

DECLARATION OF MASTER DEED

FOR

Citation Pointe Condominium

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LIST OF EXHIBITS AND ATTACHMENTS

EXHIBIT A	LEGAL DESCRIPTION OF THE PROPERTY
EXHIBIT B	LEGAL DESCRIPTION OF THE CONDOMINIUM PROPERTY
EXHIBIT C	COPY OF THE DRAWINGS
EXHIBIT D	BYLAWS
EXHIBIT E	UNITS, GARAGES, AND UNDIVIDED INTERESTS IN THE COMMON ELEMENTS

CONSENT OF MORTGAGEE

DECLARATION OF MASTER DEED

FOR

Citation Pointe Condominium

THIS DECLARATION OF MASTER DEED ("Master Deed") is made as of the 4th day of November, 2005, by CITATION POINTE, LLC, a Kentucky limited liability company ("Declarant").

A. Declarant is the owner of certain real estate located in Fayette County, Kentucky, consisting of approximately 8.75 acres, which is legally described on Exhibit A attached hereto and by this reference incorporated herein (the "Property").

B. Declarant desires to submit part of the Property, approximately 3.41 acres which is legally described on Exhibit B attached hereto and by this reference incorporated herein (the "Condominium Property"), to the condominium form of ownership pursuant to Sections 381.805 through 381.910 of the Kentucky Revised Statutes, and to establish certain covenants, easements, conditions and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Condominium Property and be binding on all parties having any right, title or interest in that portion of the Condominium Property, and their heirs, successors and assigns, and shall inure to the benefit of each owner of the Condominium Property.

C. Initially, Declarant intends to subject all of the Condominium Property described on Exhibit B and depicted on the Drawings, but not any other portion of the Property including any areas designated for future development on the Drawings. Declarant reserves the right either to expand the Condominium to include all or any portion of the Property and to make this Master Deed binding upon that property and all improvements constructed thereon, or to add all or any portion of the Property to the Condominium Property as Common Elements or Limited Common Elements.

1. DEFINITIONS

- 1.1 "Articles" – the articles of incorporation, filed with the Kentucky Secretary of State and the Office of the Clerk of Jefferson County, Kentucky, incorporating the Council as a nonprofit corporation under the provisions of the Nonprofit Corporation Law, as such articles may be amended from time to time.
- 1.2 "Assessments" – all assessments that may be levied by the Council pursuant this Master Deed, the Bylaws, or the Condominium Law, including without limitation Initial Assessments, Unit Assessments, Annual Assessments, and Special Assessments.
- 1.3 "Assigned Square Footage" – the square footage assigned to each Unit and Garage for purposes of calculating the undivided interests in the Common Elements, as

shown on attached Exhibit E, the purpose of which is to ensure that similarly styled Units and Garages are treated similarly for purposes of their undivided interests in the Common Elements, despite minor variations in actual square footages in such Units and Garages.

- 1.4 “Board” or “Board of Directors” – those persons designated by Developer or elected by the Members of the Council to manage the Condominium Property and the affairs of the Council, as further described in the Bylaws.
- 1.5 “Buildings” – initially, Building 1 containing 24 Units, a building containing 10 detached Garages, a building containing 12 detached Garages, and the clubhouse building which are part of the Condominium Property, as depicted in the Drawings. If any additional buildings are subsequently constructed on the Condominium Property and subjected to this Master Deed as set forth in Article 12, then the term “Buildings” will include such additional buildings.
- 1.6 “Bylaws” – the bylaws of the Council adopted pursuant to the provisions of the Condominium Law, which also serve as the bylaws for the Council pursuant to the Nonprofit Corporation Law, a copy of which is attached hereto as Exhibit D, as the same may be amended from time to time.
- 1.7 “Capital Expenditures” – costs and expenses incurred for improvements or enhancements of the Common Elements, or similar expenses for major construction or repair projects within or benefiting the Condominium Property.
- 1.8 “Common Elements” – all of the Condominium Property other than those portions described as Units or Garages in this Master Deed, as further described in Section 3.3, and as depicted in the Drawings.
- 1.9 “Common Expenses” – all expenses designated as such in the Condominium Law, in the Condominium Documents, or both, and as more particularly described in Section 10.5.
- 1.10 “Common Profits” – the amount by which the total income received by the Council from any of the following exceeds expenses allocable to the particular income, rental, fee, or charge: (i) Unit Assessments charged for special benefits to specific Units; (ii) fees or rents received from the rental of equipment or space in the Common Elements; or (iii) any other fee, charge, or income other than Annual Assessments.
- 1.11 “Common Surplus” – the amount by which Annual Assessments collected during any period exceed Common Expenses.
- 1.12 “Condominium Documents” – the Articles, the Bylaws, the Drawings, this Master Deed, the Rules, any contracts pertaining to the management of the Condominium Property, and any other documents, contracts, or instruments establishing

ownership of or exerting control over the Condominium Property or a Unit or Garage, as the same may be amended or supplemented from time to time.

- 1.13 “Condominium Law” – the statutory law of Kentucky regulating condominiums, currently codified in Sections 381.805 through 381.910 of the Kentucky Revised Statutes, as the same may be amended from time to time.
- 1.14 “Condominium Property” – initially, the property described on attached Exhibit B and depicted in the Drawings, together with all improvements located thereon, including without limitation the Buildings, and thereafter, such additional property as may be annexed by amendment to this Master Deed or that is owned in fee simple by the Council, together with all easements, rights, and appurtenances belonging thereto. The Condominium Property includes all of the Units, the Garages, and the Common Elements. The Condominium Property does not include the Future Expansion Areas unless and until added pursuant to Article 12.
- 1.15 “Council” – Citation Pointe Condominium Council of Co-Owners, Inc., a Kentucky non-profit corporation, and its successors and assigns, being the council of co-owners created to administer the Condominium Property pursuant to the Condominium Law.
- 1.16 “Declarant” or “Developer” – Citation Pointe, LLC, and any successor or assign that is actively engaged in the business of developing the Condominium Property, including without limitation selling Units or Garages in accordance with a common promotional plan.
- 1.17 “Director” – any person serving, at the time pertinent, as a member of the Board of Directors of the Council.
- 1.18 “Drawings” – the detailed survey, plans, and drawings graphically depicting the Condominium Property and filed concurrently with this Master Deed in Plat Cabinet G, Slide 720 of the Office of the Clerk of Fayette County, Kentucky, a copy of which is attached as Exhibit C, as the same may be amended or supplemented from time to time.
- 1.19 “Eligible Insurer” – an agency which guarantees, insures, or purchases a first mortgage loan held by an Eligible Mortgagee on a Unit and for which the Council has received a notice pursuant to Section 14.1 or a request pursuant to Section 14.2.
- 1.20 “Eligible Mortgagee” – a holder of a first mortgage on any Unit for which the Council has received a notice pursuant to Section 14.1 or a request pursuant to Section 14.2.
- 1.21 “Future Expansion Areas” – those portions of the Property which are not presently part of the Condominium Property. Future Expansion Areas may be depicted on

the Drawings for future development and may become part of the Condominium Property in the future pursuant to Article 12.

- 1.22 “Garages” – those portions of the Condominium Property subject to individual ownership pursuant to this Master Deed and intended for parking purposes in conjunction with the Units, as further described in Section 3.3, as listed in attached Exhibit E, and as depicted in the Drawings.
- 1.23 “Limited Common Elements” – those portions of the Common Elements serving exclusively one or more Units but less than all Units, the enjoyment, benefit, or use of which is reserved to the Occupants of that Unit or Units in this Master Deed, an amendment hereto, a deed for a Unit from Developer to a third party purchaser, or by agreement of all of the Owners, as further described in Section 3.4, and as designated on the Drawings. (Unless specifically excluded, all references to Common Elements shall be deemed to include the Limited Common Elements.)
- 1.24 “Minor Changes” – amendments described in Sections 16.2.1 and 16.2.2.
- 1.25 “Nonprofit Corporation Law” – the statutory law of Kentucky regulating nonprofit corporations, currently codified in Sections 273.163 through 273.387 of the Kentucky Revised Statutes, as the same may be amended from time to time.
- 1.26 “Occupant” – any person lawfully residing in a Unit, regardless of whether such person is an Owner.
- 1.27 “Owner” – the owner of record from time to time, whether one or more persons or entities, of an interest in fee simple in a Unit together with an undivided interest in the Common Elements. “Owner” includes a purchaser of a Unit under a recorded land installment contract but does not include the Council or a person or entity having an interest in a Unit merely as security for the performance of an obligation. An Owner is also sometimes referred to as a “Member” in the Council and is synonymous with the term “co-owner” as used in the Condominium Law.
- 1.28 “Property” – the real property legally described in attached Exhibit A, which includes both the Condominium Property and the Future Expansion Areas.
- 1.29 “Rules” – the rules, regulations, and restrictions governing use of the Condominium Property, as may be established by the Board from time to time pursuant to Section 4.8 and elsewhere in this Master Deed and in the Bylaws.
- 1.30 “Surface Parking Areas” – those paved portions of the Common Elements containing parking spaces located outside of the Buildings, some of which are delegated as Limited Common Elements for the exclusive use of a Unit to the exclusion of the other Units and the balance of which are designated for general use by Owners, Occupants, or their visitors, as further described in Section 3.4, and as depicted in the Drawings.

- 1.31 “Tenant” – any person or entity lawfully occupying a Unit pursuant to a written or oral lease or rental agreement with the Owner thereof, or with any other person or entity claiming under the Owner.
- 1.32 “Unit” – that part of the Condominium Property subject to individual ownership pursuant to this Master Deed and intended for residential use, as further described in Section 3.2, as listed in attached Exhibit E, and as depicted in the Drawings.
- 1.33 The following additional terms are defined elsewhere in this Master Deed, as noted below:

<u>TERM</u>	<u>ARTICLE OR SECTION</u>
AAA	§ 15.1
Affected Owners	§ 8.5.1
Annual Assessments	§ 10.5
Certificate	§ 10.8.5
CPI	§ 4.7
Declarant	Opening ¶, page 1
Factors	§ 11.6
Initial Assessments	§ 10.3
Dispute	Article 15
Insurance Trustee	§ 7.7
Liability Insurance Policy	§ 7.2
Management Company	§ 4.10
Master Deed	Opening ¶, page 1
Member	§ 1.27
Property Insurance Policy	§ 7.1.1
Special Assessments	§ 10.6
Threshold	§ 4.7
Unit Assessment	§ 10.4.1

2. SUBMISSION OF CONDOMINIUM AND PURPOSES

- 2.1 **Submission to Condominium Law.** Declarant hereby submits the Condominium Property to the condominium form of ownership under the Condominium Law. Declarant declares that the covenants, restrictions, and easements contained in the Condominium Documents are in furtherance of a plan to protect and promote the cooperative aspect of ownership and to facilitate the proper administration of the Condominium Property. Declarant reserves the right (i) to expand the Condominium to include any or all of the Future Expansion Areas and to make this Master Deed binding upon that property and all improvements constructed thereon, (ii) to add any or all of the Future Expansion Areas to the Condominium Property as Common Elements or Limited Common Elements, in either case, by complying with the procedures outlined herein and by filing the necessary amendments to this Master Deed, or (iii) to assign its role as “Declarant” or

“Developer” to another party, in which event evidence of such assignment will be filed in the Office of the Clerk of Fayette County, Kentucky.

2.2 Purposes and Name.

2.2.1 The purposes of the Condominium Documents are (i) to establish separate parcels of the Condominium Property in the form of Units and Garages for which fee simple title may be conveyed, the Units to be used for residential purposes and the Garages to be used for parking purposes in conjunction with the Units as provided hereunder; (ii) to establish a council of co-owners to govern the Condominium Property pursuant to the Condominium Law; (iii) to provide for the preservation of values of Units and Common Elements; (iv) to protect and promote the benefit, enjoyment, and well-being of Owners and Occupants; (v) to administer and enforce the covenants, restrictions, and easements contained in the Condominium Documents; and (vi) to raise funds through Assessments to accomplish these purposes.

2.2.2 The name by which the Condominium Property shall be known is Citation Pointe Condominium.

2.3 Ownership of Units and Garages. Each Owner shall own one or more Units, in fee simple, together with an appurtenant, undivided interest in the Common Elements. An Owner may own one or more Garages, in fee simple, together with an appurtenant, undivided interest in the Common Elements. Each Unit and each Garage shall be deemed to be a separate parcel of real property for purposes of taxation and assessment. Except as provided in the following sentence, an Owner other than Developer may not transfer fee simple title to a Garage separately from fee simple title to a Unit. Fee simple title to Garages may not be transferred to any person or entity who is not an Owner, other than the Council. Garages may be used only by Owners, Occupants, or the Council.

2.4 Ownership of Common Elements. The Common Elements shall be owned by all of the Owners as tenants in common. Such ownership shall be undivided, and no action for partition of any part of the Common Elements may be maintained except as specifically provided in this Master Deed or in the Condominium Law. No Owner may waive or release any rights in the Common Elements, except as otherwise specifically permitted herein. Each Owner’s undivided interest in the Common Elements shall not be separated from the Unit or Garage to which it is appurtenant.

2.5 Computation of Undivided Interest in the Common Elements. Each Unit, Garage, and its appurtenant undivided interest in the Common Elements is set forth in attached Exhibit E. The undivided interest is based on size and is determined by dividing the Unit’s or Garage’s Assigned Square Footage by the aggregate Assigned Square Footage of all Units and Garages. The undivided interests of all Units and Garages shall remain constant and shall not be changed

except as permitted in Article 12, by an amendment to this Master Deed, or as otherwise permitted by the Condominium Law.

3. DESCRIPTION OF CONDOMINIUM PROPERTY

3.1 **Buildings.** Initially, and until Declarant elects to expand the Condominium by adding additional Buildings (if ever), there will be four Buildings located on the Condominium Property: (i) Building 1, which is a three-story structure containing 24 Units; (ii) a Building containing 10 detached Garages; (iii) a Building containing 12 detached Garages; and (iv) a clubhouse Building. The size and location of the Buildings and each Unit and Garage is depicted in the Drawings. Each of the buildings is constructed using poured concrete on a concrete block foundation with wood frame construction. Exterior walls consist of glass, brick facing, wood trim, and composite cement siding. The roof is made of sealed down fiberglass shingles. Each Building that contains Units includes a fire suppression system.

3.2 **Units and Garages.** Each Unit and Garage subject to this Master Deed, together with its designation, description, location, and size, is listed on attached Exhibit E. The designation, location, square footage, and dimensions of each Unit and Garage are depicted in the Drawings. Each Unit and Garage has direct access to a Common Element, which leads directly to Remington Way, a public street. Each Unit and Garage consists, among other things, of the space in the Building depicted by that Unit's or Garage's designation in the Drawings that is bounded by the undecorated interior surfaces of the perimeter walls, the unfinished surface of the floor, and the unfinished interior surface of the ceiling, all projected, if necessary by reason of structural divisions such as interior walls and partitions, to constitute complete enclosures of space, and all improvements within that space. Without limiting the generality of the foregoing or, as appropriate, in addition thereto, each Unit and, to the extent applicable, each Garage includes the following:

3.2.1 all decorated surfaces applied to floors, ceilings, and interior and perimeter walls, including without limitation paint, lacquer, varnish, wall covering, tile, hardwood, carpeting, and vinyl; and the finished walls, ceilings, and floors themselves, including without limitation the drywall, paneling, and other finishing wall material;

3.2.2 all space between perimeter walls, floors, and ceilings, including the space occupied by any supporting wall, structural element, or fixture of the Building that is necessary for the existence, support, maintenance, safety, or comfort of any part of the Condominium Property other than the Unit itself;

3.2.3 all interior walls that are not necessary for support of the structure, all components thereof, and all space encompassed thereby;

- 3.2.4 all windows, skylights, if any, screens, and doors, including storm doors and windows, if any, and the frames, sashes, jambs, and hardware therefor;
- 3.2.5 all fixtures and appliances installed for the exclusive use of a Unit or Garage, commencing at the point of disconnection from the structural body of the Building and from utility pipes, lines, or systems serving the entire Building or more than one Unit or Garage, including without limitation built-in cabinets, dishwashers, garbage disposal units, refrigerators, stoves and hoods, television cables, hot water heaters, furnaces, heat pumps, garage door openers, and any components of the foregoing;
- 3.2.6 all plumbing, electric, heating, cooling, and other utility or service lines, pipes, wires, ducts, conduits, and apparatus, wherever located, which serve only that Unit or Garage;
- 3.2.7 all control knobs, switches, thermostats, and electrical outlets and connections affixed to or projecting from the walls, floors, and ceilings which service only that Unit or Garage or the fixtures located therein; and
- 3.2.8 the portion of fireplaces, if any, actually within the interior of a Unit and the vents and dampers therefor accessible from the Unit's interior;

excluding therefrom, however, all of the following items, whether or not located within the bounds of that Unit or Garage:

- 3.2.9 the sub-flooring or other structural elements, including without limitation rafters and joists above the ceilings or below the finished floors;
- 3.2.10 the structural walls to which the finished walls, including without limitation plaster, drywall, and paneling, are affixed;
- 3.2.11 any supporting element of the Building contained in interior walls;
- 3.2.12 all plumbing, electric, heating, cooling, and other utility or service lines, pipes, sump pumps, and accessories thereto, wires, ducts, and conduits which serve any other Unit or Garage; and
- 3.2.13 fireplace stacks and chimneys, if any.

Each Unit contains two bedrooms, two bathrooms, a kitchen, great room and dining area, laundry/utility room, and various closets. Some of the Units also contain a study or den. There is a patio or deck off of each Unit that is reserved for the exclusive use of that Unit and which constitutes a Limited Common Element

appurtenant to that Unit. Various options are available for upgrading the Units, including an optional fireplace. Cathedral ceilings are featured in Units on the top floor of each building. In subsequent phases, Developer may include Units that are different in style and size from the Units initially included in the Condominium Property, in which event those Units will be described in an amendment to this Master Deed at the time those Units become part of the Condominium. The Drawings show the boundaries, location, designation, length, width, and height of each Unit and Garage. The square footage of each Unit and Garage is measured from interior surfaces of exterior walls inward, and includes space occupied by interior walls and by drywall on perimeter walls.

3.3 Common Elements. The remainder of the Condominium Property which is not part of a Unit or Garage as set forth in Section 3.2 constitutes Common Elements which are owned by the Owners as tenants in common in the proportionate undivided interests as set forth in attached Exhibit E. The Common Elements are depicted in the Drawings, and include without limitation, the following:

- 3.3.1 the land described in Exhibit B attached hereto;
- 3.3.2 Surface Parking Areas, driveways, pavement, and sidewalks;
- 3.3.3 trees, lawns, yards, fences, gardens, landscaping, and other natural features;
- 3.3.4 the clubhouse, the swimming pool, and any other recreation facilities located on the Condominium Property;
- 3.3.5 each Building's foundation, foundation walls, roof, roof joist space, columns, girders, joists, beams, lobbies, stairways and stairwells, hallways and windows in the common areas of the Building;
- 3.3.6 any plumbing, electrical, heating, cooling, and other utility systems, service pipes, accessories, lines, wires, ducts, or conduits that service more than one Unit or common areas of the Condominium Property;
- 3.3.7 any sprinkler or other fire protection or security systems serving more than one Unit or other portion of the Condominium Property;
- 3.3.8 even if located within the boundaries of a Unit or Garage, the following: any supporting wall, structural element, or fixture of the Building that is necessary for the existence, support, maintenance, safety, or comfort of any other part of the Condominium Property; and
- 3.3.9 any and all rights and easements benefiting the Condominium Property.

Each Owner shall have the right to use the Common Elements (except for the Limited Common Elements) as a tenant in common with all other Owners, in

accordance with the purposes for which they are intended. No Owner may hinder or encroach on the lawful rights of other Owners with respect to such use. Use of the **Common Elements shall be subject to and governed by the provisions of the Condominium Law and the Condominium Documents.**

3.4 **Limited Common Elements.** Those portions of the Common Elements that are described herein as Limited Common Elements or designated as such in the Drawings are reserved for the exclusive use of Owners and Occupants of the Unit or Units which such Limited Common Elements are designed or designated to serve. Each Owner is granted an exclusive license to use and occupy the Limited Common Elements designated for that particular Owner's Unit in the Drawings, or reserved to that Unit in this Master Deed or an amendment hereto. Limited Common Elements are not part of the Units; however, Owners shall have an appurtenant interest in, and the use and possession of, those Limited Common Elements reserved to such Owners' Units, to the exclusion of all other Owners. Limited Common Elements consist of the following:

3.4.1 **Patios or decks** directly adjacent to the Units. Each such patio or deck is a Limited Common Element appurtenant to the Unit having sole direct and immediate access to it, and which it was designed to serve.

3.4.2 **Certain of the parking spaces within the Surface Parking Areas** depicted in the Drawings will be Limited Common Elements. One parking space will be assigned as a Limited Common Element for the exclusive use of each Unit in the deed from Developer to the third party purchaser of such Unit. Thereafter, use of such parking space may not be separately transferred from the Unit to which it is appurtenant but shall **automatically transfer to the purchaser of a Unit when the purchaser's deed or land installment contract is recorded in the Office of the Clerk of Fayette County, Kentucky.** Parking spaces within the Surface Parking Areas not delegated as a Limited Common Element for a Unit shall remain open for general use by the Owners, Occupants, or their visitors.

4. THE COUNCIL

4.1 **Formation.** **Declarant, by filing the Articles with the Kentucky Secretary of State, has formed the Council to administer the Condominium Property in accordance with the provisions of the Condominium Law and the Condominium Documents.**

4.2 **Membership and Voting Rights.** **Every Owner shall become a Member of the Council** upon acquisition of a fee simple ownership interest in a Unit. Membership is a right appurtenant to and inseparable from an Owner's title to a Unit, and such right of membership shall automatically transfer to any transferee of the fee simple title to a Unit at the time such title is conveyed or at such time as a land installment contract for the sale of a Unit is filed in the Office of the Clerk of Fayette County, Kentucky. The foregoing is not intended to include either the

Council itself if it owns any Unit or persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest or mortgage shall not terminate an Owner's membership. **There is one membership for each Unit owned.** If a Unit is owned by more than one person or entity, such persons or entities have one membership in common. Developer is a Member as long as it owns fee simple title to any Unit. **Voting rights of Members are as set forth in the Bylaws.**

- 4.3 **Service of Process.** The registered agent to receive service of process for the Council **until the Owners' assumption of control of the Council (as described in the Bylaws) is FBT LLC, 400 West Market Street, 32nd Floor, Louisville, KY 40202.** At any time, the Board may remove any person or entity acting as registered agent for the Council and designate a successor. Upon the Owners' assumption of control of the Council, the name and address of the President of the Council shall be filed with the Secretary of State of Kentucky as its registered agent on the appropriate form for a non-profit corporation.
- 4.4 **Board of Directors.** The number and composition, and the **authority, rights, powers, and responsibilities of the Board of Directors of the Council shall be as provided in the Bylaws.**
- 4.5 **Powers of the Council.** The Council has all of the powers and rights granted to it by the **Condominium Law, the Nonprofit Corporation Law, and the Condominium Documents.**
- 4.6 **Common Elements.** Subject to the rights and obligations of the Owners as set forth in this Master Deed, including without limitation the obligations of Owners with respect to the Limited Common Elements, the **Council is responsible for the exclusive management and control of the Common Elements, including all improvements thereon, and shall keep them in a good, clean, attractive, and sanitary condition, order, and repair, in accordance with the terms and conditions of this Master Deed.**
- 4.7 **Personal Property and Real Property for Common Use.** The Council may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Council, may accept any real or personal property, leasehold, or other property interests, if any, conveyed to it; provided that any transaction costing the Council more than \$50,000 in any calendar year (the "Threshold") **must be authorized in advance by a vote of the Owners exercising a majority of the voting power of the Council.** **The amount of the Threshold shall be adjusted on January 1 annually, beginning in 2006,** to reflect adjustment in the Consumer Price Index for All Urban Consumers, All Items published by the United States Department of Labor, Bureau of Labor Statistics, All City Average (1982-1984 = 100) (the "CPI"). If the CPI becomes unavailable to the public for any reason, a comparable index shall be substituted by the Board based upon changes in the cost of living or purchasing power of the

consumer dollar published by a governmental agency, major financial institution, university or recognized financial publisher.

- 4.8 **Rules and Enforcement.** In addition to adopting and enforcing Rules in the instances specifically mentioned in this Master Deed, the Board may, from time to time, adopt and enforce such further reasonable Rules as it deems necessary or desirable to promote harmony, to serve the best interests of Owners, Occupants, and the Council as a whole, and to protect and preserve the nature of the Condominium Property. All Rules shall be consistent with this Master Deed, and a copy of the Rules shall be furnished by the Board to the Owners and Occupants of each Unit prior to the time when the Rules become effective. The Board shall have the power to impose sanctions on any Owner in violation of the Rules, including without limitation: (i) reasonable monetary fines and interest which shall be considered Unit Assessments; (ii) suspension of the right to vote as a Member of the Council; and (iii) suspension of the right to use the Common Elements, provided that ingress and egress to such Owner's Unit or Garage shall not be denied.. In addition, the Board shall have the power to seek relief in any court of competent jurisdiction for violations or to abate unreasonable disturbances. If the Board expends funds for reasonable attorneys' fees or other expenses in connection with enforcing this Master Deed or the Rules against any Owner or Occupant, then such fees or expenses together with interest shall be considered a Unit Assessment.
- 4.9 **Implied Rights.** The Council and the Board may each exercise any other right or privilege expressly provided by the laws of the Commonwealth of Kentucky and the Condominium Documents, and every other right or privilege reasonably implied from the existence of any right or privilege granted in the Condominium Documents, or reasonably necessary to effect any such right or privilege.
- 4.10 **Contracts and Management Agreements.** The Board may retain and employ on behalf of the Council a managing agent (the "Management Company"), which may be Developer or an affiliate of Developer, and may delegate to the Management Company such duties as the Board might otherwise be authorized or obligated to perform. The compensation of the Management Company shall be a Common Expense.
- 4.11 **Books and Records.** The Council shall maintain books and records as required by the Condominium Law, the Nonprofit Corporation Law, and the Bylaws. Upon the reasonable request of any Member, Eligible Mortgagee, or Eligible Insurer, the Council shall make available for inspection all books, records, and financial statements of the Council, in accordance with the Bylaws and any Rules pertaining to such inspections.
- 4.12 **Security.** The Council may, from time to time, provide measures of security on or with respect to the Condominium Property or the Owners, Occupants, and their invitees and licensees. Notwithstanding the foregoing, the Council is not and shall not be deemed to be a provider of security, shall have no duty to provide any

security on the Condominium Property or with respect to the Owners, Occupants, or their invitees or licensees, and shall not be held liable for any loss, cost, or damage arising by failure of the Council to provide security or the effectiveness (or lack of effectiveness) of any security measures it undertakes. The obligation to provide security lies solely with each Owner and Occupant individually.

5. MAINTENANCE AND REPAIR

5.1 **Council Responsibility.** The Council, to the extent and at such times as the Board, in its exercise of business judgment, determines to allocate funds therefor, shall maintain, repair, and replace all improvements constituting a part of the Common Elements, including without limitation the swimming pool and clubhouse; storm water detention ponds; landscaped areas including lawns, shrubs, and trees; paved areas including walkways, drives, private roadways, and Surface Parking Areas; entrances; lobbies; patio area wells; exterior lights; fireplace stacks and chimneys (if any); the structural and exterior portions of the Buildings; and any other improvements which are a part of the Common Elements and that do not constitute part of a Unit. The Council is also responsible to maintain, repair, and replace when necessary any of the following, to the extent they serve more than one Unit: plumbing, electrical, or other utility lines, pipes, wires, conduits, ducts, vents, plugs, and switches. The Council shall maintain, repair, and replace when necessary deck railings and any concrete or wood material that is part of any patio floor or deck floor. Notwithstanding the foregoing, the Council shall not be responsible for the cleaning and housekeeping of any of the patios or decks that are Limited Common Elements, such cleaning and housekeeping being the responsibility of the Owner of the Unit to which the particular Limited Common Element is appurtenant. The Council shall caulk and paint the exterior of the following, to the extent that they are part of the Building exterior: (i) Garage doors and door trim; (ii) Unit entry doors and door trim; and (iii) windows and window trim; provided, however, that Owners are responsible for the interior maintenance and for the replacement of these items, subject to Council guidelines, to the extent that replacement is not covered by the Council's Property Insurance Policy. The Council shall maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements that are part of the Common Elements, including the Limited Common Elements. Except to the extent, if any, that a loss is covered by the Property Insurance Policy maintained by the Council, and then only to the extent the net proceeds, after deductibles, are available for that purpose, the Council shall have no responsibility to pay the cost of repair or maintenance of any Unit, Garage, or component thereof, or the cost of repair, maintenance, or replacement of personal property within a Unit or Garage, or any improvements made by Owners.

5.2 **Owner Responsibility.** Each Owner shall repair and maintain the Unit, Garage, and all components thereof and improvements thereto, owned by that Owner. Each Owner is responsible for any repair, maintenance, housekeeping, and cleaning of Limited Common Elements appurtenant to that Owner's Unit unless it

is expressly made the responsibility of the Council pursuant to Section 5.1. Without limiting the generality of the foregoing, each Owner's responsibility includes repair, maintenance, and replacement of all windows, screens, and doors, including the frames, sashes, jambs, locks, weather stripping, and hardware; fixtures, faucets, and shower heads within the Unit; the portion of a fireplace, if any, within the interior of a Unit and the vents and dampers accessible from the Unit's interior. Repair and maintenance of the Unit also includes repair, maintenance, and replacement when necessary of any of the following, to the extent that they serve just one Unit, even if they are located outside the boundaries of the Unit: plumbing, electrical, or other utility lines, pipes, wires, conduits, ducts, vents, plugs, and switches; and connections or fixtures which may be located outside the boundaries of a Unit but which serve or are entirely for the benefit of just one Unit.

- 5.3 **Right of Council to Repair or Maintain.** The Council shall be entitled to enter any Unit, Garage, or Limited Common Element to perform any repair or maintenance that is the Council's right or responsibility under this Master Deed after providing notice, if any is required, pursuant to Section 13.7. The Council may but is not obligated to perform any maintenance or repair, on behalf of an Owner, under the following circumstances: (i) if an Owner fails to make a repair or perform maintenance required of that Owner; (ii) if the need for maintenance or repair of any Common Element or of any other Unit or Garage is caused by the negligent or intentional act of any Owner or Occupant; or (iii) if the need for maintenance or repair results from the failure of any Owner or that Owner's predecessors in title to pursue to conclusion in a timely manner a claim under any warranty, whether express, implied, or imposed by law. If all or part of the cost of any repair or maintenance undertaken by the Council under any circumstance described in the immediately preceding sentence is not covered by the Property Insurance Policy maintained by the Council, whether because of a deductible or otherwise, the portion of such cost not so covered by insurance shall constitute a Unit Assessment on the Unit of the Owner who caused the need for such maintenance or repair. The determination that such maintenance or repair is necessary, or has been so caused, shall be made by the Board.

6. UTILITY SERVICES AND TAXES

- 6.1 **Utility Services.** Each Owner shall pay for utility services separately metered or separately charged by the utility company to that Unit. For utility services that are not separately metered (e.g., electric service for Garages, water and sewer charges), the Council may individually meter each Unit or Garage in the future. Until such time, each Owner shall reimburse the Council in the form of a Unit Assessment for that Owner's share of any utility cost not separately metered which the Board, or its designee, reasonably determines is for that Unit's or Garage's service or that is attributable to use by that Owner's Unit or Garage. At the Board's option, all or any of such utility costs may be included in Common Expenses and charged as part of the Annual Assessment. The Council may assess

an additional amount against a Unit to recover the cost of any extraordinary amount used by that Unit, as determined by the Board in its reasonable discretion. All other utility costs, including those attributable to the Common Elements, shall be Common Expenses paid by the Council and included in the Annual Assessment.

- 6.2 **Taxes.** Until each Unit is separately assessed for real estate taxes and assessments by Fayette County, Developer shall pay the real estate taxes and assessments attributable to the Condominium Property. To the extent not paid by each Owner to Developer at the closing of the purchase of the Unit, the Council shall (i) reimburse Developer for any real estate taxes and assessments attributable to Units or Garages not owned by Developer, and (ii) assess each such Unit or Garage for its share of such real estate taxes and assessments as a Unit Assessment. The share of those taxes and assessments attributable to any Unit or Garage not owned by Developer shall be computed by multiplying the total taxes and assessments for all of the Condominium Property by the undivided interest in the Common Elements attributable to that Unit or Garage. Such amount shall be prorated between Developer and each Owner for each party's respective period of ownership of the Unit or Garage. The calculation by the Council of the Units' and Garages' shares of taxes and assessments shall be binding upon the Owners. Once the Units and Garages are separately assessed, each Owner shall pay real estate taxes and assessments attributable to the Owner's Unit or Garage directly to Fayette County.

7. INSURANCE

7.1 Property Insurance Coverage.

7.1.1 The Council shall obtain for the use and benefit of all Owners and their Eligible Mortgagees insurance on the Buildings, structures, and other improvements now or at any time constituting a part of the Condominium Property. Such policy of insurance (the "Property Insurance Policy") shall provide coverage against loss or damage by vandalism, malicious mischief, sprinkler leakage, fire, lightning, extended coverage perils, and such perils as are from time to time customarily covered with respect to condominium projects similar to the Condominium Property in construction, geographical location, and use, including all perils normally covered by a standard "special perils" endorsement. The Property Insurance Policy shall insure against earthquake peril if such coverage is available at a reasonable price, as determined by the Board. The Property Insurance Policy:

7.1.1.1 shall cover (i) each Building's structure including Common Elements and the drywall in each Unit, as well as standard finishes installed by Declarant (paint, wall covering, floor covering, fixtures, cabinetry, appliances) for the Units and Garages prior to conveyance of the Unit or Garage by

Declarant to the first Owner thereof, but not for any improvements made by any Owner subsequent to the first conveyance; and (ii) any personal property owned or leased by the Council;

7.1.1.2 shall be in an amount reasonably calculated to be at least 100% of the current replacement value of the Condominium Property (as reviewed on an annual or other basis reasonably determined by the Board in conjunction with its periodic analysis of replacement reserves), without deduction for depreciation, exclusive of (i) any improvements made by Owners, and (ii) the cost of land, foundations, footings, excavation, and other elements which are not ordinarily insured against loss, and such requirement may be satisfied with a "guaranteed replacement cost" endorsement, if available at a reasonable price as determined by the Board;

7.1.1.3 shall have, if available and commonly required by prudent institutional mortgage investors in the area in which the Condominium Property is located, an "agreed amount endorsement," "inflation guard endorsement," "earthquake endorsement," a so-called "construction code endorsement," and, if applicable, a "steam boiler and machinery coverage endorsement," which provides that the insurer's minimum liability per accident at least equals the lesser of \$2,000,000 or the insurable value of the structure housing the boiler or machinery (or a separate, stand-alone boiler and machinery coverage policy);

7.1.1.4 may have a deductible on any single loss in such amount as reasonably determined by the Board after carefully considering and comparing the increased premium costs resulting from a low deductible with the lower premium costs but higher per loss risk resulting from a high deductible, together with all other pertinent factors (which deductible may be payable by one or more Owners pursuant to Section 5.3 or by the Council in the event of a loss, depending on the circumstances of the loss);

7.1.1.5 shall provide that no mortgagee shall have any right to apply the proceeds to the reduction of any mortgage debt except as otherwise provided in this Master Deed;

7.1.1.6 shall provide that despite any clause giving the insurer the right to restore damage in lieu of a cash settlement, such right shall not exist in case the Condominium Property is removed

from the provisions of the Condominium Law pursuant to this Master Deed;

- 7.1.1.7 shall provide that the insurer shall have no right to contribution from any insurance which may be purchased by any Owner as permitted below;
 - 7.1.1.8 shall contain either a waiver by the insurer of any increased hazard clause or a provision stating that the coverage shall not be affected by the act, omission, or neglect of any person, unless such act, omission or neglect is within the knowledge and control of the Council prior to the occurrence of the loss;
 - 7.1.1.9 shall contain the standard mortgage clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage lenders in the area in which the Condominium Property is located and which appropriately names Eligible Mortgagees and Eligible Insurers;
 - 7.1.1.10 shall contain provisions requiring the issuance of certificates of coverage to each Owner and to any Eligible Mortgagee upon request, and further requiring the issuance of written notice to the Council and to each Eligible Mortgagee and Eligible Insurer not less than 30 days prior to any expiration, substantial modification, or cancellation of such coverage;
 - 7.1.1.11 shall provide for the release by the insurer of any and all rights of subrogation or assignment, and all causes and rights of recovery, against any Owner or Occupant of the Condominium Property, for any loss occurring to the insured property resulting from any of the perils insured against under the Property Insurance Policy;
 - 7.1.1.12 shall be primary, even if an Owner has other insurance that covers the same loss; and
 - 7.1.1.13 shall be without prejudice to the right of any Owner to obtain individual contents or chattel property insurance.
- 7.1.2 Notwithstanding anything to the contrary contained herein, no Owner may at any time purchase individual policies of insurance covering any item which the Council is required or elects to insure. If any Owner purchases such a policy, such Owner shall be liable to the Council for any damages, expenses, or losses suffered or incurred by the Council as a result, and the Council shall have, with respect to any such damages, expenses, or losses not paid to it by such Owner, the same lien rights

provided in this Master Deed for failure of an Owner to pay Assessments.

- 7.1.3 The cost of the Property Insurance Policy, as well as any other insurance obtained by the Council pursuant to this Article 7, shall be a Common Expense.
- 7.1.4 If the Property Insurance Policy lapses for any reason whatsoever, any Eligible Mortgagee may remedy that lack of insurance by purchasing policies to supply that insurance coverage. The funds so advanced shall be deemed to have been loaned to the Council; shall bear interest at a per annum rate of two percent higher than the basic interest rate in any note secured by the Eligible Mortgagee's mortgage against any Unit; and shall be immediately due and payable by the Council to the Eligible Mortgagee upon written demand. The repayment of such obligation shall be secured by a Special Assessment against all Owners under Section 10.6 of this Master Deed and shall not require a vote of the Members of the Council, anything to the contrary in this Master Deed or the Bylaws notwithstanding.
- 7.1.5 The name of the insured under the Property Insurance Policy shall be set forth therein substantially as follows: "Citation Pointe Condominium Owners' Council, Inc., for use and benefit of the individual Owners (designated by name if required by law)." Loss payable shall be in favor of the Council as trustee for each Owner and each Owner's Eligible Mortgagee, if any.

7.2 **Liability Insurance Coverage.** The Council shall insure itself, the Board of Directors, and all Owners and Occupants against liability for bodily injury or death and for injury to or destruction of property arising out of occurrences upon, in, or about the Common Elements. Such policy of insurance (the "Liability Insurance Policy"):

- 7.2.1 shall afford protection of not less than a combined single limit of \$1,000,000 under the basic package for bodily injury, illness, disease, death, and property damage, plus coverage in a minimum amount of \$5,000,000 for excess liability under an umbrella policy;
- 7.2.2 shall include without limitation coverage for legal liability of the insureds for property damage, bodily injury, and death in connection with the operation, maintenance, or use of the Common Elements; legal liability arising out of lawsuits related to employment contracts of the Council; and such other risks as are customarily covered with respect to developments similar to the Condominium Property in construction, location, and use, as determined by the Board;

- 7.2.3 shall include a “severability of interest” endorsement, if available, which shall preclude the insurer from denying a claim because of the negligent acts of the Council, the Board, or Owners or Occupants; and
- 7.2.4 shall require written notice to the Council, and to each Eligible Mortgagee and Eligible Insurer, not less than 30 days before any expiration, substantial modification, or cancellation of such coverage.

The Liability Insurance Policy shall not insure against liability for personal injury or property damage arising out of or relating to occurrences upon, in, or about the individual Units or Garages. Each Owner shall, at such Owner’s own expense, obtain public liability insurance for personal injury or damage arising out of the use and occupancy of such Owner’s Unit or Garage in accordance with Section 7.3.3.

7.3 Exceptions from Insurance Coverage.

- 7.3.1 The Property Insurance Policy shall not cover any improvements to Units or Garages installed by any Owner or Occupant. The Property Insurance Policy shall also not insure against losses normally covered by property insurance policies issued to protect individual Units and Owners’ or Occupants’ furniture and other personal property.
- 7.3.2 The Liability Insurance Policy shall not cover personal injury or property damage arising out of or relating to the use or occupancy of individual Units or Garages. The Council may also require that any liability for personal injury or property damage arising out of or related to Limited Common Elements be excluded from coverage.
- 7.3.3 Each Owner shall, at such Owner’s own expense, obtain (i) property insurance coverage in an amount reasonably calculated to be at least 100% of the current replacement value for improvements made by such Owner to the Unit or Garage and including coverage for backup of sewers and drains; and (ii) liability insurance coverage in an amount of at least \$100,000 combined single limit for personal injury or property damage arising out of the use and occupancy of, or occurrences within, such Owner’s Unit or Garage and, if the Council has elected to exclude coverage for the Limited Common Elements as provided above, the Limited Common Elements appurtenant to that Unit. Each Owner may, at such Owner’s own expense, obtain loss assessment coverage in the event of a Special Assessment in accordance with Section 8.2. All such insurance separately carried shall contain a waiver of subrogation of rights by the carrier as to the Council, its officers and Directors, and all other Owners and Occupants.

7.4 Directors’ and Officers’ Liability Insurance. The Council shall maintain, if available at a reasonable cost as determined by the Board, directors’ and officers’

liability insurance in an amount determined by the Board to cover any liability of Directors or officers of the Council.

7.5 **Fidelity Bonds.** The Council shall maintain blanket fidelity bonds for all officers, Directors, and employees of the Council and any other person (including volunteers) handling or responsible for funds of or administered by the Council. If the Council delegates some or all of the responsibility for handling of funds to a Management Company, the Management Company shall obtain fidelity bond coverage for those of its officers, employees, and agents who handle or are responsible for funds administered on behalf of the Council. Fidelity bonds shall:

7.5.1 be in such amount as is reasonably determined by the Board in its business judgment, but (i) shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Council or the Management Company at any given time during the term of the bond; (ii) shall not be less than a sum equal to three months' aggregate Annual Assessments on all Units and Garages plus reserve funds; and (iii) shall be written in an amount sufficient to provide protection which is at least 150% of the Council's annual estimated operating expenses and reserves.

7.5.2 name the Council as an obligee and as the named insured;

7.5.3 contain an appropriate endorsement to cover persons who serve without compensation if the policy would not otherwise cover volunteers or would exclude volunteers from the definition of "employee" or similar expression; and

7.5.4 provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 10 days' prior written notice to the Council, Eligible Mortgagees, and Eligible Insurers.

The premiums on such bonds shall be paid by the Council and shall be a Common Expense, unless the Board requires in any management contract that the premiums on fidelity bonds be paid by the Management Company.

7.6 **Insurance Proceeds.** The Council shall receive, hold, and properly dispose of the proceeds of all insurance acquired by it in trust for the Owners and their respective Eligible Mortgagees, as their interests may appear.

7.7 **Insurance Trustee.** Notwithstanding any of the provisions and requirements of this Master Deed relating to property or liability insurance, there may be named by the Board as an insured, on behalf of the Council, the Council's authorized representative, including any trustee with whom the Council may enter into any insurance trust agreement or any successor to such trustee (jointly, the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy

providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. Until the Owners' assumption of control of the Council pursuant to Section 4.1.2 of the Bylaws, the Eligible Mortgagee of the Units owned by Developer shall have the right to be appointed as Insurance Trustee. Each Owner shall be deemed to have appointed the Council or any Insurance Trustee as such Owner's attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of proceeds, the negotiation of losses, execution of releases of liability, execution of all documents, and the performance of all other acts necessary to accomplish such purpose.

- 7.8 **Insurance Carrier.** Each policy of insurance obtained by the Council pursuant to this Master Deed shall be obtained from an insurance company authorized to write such insurance in the Commonwealth of Kentucky which has a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's *Insurance Reports*, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's *Insurance Reports-International Edition*, an "A" or better rating in Demotech's *Hazard Insurance Financial Stability Ratings*, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's *Insurer Solvency Review*, or a "BBS" or better claims-paying ability rating in Standard and Poor's *International Confidential Rating Service*. Insurance issued by a carrier that does not meet the foregoing rating requirements shall be acceptable if the carrier is covered by reinsurance with a company that meets one of the A.M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings described in this Section.
- 7.9 **Modifications; Additional Insurance.** The insurance coverage required hereunder shall be subject to such modifications as the Board may determine to be necessary from time to time in accordance with sound management practice, and the Board shall have the right to obtain coverage other than that described herein as it may determine necessary.
- 7.10 **Lender Requirements.** Notwithstanding the provisions of this Article 7, the Council shall at all times maintain property insurance, liability insurance, and fidelity insurance coverage conforming with the requirements then governing the making of a first mortgage loan, or the purchase, guaranty, or insurance of first mortgages, by national institutional lenders, guarantors, or insurers of first mortgage loans on condominium units.
- 7.11 **Increase in Insurance Premiums.** If the particular use of any Unit, Garage, or any Limited Common Element appurtenant to that Unit, causes the premium for any insurance policy maintained by the Council pursuant to the terms of this Master Deed to be more expensive than it would otherwise be, the Board shall have the right to charge the Owner of such Unit or Garage as a Unit Assessment an amount equal to the increase in premiums caused by such activities.

8. CASUALTY DAMAGE

- 8.1 **Sufficient Insurance.** If any improvements forming a part of the Condominium Property suffer damage or destruction from any cause or peril insured against by the Council and the proceeds payable under the policy or policies insuring against such loss are sufficient to pay the cost of repair, restoration, or reconstruction, then such repair, restoration, or reconstruction shall be undertaken by the Council substantially in accordance with this Master Deed and the Drawings, and with the original plans and specifications, unless other plans and specifications are approved by Owners holding not less than 75% of the total voting power of the Council and by at least 67% of the total voting power of Eligible Mortgagees. Notwithstanding the foregoing, (i) if the damage or destruction is isolated to only one Unit or Garage and does not affect any Common Elements, then changes to the original plans and specifications need only be approved by the Owner of the damaged Unit or Garage; and (ii) no changes to the original plans and specifications as to any Unit or Garage may be made without the approval of the Owner and any Eligible Mortgagee of such Unit or Garage. Any such repair, restoration, or reconstruction shall be performed in a good and workmanlike manner and shall comply with all applicable building and fire codes and all other federal, state, and local laws, rules, and regulations. The insurance proceeds shall be applied by the Council in payment of such repair, restoration, or reconstruction. However, if the Owners are entitled (a) under Section 8.4 to elect to sell the Condominium Property or to withdraw the same from the provisions of this Master Deed, and the Owners do so elect within 30 days after such damage or destruction, or (b) if the Owners are entitled under Section 8.5 to elect not to repair, restore, or reconstruct, and the Owners so elect within 30 days after such damage or destruction, then the repair, restoration, or reconstruction shall not be undertaken, and the insurance proceeds shall instead be applied in accordance with those Sections.
- 8.2 **Insufficient Insurance.** If any improvements forming a part of the Condominium Property suffer damage or destruction from any cause or peril which is not insured against by the Council or, if insured against, the insurance proceeds are insufficient to pay the cost of repair, restoration, or reconstruction, then unless the Owners, within 90 days after such damage or destruction, elect to withdraw the Condominium Property from the provisions of this Master Deed (if they are entitled to do so pursuant to Section 8.4), or elect not to repair, restore, or reconstruct (if they are entitled to do so pursuant to Section 8.5), such repair, restoration or reconstruction of the Condominium Property so damaged or destroyed shall be undertaken by the Council at the expense of all of the Owners in proportion to their undivided interests in the Common Elements, all in accordance with the provisions of Section 8.3, but subject to the provisions of Section 5.3. If after reasonable notice any Owner refuses or fails to pay such Owner's share of such cost in excess of available insurance proceeds, such Owner's share may be advanced by the Council, and the amount so advanced shall be charged to such Owner as a Unit Assessment.

8.3 Procedure for Repair, Restoration, or Reconstruction. Immediately after a casualty causing damage to any portion of the Condominium Property, the Council shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that immediately before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors deems necessary. The insurance proceeds and the sums deposited with the Council from collections of Special Assessments against Owners on account of such casualty shall constitute a construction fund which shall be applied by the Council to the payment of the cost of repair, restoration, or reconstruction of the Condominium Property as the work progresses. It shall be presumed that the first monies disbursed in payment of such costs shall be from insurance proceeds. If there is a balance in any construction fund after payment of all costs of the repair, restoration, or reconstruction for which the fund is established, such balance shall be disbursed to the Council and treated in the manner described in Section 10.11 for Common Profits or Common Surplus. Each Owner shall be deemed to have delegated to the Board of Directors or any Insurance Trustee such Owner's right to adjust with insurance companies all losses under the insurance policies referred to in Article 7 of this Master Deed, other than those policies obtained by such Owner.

8.4 Non-Restoration – Substantial Damage or Destruction of All Buildings.

8.4.1 In the event of substantial damage to or destruction of 50% or more of the Units where there is some damage or destruction in every Building, the Owners may, by affirmative vote of not less than 75% of the voting power of the Council, elect not to repair or restore such damage or destruction, provided that Eligible Mortgagees exercising at least 67% of the total voting power of Eligible Mortgagees also vote not to repair or restore such damage or destruction. Immediately after such election, provided that Developer then owns any Unit and Developer's right to expand the Condominium pursuant to Article 12 is still in effect, all of the Condominium Property not owned by Developer shall be offered for sale to Developer by written notice to Developer. Developer shall have 30 days after receipt of such notice to make an offer to the Owners for the purchase of the Condominium Property by sending such offer in writing to the President of the Council. If the Owners and Developer cannot agree on the purchase price for the Condominium Property, the Council (acting on behalf of the Owners) and Developer shall each appoint a qualified real estate appraiser not more than 10 days after Developer's offer is received by the President of the Council. The two appraisers shall select a third appraiser not more than five days after their appointment, and the three appraisers shall notify the Council and Developer in writing not more than 30 days after the selection of the third appraiser of their determination of the fair market value of the Condominium Property. If all three appraisers do not agree, the value shall be that determined by any two of the three appraisers, or if two

appraisers do not agree, by the third appraiser that was selected by the appraisers selected by Developer and the Owners.

8.4.2 Developer shall notify the President of the Council in writing not more than 10 days after its receipt of the appraisers' determination whether it elects to buy the Condominium Property at the fair market value so determined. If Developer does not elect to buy the Condominium Property, the Condominium Property shall be subject to an action for sale as upon partition at the suit of Owners exercising a majority of the voting power of the Council. If Developer elects to buy the Condominium Property, all of the Owners shall convey the Condominium Property by general warranty deed or deeds, subject only to (i) easements, covenants, restrictions, and agreements of record; (ii) real estate taxes and assessments not yet due and payable; and (iii) the provisions of this Master Deed, the Bylaws, and the Condominium Law. Such conveyance shall be made upon Developer's payment, by bank cashier's check payable to the President of the Council as trustee for all of the Owners, of the fair market value so determined, less (a) the Kentucky conveyance fee and transfer tax, and (b) the Owners' pro rata share of service payments, real estate taxes and assessments on the Condominium Property in accordance with the then prevailing custom in Fayette County. The closing of such conveyance shall take place not more than 60 days after Developer gives the President of the Council its written election to buy, at a date, time, and place designated by Developer.

8.4.3 In the event of any such sale to Developer or partition sale of the Condominium Property after such election by the Owners and Eligible Mortgagees, the net proceeds of the sale together with the net proceeds of insurance, if any, and any other indemnity arising because of such damage or destruction and payable to the Council, shall be considered as one fund and shall be distributed to all Owners in proportion to their respective undivided interests in the Common Elements. However, no Owner shall receive any portion of such proceeds until all liens and encumbrances on such Owner's Unit and Garage have been paid, released or discharged, including without limitation any unpaid Assessments. In the event of a sale to Developer, and notwithstanding the provisions above to the effect that the conveyance shall be subject only to certain easements and restrictions and certain taxes and assessments, to the extent, if any, that the first mortgage on any Unit and Garage is not paid from such proceeds, such first mortgage shall remain in effect against such Unit and Garage and Developer shall receive a credit against the purchase price equal to the unpaid balance of such mortgage.

8.5 Non-Restoration – Substantial Damage or Destruction of Less than All Buildings.

8.5.1 In the event of substantial damage to or destruction of at least 67% of the Units or Garages in any Building, but not all Buildings are damaged or destroyed, the Owners may, by affirmative vote of not less than 75% of the voting power of the Council which must include the Owners of Units or Garages in the Building(s) so damaged or destroyed (the "Affected Owners"), elect not to repair or restore such damage or destruction, provided that Eligible Mortgagees exercising at least 67% of the total voting power of Eligible Mortgagees and Developer if Developer then owns any Unit also vote not to repair or restore such damage or destruction. Within 30 days after such election, the Council and the Affected Owners shall agree upon the purchase price for such Units or Garages. If the Council and the Affected Owners cannot agree on the purchase price, the Council and the Affected Owners shall each appoint a qualified real estate appraiser within 10 days thereafter. The two appraisers shall select a third appraiser not more than five days after their appointment, and the three appraisers shall notify the Council and the Affected Owners in writing not more than 30 days after the selection of the third appraiser of their determination of the fair market value of the Units and Garages owned by the Affected Owners. If all three appraisers do not agree, the value shall be that determined by any two of the three appraisers, or if two appraisers do not agree, by the third appraiser that was selected by the appraisers selected by Council and the Affected Owners. The Council shall determine the cost for demolition of the Building(s) damaged or destroyed and removal of the debris from the Condominium Property.

8.5.2 If the appraised valuation plus the cost of demolition and removal exceeds the amount of insurance proceeds and any other funds available to the Council by reason of such damage or destruction, the Council shall levy a Special Assessment upon all of the Owners (including the Affected Owners) for the difference. The Affected Owners shall convey their Units and Garages to the Council by general warranty deed or deeds, subject only to (i) easements, covenants, restrictions, and agreements of record; (ii) real estate taxes and assessments not yet due and payable; and (iii) the provisions of this Master Deed, the Bylaws, and the Condominium Law. Such conveyance shall be made upon Council's payment, by bank cashier's check payable to each of the Affected Owners, of the fair market value so determined, less (a) the Kentucky conveyance fee and transfer tax, (b) the Affected Owners' pro rata share of service payments, real estate taxes and assessments on the Affected Owners' Units in accordance with the then prevailing custom in Fayette County, and (c) the Affected Owners' share of the Special Assessment described above. The closing of such conveyance

shall take place not more than 60 days after receipt of the appraised valuation, at a date, time, and place designated by the Council.

8.5.3 In the event of any such sale to the Council after such election by the Owners and Eligible Mortgagees, the net proceeds of any insurance, any Special Assessment described in Section 8.5.2, and any other indemnity arising because of such damage or destruction and payable to the Council, shall be considered as one fund out of which the monies due the Affected Owners pursuant to Section 8.5.2 shall be paid. However, no Affected Owner shall receive any portion of such fund until all liens and encumbrances on such Owner's Unit and Garage have been paid, released or discharged, including without limitation any unpaid Assessments.

8.5.4 Within 30 days after such sale, the Council shall record an amendment to this Master Deed in the Office of the Clerk of Fayette County, Kentucky eliminating the sold Units and Garages from the Master Deed and reallocating the undivided interests in the Common Elements pertaining to the sold Units and Garages among the remaining Units and Garages. Each remaining Unit's and Garage's undivided interest in the Common Elements shall be determined by dividing the Unit's or Garage's Assigned Square Footage by the aggregate Assigned Square Footage of all remaining Units and Garages.

9. CONDEMNATION

The Council shall represent the Owners in any condemnation proceedings, negotiations, settlements, or agreements with the condemning authority for acquisition of the Common Elements, or any portion thereof. Each Owner hereby appoints the Board as its attorney-in-fact for such purpose. The awards or proceeds of any condemnation action shall be payable to the Council to be held in trust for the benefit of all Owners. If economically feasible, the awards and proceeds shall be used for the restoration and repair of the affected property. If the award is insufficient to pay for the necessary repair or restoration work, then the Board shall levy a Special Assessment against all Owners in accordance with their undivided interests in the Common Elements to raise funds for the deficit. Any excess award shall be allocated to the Owners in accordance with their undivided interests in the Common Elements, except as to any portion of such award attributable to direct or consequential damages suffered by a particular Unit or Units, or by a particular Garage or Garages, as determined by a court of competent jurisdiction, which portion shall be allocated among and distributed to the Owner or Owners of such Unit or Units (or Garage or Garages) and their Eligible Mortgagees, as their interests may appear, in the ratio that each such damaged interest bears to the aggregate interest of all Owners so damaged. If a partial taking results in the taking of an entire Unit, then the Owner of that Unit shall cease to be a Member of the Council, that Owner's undivided interest in the Common Elements shall be reallocated to the remaining Owners in proportion to their respective undivided interests, and Exhibit E shall be amended to reflect such reallocation. In the case of a total taking of all of the Condominium Property, the

Condominium shall be terminated and the entire award shall be payable to the Council, to be distributed to all Owners in accordance with their undivided interests in the Common Elements. No Owner shall receive any share of any awards pursuant to this Article 9 unless and until all liens, Assessments and encumbrances on the Owner's Unit and Garage have been paid, released, or discharged in full.

10. ASSESSMENTS

10.1 Operating Account; Reserve Fund. The Board shall establish an operating account for paying necessary costs and expenses of operating the Council, repairing and maintaining the Common Elements, and otherwise performing its obligations under the Condominium Documents. In addition, the Board shall establish a reserve fund for Capital Expenditures. The Board may collect, hold, disburse, or categorize the amounts allocated to the reserve fund in any manner necessary to ensure that they are not included in the Council's taxable income under the Internal Revenue Code, U.S. Treasury Regulations, or other rulings of the Internal Revenue Service. The operating account and reserve fund may be deposited with any institution or may be invested in any manner which the Board, in the exercise of its reasonable business judgment, deems beneficial for the Council. The proportionate interest of each Owner in the operating account and reserve fund shall be appurtenant to the Owner's Unit or Garage, shall not be separated from such Unit or Garage, and shall be deemed to be transferred with the fee simple title to such Unit and Garage.

10.2 Liability and Effective Date for Assessments. Each Owner shall pay to the Council the Assessments described in this Article 10. Assessments shall become the personal obligation of each Owner beginning on the date the Assessment or installment thereof becomes due and payable. No Owner shall be exempt from the obligation to pay Assessments by waiving the use or enjoyment of the Common Elements or by abandoning the Unit or Garage. No claim of the Council for Assessments shall be subject to setoffs or counterclaims. Any Assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is sent by the Board to the Owner of the Unit or Garage subject thereto at least 10 days prior to the due date thereof, or if payable in installments, the due date of the first installment thereof. Assessments shall run with the land, are necessary to continue the care, repair, and maintenance of the Condominium Property, and to continue to provide utility and security service. Accordingly, Assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankrupt estate.

10.3 Initial Assessment. Upon acquisition of record title to a Unit by the first Owner thereof other than Developer, a contribution shall be made by or on behalf of the purchaser, in the form of an initial assessment (the "Initial Assessment"), to the working capital of the Council in an amount equal to one-sixth of the Annual Assessment then in effect for that year for that Unit and, if applicable, Garage. The Initial Assessment is in addition to, and not in lieu of, the Annual Assessment

and shall not be considered an advance payment of such Annual Assessment. The Initial Assessment shall be deposited into the purchase and sales escrow and disbursed therefrom to the Council for use in covering expenses incurred by the Council pursuant to the terms of the Condominium Documents.

10.4 Unit Assessments.

10.4.1 Generally. The Board may levy an assessment against any Unit or Garage ("Unit Assessment") to reimburse the Council for costs incurred on behalf of the Unit, Garage, or the Limited Common Elements assigned to a Unit. Unit Assessments may include without limitation costs associated with making repairs that are the responsibility of the Owner (including the cost of any deductible allocable to an Owner under the Property Insurance Policy and payable pursuant to Section 5.3) or providing special services to an Owner; costs of additional insurance premiums specifically allocable to an Owner; costs of any utility expenses chargeable to an Owner but not separately billed by the utility company; and all other charges reasonably determined to be a Unit Assessment by the Board.

10.4.2 Fines. The Board may levy a Unit Assessment in the nature of a fine in an amount reasonably determined by the Board against any Unit or Garage if the Owner or Occupant of such Unit or Garage damages any portion of the Condominium Property or violates the Rules or any provision of this Master Deed or any other Condominium Document. Upon its determination to levy a Unit Assessment that is in the nature of a fine, the Board shall give an affected Owner written notice and the right to be heard by the Board or a duly appointed committee thereof in connection with such Unit Assessment, at least 10 days prior to the effective date of Unit Assessment that is in the nature of a fine.

10.4.3 Payment Date. Any Unit Assessments shall become due and payable on such date or dates as the Board determines following at least 10 days' prior written notice to the Owner whose Unit or Garage is subject to a Unit Assessment.

10.5 Annual Assessments. All costs of administration, repair, maintenance, and replacement of the Common Elements (subject to the obligations of Owners with respect to the Limited Common Elements as set forth herein) shall be Common Expenses. Each Owner shall pay to the Council a share of Common Expenses in the form of an annual assessment (the "Annual Assessment") according to each Owner's undivided interest in the Common Elements. The Board shall estimate the Common Expenses of the Council prior to the first closing of the sale of a Unit by Developer for the balance of such fiscal year, and thereafter before the beginning of each fiscal year, and shall establish the amount of the Annual Assessments. The Board may adjust the amount of the Annual Assessments from time to time during any fiscal year, if it determines that the current Annual

Assessments are either excessive or insufficient to maintain the Common Elements or pay other Council expenses. Common Expenses consist of the following:

- 10.5.1 cost of the maintenance, repair, and other services to be provided by the Council;
 - 10.5.2 costs of insurance premiums to be provided and paid for by the Council;
 - 10.5.3 costs of utility services not separately metered or otherwise charged to Owners;
 - 10.5.4 an amount deemed adequate by the Board, as reviewed and updated on a periodic basis, to maintain a reserve for the cost of unexpected repairs and replacements of capital improvements and for the repair and replacement of major improvements for which cash reserves over a period of time in excess of one year ought to be maintained;
 - 10.5.5 costs for the operation, management, and administration of the Council, including without limitation fees for property management, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Council, salaries, wages, payroll charges, and other costs to perform these services;
 - 10.5.6 any other costs constituting Common Expenses as determined by the Board and not otherwise herein specifically excluded; and
 - 10.5.7 all expenses attributable to any Unit owned by the Council or to any Limited Common Element reserved for or delegated to such Unit.
- 10.6 **Special Assessments.** In addition to Annual Assessments, the Board may levy, at any time, special assessments ("Special Assessments") to pay for Capital Expenditures to the extent that reserves therefor are insufficient, provided that Capital Expenditures for new improvements not replacing existing improvements (except new improvements required to comply with applicable law or governmental regulation, or to correct any deficiency or defect creating a safety or health hazard to Occupants) shall not be made nor funds assessed therefor, if the cost thereof in any fiscal year would exceed an amount equal to 10% or more of that fiscal year's budget, without the prior consent of Owners exercising at least 75% of the voting power of the Council and the consent of Eligible Mortgagees exercising at least 67% of the total voting power of Eligible Mortgagees. Any Special Assessments shall be prorated among all Units and Garages in proportion to their respective undivided interests in the Common Elements, and shall become due and payable on such date or dates as the Board determines following at least 10 days' prior written notice to the Owners.

10.7 Units Owned by Developer. Developer will assume the rights and obligations of an Owner in Developer's capacity as Owner of condominium ownership interests not yet sold, including the obligation to pay Common Expenses attaching to those interests, from the date the Master Deed is filed for record, or in the case of Units or Garages added pursuant to Article 12, from the date the amendment to Master Deed for such Units or Garages is filed for record.

10.8 Nonpayment and Remedies.

10.8.1 If any installment of an Assessment, or portion thereof, is not paid within 10 days after the same is due, the entire unpaid balance of the Assessment shall immediately become due and payable, without demand or notice, unless the Board in its sole discretion determines not to accelerate the remaining installments.

10.8.2 If any installment of an Assessment, or portion thereof, is not paid within 10 days after the same is due, the Board, at its option and without demand or notice, may (i) charge interest on the entire unpaid balance (including the accelerated portion thereof) at such rate as the Board from time to time establishes by Rule; or if the Board fails to establish a rate by Rule, at the rate of eight percent per annum; (ii) charge a reasonable, uniform late fee, as established by the Board from time to time by Rule; and (iii) charge the cost of collection, including reasonable attorneys' fees and other out-of-pocket expenses, as a Unit Assessment.

10.8.3 Assessments together with interest, late fees, and costs, including reasonable attorneys' fees, shall be a charge in favor of the Council upon the Unit against which each such Assessment is made.

10.8.4 If any Assessment, or portion or installment thereof, remains unpaid for 30 days after it becomes due and payable, then the delinquent Owner's voting rights upon Council matters and privileges to use the Common Elements, except for necessary ingress and egress to the Owner's Unit or Garage, shall be suspended until such Assessment is paid.

10.8.5 At any time after any Assessment, or portion or installment thereof, remains unpaid for at least 30 days after the same has become due and payable, a certificate of lien ("Certificate") for the unpaid balance of that Assessment, including all future installments thereof, interest, late fees, and costs, including reasonable attorneys' fees, may be filed in the Office of the Clerk of Fayette County, Kentucky pursuant to authorization given by the Board. The Certificate shall contain a description or other sufficient legal identification of the Unit against which the lien exists, the name or names of the record Owner or Owners thereof, and the amount of the unpaid portion of the Assessments and charges, and shall be signed by an officer or other

authorized agent of the Council. The lien provided for herein shall become effective from the time the Certificate was duly filed therefor, and shall continue in effect until released or satisfied in the same manner provided by law in the Commonwealth of Kentucky for the release and satisfaction of mortgages on real property, or discharged by the final judgment or order of a court in an action brought to discharge the lien. Any Owner who believes that an Assessment chargeable to that Owner's Unit (for which a Certificate has been filed by the Council) has been improperly charged against that Unit may bring an action in any court having jurisdiction for the discharge of the lien. In any such action, if it is finally determined that all or a portion of the Assessment has been improperly charged to the Unit, the court shall make such order as is just, which may provide for a discharge of record of all or a portion of the lien.

10.8.6 Each Assessment together with interest, late fees, and costs, including reasonable attorneys' fees, shall also be the joint and several personal obligation of the Owners who owned the Unit at the time when the Assessment fell due. The obligation for delinquent Assessments, interest, late charges, and costs shall not be the personal obligation of that Owner or Owners' successors-in-title unless expressly assumed by the successors, or required by applicable law; provided, however, that the right of the Council to a lien against that Unit or Garage, or to foreclose any lien thereon for delinquent Assessments, interest, late charges, and costs shall not be impaired or abridged by reason of the transfer, but shall continue unaffected thereby, except as provided in Section 10.9.

10.8.7 The Council, as authorized by the Board, may file a lien or liens to secure payment of delinquent Assessments, interest, late fees, and costs, including reasonable attorneys' fees, bring or join in an action at law against the Owner or Owners personally obligated to pay the same, and an action to foreclose a lien, or any one or more of these remedies. In any foreclosure action, the Owner or Owners affected shall be required to pay a reasonable rental for that Unit or Garage to the Council during the pendency of such action, the Council shall be entitled to the appointment of a receiver to collect such rent, and the Council shall be entitled to become a purchaser at the foreclosure sale. In any such foreclosure action, interest and the costs of such action, including reasonable attorneys' fees and receiver's fees, shall be added to the amount of any such Assessment, to the extent permitted by Kentucky law.

10.9 Priority. Notwithstanding the foregoing, the lien for Assessments provided for in Section 10.8 shall be prior to any lien or encumbrance subsequently arising or created, and subordinate to the lien of all real estate taxes and assessments and any

bona fide first mortgage on a Unit or Garage recorded prior to the date on which such lien of the Council arises. Any holder of a first mortgage which comes into possession of a Unit or Garage pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid installments of Assessments and charges against the mortgaged Unit or Garage which became due and payable prior to the date of sale, in the case of foreclosure, and in all other cases, prior to the date legal title vested in the successor Owner, and any such unpaid installments of Assessments or charges against such Unit or Garage shall be Common Expenses. The successor Owner of such Unit or Garage shall be obligated for Assessments accruing thereafter and for such Unit's or Garage's share of the unpaid installments of Assessments or charges that are Common Expenses. Failure to pay Assessments shall not constitute a default under any mortgage unless otherwise stated in the mortgage.

10.10 Certificate Regarding Assessments. The Board shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or authorized agent of the Council, setting forth whether the Assessments on a specified Unit or Garage have been paid. This certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

10.11 Distribution of Common Surplus or Common Profits. Any Common Surplus or Common Profits, to the extent not retained by the Board as reserves, shall be distributed among all Owners according to their undivided interests in the Common Elements, as and when determined in the discretion of the Board.

10.12 Adjustments. The Board in its reasonable discretion may, in order to fairly allocate Common Expenses, increase or decrease an Assessment for any Unit or Garage based upon a consideration of the following factors: floor area, number of occupants, demand on utilities by the occupants, or accessibility to Limited Common Elements. The Board in its reasonable discretion may abate or reduce an Assessment for a reasonable period of time during which any Unit is uninhabitable, through no fault of the Owner or Occupant, as a result of damage or destruction.

11. RESTRICTIONS

The Condominium Property shall be benefited by and subject to the following restrictions set forth in this Article 11. In addition to any other remedy provided in the **Condominium Documents or the Condominium Law**, the Council is empowered to levy fines upon Owners for any violation of a restriction set forth in this Article 11 or in any Rule, pursuant to a schedule of fines established by the Board, as may be revised from time to time. All unpaid fines shall be assessed to the Unit as a Unit Assessment, including without limitation reasonable attorneys' fees, and the Council shall have a lien for the same, which may be enforced by the terms of this Master Deed.

- 11.1 **Animals.** Except as hereinafter provided, no animals, livestock, or poultry of any kind shall be raised, bred, or kept in any Unit, Garage, or on the Common Elements. Notwithstanding the foregoing, household domestic pets not bred or maintained for commercial purposes may be kept in a Unit, provided that: (i) the keeping of animals shall be subject to such Rules as the Board may from time to time promulgate, including without limitation the right to place limits on the size, number, and type of such pets, and the right to levy enforcement charges against persons who do not clean up after their pets; and (ii) the right of an Occupant to keep an animal in a Unit shall be subject to termination if the Board, in its sole and unfettered discretion, determines that keeping of the animal constitutes a nuisance or creates a detrimental effect on the Condominium Property or Occupants.
- 11.2 **Architectural Control.** Except for improvements constructed by Developer or its designee during the initial construction of the Condominium Property, or as otherwise provided herein, no building, wall, or other structure or improvement shall be commenced, erected, or maintained upon the Condominium Property, or any part thereof, nor shall any interior or exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, color, and location of the same shall have been submitted to and approved in writing by the Board or its designated representative or representatives, in its or their sole and unfettered discretion. The Board shall review all proposed alterations and promptly give written approval or disapproval thereof. The Board shall disapprove proposed alterations if in the Board's judgment the same would adversely affect the Condominium Property as a whole or one or more Units, Garages, or Common Elements therein; provided that the Board shall not exercise aesthetic control over proposed alterations wholly within a Unit or Garage which would not be visible from the exterior of the Unit or Garage, and approval or disapproval of any such proposed alterations shall not be based in whole or in part on aesthetic considerations. Notwithstanding any repair or maintenance provision contained herein to the contrary, the Board may require as a condition of approval that the responsibility for repair and maintenance of the addition or improvement shall be the responsibility of the requesting Owner and all future Owners of that Unit or Garage.
- 11.3 **Common Element Uses.** The Common Elements (except the Limited Common Elements) shall be used in common by Owners and Occupants and their agents, servants, customers, invitees, and licensees, in accordance with the purposes for which they are intended, reasonably suited, and capable, and as may be required for the purposes of access, ingress to, egress from, use, occupancy, and enjoyment of Units. Unless expressly provided otherwise herein, no Common Elements shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation, or enjoyment of Owners and Occupants.
- 11.4 **Construction in Easements.** No structure, planting or other material shall be placed or permitted to remain within any easements for the installation and

maintenance of utilities and drainage facilities which may (i) damage or interfere with the installation and maintenance of utility lines, (ii) change the direction of the flow of drainage channels in the easements, or (iii) obstruct or retard the flow of water through drainage channels in the easement areas. The utility facilities within the easement areas shall be subject to the right of the Council to maintain the same, and its right to delegate that right to a public authority or utility.

- 11.5 **Conveyances.** To enable the Council to maintain accurate records of the names and addresses of Owners, each Owner shall notify the Council in writing within five days after an interest in that Owner's Unit (and, if applicable, Garage) has been transferred to another person. In addition, each Owner shall provide to a purchaser of that Owner's Unit a copy of this Master Deed and any amendments hereto, the Bylaws and any amendments thereto, and the Rules in effect at the time of such conveyance.
- 11.6 **Discrimination; Handicapped Accommodation.** No Owner (including Developer), the Council, nor their agents, employees or representatives, shall discriminate on the basis of race, religion, color, sex, handicap, familial status, or national origin (the "Factors") in the sale or rental of any Unit or Garage or in the use of the Common Elements. No action shall at any time be taken by the Council or the Board which would discriminate against any Owner because of any of the Factors. In addition, except as specifically otherwise provided herein, the Council shall not adopt or enforce Rules that treat unfairly any particular group of Owners, nor shall any amendment be made to the Condominium Documents which would treat such groups unfairly without the express written consent of all Owners. In addition, notwithstanding any provision hereof, or any Rule, the Board shall make reasonable accommodation if necessary to afford a handicapped person equal opportunity to use and enjoy the Condominium Property, provided, that nothing contained herein shall be construed to mean or imply that any such accommodation be at the cost of the Council unless the Council is required by law to pay such cost.
- 11.7 **Garages and Parking Spaces.** Garages and parking spaces in the Surface Parking Areas may be used solely for purposes of the parking of personal motor vehicles, and no other purposes, unless specifically authorized by the Board, in its sole discretion.
- 11.8 **Limited Common Element Uses.** Limited Common Elements shall be used and possessed exclusively by the Owners or Occupants of the Unit or Units served by the same, and shall be used only for the purposes intended and subject to the other provisions of this Master Deed and any Rules.
- 11.9 **Offensive Activities.** No noxious, illegal, or offensive activity shall be carried on, nor shall anything be kept, in any Unit or upon the Common Elements, nor shall any Unit or Common Element be used in any way or for any purpose, which may endanger the health, safety, or welfare of or unreasonably disturb any Occupant. This restriction shall not be construed so as to prohibit Developer from

construction activities consistent with recognized construction practices during development of the Condominium Property. No waste shall be committed on the Condominium Property.

11.10 Renting and Leasing. No Unit or part thereof shall be rented or used for transient or hotel purposes, being defined as: (i) rental under which persons are provided customary hotel services such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services; or (ii) rental to roomers or boarders, that is, rental to one or more persons of a portion of a Unit only. No lease for a Unit or Garage may be of less than an entire Unit or Garage. No Owner may enter into a lease for a Unit or Garage for a term of less than six months without the prior written approval of the Board, except that, during the period Developer sells Units or Garages pursuant to a common promotional plan, Developer may lease Units or Garages owned by Developer to Tenants on a month-to-month basis or for such other term as Developer deems appropriate. Every lease shall be in writing, shall provide that the lease shall be subject in all respects to the provisions hereof, and to the Rules promulgated from time to time by the Board, and shall provide that the failure by the Tenant to comply with the terms of the Condominium Documents shall be a default under the lease. Prior to the commencement of the term of a lease, the Owner shall notify the Board, in writing, the name or names of the Tenant or Tenants and all Occupants, and the time during which the lease term shall be in effect. The Council shall have the right to bring an action in its own name or in the name of the Owner or a *bona fide* first mortgagee in possession as landlord against any Tenant who is in violation of the Condominium Documents in order to bring eviction or summary proceedings or sue for damages. Owners who lease their Units or Garages are not relieved of their responsibility to comply with the terms of the Condominium Documents and are responsible for the cost of repairing any damage to any Unit, Garage, or Common Element caused by any Occupant of the Unit. No Tenant shall have the right to vote unless the Owner of the Unit gives such Tenant a written proxy in accordance with the Bylaws.

11.11 Rules. The Board may adopt and enforce Rules in accordance with Section 4.8.

11.12 Signs. No sign of any kind shall be displayed to the public view on the Condominium Property except: (i) on the Common Elements, signs regarding and regulating the use of the Common Elements, provided they are approved by the Board; (ii) on the Common Elements and model Units, signs advertising the sale or rental of Units or Garages by Developer during the period of its sale and rental of Units and Garages; or (iii) one sign in a window of any Unit advertising that such Unit is for sale or lease, provided that the sign no larger than is typical in the industry.

11.13 Structural Integrity. Nothing shall be done in any Unit or Garage, or in, on, or to the Common Elements, which may impair the structural or mechanical integrity of the Building or any improvement on the Condominium Property.

11.14 Unit Uses. Except as otherwise specifically provided in this Master Deed, no Unit shall be used for any purpose other than that of a residence for individuals living together as a single housekeeping unit, and uses customarily incidental thereto. Single housekeeping unit means (i) one or more natural persons who live together and are related by blood, adoption, or marriage (plus one or more minors who may not be so related); or (ii) **no more than two natural persons** (plus any children or parents of either of them) who live together, though not related by blood, adoption, or marriage. **No more than two persons for each bedroom in a Unit may use and occupy any Unit as a residence at any one time.** No Unit may be used as a **rooming house,** group home, commercial foster home, fraternity or sorority house, or any similar type of lodging, care or treatment facility. Notwithstanding the foregoing, an Occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, conducting personal business (**provided that such use does not involve customers, employees, licensees, or invitees coming to the Unit**), making professional telephone calls or corresponding, in or from a Unit, is engaging in a use expressly declared customarily incidental to residential use and is not in violation of these restrictions. In addition, it shall be permissible for Declarant to maintain, during the period of its sale of Units, one or more Units or Garages as sales and rental models and offices, and for storage and maintenance purposes, and the Council may maintain one or more Units or Garages for its use in fulfilling its responsibilities.

11.15 Vehicles. Parking of vehicles shall be limited to designated parking spaces in the Surface Parking Areas and the Garages. The Board may promulgate Rules restricting or prohibiting the parking of automobiles, vans, buses, inoperable vehicles, trucks, trailers, boats, and recreational vehicles on the Common Elements, including the Limited Common Elements, or parts thereof, and may enforce such Rules by levying enforcement charges in the form of Unit Assessments, having such vehicles towed away at the expense of the owner of the vehicle, or taking such other lawful actions as the Board, in its sole discretion, deems appropriate.

11.16 Visible Areas. Nothing shall be caused or permitted to be hung, placed, displayed, or maintained on the outside walls of the Buildings or otherwise outside of a Unit or Garage, or within or outside of any Limited Common Elements, or any part thereof, and no awning, canopy, shutter, or television or citizens' band or other radio antenna or transmitter, or any other device or ornament, or sign, insignia, banner, flag, or like item, shall be affixed to or placed upon an exterior wall or roof or any part thereof, or the exterior of any door or window, or in, on, or over a patio or deck, visible to the exterior, unless approved by the Board in its sole and unfettered discretion or required by applicable law to be permitted, but, in all such cases, subject to such Rules as the Board may adopt from time to time. In addition, the Board shall also have the right to require an Owner, at the Owner's expense, to install and maintain, with respect to that Owner's Unit, window covering or shading devices over windows of

specifications, including colors and materials, established by the Board. Except as so provided, nothing shall be caused or permitted to be hung or displayed on the inside of windows visible to the exterior.

11.17 While Developer Owns Any Unit. As long as Developer owns any Unit, no action may be taken nor may any Rule be adopted or amended that would: (i) directly or indirectly alter the exterior appearance of any part of the Condominium Property; (ii) reduce or discontinue any maintenance standard or practice in effect as of the date when the Owners assume control of the Council; (iii) affect Developer's sale, leasing, or use of any Units or Garages; (iv) otherwise affect Developer, any of its rights, or any Unit or Garage owned by it without, in each instance, first obtaining Developer's written consent, which consent may be withheld for any or no reason. Neither the Owners, the Council, nor their use of the Condominium Property shall interfere with Developer's sale, leasing, or use of its Units or Garages.

12. EXPANSION OF THE CONDOMINIUM

12.1 Reservation by Declarant. Declarant explicitly reserves the right to expand the Condominium from time to time and at any time, pursuant and subject to the terms of this Article, to include any or all of the Future Expansion Areas by adding additional Buildings and by constructing related improvements and additional Common Elements or Limited Common Elements to serve those additional Buildings. In the alternative, Declarant reserves the right to add all or any portion of the Future Expansion Areas to the Condominium Property as Common Elements by filing an amendment to this Master Deed at any time within the time period for expansion as set forth in Section 12.2. Until such time as Declarant exercises either option under this Section, the Future Expansion Areas shall be owned by Declarant, who shall be responsible for all incidents and obligations of ownership, including without limitation, the payment of real estate taxes and assessments. Declarant's right to expand the Condominium is without limitation and the consent of the Owners is not required for such expansion.

12.2 Time Period for Expansion. Declarant's right to expand the Condominium shall be exercised, if at all, on or before the date that is fifteen years after the date that this Master Deed is filed for record in the Office of the Clerk of Fayette County, Kentucky.

12.3 Additional Improvements. Declarant is not obligated to add any or all of the Future Expansion Areas to the Condominium and may elect to add one or more Buildings in the Future Expansion Areas in any order it desires and without being obligated to add any other Building. There are no limitations on the locations of any improvements that may be added to the Condominium as part of any expansion pursuant to this Section. Notwithstanding the foregoing, Declarant intends to cause all or part of the Future Expansion Areas to be added to the Condominium as Buildings compatible with and of substantially equal quality of construction, constructed of similar principal materials and with similar

architectural style as the Buildings and other improvements originally submitted to the Condominium; but Declarant reserves the right to change its plans and forego any or all of the foregoing without notice to, or the consent of, the Owners.

- 12.4 **Maximum Number of Units and Garages.** Declarant establishes that the maximum number of Units that may be added to the Condominium is 96, for a maximum total of 120 Units. Declarant establishes that the maximum number of Garages that may be added to the Condominium is 72, for a maximum total of 94 Garages. Other than as stated above, there is no limitation on the number of Units or Garages that may be constructed on the Property.
- 12.5 **Limitations on Units.** Although Declarant intends that the Units to be added to the Condominium pursuant to this Section will be compatible and substantially similar to the Units previously submitted, there are no limitations as to the types of Units that may be added.
- 12.6 **Amendment to Master Deed to Add Future Expansion Areas.** Each time Declarant exercises the option to expand the Condominium, Declarant shall execute and record an amendment to the Master Deed pursuant to the Condominium Law, and shall revise the Drawings accordingly. Each such amendment shall reallocate each Unit's and Garage's undivided interest in the Common Elements as set forth on Exhibit E, which shall be determined by dividing each Unit's or Garage's Assigned Square Footage by the aggregate Assigned Square Footage of all Units and Garages within the Condominium, including those added by such amendment. With each expansion of the Condominium and amendment to this Master Deed, the Units, Garages, and Common Elements added will be made subject to this Master Deed, and shall comprise one single Condominium, and the Owners will become members of the Council to the same extent and with the same effect and the same rights and obligations as all other Members.

13. EASEMENTS

Unless otherwise specifically limited herein, the following easements shall run with the land and pass with the title to the benefited properties, shall be appurtenant to the properties benefited thereby, shall be enforceable by the Owners of the properties benefited thereby, and shall be perpetual. The easements and grants provided herein shall in no way affect any other recorded grant or easement. Failure to refer specifically to any or all of the easements or rights described in this Master Deed in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or constitute an intention not to reserve said rights or easements, but the same shall be deemed conveyed or encumbered, as the case may be, along with the Unit.

- 13.1 **Easement of Enjoyment of Common Elements.** Subject to the limitations set forth herein, every Owner shall have a right and easement of enjoyment in, over, and upon the Common Elements and an unrestricted right of access to and from that Owner's Unit or Garage, subject to the right of the Board to make reasonable

Rules concerning the use and management of the Common Elements, including the Limited Common Elements, provided that no such Rule shall limit or prohibit the right of ingress and egress to a Unit or Garage. Each Owner shall be deemed to have delegated that Owner's right of enjoyment of the Common Elements to the Occupants of that Owner's Unit.

- 13.2 **Easement for Encroachments.** Each Unit, Garage, and the Common Elements shall be subject to and benefited by easements for encroachment on or by any other Unit or Garage and by or upon the Common Elements created or arising by reason of overhangs; or by reason of deviations in construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the improvements; or by reason of errors on the Drawings. Valid easements for these encroachments and for the maintenance of same shall and do exist as long as the encroachments remain, provided that the physical boundaries of the Units or Garages after the construction, reconstruction, or repair is substantially in accordance with the description of those boundaries appearing herein or in the Drawings.
- 13.3 **Easements for Support.** Every portion of any Buildings, any utility line, or other improvement on any portion of the Condominium Property contributing to the support of another part of the Building, utility line, or other improvement on the Condominium Property shall be burdened with an easement of support for the benefit of the Building, utility lines, or other improvements on the Condominium Property which may be supported thereby.
- 13.4 **Easement for Services.** Non-exclusive easements are hereby granted to all police, firefighters, ambulance operators, mail carriers or delivery persons, garbage collectors, and all similar persons, and to the local governmental authorities and the Council (but not to the public in general) to enter upon the Common Elements to perform their duties, subject to reasonable Rules as the Board may establish from time to time.
- 13.5 **Easement for Proper Operations.** Easements to the Council shall exist upon, over, and under all of the Condominium Property for ingress to and egress from, and the installation, replacing, repairing, and maintaining of, all utilities, including without limitation any of the following: water, sewer, gas, telephone, electricity, security systems, master television or satellite antennas, and cable television, and the driveway system and all walkways, and for all other purposes necessary for the proper operation of the Condominium Property. By these easements it shall be expressly permissible for the Council to grant to the appropriate public authorities or the providing companies and contractors permission to construct and maintain the necessary appurtenances and improvements on, above, across, and under the Condominium Property, as long as such appurtenances and improvements do not unreasonably interfere with the use and enjoyment of the Condominium Property. If any public authority or other company furnishing a service requests a specific easement, permit, or license, the Board has the right to grant such easement, permit, or license without conflicting with the terms hereof. In addition, if the

Board determines that the grant of easement rights to others is in the best interests of the Council, the Council has the right to grant the same, provided that use of the same would not, in the sole judgment of the Board, unreasonably interfere with the **use and enjoyment of the Condominium Property by Owners** and Occupants.

13.6 Easements Reserved to Developer. Non-exclusive easements are hereby reserved to Declarant, its successors and assigns, as follows:

13.6.1 For the periods provided for warranties in the Condominium Documents or by law, the right to enter upon the Condominium Property for the purpose of fulfilling any warranty obligations to Owners or the Council, including making repairs required pursuant to those warranties or pursuant to contracts of sale made with purchasers of Units.

13.6.2 For as long as Developer's option to expand the Condominium remains in effect, an easement burdening the Common Elements for access to and for the purpose of completing improvements to the Condominium Property or the Future Expansion Areas.

13.6.3 An easement burdening the Common Elements for the benefit of the Future Expansion Areas for purposes of ingress and egress to and from the Future Expansion Areas.

13.6.4 An easement burdening the Common Elements for the benefit of the Future Expansion Areas for the purpose of ensuring the availability of utilities to the Future Expansion Areas.

13.7 Right of Entry. The Council shall have a right of entry and access to, over, upon, and through all of the Condominium Property, including each Unit, Garage, and the Limited Common Elements, to enable the Council to perform its obligations, rights, and duties pursuant hereto with regard to maintenance, repair, restoration, or servicing of any items, things, or areas of or in the Condominium Property. In the event of an emergency, the Council's right of entry to a Unit, Garage, or appurtenant Limited Common Elements may be exercised without notice; otherwise, the Council shall give the Owners or Occupants of a Unit or Garage no less than 24 hours' advance notice prior to entering a Unit, Garage, or appurtenant Limited Common Elements.

13.8 Power of Attorney. Each Owner, by acceptance of a deed to a Unit or Garage, appoints the Council or its designated representative, as that Owner's attorney-in-fact, to execute, deliver, acknowledge, and record, for and in the name of such Owner, such deeds of easement, licenses, permits, and other instruments as may be necessary or desirable, in the sole discretion of the Board or its authorized representative, to further establish or effectuate the foregoing easements and rights. This power is for the benefit of each and every Owner, the Council, and

the real property to which it is applicable, runs with the land, is coupled with an interest, and is irrevocable.

14. RIGHTS OF ELIGIBLE MORTGAGEES

14.1 **Record of Mortgages.** Any Owner who mortgages an ownership interest in a Unit shall notify the Council in writing of the name and address of the mortgagee and of the subsequent payment, cancellation, or other alteration of the mortgage.

14.2 **Notice to Eligible Mortgagees and Eligible Insurers.** Any Eligible Mortgagee, upon written request to the Council (which request states the name and address of such Eligible Mortgagee and the designation of the Unit mortgaged), shall be entitled to timely written notice by the Council of the following:

14.2.1 any proposed addition to, change in, or amendment of this Master Deed, the Bylaws, the Articles, or the Drawings of a material nature, including any addition to, change in, or amendment of any provision thereof establishing, providing for, governing, or regulating any of the following: (i) voting rights; (ii) Assessment liens, the priority of such liens, or increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%); (iii) reductions in reserves for maintenance, repair, and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Elements (including the Limited Common Elements) affecting the mortgaged Unit, or rights to their use; (vi) redefinition of boundaries of the mortgaged Unit; (vii) conversion of Common Elements into Units and vice versa; (viii) expansion or contraction of the Condominium Property or the addition, annexation, or withdrawal of property to or from the Condominium Property; (ix) property or fidelity insurance requirements; (x) imposition of any restrictions on the leasing of Units, (xi) imposition of any restrictions on an Owner's right to sell or transfer the mortgaged Unit; (xii) if the Condominium consists of 50 or more Units, a decision by the Council to establish self-management if professional management previously had been required by the Condominium Documents or by an Eligible Mortgagee; (xiii) restoration or repair of the Condominium Property after damage or partial condemnation in a manner other than specified in the Condominium Documents; (xiv) termination of the legal status of the condominium after substantial destruction or condemnation occurs; or (xv) provisions expressly benefiting mortgage holders, insurers, or guarantors. No addition to, change in, or amendment of this Master Deed, the Bylaws, the Articles, or the Drawings shall be considered material if it is for the purpose of correcting technical errors, or for clarification only, or if it is otherwise permitted in such documents without the consent of Owners;

- 14.2.2 any proposed decision or action that would: (i) terminate professional management and establish self-management when professional management previously has been required by an Eligible Mortgagee; (ii) cause restoration or repair of the Condominium Property (after a casualty damage or partial condemnation) in a manner other than that specified in this Master Deed; (iii) cause the Condominium Property not to be restored after substantial damage or destruction; (iv) cause the Condominium Property to be renewed or rehabilitated; (v) cause significant new capital improvements not replacing existing improvements to be constructed; or (vi) without addition to, change in, or amendment of this Master Deed, the Bylaws, the Articles, or the Drawings, make any change with respect to the items described in Section 14.2.1;
- 14.2.3 any of the following: (i) any condemnation or casualty loss that affects either a material portion of the Condominium Property or the Unit on which it holds a mortgage; (ii) any delinquency for 60 days in the payment of Assessments or charges owed by the Owner of any Unit on which it holds a mortgage; (iii) any lapse, cancellation, or material modification of any insurance policy maintained by the Council; and (iv) any proposed action that requires the consent of a specified percentage of the total voting power of Eligible Mortgagees.

An Eligible Insurer which has sent a written request to the Council stating its name and address and the Unit designation or address of the Unit on which it holds, insures, or guarantees a mortgage shall be entitled to timely written notices of the events described in Section 14.2.3.

- 14.3 **Voting Rights.** An Eligible Mortgagee has one vote for each Unit on which it holds a first mortgage and for which the Council has received the notice or request pursuant to Sections 14.1 or 14.2. No action with respect to which Eligible Mortgagees are entitled to notice, as provided in Sections 14.2.1 and 14.2.2 may be taken without the consent of at least 51% of the total voting power of Eligible Mortgagees. Furthermore, no action to terminate the condominium regime or that would have that effect other than by reason of substantial destruction or condemnation of the Condominium Property, shall be taken without the consent at least 75% of the total voting power of Eligible Mortgagees. The consent of an Eligible Mortgagee shall be deemed given when such Eligible Mortgagee fails to respond in writing to any written notice of a proposed amendment within 30 days after such notice is sent to the most current address on file with the Secretary of the Council for such Eligible Mortgagee. In the amendment, or in a writing placed of record thereafter, Declarant or the Secretary of the Council, as the case may be, shall certify as to the Eligible Mortgagees' consents obtained. Notwithstanding anything to the contrary contained herein, consent of mortgagees for whom the Council has not received the notice or request pursuant to Sections 14.1 and 14.2 shall not be required to effect the amendments described in this

Section, nor shall such mortgagees be entitled to receive any notices, exercise any voting rights, or receive any insurance or condemnation proceeds to which they otherwise would be entitled under the provisions of this Master Deed if they were Eligible Mortgagees.

15. RESOLUTION OF DISPUTES

Unless otherwise required by Kentucky law, by the terms of a purchase agreement between Developer and an Owner, or by the terms of any applicable warranty on a Unit, Garage, or the Common Elements, any dispute, claim, controversy, question, or disagreement with regard to (i) construction of improvements on the Condominium Property, (ii) the Condominium Documents, or (iii) any other matter involving the Condominium (collectively, a "Dispute") shall be resolved in accordance with the procedures set forth in this Article 15.

15.1 Negotiation/Mediation. If a Dispute arises, the parties involved shall first attempt to resolve the Dispute. To this effect, the parties shall consult and negotiate in good faith with one another to reach an equitable solution that will satisfy both parties. If they do not reach a solution within a period of 15 business days, the parties shall consider using mediation to resolve the Dispute. If mediation is agreed upon, the mediation shall be conducted in accordance with either the commercial mediation rules or the supplementary procedures for residential construction disputes, as applicable, of the American Arbitration Council (the "AAA"), unless other rules are mutually agreed upon. The compensation of the mediator shall be shared equally by the parties. If the parties do not mutually agree to use mediation to resolve the Dispute, then upon written notice by a party to the other party, the Dispute shall be resolved pursuant to Section 15.2.

15.2 Arbitration. If a Dispute arises that cannot be resolved by the parties as provided in Section 15.1, the Dispute shall be resolved by final and binding arbitration in accordance with either the commercial arbitration rules or the supplementary procedures for residential construction disputes, as applicable, of the AAA, except as specifically modified below:

15.2.1 If the parties are unable to agree upon one arbitrator mutually acceptable to both parties (whose compensation shall be shared equally by the parties), then each party shall appoint one qualified individual to act as arbitrator and these two shall then select a third qualified individual as an arbitrator. Each party shall pay the compensation of the arbitrator selected by that party, and the compensation of the third arbitrator will be shared equally by the parties. Generally, all arbitrators should be attorneys or appropriate professionals with knowledge of the subject matter of the dispute and sufficient training to carry out the arbitration.

- 15.2.2 The parties recognize that a primary benefit each derives from entering into arbitration is that the delay and cost normally associated with litigation is avoided. Therefore, the parties agree that they shall not be entitled to conduct any discovery prior to the arbitration hearing except that:
- 15.2.2.1 The parties shall exchange copies of all documents they intend to introduce as evidence at the arbitration hearing at least 14 days prior to such hearing;
 - 15.2.2.2 Any party at its own expense may take the depositions of no more than two persons for a period not to exceed two hours each;
 - 15.2.2.3 The parties are permitted to take the deposition of any witness where (i) the sole purpose for taking the deposition is to use the deposition in lieu of the witness testifying at the hearing; and (ii) the witness is in good faith unavailable to testify in person at the hearing due to poor health, residence or employment more than 50 miles from the hearing site, or other comparable reason; and
 - 15.2.2.4 The parties may ask the arbitrator(s) to grant additional discovery to the extent permitted by the AAA rules if that party demonstrates that such discovery is necessary.
- 15.2.3 Any pre-hearing disputes shall be presented to the arbitrator(s) for expeditious, final and binding resolution.
- 15.2.4 The award of the arbitrator(s) shall be final and binding and, if requested by any party, shall become a judgment enforced by a court of competent jurisdiction.
- 15.3 **Reimbursement of Expenses.** If any party commences litigation in violation of this Article 15, such party shall reimburse the other parties to the litigation for their costs and expenses, including without limitation reasonable attorneys' fees, incurred in seeking dismissal of such litigation.
- 15.4 **Exceptions.** Nothing contained in this Article 15 shall preclude the Board or the Council from exercising their rights under (i) Section 4.8 with respect to violations or abatement of unreasonable disturbances, (ii) Section 10.8 with respect to unpaid Assessments, or (iii) Article 11 with respect to violations of restrictions. The terms of this Article 15 shall not apply to any of the foregoing situations at the option of the Board or the Council.

16. AMENDMENTS

16.1 **Method to Amend.** An amendment to this Master Deed (or the Drawings or the Bylaws), adopted with the consent of Owners and Eligible Mortgagees if so required, shall be executed with the same formalities as to execution as this Master Deed by two officers of the Council and shall contain such a certification that such amendment was duly adopted in accordance with the provisions of this Article 16. Any amendment adopted by the Declarant, a duly empowered successor Declarant, or the Board of Directors pursuant to authority granted pursuant to this Master Deed shall be duly executed by the Declarant, successor Declarant, or a Director, as applicable, with the same formalities as to execution as this Master Deed and shall contain the certification of such signor that such amendment is made pursuant to authority granted by this Master Deed. Any amendment duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same in the Office of the Clerk of Fayette County, Kentucky.

16.2 **Minor Changes.**

16.2.1 **By Declarant.** Until the earlier of the date Declarant no longer owns any Unit or the expiration of Declarant's right to expand the Condominium, Declarant may make the following amendments without the consent of the Owners: (i) to correct or further clarify the legal description of the Condominium Property; (ii) to modify Units or Garages owned by Declarant; (iii) to correct clerical, typographical, or factual errors or omissions; (iv) to make nominal changes in the Condominium Documents; (v) to clarify Declarant's original intent; (vi) to make any changes necessary or desirable to meet the requirements of any institutional lender or any agency which guarantees, insures, or purchases loans on Units; (vii) to add fences, landscaping, recreation facilities or paved areas to the Condominium Property; or (viii) to make changes in any unsold Unit or Garage covered by the Master Deed to assist Developer in its marketing of that Unit or Garage. No amendments for Minor Changes shall change the method of determining any Owner's undivided interest in the Common Elements as described in Section 2.5 or materially or adversely affect any Owner's rights, unless such Owner has consented in writing. Any amendment permitted to be made by Declarant hereunder without the consent of Owners shall be deemed not to materially or adversely affect any Owner's rights.

16.2.2 **By the Board.** Without a vote of the Owners, the Board of Directors may amend this Master Deed in any manner necessary for any of the following purposes: (i) to meet the requirements of institutional mortgagees, guarantors, and insurers of first mortgage loans, including FNMA, FHLMC, FHA, VA, and similar institutions; (ii) to meet the requirements of insurance underwriters; (iii) to bring this Master Deed

into compliance with the Condominium Law; or (iv) to correct typographical errors or obvious factual errors in this Master Deed.

16.2.3 Power of Attorney. Each Owner and that Owner's mortgagee, by acceptance of a deed to a Unit or Garage or a mortgage encumbering such Unit or Garage, shall be deemed to have consented to and approved all amendments of this Master Deed for Minor Changes and to have irrevocably appointed Declarant or the Board, as applicable, as such Owner's or mortgagee's proxy and attorney-in-fact to make any amendments to this Master Deed for such Minor Changes. This power-of-attorney runs with the land, is coupled with an interest, and is irrevocable.

16.3 Amendments by Owners.

16.3.1 Required Approval of Owners. Subject to Sections 16.3.2 and 16.3.3, this Master Deed may be amended only by a vote of at least 75% of the voting power of the Council, and the Bylaws may be amended only by a vote of at least 67% of the voting power of the Council.

16.3.2 Rights of Developer and Eligible Mortgagees No amendment shall have any effect on the rights of Developer, as long as it owns at least one Unit, if in Developer's sole judgment Developer's rights under this Master Deed would be adversely affected by such amendment. No amendment shall be binding upon any Eligible Mortgagee unless the requisite consent of Eligible Mortgagees is obtained. If Developer refuses to consent to an amendment to this Master Deed or the Bylaws, or if less than the requisite number of Eligible Mortgagees consent to such amendment, such amendment shall nevertheless be valid as among the Owners, provided that the rights of Developer or a non-consenting Eligible Mortgagee shall not be derogated. No provision of this Master Deed or the Bylaws may be modified or rescinded if the modification or rescission would conflict with the provisions of the Condominium Law.

16.3.3 Unanimous Approval. Notwithstanding the provisions of Section 16.3.1, the consent of all Owners shall be required for any amendment effecting a change in: (i) the fundamental purposes to which any Unit, Garage, or the Common Elements are restricted; (ii) the provisions of the Condominium Documents which govern voting rights; or (iii) the method of calculating the undivided interest in the Common Elements appertaining to a Unit or Garage as set forth in Section 2.5 or the liability for Common Expenses appertaining thereto.

17. MISCELLANEOUS

17.1 Covenants Running with the Land. The covenants, conditions, restrictions, easements, reservations, powers of attorney, liens, and charges created hereunder

or hereby shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in or to all or any part of the Condominium Property, and the Council, and their respective heirs, executors, administrators, successors, and assigns.

- 17.2 **Enforcement.** This Master Deed may be enforced by Developer, any Owner, the Council, and their respective heirs, successors, and assigns, against any person violating, or attempting to violate, any covenant or restriction, in accordance with Article 15. Any action by the Council may be commenced in its own name or in the name of the Board or managing agent.
- 17.3 **Waiver.** Failure of Developer, the Council, or any Owner to enforce such provisions in any manner shall not constitute a waiver of any right to enforce any violation of such provisions. By accepting a deed to a Unit or Garage, each Owner is deemed to waive the defenses of laches and statute of limitations in connection with the enforcement by the Council of the Condominium Documents.
- 17.4 **Termination.** Except as otherwise provided herein (including without limitation as provided in Section 8.4), by (i) the unanimous vote of 100% of the voting power of the Council, and (ii) the approval of 75% of the total voting power of Eligible Mortgagees, the Condominium Property may be removed from the Condominium Law by filing a certificate in the Office of the Clerk of Fayette County, Kentucky certifying that all outstanding taxes, assessments, liens, and encumbrances have been released or satisfied. Upon the filing of such certificate, the Condominium Property shall be deemed removed from the Condominium Law.
- 17.5 **Severability.** Invalidation of any one or more of these covenants, conditions, restrictions, or easements by judgment or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect. In the event any language of this Master Deed conflicts with mandatory provisions of the Condominium Law, the latter's requirements shall prevail and the conflicting language shall be deemed to be invalid and void, provided that such invalidity shall in no way affect any other provisions of this Master Deed, which provisions shall remain in full force and effect.
- 17.6 **Fines; Sanctions.** If any Owner violates the provisions of this Master Deed or the Rules in a manner that entitles the Council to levy a fine or impose a sanction on such Owner including the suspension of voting or rights to use the Common Elements, **then the Council shall provide the Owner at least 10 days' written notice of such Owner's default and the opportunity to be heard by the Board, or a duly appointed committee, prior to imposing the fine or sanction.**
- 17.7 **Captions.** The captions of the various provisions of this Master Deed are not part of the context hereof, but are merely labels to assist in locating the various provisions hereof. Such captions do not define or otherwise limit the scope or intent of the provisions of this Master Deed.

- 17.8 **Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, limited liability companies, other legal entities, men, or women, shall in all cases be assumed as though in such case fully expressed.
- 17.9 **Interpretation.** Article and section references contained herein refer to articles and sections within this Master Deed unless otherwise indicated. The provisions of this Master Deed shall be liberally construed to effectuate the purpose of creating a uniform plan for the establishment and the operation of a first-class condominium development. **In case of any conflict between any of the Condominium Documents, the Master Deed shall control.** Nothing herein shall be construed by implication to omit any of the rights, powers, and authorities otherwise granted by the provisions of the Condominium Law.
- 17.10 **Notices.** **Written notice mailed or delivered to an Owner's Unit shall constitute notice to that Owner, unless the Owner has delivered written notice to the Board of a different address for notices, in which event the mailing of the same to the last designated address shall constitute notice to that Owner.** Written notice mailed or delivered to Developer or the Council at the addresses set forth below shall constitute **notice to Developer or the Council, as the case may be.**

To Developer:

Citation Pointe, LLC
4901 Hunt Road, Suite 300
Cincinnati, OH 45242

To the Council:

Citation Pointe Condominium Council of Co-Owners, Inc.
4901 Hunt Road, Suite 300
Cincinnati, OH 45242

A copy of any notice to the Council shall be provided to the Management Company, if any. Notices shall be deemed given when personally delivered or two business days after being deposited in the United States mail. Notwithstanding the foregoing, at such time as the Owners assume control of the Council, notices to the Council shall thereafter be sent to the attention of the Board of Directors or the Secretary of the Council at the address of the Building or at such other address as the Council may provide to the Owners in writing.

- 17.11 **Limitation of Liability.** Subject to the provisions of any limited warranties provided by Developer to each Owner and the Council, and unless caused by Developer's gross negligence or willful misconduct, Developer or any of its agents, representatives, successors, or assigns, shall not be liable for any claims whatsoever arising out of, or caused by, its actions or inactions pursuant to any authority granted or delegated to it by the Condominium Documents, or in its capacity as developer, contractor, owner, manager, seller, or lessor of any interest

in the Condominium Property, whether or not such claim shall be asserted by any Owner, Occupant, the Council, the Board, or by any person or entity claiming through any of them, or on account of or arising from any injury to person or damage to or loss of property from whatever cause or action.

IN WITNESS WHEREOF, the undersigned has executed this Master Deed as of date first above written.

CITATION POINTE, LLC, an Kentucky limited liability company

By: Hills Homes of America, Inc., an Ohio corporation, its sole member

By: *Ian Guttman*
Ian Guttman, Vice President

STATE OF OHIO, COUNTY OF HAMILTON) ss:

The foregoing instrument was acknowledged before me, a notary public, this 4th day of November, 2005 by Ian Guttman, the duly authorized Vice President of Hills Homes of America, an Ohio corporation which is the sole member of CITATION POINTE, LLC, a Kentucky limited liability company, on behalf of the corporation and the company.



WENDY S. BASSMAN
Notary Public, State of Ohio
My Commission Expires
June 19, 2010

Wendy S. Bassman
Notary Public

This Instrument Prepared By:

Sandra L. Nunn

Sandra L. Nunn, Esq.
FROST BROWN TODD LLC
201 East Fifth Street, Suite 2200
Cincinnati, Ohio 45202
(513) 651-6800

CinLibrary/1528713.2

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Located in Fayette County, Kentucky and being all of Lot 2, containing 8.75 acres (more or less), as shown on the Final Record Plat of Belmont Farm (formerly Givens Property), of record in Plat Cabinet M, Slide 165, in the Office of the Clerk of Court of Fayette County, Kentucky.

Prior Instrument Reference: Deed Book 2539, Page 1, Fayette County, Kentucky Clerk's Office.

EXHIBIT B

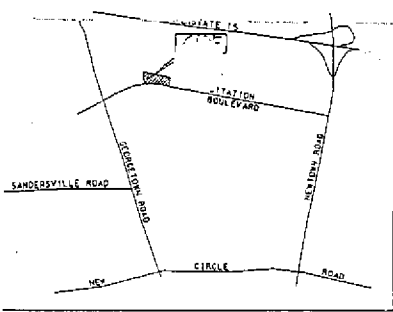
LEGAL DESCRIPTION OF THE CONDOMINIUM PROPERTY

Being a portion of Lot 2, known as 2312 Remington Way, as shown on the Easement minor Amended Subdivision Plat of Belmont Farm (formerly Givens Property) of record in Plat Cabinet M, Slide 374 in the office of the County Clerk of Fayette County, Kentucky. Containing approximately 3.41 acres.

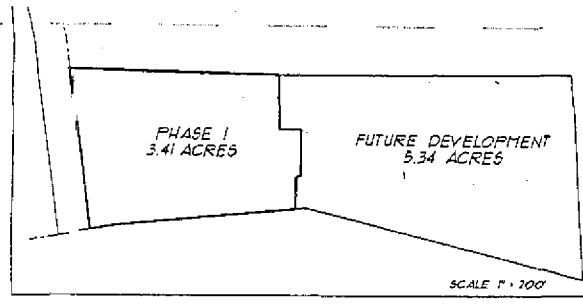
For metes and bounds survey showing the Condominium Property, see the Drawings.

EXHIBIT C

COPY OF DRAWINGS FOR THE CONDOMINIUM PROPERTY

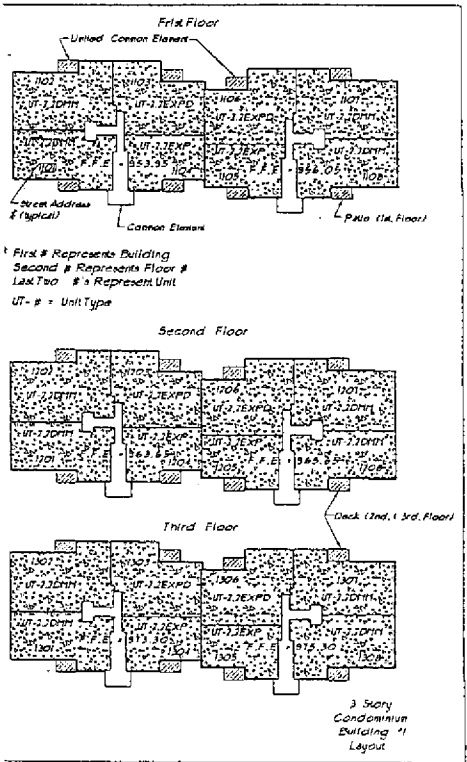


VICINITY MAP
(NOT TO SCALE)

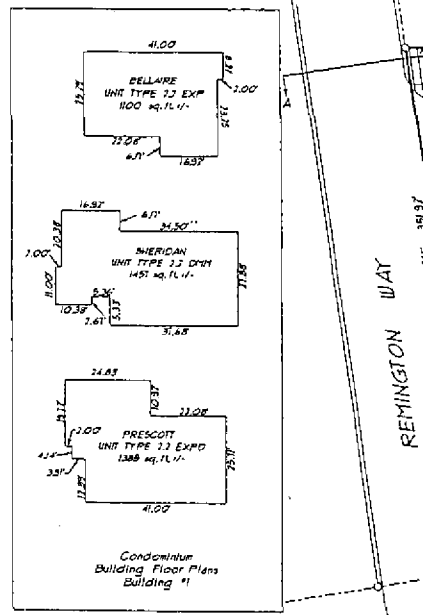
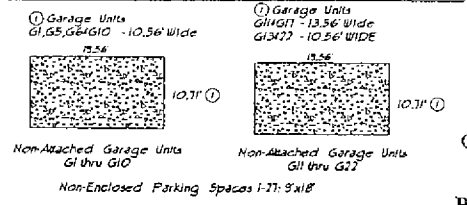


SCALE 1" = 100'

- Units
- Limited Common Element
- Common Area



1 First # Represents Building
 Second # Represents Floor #
 Lx17x20 #3 Represent Unit
 UT-# = Unit Type



**CONDOMINIUM PLAN
 CITATION POINTE CONDOMINIUMS
 CCNDOMINIUMS HORIZONTAL PROPERTY REGIME
 BUILDING 1
 KNOWN AS
 BELMONT FARM (FORMERLY GIVENS PROPERTY)
 LOT 2, 2312 REMINGTON WAY
 (A PORTION OF)
 LEXINGTON, FAYETTE COUNTY, KENTUCKY
 NOVEMBER, 2005**

by certify that the survey was made in accordance with the provisions of the laws and regulations of the State of Kentucky and that the same are true and accurate to the best of my knowledge.

Signature _____ Date _____
 SEE P.C. # 510.314 FOR SURVEY SPECIFICS, INCLUDING MONUMENTATION, SURVEY DATE, ACCURACY, ETC.

Engineer's Certificate
 I hereby certify that these plans accurately depict the layout, location, unit numbers, and dimensions of the units as built.

Signature _____ Date _____

Notary Public: _____
 I hereby certify that the above certification was signed before me as a _____

Notary Public, State of Kentucky.
 My commission expires _____



1. EACH CONDOMINIUM UNIT CONSISTS OF THE PORTION OF THE LOT BOUNDED BY THE INSIDE SURFACE OF THE EXTERIOR WALL OF THE UNIT, THE CENTER OF THE SHARED INSIDE WALL, THE INSIDE SURFACE OF THE FLOOR AND CEILING OF THE UNIT, THE APREMENTIONED CONDOMINIUM SPACE SUPERCEDES THE DIMENSIONS SHOWN IN THE CASE OF DISCREPANCIES.
2. BASED ON MAPS PREPARED BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT, THE IMPROVEMENTS SHOWN HEREON DO NOT LIE WITHIN THE FIA FLOOD HAZARD AREA.
3. EXTERIOR UTILITY METERS AND AIR CONDITIONING CONDENSER UNITS WHICH SERVE EACH UNIT ARE A PART OF THAT UNIT EVEN THOUGH THEY MAY BE WITHIN A GENERAL COMMON ELEMENT SHOWN ON THIS PLAN.
4. SEE FINAL RECORD PLAT, BELMONT FARM (FORMERLY GIVENS PROPERTY) LOTS 1 & 2, AT PLAT CABINET M, SLIDE 314 FOR COMMON AREA EASEMENTS AND RESTRICTIONS NOT SHOWN.

LEGAL DESCRIPTION BUILDING NUMBER 1:
 BEING A PORTION OF LOT 2, KNOWN AS 2312 REMINGTON WAY AS SHOWN ON THE EASEMENT MINOR ATTENDED SUBDIVISION PLAT OF BELMONT FARM (FORMERLY GIVENS PROPERTY) OF RECORD IN PLAT CABINET M, SLIDE 314 IN THE OFFICE OF THE COUNTY CLERK OF FAYETTE COUNTY KENTUCKY.

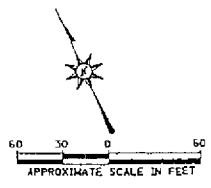
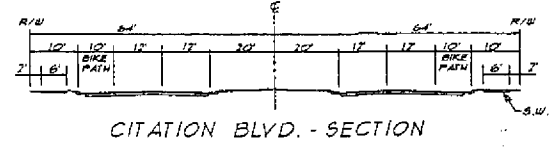
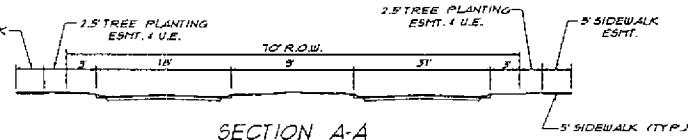
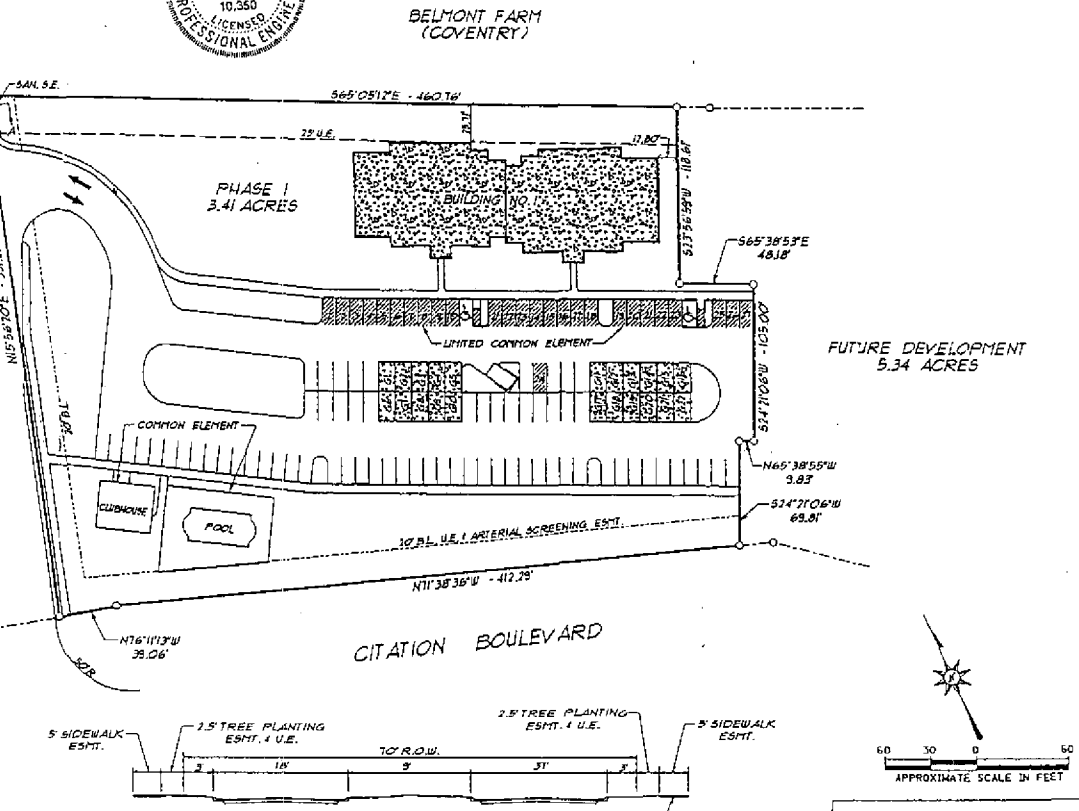


EXHIBIT C, Page 1

