

18667

**DECLARATION OF HORIZONTAL PROPERTY REGIME  
AND MASTER DEED ESTABLISHING  
THE GARDENS OF HEARTLAND CONDOMINIUMS**

THIS DECLARATION OF HORIZONTAL PROPERTY REGIME AND MASTER DEED (the "Master Deed") has been prepared at the direction of and caused to be recorded by JAGOE HOMES AND CONSTRUCTION CO., INC. (hereinafter referred to as the "Declarant"), a Kentucky corporation, having an office at 4215 Bentree Drive, P.O. Box 23019, Owensboro, Kentucky 42304-3019.

**WITNESSETH:**

**WHEREAS**, Declarant is the owner in fee simple of the land (the "Land") described on Exhibit A attached hereto and made a part hereof; and

**WHEREAS**, Declarant wishes to create a residential condominium project as part of the overall plan for Heartland, a mixed-use development located in Owensboro, Daviess County, Kentucky ("Heartland") by submitting the Land, together with the improvements and structures now existing and hereafter erected by, or at the direction of, Declarant thereon, and all easements, rights, and appurtenances belonging thereto (said Land, improvements, structures, easements, rights and appurtenances are together referred to hereinafter as the "property") to the provisions of the Horizontal Property Law of the Commonwealth of Kentucky, KRS 381.805 to KRS 381.910 (the "Horizontal Property Law");

**NOW, THEREFORE**, Declarant hereby submits said property to the provisions of the Horizontal Property Law and declares that said property shall be a residential condominium project (hereinafter referred to as the "condominium project") as defined in and pursuant to said Horizontal Property Law, and pursuant to the following provisions:

**ARTICLE I  
Definitions**

The words listed in this Article I when used in this Master Deed shall have the meanings as set forth in this Article I:

(A) "Articles of Incorporation" mean the articles of incorporation of the council, a nonstock, nonprofit corporation, which shall govern and control, in part, the affairs and administration of the condominium project.

(B) "Board of Directors" means the board of directors of the council who shall be elected and serve and shall have the powers and duties provided herein and in the articles of incorporation and the bylaws.

(C) "Buildings" mean, collectively as many as nineteen (19) buildings as ultimately may be constructed on the Land plus any other land added thereto pursuant to amendment to this Master Deed, containing all of the units in the condominium project, subject to the provisions of Article XIII herein. The location of the buildings on the Land and the area of each of the buildings are as set forth on the plans.

*Mail in Jagoe Homes  
PO Box 23019*

(D) "Bylaws" mean the bylaws of the council, approved and adopted by the board of directors, which shall govern and control, in part, the affairs and administration of the condominium project.

(E) "Common elements" mean all of the property, except the units, including, without limitation, the outside walls and roofs of the buildings, the foundations and structural members of the buildings and all columns, girders, beams, and supports, the Land and improvement on the property (including the Land under the units), all utility or other pipes and material located outside of the units, except such as are part of the units, all central installations for the furnishing of utilities or other services to the units, all driveways, roadways, grass areas, and sidewalks, all recreational facilities available in whole or in part for use by the unit owners.

(F) "Condominium documents" mean, collectively, the Master Deed, Articles of Incorporation, Bylaws, and Rules and Regulations.

(G) "Council" means The Gardens of Heartland Council of Co-Owners, Inc., a Kentucky nonstock, nonprofit corporation, the members of which shall be each an owner of record of a unit in the condominium project.

(H) "The Gardens of Heartland" means the name by which the condominium project will be known.

(I) "General common elements" means all of the common elements except for any limited common elements as more fully described in Article III below.

(J) "Heartland" means the mixed-use development located in Owensboro, Daviess County, Kentucky, of which the Gardens of Heartland is a part.

(K) "Heartland Association" means The Heartland Homeowners Association, Inc., a Kentucky nonstock, nonprofit corporation, the members of which shall include, among other members, all owners of record of a unit in the condominium project.

(L) "Limited common elements" mean and include those common elements (if any) designated by this Master Deed to be reserved for the exclusive use of a particular unit or combination of units as more fully described in Article IV below.

(M) "Person" means any natural person, firm, corporation, partnership, association, trust, or their legal entity or any combination thereof.

(N) "Plans" mean the plans and specifications for the condominium project, including the floor plans for the buildings dated 11/16/00, prepared by HRG, PLLC, showing the layout, location, unit numbers and dimensions of the units, and recorded in Condominium and Apartment Ownership Book 728 Pages 77 through 81, in the Office of the County Court Clerk of Daviess County, Kentucky, simultaneously with the recording of this Master Deed.

(O) "Rules and Regulations" mean the rules and regulations promulgated by the board of directors and governing, in part, the use and occupancy of the units.

(P) "Unit" means an enclosed space (KRS 381.810(1)) within the buildings measured from interior unfinished surfaces of walls, ceilings, and floors, having a direct exit to a thoroughfare or to a common element leading to a thoroughfare.

Each unit shall include the interior unfinished surface of any doors, windows, vents, and other structural element as ordinarily are regarded as enclosures of space, and any wallpaper, paint, carpet, tile, and all other decorating or finishing materials affixed or installed as part of the physical structure of the unit, and all closets, cabinets, storage areas, and visible fixtures, mechanical systems, and equipment installed in and for the sole and exclusive use of an individual unit; provided, however, that neither pipes, wires, conduits, or other public utility lines or installations constituting part of the overall systems designed for the general service of an entire building, nor property of any kind which is not removable without jeopardizing the soundness and safety of the remainder of an entire building, shall be deemed to be included within any unit. "Entire building," as used in the preceding sentence, shall include any other unit and any common element, whether general or limited.

(P) "Unit owner" means any person having record title to a unit.

## ARTICLE II Units

(A) Number, location, designation, and plans for units

Subject to the provisions of Article XIII herein, there may be as many as Seventy-Six (76) units within the condominium project. Twelve (12) of these units have been built, and for purposes of identification, each unit has been assigned a number as indicated on Exhibit B attached hereto and made a part hereof. No unit bears the same identification number as any other unit. The plans set forth the layout, location within the applicable building, unit number designation, and dimensions of each unit.

(B) Ownership of the units

Each unit owner shall obtain fee simple ownership of the unit acquired, the appurtenant undivided interest of the general common elements of the condominium project, and, if applicable, any limited common elements appurtenant to the unit. Each unit owner shall be a member of the Council. The form of ownership of a unit may be individual, corporate, in partnership, joint with right of survivorship, a tenancy in common, a tenancy by the entireties, or (subject to the other provisions of the condominium documents) any other estate in real property recognized by law and which may be conveyed and encumbered. All deeds to each unit shall describe such unit by reference to this Master Deed, the plans, the name of this condominium project, and the identifying number of the unit followed by the words "a condominium unit." No unit shall be subdivided, and no action for partition of a unit shall lie, except in the manner provided in the Horizontal Property Law of Kentucky and upon the prior written approval of the holder(s) of any mortgage(s) on such unit and approved by a majority vote of the Council. Any conveyance of a unit shall be deemed also to convey the undivided interest of the unit owner in the general common elements and any limited common elements appurtenant to the unit, whether or not the instrument evidencing such conveyance expressly shall so state.

(C) Taxation of units

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The owner of each unit shall be responsible for any and all ad valorem or real estate taxes and special assessments that may be assessed against the unit and its percentage of ownership in the common element by any governmental authority with jurisdiction over the unit. Nothing contained in this Master Deed shall be construed as giving to any unit owner any right of contribution or adjustment against any other unit owners on account of any deviation by any governmental authority from the percentages of ownership set forth in any valuation or assessment against the unit owned by such unit owner.

(D) Maintenance and repair by unit owners

It shall be the responsibility of each unit owner with respect to the unit owned by such unit owner:

(1) To maintain, repair, and replace at the expense of such unit owner all portions of the unit except the portions to be maintained, repaired, and replaced by the Council, including all decorating and redecorating, painting, tiling, carpeting, waxing, papering, plastering, or varnishing which may be necessary to maintain the good appearance and condition of the unit. Such maintenance, repair, and replacement shall not change the appearance of any portion of the exterior of the building or unit without prior approval of the Board of Directors.

(2) To maintain, repair, and replace at the expense of each unit owner the appliances, fixtures and any other portions of the buildings located in the unit, or located in the limited common elements appurtenant to the unit, or located in the general common elements but benefiting the unit to the exclusion of any other unit, including, but not limited to inside of exterior doors and locks, windows (including window cleaning and repair), any plumbing fixtures, sewer lines to the point of connection with a common sewer line, water heaters, heating and air conditioning equipment, interior and exterior lighting fixtures, refrigerators, dishwashers, disposals, ranges, hoods and fans, sinks, lamps, interior doors, garage door openers, telephones or any telephone, cable, electric, gas or water pipes or lines or wires or conduits or ducts serving any such appliances and fixtures and units in which they are located or serve.

(3) To report promptly to the Council any defect or need for repairs for which the Council is responsible.

(4) To maintain, repair, or replace at the expense of such unit owner all portions of the unit which may cause injury or damage to the other units or to the common elements.

(5) To perform the responsibilities of such unit owner in such a manner and at such reasonable hours so as not to unreasonably disturb other unit owners in the building.

(E) Liability of unit owner for certain repairs

A unit owner shall be liable for the entire expense of any maintenance, repair, or replacement of any part of the condominium project, whether part of a unit or part of the general common elements or limited common elements, if such maintenance, repair, or replacement is rendered

necessary by any negligent act or omission of the unit owner, or any member of the family, or guests, employees, agents, or lessees of such unit owner. If any unit owner fails to undertake any such maintenance, repair, or replacement within 10 days after the Board of Directors notifies such unit owner in writing that the Board of Directors has determined that such maintenance, repair, or replacement is the responsibility of such unit owner under this section, the Board of Directors may undertake such maintenance, repair, or replacement, and the cost thereof shall be a lien on the unit owned by such unit owner until paid by the unit owner, and such lien shall be subject to the same remedies as are provided in this Master Deed for nonpayment by a unit owner of common charges and assessments.

(F) Alteration or improvements of units and common elements.

No alteration or improvement to any common element or to the unit which would alter or affect the common elements or any other unit may be made by any unit owner other than the Declarant without the prior written consent of the Board of Directors. This includes any change to any exterior colors or building materials. No application shall be filed by any unit owner other than the Declarant with any governmental authority for a permit covering an addition, alteration, or improvement to be made in a unit which alters or affects the common elements or other units, unless approved and executed by the Board of Directors. Such approval and execution shall not evidence any consent to any liability on the part of the Board of Directors, or any individual member of the Board of Directors, to any contractor, subcontractor, materialman, architect, or engineer by reason of such addition, alteration, or improvement or to any person having any claim for injury to person or damage to property arising therefrom. Consent shall be requested in writing through the manager or managing agent, if any, or through the president or secretary of the Council if no manager or management agent is employed. The Board of Directors shall have the obligation to answer within 30 days. The Board of Directors may require that the unit owner making such improvement, alteration, or addition obtain such insurance coverage and in such amounts as the Board of Directors deems proper.

**ARTICLE III**  
**Common Elements**

(A) General common elements

The general common elements of the condominium project include the Land and all other areas, and all structures and improvements, within the boundaries of the condominium project not included within the units and limited common elements. The general common elements include, but are not necessarily limited to, the Land, the foundations, structural columns, walls, slab floors on which the buildings, including garages, are built, upper floor ceilings and roofs (other than the interior decorated surfaces thereof located within the boundaries of individual units) of the buildings, the gardens, outside walks, and outside driveways, breezeways, automobile parking spaces (other than those designated as limited common elements pursuant to the article of this Master Deed entitled "Limited Common Elements"), outside retaining walls and landscaping on the common elements, any recreational facilities located on the Land, and compartments or installations of central services such as pipes, ducts, electrical wiring and conduits, and public utility lines.

## (B) Interest in common elements

Each unit shall have appurtenant to it that percentage interest in the common elements which the floor area of the unit bears to the sum of the floor area for all units (which percentage interest is set forth on Exhibit B attached and made a part of this Master Deed), and each unit owner shall bear the same such percentage of the common expense of the condominium project. The undivided interest in the common elements shall not be separated from the unit to which it appertains and shall be deemed conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the instrument of such conveyance.

## (C) Common elements to remain undivided

The common elements shall remain undivided and no unit owner shall bring any action for partition or division unless otherwise provided herein or by law.

## (D) Adjustments in percentage of ownership

Except as provided in Article XIII of this Master Deed and as otherwise may be expressly provided herein, the percentages of ownership in the common elements set forth in Exhibit B attached to this Master Deed shall remain constant regardless of the purchase price paid for any unit at any time. Except as provided in Article XIII of this Master Deed and as otherwise may be expressly provided herein, no adjustment in percentages of ownership shall be made without the prior written approval of all unit owners, and all holders of record of first mortgages on all units in the condominium project for which the percentages of ownership are being adjusted.

## (E) Use of common elements

The common elements shall be used for the benefit of the unit owners, the furnishing of services and facilities for which the same are reasonably intended, and for the enjoyment to be derived from such proper and reasonable use. Each unit owner may use the general common elements in accordance with the purposes for which they are intended so long as such use does not hinder the exercise of or encroach upon the rights of other unit owners. The Board of Directors shall, if any question arises, determine the purpose for which a common element is intended to be used. The Board of Directors shall have the right to promulgate the rules and regulations which may limit the use of the common elements to unit owners, their guests, permitted tenants, and invitees.

(F) Additional Restrictions for Common Elements Adjoining East 26<sup>th</sup> Street

Any common element, or portion thereof, along 26<sup>th</sup> Street shall be subject to the following additional restrictions:

1. Any fence constructed along East 26<sup>th</sup> Street may not be higher than six (6) feet, shall be cedar and dog-eared or dog-eared-shadow-box style, must be left natural (except a clear preservative may be applied), and shall be of the same design and location as originally constructed by the Declarant. Any fence constructed pursuant to this section must be approved by the Design Review Committee of the Heartland Association as set forth herein, which Committee may impose more restrictive location, design, and setback requirements, and must be maintained by the Heartland Association, as set forth herein. This provision does not apply to fences around the patios

of the units.

2. Any and all shrubs and trees located along the East 26<sup>th</sup> Street side of the Property and within the street right-of-way and/or the sign easement, must be maintained by the Heartland Association as set forth herein. If the City of Owensboro fails to perform any maintenance of shrubs and trees in the East 26<sup>th</sup> Street right-of-way or the greenbelt, the Heartland Association must maintain same. If a plant or shrub dies or if a portion of a hedge dies, then the Heartland Association shall replant same with the same species and variety during the optimum planting season following such time as the plant, shrub or hedge, as the case may be, becomes unsightly. Trees must be at least 1 ½ inch caliber or larger. If a disease or insect which kills the trees or shrubs spreads through the region killing all or a majority of like trees or shrubs, according to and verified by the University of Kentucky, College of Agriculture, Cooperative Extension Service, a similar tree or shrub may be planted which is resistant to the disease or insect. The Heartland Association may not replace trees or shrubs if the remaining trees and shrubs have reached sufficient size that it is not practicable to plant more trees and shrubs in the particular area.

3. Grass and mulched areas along East 26<sup>th</sup> Street shall be kept in pristine condition up to the line of maintenance by the City of Owensboro which is the line for street rights-of-way, parks and greenbelt. If the City of Owensboro does not perform its obligations of maintaining any adjoining rights-of-way for streets, islands or greenbelt, then the Heartland Association shall maintain the area by cutting grass, trimming shrubs and trees, removing debris, fertilizing, herbiciding, treating for pests, and/or watering, etc., the need for which shall be as determined by the Heartland Association.

4. Any landscaped areas along East 26<sup>th</sup> Street shall have a natural, informal scheme complementing the landscaping originally installed by Declarant, and shall not be planted in formal, straight lines. Any such hedges shall be retained and shall be planted to form a continuous screen, shall be allowed to grow together, shall be minimally pruned to maintain a natural shape, and shall not be heavily sheared into a tightly growing hedge or balls.

5. No storage shed, above-ground pools, detached garage or unsightly structures shall be placed in sight of automobile traffic along East 26<sup>th</sup> Street. If approved as set forth herein, fences and/or landscaping shall shield the structures from view from six (6) feet above the sidewalk. Such fences must not be in violation of any other provision of this instrument and their location must be approved by the Design Review Committee as set forth herein.

6. To the extent that the Heartland Association or its Design Review Committee fails to perform any of its obligations described herein, they shall be assumed by the Council described elsewhere herein.

(G) Maintenance and Repair of common elements

The maintenance and operation, including landscaping, gardening, snow removal, cleaning, painting and all other repair, of the common elements, (including, but not limited to, the repair of major cracks in the slabs on which the units and garages are built) shall be the responsibility and expense of the Council, unless and except as otherwise expressly provided in the condominium documents, and the Board of Directors of the Council, pursuant to authority found at Article VI of this Master Deed, shall have the authority to make all decisions of the Council as respects repairs

and maintenance and the costs incurred pursuant thereto. It shall be the responsibility of the Council to maintain, repair, or replace:

(1) The buildings (except to the extent of the units comprising a part of the same), including the roofs, and the grounds and parking lots.

(2) All portions of any unit which contribute to the support of any building, including main bearing walls (but excluding painting, wallpapering, decorating, or other work on the interior surfaces of walls, ceilings, and floors within the unit, which shall be the unit owner's responsibility).

(3) All portions of what would appear to be the unit but which really constitute a part of the exterior of any building and, therefore, in actuality are common elements, including, but not limited to, all exterior doors (including overhead garage doors) and windows (except all interior painting, interior caulking and interior repair of same).

(4) All common elements not heretofore mentioned.

(5) All incidental damage caused by work done at the direction of the Board of Directors.

(6) All patios and fences around any portion of the condominium project, including, but not limited to, fencing around any and all patios.

(H) Alteration and improvement of common elements

The Board of Directors shall have the right to make or cause to be made such alterations and improvements to the common elements as, in the opinion of the Board of Directors, may be beneficial and necessary. The cost of any such alterations and improvements to the common elements shall constitute a part of the common expenses. When, in the sole opinion of the Board of Directors, the costs therefor shall be exclusively or substantially exclusively for the benefit of unit owner(s) that requested the alteration or improvement, the cost shall be assessed against such unit owner(s) in such proportion as the Board of Directors, in its discretion, reasonably shall determine is fair and equitable.

#### ARTICLE IV Limited Common Elements

(A) Limited common elements

The limited common elements of the condominium project are areas which are reserved for the use of unit owners of a certain unit or units to the exclusion of the unit owners and/or occupants of other units. The limited common elements of the condominium project include any attics, patios, or porches and outside air conditioning units adjacent to or associated with a particular unit and intended for use exclusively by occupants of that particular unit, and shall also include automobile parking garages and storage areas designated as being intended for the exclusive use of a unit or units pursuant to the plans.

(B) Limited common elements to remain undivided

The limited common elements shall remain undivided and no unit owner shall bring any action for partition or division unless otherwise provided by law. Any covenant to the contrary shall be void.

(C) Parking spaces

Any parking spaces not a part of a unit and not expressly designated on the plans as being appurtenant to any unit as a limited common element shall remain general common elements and shall be available for use generally by all unit owners, their tenants, or guests without reservation or restriction, other than any reasonable restrictions imposed by the Board of Directors and applicable to all unit owners.

**ARTICLE V**  
**Assessments**

The making and collection of assessments against unit owners for common expenses of the condominium project, including, but not limited to, maintenance and repair of, and insurance charges and utility expenses related to, the common elements, shall be pursuant to the bylaws and subject to the following provisions:

(A) Share of common expense

Each unit owner shall be personally liable for the proportionate share of the common expenses and shall share in the common surplus (after due allowance for the retention of any reserve to cover future common expenses), such shares being the same as the unit owner's undivided share in the common elements as set forth in Exhibit B to this Master Deed. No unit owner shall be exempt from contributing toward such expenses by waiver of the use or enjoyment of the common elements or by abandonment of the unit owned by such unit owner or by claiming that the quantity or quality of services does not warrant such payment or is not as contemplated by such unit owner as of the time of purchase; provided, however, the Board of Directors may, but is not required to, abate or reduce a unit owner's contribution for a reasonable period of time during which the unit owned by such unit owner is uninhabitable as the result of damage or destruction.

(B) Interest; application of payments

Assessments and installments on such assessments paid on or before 10 days after the day when due shall not bear interest, but all sums not paid on or before 10 days after the date when due, including any sums due as a result of acceleration of unpaid assessments as may be provided in the Bylaws, shall bear interest from the date when due until paid at the rate of interest per annum provided in the bylaws. All payments upon account shall be first applied to interest and then to the assessment payment first due.

(C) Lien for assessments

Except as provided in Article V(E) of this Master Deed, any unpaid common expenses assessed to a unit owner shall constitute a lien against the unit owned by such unit owner and against such unit owner's interest in the condominium project prior to all other liens except the lien of a first

mortgage on the unit and tax or assessment liens on the unit by the taxing subdivision of any governmental authority, including but not limited to state, county, city, and school district taxing agencies.

The lien created by this section shall be deemed to be incorporated by reference in and reserved by each deed or other instrument conveying any interest in a unit whether or not such deed or instrument by its express terms refers to said lien. In addition to any other remedies or liens provided by law, if any unit owner is in default in the payment of any common expenses assessed to such unit owner for 30 days, including any sums due as a result of acceleration of unpaid assessments as may be provided in any of the condominium documents, the Council may bring suit for and on behalf of itself and as representative of all unit owners to enforce collection of the assessment and all costs of collection thereof, including reasonable attorney fees, and to foreclose the aforesaid lien in accordance with the laws of the Commonwealth of Kentucky, in like manner as a mortgage on real property. The lien for unpaid assessments shall also secure legal interest and reasonable attorney fees incurred by the Council incident to the collection of such assessment or enforcement of such lien. In the event the proceeds of the foreclosure sale are not sufficient to pay such unpaid common charges, the unpaid balance shall be charged to all unit owners as a common expense.

(D) Transfer of units

A unit owner shall not be liable for any common expenses accruing after the sale of his unit and the recording of a deed to the purchaser. The purchaser of a unit subject to any lien arising under this Master Deed prior to the date of purchase and the recording of the deed shall take title to the unit subject to the lien; provided, however, that, at the request of any unit owner or a prospective purchaser of the unit, the Board of Directors shall provide a statement disclosing whether the unit owner is then in default under any of the obligations hereunder and whether and in what amount a lien exists against the unit owned by the unit owner under the section hereof entitled "Lien for Assessments," which statement shall be conclusive as to the facts stated therein as against the Council and the other unit owners and may be relied upon by a prospective purchaser or mortgagee or assignee of any mortgagee upon the unit of such unit owner.

(E) Limitation on mortgage liabilities

Where the mortgagee of a first mortgage of record or the purchaser or purchasers of a unit obtain title to the unit as a result of foreclosure of a first mortgage, or by voluntary conveyance in lieu of such foreclosure, said mortgagee or purchaser shall not be liable for the shares of common expenses or assessments by the Council pertaining to such unit or chargeable to a former unit owner of such unit which became due prior to acquisition of title by said mortgagee or purchaser as a result of the foreclosure or voluntary conveyance in lieu of said foreclosure. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the other unit owners of units, including a successor or assign of the mortgagee. The waiver of liability granted herein for the payment of past due assessments shall not apply to a unit owner who takes back a purchase money mortgage or to any other mortgagee which is not an "institutional mortgagee." The term "institutional mortgagee" herein used shall mean a first mortgage holder which is a bank, savings and loan association, life insurance company, pension fund, trust company, credit union, or other similar institutional lender.

(F) Rental pending foreclosure

In any foreclosure of a lien for assessments, the unit owner of the unit subject to the lien shall be required to pay a reasonable rental for the unit, and the Council shall be entitled to the appointment of a receiver to collect the same.

(G) Anything to the contrary contained in this Master Deed or in the Bylaws of the Council notwithstanding, until the Declarant transfers control and management to the Council, the Declarant shall not be liable for the payment of any assessment, monthly or otherwise, for common expenses or for reserve or contingency accounts, and the units owned by the Declarant, prior to the Declarant transferring control to the Council, shall not be subject to any lien therefor; and the Declarant shall not have any liabilities of a unit owner. The Declarant shall, however, until the Declarant transfers control to the Council, be responsible for the maintenance costs of the condominium project incurred over and above assessments or amounts paid by unit owners for common expenses and other appropriate charges.

**ARTICLE VI**  
**Council of Co-owners**

(A) Council manages condominium project

The management and operation of the condominium project shall be the responsibility of the Council, acting through the Board of Directors and the elected officers thereof, and the Council shall fulfill its functions pursuant to the provision of the condominium documents.

(B) Bylaws

The Bylaws adopted by the Council from time to time shall be the Bylaws of the condominium project.

(C) Rules and regulations

Each unit owner's ownership and use of the unit(s) owned by such unit owner shall be subject to the Rules and Regulations promulgated by the Board of Directors from time to time, applicable to all unit owners including Declarant. Such Rules and Regulations shall have the same force and effect as, and shall be enforceable in the same manner as, the provisions of this Master Deed. A copy of the Rules and Regulations, including any amendments thereto, shall be furnished by the Council to all unit owners and residents of the condominium project upon request.

(D) Limitation upon liability of council

Notwithstanding the duty of the Council to manage, operate, maintain, and repair the condominium project, subject to and in accordance with the provisions of the condominium documents, the Council shall not be liable to unit owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the condominium project required to be maintained and repaired by the Council, or caused by the weather or other element, or by other unit owners or persons, including, but not limited to, defects which are the result of characteristics common to the materials used, damage due to ordinary wear and tear and normal use, and damage

due to wind, rain, snow, hail, and condensation on or expansion or contraction of materials due to weather.

(E) Board of Directors

The members of the Board of Directors shall be elected and serve and shall have the duties and powers as provided in the Articles of Incorporation and Bylaws. The Board of Directors shall have the right to delegate its duties to a managing agent. The Board of Directors shall be the final arbiter of any dispute concerning the operation of the condominium project and the interpretation and effect of the condominium documents.

(F) Declarant's written consent necessary for certain actions

Anything to the contrary contained in any of the condominium documents notwithstanding, during the interval (the "declarant's marketing interval") from the date of recordation of this Master Deed until the earlier of such time as (1) Declarant or its designee(s) shall cease to own any units in the condominium project, or (2) five (5) years from the date of recording this Master Deed, or (3) prior thereto, at the sole election of the Declarant, the Board of Directors may not, without the Declarant's prior written consent, (1) amend any of the condominium documents; (2) make any addition, alteration, or improvement to the common elements or to any unit; (3) assess any common charges for the creation of, addition to, or replacement of all or part of a reserve, contingency, or surplus fund if the effect of such assessment would be to increase the amount of such reserve, contingency, or surplus fund in excess of an amount equal to that proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the condominium project bears to the total amount of such initial budget of estimated expenses; (4) hire any employee in addition to the employees, if any, provided for in the initial budget; (5) enter into any service or maintenance contract for work not covered by contracts in existence on the date of the first closing of title to a unit; (6) borrow money on behalf of the condominium project; or (7) reduce the quantity or quality of service to or maintenance of the condominium project. During the Declarant's marketing interval, an irrevocable power of attorney coupled with an interest is hereby granted and reserved unto Declarant, its successors and assigns (however, individual unit owners are not included within the meaning of successors and assigns as used in this paragraph) to amend any condominium document so long as any such amendment does not (1) increase the share of common expenses which are the obligation of unit owners other than Declarant at the time of such amendment, or (2) materially alter the responsibilities and obligations of Declarant as developer of the condominium project to other unit owners under the condominium documents.

(G) Approval or disapproval of matters

Whenever the decision of a unit owner is required upon any matter, whether or not the subject of a Council meeting, such decision shall be expressed by the same person who would cast the vote of such unit owner if in a Council meeting, unless joinder of all unit owners of record is specifically required by the applicable provision of the condominium documents.

(H) Remonstrate or Petition