owner, upon execution of the applicable conveyance document giving rise to such Owner's ownership interest in and to any Unit shall pay to the Association an amount equal to two months' of the pro rata assessment attributable to such Unit (the "Operating Reserve Assessment"), and such Operating Reserve Assessments shall be deposited into an operating reserve account (the "Operating Reserve Account") maintained by the Association. The Operating Reserve Assessment under this Section 6.3 is in addition to (and not in lieu of) the regular

0926040.04

monthly assessments due for each particular Unit. In the event that any Unit has been subdivided into Sub-Units, then the applicable Sub-Unit Owners of the Sub-Units created from the subdivision of the applicable original Unit shall pay in the aggregate as a single payment to the Association the entire amount of the Operating Reserve Assessment due and payable under this Section 6.3 assessed against the original Unit. All or a portion of the Operating Reserve Assessments received by the Association or maintained by the Association in the Operating Reserve Account from time to time may be deposited or transferred into a working capital account or accounts maintained by the Association.

6.4 – Operating Shortfalls Paid by Declarant. Notwithstanding anything contained in this Declaration to the contrary and to the extent allowable under the Act or applicable Missouri law, until the end of the Declarant Control Period Declarant shall be responsible for and shall bear the cost and expense of all actual budgetary shortfalls relating to the operation of the Association; provided, however, in no event shall any un-leased Commercial Unit or un-sold Residential Unit held at any time by Declarant be subject to the assessment contemplated by this Article 6; provided, further, that Declarant's only obligation under this Article 6 shall be to pay the difference between the actual operating costs of the Association and the assessments paid to the Association by the applicable Unit Owners.

ARTICLE 7 – MAINTENANCE & REPAIRS OF COMMON ELEMENTS

7.1 – Common Elements by the Association. The management, maintenance, repair, replacement, alteration, improvement, construction, operation (including, without limitation, lighting, providing security, providing HVAC, and providing electricity and other utilities), cleaning and insuring, of the Common Elements shall be the responsibility of the Association, and the costs and expenses thereof shall be Common Expenses; provided, however, that:

(a) All Commercial Common Expenses and Commercial Common Expense Liability incurred by the Association shall be borne solely by the Owners of Commercial Units according to such Owner's Commercial Unit Sub-Allocated Interest.

(b) All Residential Common Expenses and Residential Common Expense Liability incurred by the Association shall be borne solely by the Owners of Residential Units according to such Owner's Residential Sub-Allocated Interest.

(c) All expenses incurred for the construction, maintenance, repair, replacement, operating (including, without limitation, lighting, providing security, providing HVAC, and providing electricity and other utilities) and cleaning of, and any separate insurance of, the Residential LCE or the Commercial LCE shall be borne solely by the Owner or Owners of the Unit or Units to which such Residential LCE or Commercial LCE are allocated or assigned.

(d) **Common Insurance; Separate Insurance.** Notwithstanding anything to the contrary contained in this Declaration, the costs and expenses of procuring and maintaining the common property casualty insurance of all the Common Elements, and of any other common liability insurance policy or other insurance policy, maintained by the Association pursuant to this Declaration shall be allocated amongst the Units based on the associated interests of the Units; even though the common insurance includes insurance coverage for areas that are Commercial LCE and Residential LCE. However, the costs and expenses of procuring and maintaining any separate insurance policies that cover and apply only to specific Residential LCE or Commercial LCE shall be borne solely by the Owner or Owners of the Unit or Units to which such Residential LCE or Commercial LCE is allocated or assigned.

7.2 – Incidental Damage to Units. All incidental damage caused to a Unit by any work on or to the Common Elements done by or for the Association shall be repaired by the Association, and the cost thereof shall be a Common Expense.

7.3 – Waiver of Claims. Anything herein to the contrary notwithstanding, the Association agrees that it shall make no claim against a Unit Owner or occupant, and (except as provided in Section 7.2 hereof) each Unit Owner and occupant agrees that he shall make no claim against the Association, the members of the Executive Board, officers of the

0926040.04

Association, or employees or agents of any thereof, or against any manager retained by the Executive Board or his or its officers, directors, employees or agents, or other Unit Owners or occupants, for any loss or damage to any of the Property, or to a Unit or personal property therein, even if caused by the act or neglect of any one or more of such Persons, due to a peril insured against by casualty insurance purchased by the Association or by any Unit Owner or occupant to the extent of the insurance proceeds recovered under all such policies of insurance, and all such claims, to the extent of such recovery, are hereby waived and released; provided, however, that: (a) this waiver shall not apply to vandalism or malicious mischief and shall apply only during such time as the applicable policy or policies shall contain a clause or endorsement to the effect that any such waiver and release shall not adversely affect or impair said recovery thereunder; and (b) the foregoing waiver applies only to the extent that the loss or claim is covered by insurance, the foregoing waiver shall not apply to the deductible under any policy of insurance, and the foregoing waiver shall not apply to any claim the aggregate amount of which is Ten Thousand Dollars (\$10,000.00) or less. The Association and each Unit Owner and occupant agree that their respective insurance policies shall contain such a clause or endorsement, and each Unit Owner and occupant shall furnish evidence reasonably acceptable to the Association of the existence of such a clause or endorsement.

ARTICLE 8 -- INSURANCE

8.1 -- Insurance. Not later than the time of the first conveyance of a Unit or a Sub-Unit to a Person other than the Declarant, the Executive Board in its own name for the use and benefit of the Unit Owners and the Sub-Unit Owners shall be required to purchase and maintain "blanket" or "" fire and extended coverage insurance policies and if available an "all risks endorsement" in amounts equal to the replacement value of the Units (including any fixtures or equipment within the Units which are customarily financed by first mortgages, but otherwise not including the contents of the Units or any improvements or betterments added by the Unit Owner), the Common Elements, the Residential LCE, the Commercial LCE, and common fixtures, equipment, personalty, and any other personal property owned by the Association. The Policy shall include an "Agreed Amount Endorsement" and, if available, an "Inflation Guard Endorsement". The Executive Board shall also obtain a general comprehensive public liability policy, which policy of insurance shall insure members of the Executive Board, their agents and employees and the owners of all Units, and the owners of all Sub-Units, against any liability, including medical payments, to the public or to the owners, their invitees, tenants and any other Persons who may be on the Property for any reason whatsoever, in the use of any Common Elements, the liability under which insurance shall be not less than One Million Dollars (\$1,000,000) for any one Natural Person injured, One Million Dollars (\$1,000,000) for any one accident, and Two Hundred and Fifty Thousand Dollars (\$250,000) for property damage. The Executive Board is further authorized to purchase Directors and Officers Liability Insurance and any other insurance coverage in such reasonable amounts as the Executive Board shall deem desirable. Premiums for such insurance shall be a Common Expense Liability to be paid from the common fund. Fire and extended coverage policies shall be written in the name of the Executive Board as Trustees for each of the Unit Owners in the Allocated Interests established in this Declaration, and for each of the Sub-Unit Owners of a Unit in accordance with the allocated interest allocated to such Sub-Unit. Insurance maintained under this Section 8.1 shall cover all Units and all Sub-Units, but (except for any fixtures or equipment within the Units which are customarily financed by first mortgages) not the contents thereof and not improvements and betterments installed by Unit Owners or Sub-Unit Owners.

8.2 -- Insurance Certificate. The Executive Board upon written request shall issue a certificate of insurance to any Unit Owner or Sub-Unit Owner or to any Security Holder of said Unit Owner or Sub-Unit requesting same. Said certificates shall contain the standard mortgagee clause naming the Security Holder as an additional insured and shall contain a minimum thirty (30) day cancellation notice which shall be given to the Executive Board, each Unit Owner, Sub-Unit Owner and each Security Holder to whom a certificate of insurance has been issued, prior to any cancellation of said insurance. Said policy shall contain a "special condominium endorsement," shall provide recognition of any insurance trust agreement, shall contain waiver of rights to subrogation against Unit Owners and Sub-Unit Owners, shall provide that said insurance coverage is not to be prejudiced by any act or neglect of an individual Unit Owner or Unit Owners or Sub-Unit Owners which is not within the control of the Unit Owners collectively and shall provide that said policy is primary in the event that any Unit Owner or Sub-Unit Owner has coverage for the same loss. **THE POLICIES, HOWEVER, SHALL NOT INSURE THE CONTENTS OF ANY UNIT OR SUB-UNIT OR ANY IMPROVEMENTS OR FIXTURES ADDED TO A UNIT OR SUB-UNIT.**

8.3 – Appointment of Trustee. Declarant, in consideration of the funds loaned to it and in consideration of loans which may hereafter be made by various lenders to Declarant and to Unit Owners and Sub-Unit Owners, does herewith, on behalf of itself, and the future Unit Owners of this Condominium, and all future Sub-Unit Owners, irrevocably constitute and appoint the Executive Board, the true and lawful insurance trustee to receive the proceeds of all fire and extended coverage insurance losses and does herewith require of the Executive Board that the said Board, on purchasing any fire and extended coverage policy or policies, shall notify the insurance carriers in writing to make all loss proceeds payable to the said trustee. The said trustee shall have full power and authority to adjust and collect all losses and to reimburse itself for reasonable expenses for such adjustment or collection. The trustee may, but shall not be required to, consult with the Unit Owners and Sub-Unit Owners. The trustee shall have full power and authority to execute all documents necessary on its own behalf and on behalf of the named insureds and to endorse all checks and drafts on its own behalf and on behalf of the named insureds. The trustee shall hold the insurance proceeds in trust for Unit Owners, for Sub-Unit Owners, for Security Holders and other lienholders as their interests may appear. Subject to the provisions of Article 9 hereof, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and Unit Owners, Sub-Unit Owners, Security Holders and other lienholders are not entitled to receive payment of the proceeds, unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Condominium is terminated. The trustee may disburse funds pursuant to Section 9.1 (in the event proceeds are sufficient for reconstruction), but notwithstanding the provisions thereof, the trustee shall have the right (but not the obligation) to require the funds to be disbursed pursuant to disbursement escrows or to be disbursed only against surety bonds, completion guarantees, or such other assurances as may satisfy the trustee. In the event the trustee is of the reasonable opinion that the fire and extended coverage insurance is insufficient to cover the replacement value of the insurable improvements, it may (but shall not be required to) increase the insurance coverage and send the bill for the premium therefor to the Association for the payment thereof as a Common Expense Liability from the common fund, as provided in Section 8.1 hereof, and remit the amount of the premium to the party entitled thereto. Nothing herein contained shall impose any liability on the trustee for failing to increase the coverage or failing to increase the coverage sufficiently or for selecting any particular insurance company. The trustee shall have the right to resign or appoint a trustee as successor trustee with full power of substitution as a successor trustee with like powers. In the event that the trustee fails to appoint a successor trustee, then the Executive Board shall appoint said successor. All handling of insurance proceeds shall be at no expense to the trustee, except that the cost of security bonds, completion guarantees, title escrow distribution charges, if any, shall be at the expense of the Association. Under no circumstances shall the trustee be liable for any act or omission except for fraud, gross negligence or lack of reasonable and ordinary care. All insurance shall be placed with companies licensed in the State of Missouri.

8.4 – Personal Property Insurance. Each Unit Owner and/or Sub-Unit Owner shall obtain and maintain his own insurance on the contents of his Unit or Sub-Unit including any additions and improvements to the Unit or Sub-Unit performed by the Unit Owner or Sub-Unit Owner, and obtain and maintain his own insurance on any personal property belonging to him, but stored elsewhere on the Property; and the Association shall have no obligation or responsibility to obtain and maintain any such insurance. Such policy(ies) of insurance shall contain an HO6 rider and shall name the Association as an additional insured.

ARTICLE 9 – DAMAGE, DESTRUCTION, REPAIR AND TERMINATION

9.1 – General. Any portion of the Condominium for which insurance is required under Section 8.1 which is damaged or destroyed shall be repaired or replaced promptly by the Association, unless: (a) the Condominium is terminated, or (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (c) Unit Owners owning eighty percent (80%) of the Votes in the Association (Section 448.2-118 of the Act), including every owner of a Unit or assigned Residential LCE or Commercial LCE, which will not be rebuilt, Vote not to rebuild pursuant to Section 9.2 hereof. The cost of repair or replacement in excess of insurance proceeds and reserves shall be a Common Expense Liability. If the entire Condominium is not repaired or replaced, then: (x) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium, (y) the insurance proceeds attributable to Units, Sub-Units, Residential LCE and Commercial LCE that are not rebuilt shall be distributed to the Owners of those Units and Sub-Units, and the Owners of the Units and Sub-Units to which those Residential LCE and Commercial LCE were allocated, and (z) the remainder of the proceeds shall be distributed to all the Unit Owners, Sub-Unit Owners, Security Holders or lienholders, as their interests may appear, in proportion to Allocated Interest of all Units. If the Unit Owners Vote not to rebuild any Unit in its entirety, then that Unit's Allocated Interest (and that Unit's Commercial Sub-Allocated

0926040.04

Interest and Residential Sub-Allocated Interest, as applicable) are automatically reallocated upon the Vote as if the Unit had been condemned under Article 10 hereof and the Association shall promptly prepare, execute and Record an amendment to the Declaration reflecting the reallocation. Notwithstanding the provisions of this Section 9.1, Section 9.2 hereof governs the distribution of insurance proceeds if the Condominium is terminated.

9.2 – Termination.

(a) The Condominium may be terminated only by: (1) agreement of Unit Owners of Units to which at least eighty percent (80%) of the Votes are allocated, and (2) approval by Security Holders of first mortgages on Units or Sub-Units to which at least fifty-one percent (51%) of the Allocated Interests are allocated.

(b) An agreement to terminate shall be evidenced by the execution of a termination agreement or ratifications thereof, in the same manner as a deed, by the requisite number of Unit Owners. The termination agreement shall specify a date after which the agreement will be void unless it is Recorded before that date. A termination agreement and ratifications thereof shall be Recorded in the real property records of Jackson County, Missouri, and is effective only upon Recordation.

(c) The termination agreement may provide that all of the Common Elements and Units of the Condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the Condominium is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

(d) The Association, on behalf of the Unit Owners, may contract for the sale of real estate in the Condominium, but the contract is not binding on the Unit Owners until approved pursuant to Section 9.2(a) and Section 9.2(b). If any real estate in the Condominium is to be sold following termination, title to that real estate, upon termination, vests in the Association as trustee for the holders of all interests in the Units. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Unit Owners, Sub-Unit Owners, Security Holders and other lienholders as their interests may appear, in proportion to the respective interests of the Unit Owners and Sub-Unit Owners. Unless otherwise specified in the termination agreement, as long as the Association holds title to the Property, each Unit Owner and his successors in interest have an exclusive right to occupy that portion of the Property which formerly constituted his Unit. During the period of that occupancy, each Unit Owner and his successors in interest remain liable for all assessments and other obligations imposed on Unit Owners by the Act, this Declaration and the Bylaws.

(e) If the Property constituting this Condominium is not to be sold following termination, title to the Common Elements and, if this Condominium contains only Units having horizontal boundaries described in the Declaration, title to all the Property in the Condominium vests upon termination in the Unit Owners as tenants in common in proportion to their Allocated Interest as provided in Section 9.2(g), and liens on the Units shift accordingly. While the tenancy in common exists, each Unit Owner and his successors in interest shall have an exclusive right to occupy that portion of the Property which formerly constituted his Unit.

(f) Following termination of this Condominium the proceeds of any sale of real estate, together with the assets of the Association, are held by the Association as trustee for Unit Owners, Sub-Unit Owners, Security Holders and other lienholders on the Units and Sub-Units as their interests may appear. Following termination, creditors of the Association holding liens on the Units, which were Recorded prior to termination, may enforce such liens in the same manner as any lienholder. Any other creditors of the Association shall be treated as if they had perfected liens on the Unit immediately prior to termination.

(g) The respective interests of Unit Owners and Sub-Unit Owners referred to in Section 9.2(d) and Section 9.2(e) are as follows:

(1) Except as provided in Section 9.2(g)(2), the respective interests of Unit Owners and Sub-Unit Owners are the fair market values of their Units, Sub-Units, Common Elements, Residential LCE and Commercial LCE interests immediately before the termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the Unit Owners and Sub-Unit Owners,

0926040.04

and becomes final, unless disapproved within thirty (30) days after distribution by Unit Owners of Units to which twenty-five percent (25%) of the Allocated Interests are allocated. The proportion of any Unit Owner's interest to that of all Unit Owners is determined by dividing the fair market value of that Unit Owner's Unit and Allocated Interest by the total fair market value of all the Units and Allocated Interests; and

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

9.3 -- Waiver of Subrogation. Each Unit Owner and Sub-Unit Owner hereby waives and releases any and all claims which he may have against any other Unit Owner or Sub-Unit Owner, the officers and members of the Executive Board, and the Declarant, and their respective employees and agents, for damage to the Common Elements, the Units, the Sub-Units, or to any personal property located in the Units or Common Elements, caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance; provided, however, that the foregoing waiver applies only to the extent that the loss or claim is covered by insurance, the foregoing waiver shall not apply to the deductible under any policy of insurance, and the foregoing waiver shall not apply to any claim the aggregate amount of which is Ten Thousand Dollars (\$10,000.00) or less.

9.4 -- Damage Caused by Unit Owner, Not Covered by Insurance. If, due to the act or neglect of a Unit Owner, or Sub-Unit Owner, or of a member of his family, household pet, guest or other authorized occupant or visitor of such Unit Owner, damage shall be caused to the Common Elements or to a Unit or Units or Sub-Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then the Executive Board (in its reasonable discretion) may require that such Unit Owner or Sub-Unit Owner pay for such damage or such maintenance, repairs and replacements, either: (a) if the cost is Ten Thousand Dollars (\$10,000.00) or less; or (b) if the cost is more than said amount, then to the extent that the damage, or such maintenance, repairs and replacements, is not covered by insurance.

ARTICLE 10 -- CONDEMNATION

10.1 -- Condemnation.

(a) In the event it shall become necessary for any public agency to acquire all or any part of any of the Units or the Common Elements of the Condominium for any public purpose, the Executive Board is hereby appointed as attorney-in-fact and is hereby authorized to negotiate with such public agency for such acquisition and to execute such instruments as may be necessary for conveyance to any such public agency. Should acquisition by eminent domain become necessary, only the Executive Board need be made party, and monies, damage payments or condemnation awards shall be held by the Executive Board for the benefit of the Owners of the Units subject hereto.

(b) If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award shall compensate the Unit Owner for his Unit and Allocated Interest, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, that Unit's Allocated Interests (and that Unit's Commercial Sub-Allocated Interest or Residential Sub-Allocated Interest, as applicable) are automatically reallocated to the remaining Units in proportion to the respective Allocated Interests (and Commercial Sub-Allocated Interest and Residential Sub-Allocated Interest, as applicable) of those Units before the taking, and the Executive Board shall promptly prepare, execute and Record an amendment to this Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this Section 10.1 is thereafter a Common Element.

(c) Except as provided in Section 10.1(b), if part of a Unit is acquired by eminent domain, the award shall compensate the Unit Owner for the reduction in value of the Unit and its Allocated Interest, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, (1) that Unit's Allocated Interests (and that Unit's Commercial Sub-Allocated Interest and Residential Sub-Allocated Interest, as applicable) are reduced in proportion to the reduction in the size of the Unit, or on any other basis specified in this Declaration, and (2) the portion of the Allocated Interests (and Commercial Sub-Allocated Interest and Residential Sub-Allocated Interest, as applicable) divested from the partially acquired Unit are automatically reallocated to that Unit and the remaining

0926040.04

Units in proportion to the respective Allocated Interests (and Commercial Sub-Allocated Interest and Residential Sub-Allocated Interest, as applicable) of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests (and Commercial Sub-Allocated Interest and Residential Sub-Allocated Interest, as applicable).

ARTICLE 11 – SUBDIVISION OF UNITS

11.1 – Right to Subdivide; Convert Unit to CE and LCE.

(a) Subject to the limitations set forth in Section 11.1(e) below, each Owner of a Commercial Unit under this Declaration shall have the absolute right to subdivide the Commercial Unit owned by such Unit Owner into Sub-Units comprised of individual commercial spaces. Subject to the limitations set forth in Section 11.1(c) below, the Sub-Unit Owner of a Sub-Unit derived from a Commercial Unit may further subdivide the Sub-Unit owned by such Sub-Unit owner into individual commercial spaces.

(b) In connection with such subdivision of an applicable Unit into Sub-Units, the applicable unit Owner shall have the right: (1) to convert portions of the original Unit into Common Element areas for the use, benefit and enjoyment of the applicable Sub-Units created from the subdivision of the original Unit; (2) to convert portions of the original Unit into Commercial LCE for the use, benefit and enjoyment of certain of the Sub-Units created from the subdivision of the original Unit. In addition, in the event that there is any Commercial LCE allocated and assigned for the exclusive use and benefit of an applicable Unit, then in such event, in connection with the subdivision of said applicable Unit into Sub-Units, the applicable Unit Owner shall have the right to allocate and designate any portion or portions of said Commercial LCE as Commercial LCE allocated and assigned for the exclusive use, benefit and enjoyment of any one or more of the Sub-Units created from the subdivision of the original Unit.

(c) The subdivision of the Commercial Units into Sub-Units, and the further subdivision of Sub-Units, are subject to the following limitations:

(1) **Commercial Units.** The maximum number of Sub-Units derived and created from the subdivision of any original Commercial Unit shall not exceed one (1) Sub-Unit. The foregoing maximum number of Sub-Units includes any Sub-Units derived and created from the further subdivision of a Sub-Unit created from any original Commercial Unit. Each Sub-Unit derived and created from the subdivision of an original Commercial Unit shall contain at least twenty-five percent (25%) of the square feet of area of the original Commercial Unit from which such Sub-Unit is derived and created. The foregoing minimum size requirement applies to any Sub-Units derived and created from the further subdivision of a Sub-Unit created from any original Commercial Unit.

11.2 -- Notices Under Declaration. In the event that any Commercial Unit is subdivided into Sub-Units, then, following such subdivision, the Association shall send any and all notices under this Declaration with respect to the original Commercial Unit (including, but not limited to, any and all assessment notices under this Declaration with respect to assessments, sums and expenses that are due and payable under this Declaration with respect to the original Unit), to the original Commercial Unit Owner. Any and all notices under this Declaration (including assessment notices) by the Association that are given to, sent to and/or served upon the applicable original Commercial Unit Owner shall have the same force and effect as if the notices were given to, sent to and served upon each of the Sub-Unit Owners.

11.3 -- Assessments Under Declaration. In the event that any Commercial Unit is subdivided into Sub-Units, then, following such subdivision, the applicable Sub-Unit Owners of the Sub-Units created from the subdivision of the applicable original Commercial Unit shall pay in the aggregate as a single payment to the Association the entire amount and share of assessments under this Declaration for Common Expenses and Commercial Common Expenses, as applicable, that are due and payable by the original Commercial Unit based on the original Unit's Allocated Interest and Commercial Sub-Allocated Interest, as applicable, and all other assessments, sums and expenses that are due and payable under this Declaration with respect to the original Commercial Unit. Notwithstanding the conversion of portions of the original Commercial Unit into Commercial LCE for the use, benefit and enjoyment of the applicable Sub-Units, the applicable Sub-Units Owners of the applicable Sub-Units

0926040.04

shall pay in the aggregate the entire amount of all assessments, sums and expenses that were due and payable under this Declaration with respect to the entire original Commercial Unit, including assessments, sums and expenses due and payable with respect to or attributable to the portions of the original Commercial Unit that have been converted to Commercial LCE.

11.4 -- Unpaid Assessments Constitute Lien on All Sub-Units. In the event that any such assessments and other sums and expenses that were due and payable under this Declaration with respect to the entire original Commercial Unit are not paid when due, then the unpaid amounts shall be and constitute liens pursuant to this Declaration on all of the Sub-Units created from the subdivision of the applicable original Commercial Unit.

11.5 -- Votes and Other Rights to Be Exercised by Sub-Unit Owners. In the event that any Commercial Unit is subdivided into Sub-Units, then, following such subdivision, the Sub-Unit Owner(s) shall be entitled to exercise and Vote as a single Vote, the Vote, the Owner's Reserved Rights and the other rights under this Declaration attributable to the applicable Commercial Unit from and out of which the applicable Sub-Units were derived and subdivided. In the event that any Commercial Unit is subdivided into Sub-Units, then: (a) all Voting rights, Owner's Reserved Rights and other rights attributable to the original Commercial Unit, and all rights attributable to the original Commercial Unit as a Condominium Member of the Association, shall be exercised by and exercisable only by, the applicable Sub-Unit Owners; (b) the Sub-Unit Owners of the Sub-Units created from the subdivision of the applicable original Commercial Unit shall exercise all of the Votes, rights and privileges applicable to the Unit Owner of such Commercial Unit as Condominium Member of the Association for all purposes of the Bylaws and this Declaration; (c) the Vote allocated to the Commercial Unit shall not be split but shall be Voted as a single whole by the applicable Sub-Unit Owners; and (d) all assessments, sums and expenses that are due and payable under this Declaration with respect to the original Commercial Unit, shall be paid by the Sub-Unit Owners to the Association in a single payment.

11.6 -- Partition Walls Within Units and Sub-Units. The Unit Owner of a Commercial Unit, and the Sub-Unit Owner of a Sub-Unit, may erect partition walls within the Commercial Unit or Sub-Unit to physically divide the Commercial Unit or Sub-Unit into two or more separate spaces, and may lease or sublease one or more of the separate spaces thus formed to tenants or subtenants, without subdividing the Commercial Unit or Sub-Unit into separate Commercial Units or Sub-Units, all without the consent of any other Commercial Unit Owner or Sub-Unit Owner. If the Unit Owner of a Commercial Unit, or the Sub-Unit Owner of a Sub-Unit, erects such partition walls and/or leases or subleases portions of the Commercial Unit or Sub-Unit to tenants or subtenants in this manner, then the Unit Owner of the Commercial Unit, or the Sub-Unit Owner of the Sub-Unit, retains full responsibility and liability of a Commercial Unit Owner or Sub-Unit Owner for the entire Commercial Unit or Sub-Unit with respect to the other Commercial Unit Owners and the Association, notwithstanding any contrary term in any lease or sublease with the applicable tenant or tenants or subtenants.

ARTICLE 12 -- DECLARANT'S RIGHTS

12.1 -- Right of Declarant to Vote. The Declarant shall have the right to exercise the Votes allocated to Units which Declarant owns and which have not been transferred to third parties.

12.2 -- Development Period. The "Development Period" is the period commencing on the date of Recording hereof and continuing until the earlier of: (a) the date on which Declarant has conveyed to third parties all of the original Units; or (b) the tenth (10th) anniversary of the date of Recording of this Declaration.

12.3 -- Development Rights. Notwithstanding any provision hereof to the contrary, at all times and from time to time, until the expiration of the Development Period, Declarant (and its successors, assigns and Security Holders) shall have the following rights or combination of rights (the "Development Rights"): (a) the right to construct, reconstruct, erect, develop, redevelop, demolish, rebuild, relocate and/or complete all or any portion of the original Improvements to the Property, including structural and foundation components of the Improvements, demising walls, mechanical systems, HVAC systems, electrical systems, plumbing systems, elevators and any other original Improvements now or hereafter existing on the Property, including but not limited to the right to construct additional stories on the Building; (b) the right to create Units, Common Elements, Residential LCE and Commercial LCE within the Condominium; including, but not limited to, acquiring additional Property and creating additional Units in the Condominium; (c) the right to

0926040.04

subdivide and resubdivide Units or convert Unit areas into Common Elements, pursuant to and in accordance with Article 11 hereof; (d) the right to convert Common Elements to Residential LCE and Commercial LCE, and the right to convert Residential LCE and Commercial LCE to Common Elements; and (f) the right to use easements through the Common Elements for the purpose of making improvements within the Condominium or within real estate, which may be added to the Condominium. Declarant hereby reserves the right and privilege for itself (and its successors, assigns and Security Holders) to conduct the activities enumerated in this Section 12.3 until the expiration of the Development Period; provided, however, while Declarant shall have the right to conduct the activities enumerated in this Section 12.3 Declarant shall have no obligation to do so.

12.4 – Advertising and Sales Activity by the Declarant. Notwithstanding any provision hereof to the contrary, at all times and from time to time, until the expiration of the Development Period, Declarant (and its successors, assigns and Security Holders) shall have the following Special Declarant Rights: (a) the right and privilege to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, sales Units in this Condominium, (b) the right and privilege to maintain Units and portions of Units as sales models management offices and business offices, and (c) the right and privilege to maintain and locate tools and equipment within the Property. Declarant hereby reserves the right and privilege for itself (and its successors, assigns and Security Holders) to conduct the activities enumerated in this Section 12.4 until the expiration of the Development Period.

12.6 – Amendments By Declarant. Refer to Sections 13.1(a) to 13.1(e) hereof.

12.7 – Rights of Declarant's Successors. All rights afforded Declarant under this Article 12 shall inure to the benefit of any Security Holder acquiring title to any Unit hereunder by, through or under Declarant, and to any successor declarant to whom Declarant assigns its rights as Declarant, by written assignment instrument Recorded in the real property records of Jackson County, Missouri.

ARTICLE 13 – AMENDMENTS

13.1 – Amendments.

(a) During the Declarant Control Period, the Declarant, may modify and amend this Declaration and the Plat.

(b) Subject to Sections 13.1(f) and (g) hereof, during the Development Period, Declarant may modify and amend this Declaration and the Plat, in connection with and in furtherance of Declarant's exercise of Development Rights under Section 12.3 hereof.

(c) Subject to Sections 13.1(f) and (g) hereof, the Unit Owners (acting by and through the Association), upon the affirmative Vote of Unit Owners of Units to which are allocated at least sixty-seven percent (67%) of the Allocated Interests, and at least sixty-seven percent (67%) of the Votes in the Association, may modify and amend this Declaration by satisfying Section 448.2-117 of the Act; provided, however, that (1) so long as Declarant holds fee simple title to any Residential Unit or any Commercial Unit remains un-leased, this Declaration may not be amended by the Unit Owners, excepting with the written agreement of the Declarant, such agreement not to be unreasonably withheld; (2) with respect to any Commercial Unit that has not been subdivided into Sub-Units, any amendment to this Declaration or the Plat which, if enacted, would, with respect to the applicable Commercial Unit, be a Material Condominium Amendment to this Declaration or the Plat, shall require the written approval of the Security Holder of the first lien Security Interest encumbering the applicable Commercial Unit; and (3) with respect to any Commercial Unit that has been subdivided into Sub-Units, any amendment to this Declaration or the Plat which, if enacted, would, with respect to the applicable Commercial Unit and the Sub-Units derived therefrom, be a Material Condominium Amendment to this Declaration or the Plat, shall require the written approval of the Security Holders of the first lien Security Interest encumbering at least fifty-one percent (51%) of the aggregate square footage of the Sub-Units derived from such Commercial Unit.

(d) Notwithstanding the provisions of Section 13.1(c), this Declaration may also be amended by the Executive Board and any Owner required by Sections 448.2-108, 448.2-112, and 448.2-113 without the Vote and approval specified and required in Section 13.1(c) hereof as follows:

- (1) To reallocate Residential LCE and Commercial LCE in accordance with Section 448.2-108 of the Act;
- (2) To relocate the boundaries between adjoining Units in accordance with Section 448.2-112 of the Act; and
- (3) To subdivide a Unit into two or more Sub-Units in accordance with Section 448.2-113 of the Act and Article 11 of this Declaration.

(e) With respect to any amendments made by the Declarant, the Declarant may prepare, execute, certify and Record amendments to this Declaration. With respect to any amendments made by the Unit Owners (acting by and through the Association), the president, treasurer, secretary or assistant secretary of the Association may prepare, execute, certify and Record amendments to this Declaration on behalf of the Unit Owners and the Association. Each such modification and amendment must be duly Recorded in the real property records of Jackson County, Missouri; provided, however, that this Declaration and Bylaws shall at all times contain the minimum requirements imposed by the Act, and, in particular, the minimum insurance required to be maintained by Section 448.3-113 of the Act.

(f) Notwithstanding anything to the contrary contained in this Article 13, each Owner of a Unit shall have the Owner's Reserved Right with respect to such Unit. By reason of such Owner's Reserved Rights, with respect to any Unit that has not been subdivided into Sub-Units, (1) any amendment to this Declaration or the Plat which, if enacted, would, with respect to the applicable Unit, be a Material Condominium Amendment to this Declaration or the Plat, shall require the written approval of the applicable Unit Owner of the applicable Unit; and (2) the Owner of a Unit shall have the absolute right to disapprove any amendment to this Declaration or the Plat which, if enacted, would, with respect to the applicable Unit owned by the applicable Unit Owner, be a Material Condominium Amendment to this Declaration or the Plat.

(g) Notwithstanding anything to the contrary contained in this Article 13, the Sub-Unit Owners of the Sub-Units derived from an applicable Commercial Unit shall have the Owner's Reserved Right with respect to such Commercial Unit. By reason of such Owner's Reserved Rights, with respect to any Commercial Unit that has been subdivided into Sub-Units, (1) any amendment to this Declaration or the Plat which, if enacted, would, with respect to the applicable Unit and the Sub-Units derived therefrom, be a Material Condominium Amendment to this Declaration or the Plat, shall require the written approval of the Sub-Unit Owners of the Sub-Units derived from such Commercial Unit owning at least fifty-one percent (51%) of the aggregate square footage of the Sub-Units derived from such Commercial Unit; and (2) the Sub-Unit Owners owning at least fifty-one percent (51%) of the aggregate square footage of the Sub-Units derived from such Commercial Unit, shall have the absolute right to disapprove any amendment to this Declaration or the Plat, which, if enacted, would, with respect to the applicable Commercial Unit and the Sub-Units derived therefrom, be a Material Condominium Amendment to this Declaration or the Plat.

ARTICLE 14 – SECURITY HOLDER PROVISIONS

14.1 – Notice to Association. Upon request, each Unit Owner and Sub-Unit Owner shall be obligated to furnish to the Association the name and address of the holder, insurer or guarantor of any Security Interest encumbering such Unit Owner's Unit or such Sub-Unit Owner's Sub-Unit.

14.2 – Failure of Security Holder to Respond. Any Security Holder of a Security Interest of a Unit or a Sub-Unit who receives a written request from the Executive Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from such Security Holder within thirty (30) days of the date of the Association's request, provided such request is delivered to the Security Holder by certified or registered mail, return receipt requested.

14.3 -- Payments of Charges by Security Holders. Security Holders which hold, insure or guarantee a first lien Security Interest may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Elements and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and such Security Holders making such payments shall be entitled to immediate reimbursement from the Association.

14.4 -- Security Holder's Rights. Unless provided to the contrary in a Unit Owner's or Sub-Unit Owner's mortgage, the Security Holder of a first lien Security Interest in the Units and Sub-Units (including a Security Holder, insurer or guarantor of a first lien Security Interest in a Unit or Sub-Unit which has requested notice in accordance with the provisions of Section 14.5 of this Declaration) shall be entitled to the following rights:

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

(b) Any election to terminate the Condominium after substantial destruction or a substantial taking in condemnation of the Condominium property must also require the approval of the eligible Security Holders of first lien Security Interests in Units and Sub-Units to which at least fifty-one percent (51%) of the Allocated Interests of Units subject to first lien Security Interests held by such eligible Security Holders are allocated.

(c) No reallocation of interests in the Common Elements resulting from a partial condemnation or partial destruction of the Condominium project may be effected without the approval of the eligible Security Holders of first lien Security Interests in Units and Sub-Units to which at least fifty-one percent (51%) of the Allocated Interests of Units subject to first lien Security Interests held by such eligible Security Holders are allocated.

14.5 -- Notice to Security Holders. Upon written request to the Executive Board, the Security Holder of any duly recorded Security Interest against any Unit or Sub-Unit shall thereafter be given copies of any and all notices permitted or required by this Declaration to be given to the Unit Owners or Sub-Unit Owners or whose Unit or Sub-Unit is subject to such Security Interest (such written request to state the name and address of such Security Holder and the Unit or Sub-Unit number). Notices shall be given to Security Holders under the following conditions:

(a) Any proposed amendment of the Declaration that would be a Material Condominium Amendment with respect to the Unit or Sub-Unit subject to such Security Interest.

(b) Any proposed termination of the Condominium;

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

(d) Any delinquency in the payment of assessments or charges owed by an Owner of a Unit or an Owner of a Sub-Unit subject to the Security Interest of such eligible Security Holder, insurer or guarantor, where such delinquency has continued for a period of 60 days;

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

ARTICLE 15 -- GENERAL PROVISIONS

15.1 -- Captions. The captions of the various Articles and Sections of this Declaration are for purposes of reference only and are not deemed to have any substantive effect.

15.2 -- Rules and Regulations. The Executive Board may make such reasonable rules and regulations governing the window treatments that may be installed within the windows of the Building; including the window treatments that may be installed within the Units and Sub-Units. The Executive Board may make such reasonable rules and regulations as the Executive Board may determine pertaining to the use of any common recreational facilities (if any) and Common Elements, including (as to common recreational facilities, if any) the right to admit non-residents as guests on a fee basis and including the matters of safety, deportment, dress, hours, children, pets and disciplining measures against unruly members and children. Further, the Executive Board shall have the right (but not the obligation) to make such rules and regulations governing the use of, and the standing of vehicles, in any drive lanes and loading dock areas. The Executive Board may bring such legal actions as it may deem appropriate, in its sole and absolute discretion, against Persons violating its rules and regulations and, upon the Executive Board prevailing, the costs and attorneys' fees associated with such action shall be taxed against such party.

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

41 Penn, LLC
420 West 42nd Street, Suite 12
Kansas City, Missouri 64111

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

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

15.6 -- No Waiver. No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

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

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

15.9 -- Bonds. Before any Natural Person shall become a member of and serve on the Executive Board, he shall be able to be bonded. The Executive Board shall procure a blanket fidelity bond on themselves individually and collectively for the benefit of all Unit Owners and Sub-Unit Owners in an amount not less than the estimated maximum of funds, including reserve funds in the custody of the Executive Board at any given time during the term of each bond.

0926040.04

The bond shall be written only by a bonding company approved to write fidelity bonds for Executors and Administrators by the Probate Division of the Jackson County Circuit Court. The cost of premiums for such blanket bond shall be paid out of the common funds of this Condominium as a general charge and shall not be borne by the individual members of the Executive Board. The bond shall contain waiver of all defenses based upon the exclusion of Persons serving without compensation from the definition "employee" or similar terms or expressions. The bond shall provide that it may not be cancelled or substantially modified (including cancellation for non-payment of premium) without 10 days' prior written notice to Executive Board. Notwithstanding anything contained in this Section 15.9 to the contrary, should the Association, acting through the Executive Board, elect to cause the funds and moneys of the Association to be managed by a third party that is bonded in substantially the manner set forth herein, the individual bonding requirement of this Section 15.9 may be waived by the Executive Board.

15.10 – Operative Effect. This Declaration shall be of full force and effect upon the Recordation in the real property records of Jackson County, Missouri.

15.11 – Lease of Unit. Each Unit Owner (and each Sub-Unit Owner) shall have the right to lease or sublease all or any portion of the Unit owned by such Unit Owner (or of the Sub-Unit owned by such Sub-Unit Owner), subject to the following requirements:

(a) **Commercial Units.** Every lease or sublease (a "Commercial Lease") of a Commercial Unit or of any Sub-Unit or other portion of a Commercial Unit, shall be in writing and shall be subject to all the terms and provisions of this Declaration and the Bylaws. Each such Commercial Lease shall incorporate by reference this Declaration and the Bylaws, and the rules and regulations of the Condominium; and shall include a provision that any violation by the tenant or subtenant under such Commercial Lease of this Declaration, the Bylaws or said rules and regulations, that is not cured with any applicable cure period set forth in said Commercial Lease, shall constitute a default by the tenant or subtenant under such Commercial Lease.

(b) **Residential Units.** Every lease or sublease (a "Residential Lease") of a Residential Unit or other portion of a Residential Unit (such as any Individual Dwelling Unit portion of a Residential Unit), shall be in writing, shall be for a minimum term of six (6) months and shall be subject to all the terms and provisions of this Declaration and the Bylaws. Each such Residential Lease shall incorporate by reference this Declaration and the Bylaws, and the rules and regulations of the Condominium; and shall include the provision that any violation by the tenant or subtenant under such Residential Lease of this Declaration, the Bylaws or said rules and regulations, that is not cured with any applicable cure period set forth in said Residential Lease, shall constitute a default by the tenant or subtenant under such Residential Lease. The form of each Residential Lease of an Individual Dwelling Unit shall be submitted to the Executive Board for its review and approval (which shall not be unreasonably withheld), so as to assure compliance with this Declaration.

(c) In the event that the Executive Board incurs any legal fees, costs or other expenses in connection or by reason of any violation by any tenant or subtenant of a Unit or Sub-Unit of the terms and provisions of this Declaration, the Bylaws or the rules and regulations, then the applicable Unit Owner shall be responsible for said legal fees, costs and expenses, and upon demand shall pay same to the Executive Board; and if same shall remain unpaid, then same shall constitute an assessment against and a lien upon the Unit, which lien shall be enforceable the same as other assessment liens hereunder.

15.12 – Lease Provisions Not Applicable To Security Holders Purchasing Units. The lease provisions of Sections 15.11(a), (b) and (c) of the Declaration do not apply to any Security Holder who has purchased a Unit either upon foreclosure of the Security Interest encumbering the applicable Unit held by such Security Holder, or by deed in lieu of foreclosure with respect to the Unit; and during such Security Holder's period of ownership of such Unit, such Security Holder shall be exempted from the provisions of this Sections 15.11(a), (b) and (c) of the Declaration with respect to the Unit so purchased and owned by such Security Holder; but such Security Holder shall otherwise be subject to all of the other terms and provisions of this Declaration and the Bylaws.

15.13 – Residential Storage Areas. The Declarant shall have the right to amend the Plat: (1) to convert any Residential Storage Area that is Residential LCE into Commercial LCE, and (2) to convert any Commercial Storage Area that is Commercial LCE into Residential LCE.

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15.14 – Substantial Completion of Units. Attached hereto as **Exhibit I** and incorporated herein by this reference is a duly executed Certificate of Substantial Completion executed by a registered and licensed engineer or architect, certifying as to the matters which Section 448.2-101.2 of the Act requires to be certified by a registered and licensed engineer or architect.

15.16 – Financial Statement of Association. Upon written request from any persons or parties hereinafter described, the Executive Board shall (within a reasonable time after receipt of such request) furnish and provide to the requesting Person or party a true and correct copy of the audited financial statement of the Association for the immediately preceding fiscal year. Each and all of the following Persons or parties shall be entitled, upon written request as aforesaid, to receive such copy of said financial statement of the Association: any Unit Owner or Sub-Unit Owner, any Security Holder of a first lien Security Interest in a Unit or Sub-Unit, any prospective purchaser of a Unit or Sub-Unit, any prospective first mortgage Security Holder in a Unit Owner or Sub-Unit Owner or to a prospective purchaser of a Unit or Sub-Unit, and any agency, instrumentality or corporation acting for or in behalf of any such first mortgage Security Holder or prospective first mortgage Security Holder.

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

15.18 -- Disputes & Dispute Resolution Proceedings.

(a) Other than disputes and disagreements regarding the Owner's Reserved Rights and/or Material Condominium Amendments, in the event of any dispute or disagreement between or among any Owners of the Units or any Sub-Unit Owners of any of the Sub-Units, or any questions of interpretation or application of the provisions of the Declaration or the Bylaws, the determination reached by the Board of Directors of the Association shall be deemed presumptively correct. Subject to the remaining provisions of this Declaration and the Bylaws, no such determination shall limit the rights otherwise available to any affected Owner to seek legal redress to reverse or otherwise modify the determination of the Board or to submit a dispute to Dispute Resolution, but such aggrieved party shall bear the burden of proof in establishing its case. Any dispute relating to Owner's Reserved Rights and/or Material Condominium Amendments may be submitted to Dispute Resolution by the Owner of the affected Unit or Sub-Unit.

(b) Other than legal proceedings for, regarding or in connection with the determination, dispute, collection and/or enforcement of assessments, assessment liens and other sums and monies due and payable by any Unit Owner or Sub-Unit Owner under and pursuant to any of the terms and provisions of this Declaration and/or the Bylaws, the Declarant, the Association, the Unit Owners and the Sub-Unit Owners agree and provide that any and all other disputes and disagreements under, regarding or in connection with this Declaration and/or the Bylaws shall be submitted to and determined by binding Dispute Resolution. The non-prevailing party in any such arbitration shall pay all of the fees of the arbitrator, and all fees, costs and expenses of the Dispute Resolution, and all of the reasonable attorneys' fees, costs and expenses incurred in connection with any such arbitration by the prevailing party. The arbitrator shall have the right to order the non-prevailing party to pay all of the fees of the arbitrator, and all fees, costs and expenses of the Dispute Resolution. The arbitrator shall also have the right to order the non-prevailing party to pay (and to award to the prevailing party) the prevailing party's reasonable attorneys' fees, costs and expenses incurred in connection with any such arbitration.

(c) Pursuant to, and in connection with, and in furtherance of any Dispute Resolution proceeding, the arbitrator shall be empowered to order and compel a Unit Owner or a Sub-Unit Owner to execute any instrument which this Declaration obligates the Unit Owner or the Sub-Unit Owner to execute, and to otherwise order and compel the Unit Owner and Sub-Unit Owner to comply with its agreements, obligations, covenants and duties under this Declaration.

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(d) Any and all legal proceedings for or regarding or in connection with the determination, dispute, collection and/or enforcement of assessments, assessment liens and other sums and monies due and payable by any Unit Owner or any Sub-Unit Owner under and pursuant to any of the terms and provisions of this Declaration and/or the Bylaws, shall not be subject to mandatory Dispute Resolution, unless the parties agree and consent otherwise in writing.

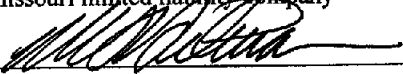
(e) Wherever this Declaration or the Bylaws provides for the Association, or the Executive Board, or any Unit Owner, or any Sub-Unit Owner, or any other applicable party subject to and governed by the terms of this Declaration and/or the Bylaws (as applicable, the "Responding Party"), to be reasonable, or provides for any such Responding Party not to be unreasonable, with respect to any consent or approval of any matter requested by any other party (the "Requesting Party"); in the event that any such Responding Party withholds, conditions or delays its consent or approval to the matter requested by the Requesting party, then: (1) the Requesting Party's sole right and remedy shall be to seek Dispute Resolution pursuant to this Section 15.18, of whether the Responding Party has unreasonably withheld, conditioned or delayed its consent or approval of the matter requested; and (2) if the arbitrator concludes that Responding Party did not act reasonably, or that the Responding Party acted unreasonably, then the arbitrator shall be empowered to enforce by any and all appropriate orders the Responding Party's obligation to be reasonable and/or the Responding Party's obligation not to be unreasonable, including (but not limited to) fashioning and determining a specific remedy that will be enforced, such as ordering the Responding Party to approve or consent to a specific matter requested by the Requesting Party. However, in all events, the Responding Party shall not be liable to the Requesting Party for any damages (whether actual, incidental, consequential or otherwise) that the Requesting Party sustains or incurs by reason of the Responding Party withholding, conditioning or delaying its consent or approval of any matter requested by the Requesting Party.

15.19 -- Conflict Between Declaration & Bylaws. In the event of a conflict between or among any of the terms, provisions, conditions and definitions of this Declaration, on the one hand, and any of the terms, provisions, conditions and definitions of the Bylaws, on the other hand, then in all such events the terms, provisions, conditions and definitions of this Declaration shall apply, govern, control and prevail, and the terms, provisions, conditions and definitions of the Bylaws shall be construed and amended to implement the intent of the terms, provisions, conditions and definitions of this Declaration, unless the context shall clearly indicate that the terms, provisions, conditions and definitions of the Bylaws are intended to prevail.

THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION THAT MAY BE ENFORCED BY THE PARTIES.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the date first above written.

41 PENN, LLC
a Missouri limited liability company

By: 

Name: Michael H. Heitmann

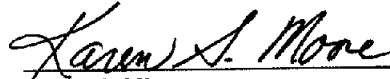
Title: Managing Member

STATE OF MISSOURI)
) SS
COUNTY OF Platte)

On this ____ day of January, 2008, before me personally appeared Michael H. Heitmann, to me known who, being by me duly sworn, did say that he is the managing member of 41 Penn, LLC, a Missouri limited liability company, who executed the within instrument in behalf of said company, duly authorized by its members and managers; and acknowledged said instrument to be the free act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

My Commission Expires: 3-12-10


Notary Public

KAREN S. MOORE
Notary Public - State of Missouri
Commissioned in Platte County
My Commission Expires 3/12/2010
Commission # 06438630

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

The following described real estate situated in the City of Kansas City, State of Missouri, to-wit:

LOTS 9 AND 12, CAMPBELL'S ADDITION TO WESTPORT, A SUBDIVISION IN KANSAS CITY, JACKSON COUNTY, MISSOURI. (AND THE WESTERLY HALF OF THE VACATED ALLEY LYING EASTERLY OF AND ADJACENT THERETO)

ALL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 9; THENCE NORTH 58° 43' 12" EAST ALONG THE NORTHERLY LINE THEREOF 147.87 FEET TO THE CENTERLINE OF SAID VACATED ALLEY; THENCE SOUTH 31° 22' 05" EAST ALONG SAID CENTERLINE 148.00 FEET; THENCE SOUTH 58° 43' 13" WEST ALONG THE SOUTHERLY LINE OF SAID LOT 12 147.79 FEET TO THE SOUTHWEST CORNER THEREOF; THENCE NORTH 31° 24' 03" WEST ALONG THE WESTERLY LINES OF LOTS 12 AND 9 148.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

CONDOMINIUM PLAT

Condominium Plat of the Property described in Exhibit A, titled CONDOMINIUM PLAT OF 41 PENN
CONDOMINIUM Recorded on the ____ day of _____, 2008, in Book _____ at Page(s) _____
of the real property records of Jackson County, Missouri.

EXHIBIT C

ALLOCATED INTERESTS OF UNITS

<u>Unit No.</u>	<u>Allocated Interest</u>	<u>Use</u>
Unit 101	5.81%	Commercial
Unit 102	4.58%	Commercial
Unit 103	3.22%	Commercial
Unit 104	1.84%	Commercial
Unit 105	2.75%	Commercial
Unit 201	2.88%	Residential
Unit 202	1.85%	Residential
Unit 203	2.88%	Residential
Unit 204	2.65%	Residential
Unit 205	2.88%	Residential
Unit 206	1.85%	Residential
Unit 207	2.87%	Residential
Unit 208	2.59%	Residential
Unit 301	2.88%	Residential
Unit 302	1.85%	Residential
Unit 303	2.88%	Residential
Unit 304	2.65%	Residential
Unit 305	2.88%	Residential
Unit 306	1.85%	Residential
Unit 307	2.87%	Residential
Unit 308	2.59%	Residential
Unit 401	2.88%	Residential
Unit 402	1.85%	Residential
Unit 403	2.88%	Residential
Unit 404	2.65%	Residential
Unit 405	2.88%	Residential
Unit 406	1.85%	Residential
Unit 407	2.87%	Residential
Unit 408	2.59%	Residential
Unit 501	2.88%	Residential
Unit 502	1.85%	Residential
Unit 503	2.88%	Residential
Unit 504	2.65%	Residential
Unit 505	2.88%	Residential
Unit 506	1.85%	Residential
Unit 507	2.87%	Residential
Unit 508	2.59%	Residential
Totals:	100.000%	

EXHIBIT C - 1

ALLOCATED INTERESTS OF UNITS

	<u>Square Footage</u>	<u>Allocated Interests</u>
Totals for Commercial Units:	9,492 s.f.	18.2%
Totals for Residential Units:	42,764 s.f.	81.8%
		<hr/>
Totals all Units:	52,256 s.f.	100.00%

EXHIBIT D

COMMERCIAL SUB-ALLOCATED INTERESTS OF COMMERCIAL UNITS

<u>Unit No.</u>	<u>Square Foot</u>	<u>Sub-Allocated Interest</u>
Unit 101	3,038	32%
Unit 102	2,395	25%
Unit 103	1,682	18%
Unit 104	940	10%
Unit 105	1,437	15%
<hr/>		
Totals:	9,492 s.f.	100.000%

EXHIBIT E

RESIDENTIAL SUB-ALLOCATED INTERESTS OF RESIDENTIAL UNITS

<u>Unit No.</u>	<u>Square Foot</u>	<u>Sub-Allocated Interest</u>
Unit 201	1,506	3.52%
Unit 202	966	2.26%
Unit 203	1,506	3.52%
Unit 204	1,383	3.23%
Unit 205	1,506	3.52%
Unit 206	966	2.26%
Unit 207	1,502	3.51%
Unit 208	1,356	3.17%
Unit 301	1,506	3.52%
Unit 302	966	2.26%
Unit 303	1,506	3.52%
Unit 304	1,383	3.23%
Unit 305	1,506	3.52%
Unit 306	966	2.26%
Unit 307	1,502	3.51%
Unit 308	1,356	3.17%
Unit 401	1,506	3.52%
Unit 402	966	2.26%
Unit 403	1,506	3.52%
Unit 404	1,383	3.23%
Unit 405	1,506	3.52%
Unit 406	966	2.26%
Unit 407	1,502	3.51%
Unit 408	1,356	3.17%
Unit 501	1,506	3.52%
Unit 502	966	2.26%
Unit 503	1,506	3.52%
Unit 504	1,383	3.23%
Unit 505	1,506	2.26%
Unit 506	966	3.51%
Unit 507	1,502	3.17%
Unit 508	1,356	3.52%

Totals:	42,764 s.f.	100.000%
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EXHIBIT F

Votes in the Association

<u>Unit No.</u>	<u>Number of Votes</u>
Unit 101	1
Unit 102	1
Unit 103	1
Unit 104	1
Unit 105	1
Unit 201	1
Unit 202	1
Unit 203	1
Unit 204	1
Unit 205	1
Unit 206	1
Unit 207	1
Unit 208	1
Unit 301	1
Unit 302	1
Unit 303	1
Unit 304	1
Unit 305	1
Unit 306	1
Unit 307	1
Unit 308	1
Unit 401	1
Unit 402	1
Unit 403	1
Unit 404	1
Unit 405	1
Unit 406	1
Unit 408	1
Unit 501	1
Unit 502	1
Unit 503	1
Unit 504	1
Unit 505	1
Unit 506	1
Unit 507	1
Unit 508	1

Total: 37 Votes

EXHIBIT G
**Existing Easements, Building Lines, Restrictions
and Other Title Matters of Record**

As set forth in the Plat described in Exhibit B

EXHIBIT H

OPERATING FUND ASSESSMENTS UNDER SECTION 6.3

<u>Unit No.</u>	<u>Amount of Operating Fund Assessment</u>
Unit 101	\$380.00
Unit 102	\$380.00
Unit 103	\$380.00
Unit 104	\$380.00
Unit 105	\$380.00
Unit 201	\$692.00
Unit 202	\$444.00
Unit 203	\$692.00
Unit 204	\$636.00
Unit 205	\$692.00
Unit 206	\$444.00
Unit 207	\$690.00
Unit 208	\$624.00
Unit 301	\$692.00
Unit 302	\$444.00
Unit 303	\$692.00
Unit 304	\$636.00
Unit 305	\$692.00
Unit 306	\$444.00
Unit 307	\$690.00
Unit 308	\$624.00
Unit 401	\$692.00
Unit 402	\$444.00
Unit 403	\$692.00
Unit 404	\$636.00
Unit 405	\$692.00
Unit 406	\$444.00
Unit 407	\$690.00
Unit 408	\$624.00
Unit 501	\$692.00
Unit 502	\$444.00
Unit 503	\$692.00
Unit 504	\$636.00
Unit 505	\$692.00
Unit 506	\$444.00
Unit 507	\$690.00
Unit 508	\$624.00

Total:	\$21,556.00
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EXHIBIT I

CERTIFICATE OF SUBSTANTIAL COMPLETION

With respect to the "Property" located in the City of Kansas City, Missouri, being more particularly described on Exhibit A to the Declaration of Condominium of 41 Penn Condominium to which this Exhibit I is annexed, the undersigned _____, a Registered Missouri Architect or Engineer, No. _____, hereby certifies: that all structural components and all mechanical systems of the Building containing or comprising the Units constructed on the Property have been substantially completed in accordance with the plans thereof and therefor. (See Mo. Rev. Stat. §448.2-101)

Dated: _____, 2007.

[ARCHITECT or ENGINEER SEAL]

X _____
Print: _____
Registered Missouri Architect or Engineer,
No. _____

STATE OF MISSOURI)
) SS
COUNTY OF _____)

On this ____ day of _____, 2007, before me personally appeared _____, a Registered Missouri Architect or Engineer, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

My term expires:

Notary Public

EXHIBIT J

BYLAWS OF 41 PENN CONDOMINIUM ASSOCIATION, INC. A Missouri Non-Profit Corporation

ARTICLE 1 -- IDENTITY

These are the Bylaws of 41 Penn Condominium Association, Inc., a Missouri Non-Profit Corporation (the "Association").

For the purpose of these Bylaws, the terms specifically defined in the Declaration of Condominium of 41 Penn Condominium (the "Declaration"), or in Section 448 of the Missouri Revised Statutes (the "Act") and any laws amendatory thereof and supplemental thereto, shall have the same meaning herein.

ARTICLE 2 -- QUALIFICATIONS AND RESPONSIBILITIES OF CONDOMINIUM MEMBERS

The qualifications and responsibilities of Condominium Members and the manner of their admission into the Association shall be as follows:

2.1 -- Condominium Members. Each Unit Owner, by virtue of such ownership, shall be a member ("Condominium Member") of the Association, and shall remain a Condominium Member until such time as such ownership ceases for any reason. Provided, however, that, in the event that any Unit is subdivided into Sub-Units, then: (a) all Voting rights, Owner's Reserved Rights and other rights attributable to the original Unit, and all rights attributable to the original Unit as a Condominium Member of the Association, shall be exercised by and exercisable only by, the applicable Sub-Association; (b) the Sub-Association (acting for and in behalf of the applicable Sub-Unit Owners of the Sub-Units created from the subdivision of the applicable original Unit) shall exercise all of the Votes, rights and privileges applicable to the Unit Owner of such Unit as Condominium Member of the Association for all purposes of the Bylaws and the Declaration.

2.2 -- More Than One Unit Owner. Where more than one Person owns a Unit, all such Persons together shall be and constitute one (1) Condominium Member with respect to the Unit owned by such Persons.

2.3 -- Registration. It shall be the duty of each Unit Owner to register his name and the Unit number with the Secretary of the Association. If a Unit Owner does not so register, the Association shall have no duty or obligation to recognize his membership.

2.4 -- Prohibition of Assignment of Member's Share in Funds of Association. The share of a Condominium Member in the funds and assets of the Association cannot be assigned, pledged, encumbered, alienated or transferred in any manner except as an appurtenance to his Unit.

ARTICLE 3 -- MEMBERS' MEETING AND VOTING

3.1 -- Place of Meeting. Meetings of the Association shall be held at the registered office of the Association, or such suitable places within the City of Kansas City, Missouri, convenient to the Condominium Members, as may be designated from time to time by the Board.

3.2 -- Annual Meetings. The Condominium Members shall meet at least once a year. The annual meeting of the Condominium Members shall be held on the Second Tuesday in February in each year (or at such other time as the Board may decide), commencing in 2008, and if such day shall be a legal holiday, then on the next business day following, at such time and place as is specified by the President or Secretary in the notice of such meeting; provided, however, that the Board, from time to time, at any regular or special meeting, may designate a different day for the annual meeting. Except as otherwise provided in Article 4 hereof, at each annual meeting, the Condominium Members shall elect a Board to serve until the next annual meeting and may transact any other business authorized to be transacted by the Condominium Members.

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3.3 -- Special Meetings. Special meetings of the Condominium Members may be called at any time by the President or by the Executive Board, and must be called by the President upon receipt of a written request for a special meeting signed by at least two (2) of the Condominium Members (Unit Owners) of the Condominium. No business shall be transacted at a special meeting except as stated in the notice thereof. Such notice shall be in writing, shall be sent by United States mail to the addresses of their respective Units or to such other addresses as any Condominium Member may have designated to the President or Secretary, and shall be mailed not less than twenty-one (21) days in advance of the annual or regularly scheduled meeting and at least seven (7) days in advance of any other meeting; provided, however, that such notice may be delivered personally to any Condominium Member if not prohibited by the statutes of the State of Missouri. Proof of such mailing or delivery shall be given by the affidavit of the Natural Person mailing or delivering the notice. Notice of the meeting may be waived in writing by any Condominium Member before or after such meeting.

3.4 -- Attendance of Mortgagee at Meetings. Any Security Holder of a Security Interest encumbering a Unit or Sub-Unit may attend and participate in any general or special meeting, but shall have no Vote, unless granted by proxy.

3.5 -- Condominium Member in Good Standing. A "Condominium Member in Good Standing" means a Condominium Member with respect to a Unit in respect to which none of the assessments under the Declaration and Bylaws are more than twenty (20) days past due. So long as a Condominium Member is a Condominium Member in Good Standing, the Condominium Member shall be entitled to vote the Votes allocated to the Unit. During any period in which a Condominium Member is not a Condominium Member in Good Standing, the Condominium Member shall not be entitled to vote the Votes allocated to the Unit; provided that the foregoing shall not apply to voting on any amendments to the Declaration and Bylaws.

3.6 -- Quorum. A quorum at meetings of the Condominium Members shall consist of Condominium Members who are Condominium Members in Good Standing present, in person or by proxy, representing at least fifty percent (50%) of the total Votes in the Association.

3.7 -- Voting Power; Association Not to Vote. The voting power of Condominium Members shall be based upon the Units owned and the Vote allocated to such Units by the Declaration. When more than one Person is the owner of a Unit, the Votes for that Unit shall be cast as the Unit Owners shall determine, but in no event shall more than the Vote allocated by the Declaration to the Unit be Voted. The Votes allocated to a Unit shall not be split but shall be Voted as a single whole. Notwithstanding anything herein to the contrary, the Association shall not be entitled to cast the Votes allocated to any Unit owned by it during the period of its ownership.

3.8 -- Manner of Casting Votes. A Vote may be cast in person or by proxy. A proxy must be in writing, be signed by all owners of the Unit, the Vote of which are subject to the proxy, and be only to another Condominium Member or to a Security Holder of a Security Interest encumbering that Unit, and be filed with the Secretary before the meeting. A proxy shall be valid until revoked in writing by all owners of such Unit.

3.9 -- Action by Members Without Meeting. Any action required by law to be taken at a meeting of the Condominium Members, or any action that may be taken at a meeting of the Condominium Members, may be taken without a meeting if authorization in writing, setting forth the action taken is signed by two-thirds (2/3) of the Condominium Members or as may otherwise be required by Missouri Statutes.

3.10 -- Adjournment when Quorum Lacking. If a meeting cannot be organized because a quorum has not attended, the meeting shall be adjourned from time to time until a quorum is present; provided, however, that in the event a quorum cannot be attained at any two successive, properly noticed meetings, those Condominium Members present at the next, properly noticed meeting of the Condominium Members immediately following such second failed attempt at attaining a quorum may hold a meeting of the Condominium Members and any question brought before the meeting shall be decided by a majority of the voting power present in person or by proxy, unless express provisions of applicable law, the Declaration, or these Bylaws require a greater Vote.

3.11 -- Manner of Acting. When a quorum is present at a meeting, any question brought before the meeting shall be decided by a majority of the voting power present in person or by proxy, unless express provisions of applicable law, the Declaration, or these Bylaws require a greater Vote.

3.12 -- Statement of Members and Votes. At the beginning of each meeting, the Secretary, or other Person designated by the presiding officer, shall certify a statement listing all Condominium Members present in person or by proxy at such meeting, the Votes of each, and the total percentage or number of Votes represented at the meeting.

3.13 -- Prohibition of Cumulative Voting. There shall be no cumulative voting.

3.14 -- Order of Business at Annual and Other Meetings. The order of business at the annual meetings of the Condominium Members, and, so far as is applicable and practical, at all other meetings of the Condominium Members, shall be:

- (a) Certification of Condominium Members and Votes present.
- (b) Calling of the roll.
- (c) Proof of notice of meeting or waiver of notice.
- (d) Approval of minutes from previous meetings.
- (e) Reports of Officers.
- (f) Reports of committees.
- (g) Appointment by presiding officer of judges of election.
- (h) Election of Directors for the second and subsequent Boards.
- (i) Unfinished business.
- (j) New business.
- (k) Adjournment.

The presiding officer may vary such order as the presiding officer deems necessary.

ARTICLE 4 -- DIRECTORS

4.1 -- First Board. The first Executive Board shall consist of the **three (3) Natural Persons** appointed by the Declarant, and successors to any thereof appointed by Declarant. Said first Executive Board and officers elected thereby shall serve until their successors have been duly elected and have qualified.

4.2 -- Number and Qualifications of Directors. The Executive Board shall consist of three (3) Natural Persons. The members of the Executive Board (each, a "**Director**") may be any Natural Persons designated by the Unit Owners, and the Directors do not need to be Unit Owners. Collectively, the Commercial Units shall be entitled to elect and appoint one (1) of the three (3) Directors; as provided below. The Residential Units shall be entitled to appoint two (2) of the three (3) Directors.

4.3 -- Election of Directors.

(a) **During Declarant Control Period.** At any time after the Recording of the Declaration prior to the first annual meeting of the Condominium Members, and thereafter at the first annual meeting of the Condominium Members, and thereafter at each subsequent annual meeting during the Declarant Control Period, the Directors shall be elected or appointed by the Declarant, or by Persons designated by the Declarant.

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(b) **After Declarant Control Period.** Upon the termination of the Declarant Control Period, the Directors shall be elected by the Condominium Members, as follows: (1) collectively, the Owners of the Commercial Units shall elect and appoint one (1) Director, and (2) the Owners of the Residential Units shall elect and appoint two (2) Directors.

At such time as the Declarant initially leases and conveys any of the Commercial Units (or any Sub-Unit portion of any of said Commercial Units) to a third-party, the Declarant shall cause one (1) of the Directors initially appointed by the Declarant to resign; and the Owners of the Commercial Units shall elect and appoint the successor to such Director. The Director elected and appointed by the Commercial Unit Owners shall be elected by majority vote of the Commercial Unit Owners, such majority vote being determined based on the Commercial Sub-Allocated Interests allocated to the Commercial Units.

At such time as the Declarant initially deeds and conveys any one of the Residential Units to a third-party, the Declarant shall cause one (1) of the Directors initially appointed by the Declarant to resign; and the Owners of the Residential Units shall elect and appoint the successor to such Director. The Director elected and appointed by the Residential Unit Owners shall be elected by majority vote of the Residential Unit Owners, such majority vote being determined based on the Residential Sub-Allocated Interests allocated to the Residential Units.

4.4 -- Term. Upon termination of the Declarant Control Period, three (3) Directors shall be elected to serve, one for one (1) year, one for two (2) years and one for three (3) years in conformance with the requirements set forth in Section 4.3(b) above; provided, however, that the three year term on the initial Board of Directors following the termination of the Declarant Control Period shall be filled by a Director elected by the Commercial Unit Owners. Thereafter all terms shall be for three (3) years with not less than one Director nor more than one-third (1/3) of the Directors to be elected at each annual meeting.

4.5 -- Removal and Replacement.

(a) **By Declarant.** Any Director on the first Executive Board, and any Director on any subsequent Executive Board, whom the Declarant appointed or elected shall serve at the pleasure of the Declarant, and may be removed and replaced by the Declarant at any time, and from time to time, and with or without cause; and any successor duly appointed by the Declarant shall serve for the balance of the predecessor's term, or until his successor has been duly elected and has qualified.

(b) **By Owners of Commercial Units.** Any Director on any Executive Board whom the Owners of the Commercial Units appointed or elected shall serve at the pleasure of the Owners of the Commercial Units, and may be removed and replaced by the Owners of the Commercial Units at any time, and from time to time, and with or without cause; and any successor duly appointed by the Owners of the Commercial Units shall serve for the balance of the predecessor's term, or until his successor has been duly elected and has qualified. Removal and replacement of the Director elected and appointed by the Commercial Unit Owners shall be by majority vote of the Commercial Unit Owners, such majority vote being determined based on the Commercial Sub-Allocated Interests allocated to the Commercial Units.

(c) **By Owner of Residential Units.** Any Director on any Executive Board whom the Owners of the Residential Units appointed or elected shall serve at the pleasure of the Owners of the Residential Units, and may be removed and replaced by the Owners of the Residential Units at any time, and from time to time, and with or without cause; and any successor duly appointed by the Owners of the Residential Units shall serve for the balance of the predecessor's term, or until his successor has been duly elected and has qualified. Removal and replacement of the Director elected and appointed by the Residential Unit Owners shall be by majority vote of the Residential Unit Owners, such majority vote being determined based on the Residential Sub-Allocated Interests allocated to the Residential Units.

4.6 -- Vacancies. Any vacancy in the Executive Board arising out of the removal, death or resignation of a Director appointed or elected by the Declarant shall be filled by appointment made by the Declarant.

Any vacancy in the Executive Board arising out of the removal, death or resignation of a Director appointed or elected by the Owners of the Commercial Units shall be filled by appointment made by the Owners of the Commercial Units, by majority vote of the Commercial Unit Owners, such majority vote being determined based on the Commercial Sub-Allocated Interests allocated to the Commercial Units.

Any vacancy in the Executive Board arising out of the removal, death or resignation of a Director appointed or elected by the Owners of the Residential Units shall be filled by appointment made by the Owners of the Residential Units, by majority vote of the Residential Unit Owners, such majority vote being determined based on the Residential Sub-Allocated Interests allocated to the Residential Units.

4.7 -- Organization Meeting of Newly Elected Board. The organization meeting of a newly elected Executive Board shall be held within ten (10) days of its election, at such time and place as shall be fixed by such Directors at the meeting at which they were elected, and no further notice of such organization meeting shall be necessary, providing a quorum shall be present.

4.8 -- Regular Meeting. Regular meetings of the Executive Board may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone, confirmed facsimile transmission, email or telegraph, at least three (3) days prior to the day designated for such meeting, unless such notice is waived. All regular and special Board meetings shall be open to the Condominium Members, and the Condominium Members may attend such regular and special Board meetings. The Board may meet for executive session meetings that are not open to the Condominium Members.

4.9 -- Special Meetings. Special meetings of the Executive Board may be called by the President and must be called by the Secretary at the written request of one (1) Director. Not less than three (3) days' notice of such special meeting shall be given personally or by mail, telephone, confirmed facsimile transmission, email or telegraph; provided, however, in case the President or any Director determines that an emergency exists, then a special meeting may be called by giving such notice as is possible under the circumstances. All notices of a special meeting shall state the time, place and purpose of such meeting. No business shall be transacted at a special meeting except as stated in the notice thereof.

4.10 -- Waiver of Notice. Any director may waive, in writing, notice of a meeting, either regular or special, before or after such meeting, and such waiver shall be deemed equivalent to the giving of notice.

4.11 -- Quorum. A majority of the Executive Board shall constitute a quorum for the transaction of business at any meeting of the Executive Board.

4.12 -- Adjournment When Quorum Lacking. If at any meeting of the Executive Board there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any such adjourned meeting any business that might have been transacted at the meeting as originally called may be transacted without further notice. If a Director signs the minutes of a meeting, such signing shall constitute the presence of such Director at that meeting for the purpose of determining a quorum.

4.13 -- Manner of Acting. Each Director shall be entitled to one (1) vote, and the act of a majority of the Directors present at a meeting at which a quorum is present shall constitute the act of the Executive Board, unless the act of a greater number is required by these Bylaws, the Declaration, or express provisions of applicable law.

4.14 -- Executive Board Action Without Meeting. Any action required by law to be taken at a meeting of the Executive Board or any action that may be taken at a meeting of the Executive Board, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all Directors.

4.15 -- Presiding Officer. The presiding officer at meetings of the Executive Board shall be the President. In his absence the Directors present shall designate one of their number to preside.

4.16 -- Compensation of Directors Restricted. Directors shall receive no compensation for their services, but may be paid for out-of-pocket expenses incurred in the performances of their duties as Directors.

0926040.04

4.17 -- Powers and Duties of Executive Board. All of the powers and duties of the Association shall be exercised by the Board, including those existing under the common law, applicable statutes, the Act, the Declaration, and these Bylaws, as any thereof may from time to time be amended. Such powers and duties shall be exercised in accordance with the provisions of applicable law, the Declaration, and Bylaws, and shall include, but not be limited to, the following:

- (a) To elect the officers of the Association.
- (b) To prepare and provide to Condominium Members annually a report containing at least the following:
 - (1) A statement of any capital expenditures in excess of two percent (2%) of the current budget or One Thousand Five Hundred Dollars (\$1,500.00), whichever is greater, anticipated by the Association during the current year or succeeding two (2) fiscal years.
 - (2) A statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the Executive Board.
 - (3) A statement of the financial condition of the Association for the last fiscal year.
 - (4) A statement of the status of any pending suits or judgments to which the Association is a party.
 - (5) A statement of the insurance coverage provided by the Association.
 - (6) A statement of any unpaid assessments due and payable to the Association, identifying the Unit and the amount of the unpaid assessment.
- (c) To adopt and amend budgets and to determine, establish, levy, assess and collect assessments against Condominium Members to pay the Common Expenses, Commercial Common Expenses and Residential Common Expenses of the Condominium.
- (d) To use the proceeds of assessments in the exercise of its powers and duties.
- (e) To maintain, repair, replace, and operate the Common Elements.
- (f) To restore, replace and repair improvements as provided in the Declaration.
- (g) To establish and amend rules and regulations and reasonable penalties for infraction thereof.
- (h) To enforce the provisions of the Declaration, these Bylaws, the Act, and the rules and regulations established by the Board or Association, including recovery of monetary penalties and injunctions, and including purchase of Units, in the name of the Association, at foreclosure or other judicial sale.
- (i) To obtain and maintain insurance as provided in the Declaration.
- (j) To contract for management of the Condominium and to delegate to such manager such powers and duties as the Executive Board shall determine, except such as are specifically required by the Declaration, these Bylaws, or the Act, to be done by the Board or the Condominium Members, provided that no such contract shall be entered into for a period exceeding one (1) year and shall provide, at a minimum, that it shall be terminable by the Association, for cause, upon sixty (60) days written notice.
- (k) To employ personnel for reasonable compensation to perform the services required for proper administration of the Association and for proper care and maintenance of the Common Elements.

(l) To pay all Common Expenses, Commercial Common Expenses and Residential Common Expenses.

(m) To contract for such services for the Condominium as the Executive Board, in its sole and absolute discretion, deems necessary or desirable.

(n) To bring, prosecute, defend, settle and intervene in actions and lawsuits for and on behalf of itself, or on behalf of two (2) or more Condominium Members, with respect to any cause of action relating to the Condominium, the Common Elements or to more than one Unit. All costs and expenses incurred in connection with any such action or lawsuit, including settlement thereof, not paid by the opposing party or parties or the Condominium Members benefited thereby, shall be a Common Expense.

(o) To establish and dissolve and liquidate, from time to time, reserve accounts for any purpose.

(p) To perform such other acts as may be delegated to the Association or Executive Board by applicable statutes, the Declaration, these Bylaws, or the Act, and to perform such other acts as may be incident to or necessary in the performance of the foregoing.

(q) To borrow money for the repair, replacement, maintenance and reconstruction of Common Elements, and to pledge and pay assessments, and any and all other revenue and income for such purpose.

(r) To buy Units, in foreclosure of an assessment lien or at any other time or for any other reason and to sell, lease, mortgage, and otherwise deal in Units from time to time owned by the Association.

(s) To impose from time to time, and collect, reasonable rates, fees and charges for the use, rental or operation of recreational facilities, if any, and other amenities forming a part of the Common Elements, and the other Common Elements other than Limited Common Elements.

(t) To grant leases, licenses and concessions not to exceed one (1) year and utility and other easements through and over the Common Elements; provided, however, that after conveyance to Unit Owners other than Declarant or an affiliate of Declarant of Units to which more than fifty percent (50%) of the Votes are allocated, the Association may by resolution of the Condominium Members at a meeting duly called for such purpose grant leases, licenses and concessions in excess of one (1) year and easements through and over the Common Elements.

(u) To impose and collect reasonable charges, including attorneys' fees, for the evaluation, preparation and Recordation of amendments to the Declaration, preparation of resale certificates required by Section 448.4-109 of the Act, or statement of unpaid assessments.

(v) To provide for indemnification of the Association's officers and directors and maintain officers' and directors' liability insurance.

(w) To assess against any Unit Owner who fails or refuses to make any payment of the Common Expenses when due, the amount thereof, together with an "Administrative Charge" in the amount hereinafter set forth, not paid by the 10th day of the month in which payment becomes due, and together with interest on the amount unpaid as provided in Section 8.13 hereof. The "Administrative Charge" shall be Twenty-Five Dollars (\$25.00), for each late payments by a Unit Owner. The Executive Board, in its reasonable judgment, may waive some or all of the Administrative Charges.

(x) To assess and levy, after notice and an opportunity to be heard, reasonable fines for violations of the Act, the Declaration, these Bylaws, or the rules and regulations of the Association.

(y) To keep financial records sufficiently detailed to enable the Association to comply with Section 448.3-118 of the Act.

ARTICLE 5 -- OFFICERS

5.1 -- Designation of Officers. The officers of this Association shall be a President, a Secretary and a Treasurer, and such other officers (such as one or more Vice-Presidents, Assistant Secretaries and Assistant Treasurers) as the Board may from time to time determine appropriate or necessary, in accordance with Section 5.9 hereof. Each of the President, Secretary and Treasurer, except those who hold office pursuant to Section 5.3 beyond their term as Director, shall be a member of the Executive Board. A Natural Person may hold one or more of such offices at one time, except that the President shall not at the same time hold another office in the Association.

5.2 -- Election of Officers. The first Executive Board shall elect the initial officers as soon as practicable after filing of the Declaration. Thereafter, Executive Boards shall elect officers at the organization meeting(s) of the Executive Board as provided in Article 4, and at such other times as the Executive Board shall from time to time determine.

5.3 -- Term. Each officer shall serve until the next meeting at which Directors are elected after the organization meeting at which he is elected, and until his successor has been duly elected and has qualified, except that the officers elected by the first Executive Board shall serve until their respective successors have been elected and qualified.

5.4 -- Removal. Any officer may be removed, with or without cause, and without notice, by a majority vote of the Directors at any meeting of the Executive Board.

5.5 -- Vacancy. Any vacancy in any office shall be filled by the Executive Board, and an officer elected to fill a vacancy shall serve for the unexpired term of his predecessor in office, and until his successor has been duly elected and has qualified.

5.6 -- Powers and Duties of Officers.

(a) **President.** The President shall be the chief executive officer of the Association. He shall have all of the powers and duties that are usually vested in the office of the President of a corporation, including, but not limited to, the duty to preside at all meetings of the Executive Board and of the Condominium Members at which he is present, and the general supervision over other officers in the management of the business and affairs of the Association. He shall see that all actions and resolutions of the Executive Board are carried into effect.

(b) **Secretary.** The Secretary shall keep the minutes of all proceedings of the Directors and the Condominium Members. He shall attend to the giving and serving of all notices required by law. He shall keep the records of the Association except those of the Treasurer, and shall perform all other duties incident to the office of a secretary of a corporation.

(c) **Treasurer.** The Treasurer shall have custody of all intangible property of the Association, including funds, securities and evidences of indebtedness. He shall keep the books of the Association in accordance with good accounting practices and principles, and shall submit them, together with all his vouchers, receipts, records, and other papers to the Directors for their examination and approval, as often as they may require. He shall deposit all moneys and other valuable effects in the name of or to the credit of the Association in such depositories as may be designated from time to time by the Executive Board, shall disburse the funds of the Association as ordered by the Executive Board, and shall perform all other duties incident to the office of a treasurer of a corporation. If a managing agent or manager be employed, the Executive Board may designate some or all of the foregoing functions to be entrusted to him or it, subject to overseeing control by the Treasurer.

(d) **Other Officers.** Other officers shall have such duties, responsibilities, powers and authorities as the Executive Board shall from time to time determine and authorize.

5.7 -- Execution of Agreements. All agreements, contracts, deeds, mortgages, or other instruments shall be executed by any two (2) officers or by such other Person(s) as may be designated from time to time by the Executive Board.

5.8 -- Compensation of Officers Restricted. No officer of the corporation shall receive compensation for his services in such capacity, but may be reimbursed for out-of-pocket expenses incurred in performing his duties.

5.9 -- Additional Officers. The Executive Board may from time to time elect such other officers and designate their powers and duties as it, in its sole and absolute discretion, shall find to be required or desirable to manage the affairs of the Association. Such additional officers need not be Directors.

ARTICLE 6 -- DIRECTORS' AND OFFICERS' INDEMNITY

6.1 -- Indemnification. The Association shall indemnify Directors and officers, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as permitted by Section 448.3-102(13) of the Act, as now enacted or hereafter amended.

ARTICLE 7 -- FISCAL MANAGEMENT

7.1 -- Depository. The depository of the moneys of the Association shall be such bank or banks as from time to time shall be designated by the Executive Board. Withdrawal of moneys from such depository shall be only by checks signed by any two (2) officers of the Association, or any other Persons as may from time to time be authorized by the Executive Board. Notwithstanding anything herein to the contrary, should the moneys of the Association be placed for deposit by a property management company acting under the control of the Association, withdrawals and disbursements of such moneys may be authorized by any one (1) officer of the Association, or any other Persons as may from time to time be authorized by the Executive Board.

7.2 -- Records of Association. The books, accounts, and records of the Association shall be open to inspection and examination by any Condominium Member of the Association and any Security Holder at all reasonable times, except that the books, accounts, and records of the Association that contain matters that are subject to attorney-client or similar privilege shall not be subject to inspection and examination by Condominium Members and Security Holders, unless the Board approves otherwise in writing, or except pursuant to the order of a court of competent jurisdiction.

7.3 -- Fidelity Bonds. Fidelity bonds shall be required by the Executive Board in accordance with the provisions of the Declaration. The premiums on such bonds shall be a Common Expense.

7.4 -- Payment Vouchers. Payment vouchers shall be approved by the Executive Board, unless such authority to approve the same has been delegated to any officer or manager by the Executive Board.

7.5 -- Fiscal Year. The fiscal year of the Association shall be the calendar year; provided, however, that the Directors, from time to time, by resolution, may change the fiscal year to some other designated period.

ARTICLE 8 -- ASSESSMENTS

8.1 -- Obligation of Members to Pay Assessments; Amount of Levy. Until the Association levies a Common Expense assessment, Declarant shall pay all accrued expenses of the Condominium. Thereafter, each Unit Owner shall be personally severally liable for the assessments for Common Expense (including Commercial Common Expenses and Residential Common Expenses), that are levied against his Unit while a Unit Owner. Each Unit shall be assessed Common Expense (including Commercial Common Expenses and Residential Common Expenses), in accordance with that Unit's Allocated Interest, Commercial Sub-Allocated Interest and Residential Sub-Allocated Interest, as applicable. Notwithstanding anything contained in these Bylaws or the Declaration to the contrary, until the end of the Declarant Control Period Declarant shall be responsible for and shall bear the cost and expense of all actual budgetary shortfalls relating to the operation of the Association; provided, however, in no event shall any un-leased Commercial Unit or un-sold Residential Unit held at any time by Declarant be subject to the assessment contemplated by these Bylaws of the Declaration; provided, further, that Declarant's only obligation with respect to the assessments contemplated by these Bylaws or the Declaration shall be to pay the difference between the actual operating costs of the Association and the assessments paid to the Association by the applicable Unit Owners.

8.2 -- Allocation of Common Surplus. Any common surplus shall be allocated to each Unit in accordance with its Allocated Interest, Commercial Sub-Allocated Interest and Residential Sub-Allocated Interest, as applicable, and shall be owned by the Unit Owner of that Unit and credited against that Unit's proportionate share of Common Expenses subsequently assessed.

8.3 -- Preparation of Budget and Levying of Assessment. At least once each fiscal year, beginning with the fiscal year beginning January 1, 2008, the Executive Board shall prepare and adopt a budget for that fiscal year, including therein estimates of the amount necessary to pay the Common Expenses (including Commercial Common Expenses and Residential Common Expenses), together with amounts considered necessary by the Executive Board for reserves. Within thirty (30) days after the Executive Board's adoption of any such proposed budget, the Executive Board shall provide a summary of the budget to all Unit Owners, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget, which date shall be not less than fourteen (14) days and not more than thirty (30) days after mailing of the summary. Unless at that meeting a majority Vote of the Unit Owners rejects the budget, then the budget is ratified, whether or not a quorum is present at the meeting. In the event that the proposed budget is rejected, then the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board. After ratification of each such budget, the Executive Board shall provide each Condominium Member with a copy and shall give each Condominium Member notice of the assessment made against that Condominium Member's Unit based upon such budget, and based upon such Unit's Allocated Interests, Commercial Sub-Allocated Interest and Residential Sub-Allocated Interest, as applicable, and such notice may also provide for the rate of interest to be charged on delinquent payments thereof, if to be other than the rate specified in Section 8.13 of these Bylaws. The assessment shall be deemed levied upon the giving of such notice; provided, however, that the first budget after creation of the Condominium shall be prepared and adopted by the first Executive Board only for the balance of the then fiscal year of the Association, shall be prepared and adopted as soon as practicable after such creation, and notice of the amount of the assessment against each Unit for such balance of the fiscal year shall be given by the Executive Board or Declarant to each Condominium Member as soon as practicable after adoption of such assessment and shall be deemed levied upon notice thereof given by the Executive Board or Declarant, and shall be due as provided in Section 8.5 hereof.

8.4 -- Assessment a Lien. Every assessment shall constitute a lien upon each Unit assessed from the date the assessment is levied prior to all other liens except only (a) tax liens, including special assessments, in favor of any taxing or assessing authority, (b) all sums unpaid on any first lien Security Interest in the Unit, and (c) liens and encumbrances Recorded before the Recordation of the Declaration.

8.5 -- Payment of Assessments. Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the times and in the amounts specified by the Executive Board in each such notice. If no times and amounts are specified, 1/12th of the assessment shall be paid on or before the first day of each month of the fiscal year of the Association. Payment shall be made to the Association, or as the Executive Board may from time to time otherwise direct.

8.6 -- Lien After Foreclosure. The lien of any assessments against a Unit becoming payable after the date of Recordation of any first lien Security Interest in such Unit shall be subordinate to such first mortgage. When ownership of a Unit is transferred by foreclosure under the remedies provided in any such first mortgage, the lien of any unpaid assessments as to the Unit shall be discharged and extinguished by such foreclosure, and such unpaid assessments shall be paid by the foreclosed former owner of the Unit (the borrower). The Unit and Unit Owner acquiring title under the remedies provided in a Deed of Trust shall be subject only to the lien of assessments which become due after such transfer of title. Nothing in this Section shall be construed as a waiver or release of the obligation of the former owner of the Unit to pay the delinquent assessments.

8.7 -- Reserve Fund and Working Capital Fund. All sums collected by the Association from assessments shall be accounted for as follows:

(a) **Reserve Fund for Replacements.** To this fund shall be credited all sums collected or set aside for the purpose of effecting periodic maintenance, repairs and replacements of structural elements, and other Common Elements of the Condominium.

(b) **Working Capital Fund.** To this fund shall be credited collections of assessments for all Common Expenses for the current year as well as common profits and surplus from the previous year, and not to be credited to the above reserve fund.

The reserve fund for replacements shall be established by the Executive Board and shall be funded by regular installments rather than by extraordinary special assessments. The reserve fund described above shall be maintained only in such amounts as deemed necessary or desirable by the Executive Board, subject, however, to the preceding sentence. To the extent maintained, funds therein shall be held in such accounts and with such depositories as the Executive Board, in its discretion, selects.

8.8 – Special Assessments. In addition to the assessments levied as provided in Section 8.3, the Executive Board, in its discretion, may levy special assessments at such other and additional times as in its judgment are required for:

(a) **Repair and Maintenance of Common Elements and Operation of the Condominium.** Maintenance, repair, replacement and restoration of the Common Elements, and operation of the Condominium.

(b) **Alterations, Improvements and Additions to Common Elements.** Alterations, improvements, and additions to the Common Elements; provided, however, that any such special assessment involving the expenditure of Fifteen Thousand Dollars (\$15,000.00) or more shall be first approved by the voting Condominium Members of the Association representing at least fifty-one (51%) percent of the total Allocated Interests of the Units and at least fifty-one percent (51%) of the Votes, at a special meeting called for such purpose.

(c) **Operating Reserve Assessment.** Establishing an operating reserve fund in accordance with Section 6.3 of the Declaration. A portion of the funds contained from time to time in such operating reserve fund may be credited to the working capital fund in the reasonable discretion of the Executive Board.

(d) **Curing of Member's Default.** Costs and expenses incurred in curing defaults of a Condominium Member pursuant to Section 8.12 hereof or Article 10 hereof.

Special assessments made pursuant to this Section 8.8 shall be deemed levied upon notice thereof being given to the Condominium Members subject to such special assessment, and shall be payable as determined by the Executive Board and as set out in such notice.

8.9 – Common Expenses Associated with Limited Common Elements or Benefiting Less Than All Units. Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit or Units, and/or Sub-Unit or Sub-Units, to which such Limited Common Element was allocated at the time the expense was incurred. In addition, the Association may assess any Common Expense benefiting less than all of the Units against the Units benefited in proportion to the relative Allocated Interests, Commercial Sub-Allocated Interest or Residential Sub-Allocated Interest, of the Units benefited.

8.10 – Failure to Prepare Budget and Levy Annual Assessments Deficiencies in Procedure. The failure of the Executive Board to prepare, or delay of the Executive Board in preparing, any budget, and to levy or in levying assessments, shall not constitute a waiver or release of the Condominium Members' obligation to pay assessments whenever the same shall be determined and levied by the Executive Board.

Until a new assessment is levied by the Executive Board pursuant to Section 8.3 each Condominium Member shall continue to pay the assessment previously levied pursuant to Section 8.3 in the same amount and at the same periodic times as levied, or as the Executive Board may otherwise advise in writing. Also, any deficiencies or inadequacies in the procedure followed by the Executive Board in levying an assessment shall not in any way affect its validity or the obligation of Condominium Members to pay such assessment.

8.11 – Assessment Roll; Statement. All assessments shall be set forth upon a roll of the Units, which shall be available in the office of the Association for inspection at all reasonable times by Condominium Members and Security Holders, and their duly authorized representatives. Such roll shall include, for each Unit, the name and address of the Condominium Member(s), all assessments levied, and the amount of all assessments unpaid. The Association, upon written request, shall furnish to a Unit Owner, or his authorized agent, a recordable statement

0926040.04

setting forth the amount of unpaid assessments currently levied against his Unit. The statement shall be furnished within ten (10) business days after receipt of the request and shall be binding upon the Association and all Unit Owners. A reasonable fee may be charged by the Executive Board for providing such statement.

8.12 -- Default and Enforcement. If any assessment, or installment thereof, remains delinquent for ten (10) days, then that assessment, and all other assessments then a lien against that Unit, may be declared by the Executive Board to be immediately due and payable in full, with interest, without further notice, and may be foreclosed by the Association in the manner provided by Section 448.3-116 of the Act.

8.13 -- Interest on Delinquent Assessments. Assessments or installments thereof, paid before they become delinquent shall not bear interest. All delinquent assessments in addition to the administrative charge provided in Section 4.17(w) shall bear interest at the rate of ten percent (10%) per annum, or such lesser interest as is set forth in the notice levying the assessment, but not exceeding the maximum rate of interest allowed by the Act, from the date delinquent until the date paid. All payments upon account shall be applied first to the administrative charge, then to interest, and then to the assessment, or installment thereof, longest delinquent.

8.14 -- Rates, Fees and Charges. All rates, fees, charges, fines and penalties imposed by the Executive Board against, or due from, any Condominium Member or Unit may be collected and enforced as an assessment.

ARTICLE 9 -- SUBDIVISION, CONVERSION, RELOCATION AND ALTERATION OF UNITS

9.1 -- Permitted Subdivision; Prohibitions. Article 11 of the Declaration provides that each Commercial Unit Owner may subdivide the Commercial Unit owned by such Unit Owner into Sub-Units. In addition, if any Unit Owner owns two adjoining Units or Sub-Units (two Units or Sub-Units which share a common wall, or two Units or Sub-Units with respect to which the floor of one is the ceiling of the other), then the Unit Owner may remove or alter any intervening partition between the Units or Sub-Units, and/or create apertures and openings in such partition between the Units or Sub-Units, even if such partition is in whole or in part Common Element, so long as: (a) such work does not impair the structural integrity of or lessen the structural support of any portion of the applicable Building, and such work does not alter or impair any mechanical systems of the applicable Building; (b) the Unit Owner agrees in writing to be responsible for and to repair and remedy any damage to the Common Elements caused by or resulting from such work; (c) the work is performed by insured reputable licensed professional contractors; and (d) the Association has approved in writing the plans and specifications, the contractor and the construction contract for such work, such approval not to be unreasonably withheld. The removal of partitions or the creation of apertures or openings pursuant to the foregoing is not an alteration or relocation of the boundaries of the Units or Sub-Units. Except for the subdivision and related rights granted to the Unit Owners under and pursuant to said Article 11 of the Declaration, and except as provided in this Section 9.1, no Unit Owner may subdivide or convert or relocate the boundaries of his Unit. No Unit Owner shall make any alterations to his Unit or to the Building in violation of Section 5.14 of the Declaration.

ARTICLE 10 -- COMPLIANCE, ENFORCEMENT, FINES AND PENALTIES

10.1 -- Compliance. Each Unit Owner and Occupant, and each Security Holder, shall be governed by and shall comply with the terms, conditions, obligations, and provisions of the Act, the Declaration, these Bylaws, and the rules and regulations of the Condominium, as the same may be amended from time to time.

10.2 -- Default and Remedies. A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Act, the Declaration, these Bylaws, or the rules and regulations of the Condominium, as the same may be amended from time to time, by any Unit Owner or occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and penalties for such default or failure as determined by the Executive Board, sums due for damages, an injunction, or any combination thereof, and which relief may be sought by the Association or, if appropriate, by any one or more aggrieved Condominium Members, or both. Also, if any Condominium Member fails to perform any obligation under the Act, the Declaration, these Bylaws, or such rules and regulations then the Association may, but is not obligated to, perform the same for the Condominium Member's account, and for such purpose may enter upon his Unit, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such

0926040.04

expenses and costs may levy a special assessment against the Unit owned by such defaulting Condominium Member.

10.3 -- Notice of Default and Failure to Cure. In the event of any such default or failure, the Executive Board shall promptly serve upon or mail to the defaulting Condominium Member, and each Security Holder of that Condominium Member's Unit, a written notice specifying the nature of the default, the cure thereof, and the time within which the cure shall be effected. Within the time limit specified in the notice, the defaulting Condominium Member may cure the default specified.

10.4 -- Remedy of Abatement in Addition to Other Remedies. In the event a Condominium Member fails to effect the cure specified by the Executive Board in the notice of default, within the time specified in such notice, where the default is a structure, thing or condition existing in or on the premises of the Condominium Member's Unit, the Board, or its duly authorized representative, shall have the right upon obtaining an order from a court of competent jurisdiction to enter upon the premises of the Condominium Member's Unit in which, on which, or as to which, such default exists, and to abate and remove at the defaulting Condominium Member's expense (and levy an assessment therefor), the structure, thing, or condition constituting the default, and the Executive Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of or liable for any manner of trespass. In addition, in the event of any condition in a Unit which is in the nature of an emergency, the Board (and its duly authorized representatives) shall have the right upon such notice as is practicable and reasonable given the nature of the emergency, to enter upon the premises to abate such emergency at the Unit Owner's expense (and levy an assessment therefor), and the Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of or liable for any manner of trespass.

10.5 -- Recovery of Attorneys' Fees and Costs. In any proceeding arising because of an alleged default by a Condominium Member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be allowed by the court, with interest thereon at eighteen percent (18%) per annum from the dates such costs are incurred until paid.

10.6 -- Non-waiver of Covenants. The failure of the Association or of any Condominium Member thereof to enforce any term, provision, right, covenant, or condition that may be granted by the Declaration, these Bylaws, the rules and regulations or the Act, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a Condominium Member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

10.7 -- Assessment Lien. Assessment liens shall be enforced pursuant to Article 8 hereof, and not pursuant to this Article 10.

10.8 -- Disputes & Dispute Resolution Proceedings.

(a) Other than legal proceedings for, regarding or in connection with the determination, dispute, collection and/or enforcement of assessments, assessment liens and other sums and monies due and payable by any Unit Owner or any Sub-Unit Owner under and pursuant to any of the terms and provisions of the Declaration and/or these Bylaws, the Condominium Members, the Declarant, the Association, the Unit Owners and the Sub-Unit Owners agree and provide that any and all other disputes and disagreements under, regarding or in connection with the Declaration and/or these Bylaws shall be submitted to and determined by binding Dispute Resolution, pursuant to Section 15.18 of the Declaration.

(b) Any and all legal proceedings for, regarding or in connection with the determination, dispute, collection and/or enforcement of assessments, assessment liens and other sums and monies due and payable by any Unit Owner or by any Sub-Unit Owner under and pursuant to any of the terms and provisions of the Declaration and/or these Bylaws, shall not be subject to mandatory Dispute Resolution, unless the parties agree and consent otherwise in writing.

ARTICLE 11 -- AMENDMENT

11.1 -- Amendment.

(a) Unless the Declarant otherwise agrees in writing to permit an amendment to these Bylaws under Section 11.1(b) hereof, for so long as the Declarant is the owner of Units or Sub-Units representing in the aggregate ten percent (10%) or more of the Units and Sub-Units in which Votes in the Association are allocated, these Bylaws may only be amended with the affirmative vote of at least sixty-seven percent (67%) of the Unit Owners and Sub-Unit Owners of Units and Sub-Units to which Votes in the Association are allocated.

(b) After the Declarant ceases to own ten percent (10%) or more of the Units and Sub-Units in which Votes in the Association are allocated, these Bylaws may only be amended with the affirmative vote of a majority of the Unit Owners and Sub-Unit Owners of Units and Sub-Units to which Votes in the Association are allocated.

(c) An amendment to these Bylaws, once made and approved, shall become effective when Recorded in the same manner and place as an amendment to the Declaration.

ARTICLE 12 -- GENERAL PROVISIONS

12.1 -- Rules and Regulations. The Executive Board may promulgate from time to time such rules and regulations as it deems reasonable and necessary governing the administration, management, operation, and use of the Common Elements so as to promote the common use and enjoyment thereof by Unit Owners and occupants, and for the protection and preservation thereof.

In addition the Executive Board may adopt such rules and regulations as it deems reasonable and necessary with respect to Units to provide for the common good and enjoyment of all Unit Owners and Occupants, including, without limitation, the right to adopt such rules and regulations with reference to children, animals and leases. Also, the Executive Board may from time to time establish penalties for infraction of such rules and regulations. Copies of all such rules and regulations and any amendments thereto shall be furnished to all Condominium Members, and a copy shall be posted or otherwise made available to Condominium Members at the office of the Association. However, failure to furnish or post such rules or regulations shall not affect in any way their validity or enforceability. Any such rule or regulation adopted by the Executive Board may be amended, modified, or revoked, and new and additional rules and regulations may be adopted, by the Condominium Members at an annual or special meeting of the Condominium Members. Any such act of the Condominium Members shall control over any contrary rule or regulation then or thereafter adopted by the Board. All rules and regulations shall be equally and uniformly applicable to all Unit Owners, occupants and Units, but need not be equally uniformly applicable if it is determined that such unequal or non-uniform application is in the best interest of the Association or if equal and uniform application is not practicable.

12.2 -- Parliamentary Authority. Robert's Rules of Order, Newly Revised, shall govern the conduct of Association proceedings when not in conflict with the Declaration, these Bylaws, the Act or any statutes of the State of Missouri applicable thereto. The Chairman of the meeting shall have the authority to appoint a parliamentarian if he deems it necessary.

12.3 -- Compliance with the Act; Contract; Severability. These Bylaws are established in compliance with the Act. Should any of the terms, conditions, provisions, paragraphs, or clauses of these Bylaws conflict with any of the provisions of said Act, the provisions of said Act shall control.

If any such term, provision, limitation, paragraph or clause of these Bylaws or the application thereof to any Person or circumstance, is judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the remainder of these Bylaws, or the application thereof to any other Person or circumstance.

12.4 -- Interpretation of Bylaws. Whenever appropriate the singular number may be read as the plural, and the plural may be read as the singular. The masculine gender may be read as the feminine gender or as the neuter gender. Compound words beginning with the prefix "here" shall be read as referring to this entire set of Bylaws and not merely to the part of it in which they appear.

0926040.04

THESE BYLAWS CONTAIN A BINDING ARBITRATION PROVISION THAT MAY BE ENFORCED BY THE PARTIES.

The undersigned, the duly elected and acting President and Secretary of the Association, hereby certify that the foregoing Bylaws have been duly adopted by the Association, and are in full force and effect as of the date hereof.

IN WITNESS WHEREOF, the undersigned have executed these Bylaws as of the ____ day of _____, 2007.

41 PENN CONDOMINIUM ASSOCIATION, INC.

By: _____
Name: _____
Title: President

By: _____
Name: _____
Title: Secretary

STATE OF MISSOURI)
) SS
COUNTY OF _____)

On this ____ day of _____, 2007, before me appeared _____, to me personally known, who being by me duly sworn, did say that he is the President of 41 Penn Condominium Association, Inc., a Missouri Non-Profit Corporation, and that said instrument was signed in behalf of said corporation, by authority of its Executive Board; and said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

My Commission Expires:

Notary Public

STATE OF MISSOURI)
) SS
COUNTY OF _____)

On this ____ day of _____, 2007, before me appeared _____, to me personally known, who being by me duly sworn, did say that he is the Secretary of 41 Penn Condominium Association, Inc., a Missouri Non-Profit Corporation, and that said instrument was signed in behalf of said corporation, by authority of its Executive Board; and said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

My Commission Expires:

Notary Public