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REGISTER OF DEEDS

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DECLARATION OF CONDOMINIUM FOR BRADLEY CREEK STATION CONDOMINIUM

Prepared by and return to:

Murchison, Taylor & Gibson, PLLC
1979 Eastwood Road, Suite 101
Wilmington, NC 28403

**DECLARATION OF CONDOMINIUM FOR
BRADLEY CREEK STATION CONDOMINIUM**

THIS DECLARATION OF CONDOMINIUM FOR BRADLEY CREEK STATION CONDOMINIUM (the “**Declaration**”) is made this 3 day of JUNE, 2020, by **BRADLEY CREEK STATION LLC**, a North Carolina limited liability company (the “**Declarant**”), pursuant to the provisions of the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes (the “**Act**”).

BACKGROUND STATEMENT

WHEREAS, Declarant is the owner of that certain real property located in New Hanover County, North Carolina, and more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (the “**Land**”). Declarant has or will have constructed on the Land one building (the “**Building**”) initially containing a total of thirteen (13) condominium units and certain Common Elements (as defined below) such as parking areas, sidewalks and other improvements. Declarant intends by this Declaration to subject the Land, Building, Common Elements and all other improvements on the Land (collectively, the “**Condominium Property**”) to the terms and provisions of the Act, and to establish a plan for the individual ownership, subject to certain protective covenants, conditions, restrictions, limitations, reservations, grants of easement, rights-of-way, liens, charges and equitable servitudes as set forth in this Declaration, of condominium units located on the Land and the co-ownership by the individual owners of the condominium units, as tenants in common, of the Common Elements of the condominium established hereby.

WHEREAS, Declarant desires to reserve the right to create and/or construct additional units and/or buildings on the Land or on nearby land, as more particularly described herein;

WHEREAS, Declarant has also deemed it desirable to create a nonprofit, incorporated owners’ association which will be delegated and assigned powers of maintaining and administering the Common Elements and facilities on the Land; administering and enforcing the covenants and restrictions created in this Declaration; levying, collecting and disbursing the assessments and charges created in this Declaration; and taking any steps or performing any acts deemed necessary or appropriate to preserve the values of condominium units within the Condominium Property and to promote the recreation, health, safety and welfare of the unit owners.

STATEMENT OF DECLARATION

NOW, THEREFORE, pursuant to the provisions of the Act, Declarant hereby declares that the Condominium Property shall be held, conveyed, divided, encumbered, hypothecated, leased, rented, used, occupied and improved subject to this Declaration including all covenants, conditions, restrictions, limitations, reservations, easements, rights-of-way, liens, charges and equitable servitudes herein contained, all of which are hereby declared, established, expressed, and agreed (i) to be for the benefit and protection of the Condominium Property, its desirability, value and attractiveness; (ii) to be for the benefit of the Owners (as defined below) of Units (as defined below) in the Condominium Property; (iii) to run with the land and be binding upon all parties having or acquiring any right, title or interest in the Condominium Property or any portion thereof whether as sole owners, joint owners, lessees, tenants, occupants or otherwise; (iv) to inure, but only in the manner herein specified, to the benefit of every

portion of the Condominium Property and any interest therein; and (v) to inure to the benefit of and be binding upon each successor and assignee in interest of each Owner and of Declarant. Any conveyance, transfer, sale, assignment, lease or sublease of a Unit in the Condominium Property will be and hereby is deemed to incorporate by reference and will be subject to the provisions of this Declaration herein contained. The provisions of this Declaration will be enforceable by Declarant (until Declarant has conveyed title to all Units), any Owner of a Unit (including Declarant) or such Owner's successor in interest, by the Association (as defined below), any person, firm, corporation or other association duly authorized by the Association to enforce all or any one or more of the provisions hereof, and to the extent that Mortgagees (as defined below) are expressly granted rights hereunder, by any Mortgagee.

ARTICLE 1 DEFINITIONS

Unless it is plainly evident from the context that a different meaning is intended, the following terms, words, and phrases shall have the following meanings when used in this Declaration:

Section 1.1 Act. "Act" shall mean and refer to Chapter 47C of the North Carolina General Statutes, as it may be amended from time to time.

Section 1.2 Additional Property. "Additional Property" shall mean and refer to the real property described in Exhibit C attached hereto and incorporated herein by reference, or any part thereof, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way appertaining to said real property, which Declarant may, but is not required to, annex to the Condominium from time to time as additional components or phase(s) of the Condominium.

Section 1.3 Allocated Interest. "Allocated Interest" shall mean and refer to the undivided percentage interest in the Common Elements allocated to each Unit, as set forth in **Article 2** and on Exhibit B attached hereto. The Allocated Interest shall be used to determine each Unit's share of Common Expenses in the Association, and to allocate the division of proceeds, if any, resulting from any casualty loss or eminent domain proceedings, and to determine each Unit's share of the votes in the Association.

Section 1.4 Assessments. "Assessments" shall mean the Common Assessment, Special Assessment, and Individual Unit Assessment.

Section 1.5 Association. "Association" shall mean and refer to **Bradley Creek Station Condominium Owners Association Inc.**, a corporation incorporated and existing under the North Carolina Non-Profit Corporation Act pursuant to and in accordance with this Declaration and the Act.

Section 1.6 Building. "Building" shall mean and refer to the building located within the Land containing the Units and the Common Elements, as well as any additional buildings which may be constructed and added to the Condominium in the future.

Section 1.7 Bylaws. "Bylaws" shall mean and refer to the bylaws of the Association and all amendments to such bylaws which may from time to time be adopted.

Section 1.8 Common Assessment. "Common Assessment" shall have the meaning set forth in **Section 15.4**.

Section 1.9 Common Elements. “Common Elements” shall mean and refer to all portions of the Condominium other than the Units, and as more particularly described in **Article 4** of this Declaration.

Section 1.10 Common Expenses. “Common Expenses” shall mean and refer to any and all expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with the Condominium Documents and Section 47C-1-103(5) of the Act.

Section 1.11 Common Surplus. “Common Surplus” shall mean and refer to all funds and other assets of the Association, including excess of receipts of the Association from assessments, rents, profits and revenues from whatever source, over the amount of Common Expenses.

Section 1.12 Condominium. “Condominium” (also known as the “Bradley Creek Station Condominium”) shall mean and refer to the Condominium Property that is hereby submitted to the terms of the Act by this Declaration, as the same may be expanded from time to time by the annexation of the Additional Property described in **Exhibit C**, or any part thereof.

Section 1.13 Condominium Documents. “Condominium Documents” shall mean and refer to this Declaration, the Plans, the Articles of Incorporation of the Association, the Bylaws, and the Rules and Regulations governing the use of the Condominium Property, as amended and supplemented from time to time, and all attachments and exhibits thereto.

Section 1.14 Condominium Property “Condominium Property” shall mean and refer to the Land, the Units, the Building and Common Elements subjected to this Declaration.

Section 1.15 Declarant. “Declarant” shall mean and refer to Bradley Creek Station LLC, a North Carolina limited liability company, its successors, or any party to which it assigns its rights as the Declarant under this Declaration.

Section 1.16 Declarant Control Period. “Declarant Control Period” shall mean refer to the period commencing on the date of this Declaration and continuing until the earlier of (i) one hundred twenty (120) days after conveyance of the seventy-five percent (75%) of the Units (including Units which may be created pursuant to the Special Declarant Rights) to an Owner other than Declarant; (ii) two (2) years after Declarant ceases to offer Units for sale in the ordinary course of business; (iii) two (2) years after any Development Right to add Units in Article 5 was last exercised; or (iv) the date upon which Declarant voluntarily surrenders control of the Condominium by recording a notice to that effect in the Office of the Register of Deeds of New Hanover County, North Carolina. During the Declarant Control Period, Declarant reserves the right to appoint and remove any Executive Board members subject to the provisions of Section 8.3.

Section 1.17 Declaration. “Declaration” shall mean and refer to this Declaration of Condominium, as it may be amended in the future.

Section 1.18 Development Rights. “Development Rights” shall have the meaning set forth in **Section 5.1**.

Section 1.19 Executive Board. “Executive Board” shall mean and refer to the governing body from time to time of the Association, as constituted in accordance with the Articles of Incorporation of the Association, the Bylaws and the Act.

Section 1.20 Individual Unit Assessment. “Individual Unit Assessment” shall have the meaning set forth in **Section 15.6** of this Declaration.

Section 1.21 Land. “Land” shall mean and refer to the real property described in **Exhibit A** attached hereto and such Additional Property as may be subjected to this Declaration pursuant to the exercise of Development Rights.

Section 1.22 Limited Common Elements. “Limited Common Elements” shall mean and refer to those portions of the Common Elements allocated by this Declaration (including any Supplemental Declaration executed by the Declarant pursuant to an exercise of its Development Rights), or by the terms of Sections 47C-2-102(2) or (4) of the Act, for the exclusive use and benefit of one or more, but fewer than all, of the Units, to the exclusion of any other Units, as more fully described in Article 4 of this Declaration, and as depicted on the Plans.

Section 1.23 Mortgage. “Mortgage” shall mean and refer to a mortgage or deed of trust constituting a lien on a Unit.

Section 1.24 Mortgage Vote. “Mortgage Vote” shall have the meaning set forth in **Section 19.1**.

Section 1.25 Mortgagee. “Mortgagee” shall mean and refer to the owner and holder of the indebtedness secured by a Mortgage that has notified the Association in writing of its name and address, and that it holds a Mortgage on a Unit. Such notice will be deemed to include a request that the Mortgagee be given the notices and other rights described in **Article 19**.

Section 1.26 Permittees. “Permittees” shall mean and refer to a Unit Owner’s guests, invitees, licensees and tenants.

Section 1.27 Plans. “Plans” shall mean and refer to the plat, plans and specifications for the Building and Condominium Property, including any amendments thereto, recorded under the name of the Condominium in the Public Records, including the plan of condominium recorded in Condominium Plat Book **19**, Page **157**, of the Public Records, and any amendments or supplements to those plans that may be attached to the Supplemental Declaration required by **Section 5.4** of this Declaration if the Declarant exercises a Development Right, or required by **Section 6.1** or **Section 6.2**, in the event of a permitted subdivision or reallocation of Unit boundaries.

Section 1.28 Public Records. “Public Records” shall mean and refer to the Office of the Register of Deeds of New Hanover County, North Carolina.

Section 1.29 Repair Work. “Repair Work” shall mean all maintenance, repair, and rebuilding or replacement work, including costs of plans and specifications, supervision and other related costs, and including capital and non-capital repairs and replacements.

Section 1.30 Rules and Regulations. “Rules and Regulations” shall mean all rules and regulations adopted by the Executive Board in accordance with the terms of this Declaration and the Bylaws.

Section 1.31 Second Tier Condominium Instruments. “Second Tier Condominium Instruments” shall mean and refer to any Declaration of Condominium recorded in the Public Records imposing pursuant to the Act and the terms of this Declaration, a separate condominium regime on any

one or more of the Units, thereby further dividing the Unit(s) into Second Tier Condominium Units and Second Tier Condominium Common Elements.

Section 1.32 Second Tier Condominium Units. “Second Tier Condominium Units” shall mean and refer to any units formed pursuant to Second Tier Condominium Instruments.

Section 1.33 Special Assessment. “Special Assessment” shall have the meaning set forth in **Section 15.5** of this Declaration.

Section 1.34 Special Declarant Rights. “Special Declarant Rights” shall have the meaning set forth in Section 47C-1-103 of the Act and as more particularly described in **Article 5** of this Declaration.

Section 1.35 Special Declarant Rights Period. “Special Declarant Rights Period” shall commence as of the recordation of this Declaration and shall continue for forty (40) years thereafter unless the Declarant records a statement of termination of such rights in the Public Records prior to such time.

Section 1.36 Supplemental Declaration. “Supplemental Declaration” shall have the meaning set forth in **Section 5.4**.

Section 1.37 Units. “Units” shall mean the initial thirteen (13) units constructed upon the Land as more particularly described in **Article 3** below, and such additional Units as may hereafter be created by the exercise of Development Rights or otherwise as provided in this Declaration.

Section 1.38 Unit Owner or Owner. “Unit Owner” or “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit or subdivided portion thereof, but shall exclude those persons or entities having an interest in any Unit as merely security for the payment or performance of an obligation.

Section 1.39 Utility Facilities. “Utility Facilities” shall mean and refer to any sanitary sewer, water, power, gas, data, telephone, communication, drainage or other utility service line, cable, pipe, main, meter, conduit, connection or system.

In addition, the definitions set forth in Section 47C-1-103 of the Act are incorporated in this Declaration by reference, and the terms defined therein shall have the meanings set forth therein when used in this Declaration or the Condominium Documents; unless those terms are expressly defined otherwise in this Declaration or unless it is plainly evident from the context that a different meaning is intended.

ARTICLE 2

OWNERSHIP OF UNITS AND ALLOCATED INTEREST IN COMMON ELEMENTS

Each Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Unit Owner of each Unit shall also own, as an appurtenance to the ownership of each said Unit, an Allocated Interest in the Common Elements. The Allocated Interest appurtenant to each Unit as of the date of this Declaration is as set out in **Exhibit B** attached hereto and made a part hereof. The Allocated Interest in the Common Elements appurtenant to each Unit has been determined by dividing the square foot area of each Unit as shown on the Plans (the “**Unit Area**”) by the aggregate Unit Area of all Units. The Allocated Interest may be reallocated as further provided in **Article 4**. The Allocated Interest in Common Elements appurtenant to each Unit shall not be conveyed,

devised, encumbered or otherwise dealt with separately from such Unit, and the Allocated Interest in the Common Elements appurtenant to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such Allocated Interest is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Any conveyance, encumbrance, judicial sale or other voluntary or involuntary transaction which purports to grant any right, interest or lien in, to or upon a Unit shall be null, void and of no effect insofar as the same purports to affect any interest in a Unit and its Allocated Interest in Common Elements, unless the same purports to convey, devise, encumber or otherwise trade or deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which describes said Unit by the Identifying Number assigned thereto in **Exhibit B** without limitation or exception, shall be deemed and construed to affect the entire Unit and its Allocated Interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its Allocated Interest in the Common Elements by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety.

ARTICLE 3 **DESCRIPTION OF CONDOMINIUM**

Section 3.1 General. The Land on which the Building and other improvements is located is entirely in New Hanover County, North Carolina, contains approximately 5.86 acres, and is more particularly described on **Exhibit A** attached hereto and incorporated herein by reference. The Land and the remainder of the Condominium Property are subjected to the terms of the Act by this Declaration. The name of the Condominium is "Bradley Creek Station Condominium."

Section 3.2 Building. The Building located on the Land is steel framed with a combination of brick masonry and hardie board siding exterior. The Building consists of three (3) levels and initially consists of thirteen (13) Units. The location and dimensions of the Building are shown on the Plans. If Declarant exercises its Development Right to create additional Buildings and/or Units, the Supplemental Declaration required by **Section 5.4** of the Declaration shall contain a revised set of Plans which shall show the location and dimensions of the new Building and/or Units.

Section 3.3 Units. The location of Units within the Building, their dimensions, and their floor and ceiling elevations, are shown on the Plans. The initial number of Units created hereunder is thirteen (13). Pursuant to **Article 5** of the Declaration, Declarant has reserved a Development Right to create up to an additional twenty seven (27) Units, so that the maximum number of Units that may be created by Declarant is forty (40). The identifying number for each Unit is set forth on **Exhibit B** and on the Plans. If Declarant exercises its Development Right to create additional Units and/or Buildings, the Supplementary Declaration required by **Section 5.4** of this Declaration shall contain a new **Exhibit B** and a revised set of Plans, which shall contain new identifying numbers for the Units thereby created. The foregoing shall not limit the number of Second Tier Condominium Units that may be created pursuant to Second Tier Condominium Instruments.

Section 3.4 Unit Boundaries. The boundaries of each Unit are as follows:

(a) **Upper Boundary:** The horizontal plane of the underside of the structural decking above. In addition, in Units that are located on the third (3rd) floor of the Building and are located underneath a sloped structural roofing deck, the horizontal plane will be measured to the underside of the sloped decking and its varying height above the third (3rd) floor slab.

(b) Lower Boundary: The horizontal plane of the top surface of the concrete slab within each Unit.

(c) Vertical Boundaries: The vertical planes which include the interior surface of the metal studs of all demising walls between the Unit and adjacent Units, extended to intersections with each other, and with the upper and lower boundaries. In addition, the face of the studs which create walls adjacent to common spaces such as common corridors and elevator and mechanical shafts serving the entire Building. In addition, the interior face of the studs which create the exterior walls of the Building.

(d) As provided in Section 47C-2-102(1) of the Act, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of the perimeter walls, floors, and ceilings are part of the Unit. As provided in Section 47C-2-102(2) of the Act, if any chute, flue, duct, wire, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit shall be a Limited Common Element allocated to that Unit and any portion thereof serving more than one Unit, or any portion of the Common Elements, shall be a Common Element.

(e) Certain Units, as shown on the Plans, may include special pieces of equipment such as generators, air conditioning compressors, meter boxes, utility connection structures, and grease traps that serve a sole Unit but are detached or semidetached from the Unit or the Building. Unless such special pieces of equipment are specifically designated as a Limited Common Element as provided in **Article 4**, those shall be deemed part of the respective Unit notwithstanding their non-contiguity .

Section 3.5 Utility Easements. Declarant hereby declares that each Unit shall be held, sold and conveyed subject to a perpetual non-exclusive easement on, under and across all portions of the Unit on which are located Utility Facilities serving one or more of the other Units or the Common Elements for the purpose of maintaining, repairing and replacing the Utilities Facilities now or hereafter located in such areas.

ARTICLE 4 **COMMON ELEMENTS**

Section 4.1 Common Elements. The Common Elements include all portions of the Condominium that are not part of the Units, including without limitation:

(a) The Land.

(b) All improvements located within the Land outside of the Units, including without limitation a paved entrance drive from Oleander Drive, a paved surface parking area, common trash receptacles, any walkways and landscaped areas, the interior stairwells and interior corridors within the Building, as well as the Limited Common Elements described in **Section 4.2** below.

(c) The foundations, roofs, columns, girders, beams, supports, exterior and interior load-bearing walls, floors within and between Units, and all other structural elements of the Building.

(d) Any public connections and facilities for utility services serving the Building and located within the Land that are not owned by the public utility or municipal agency providing such services, until owned or maintained by the public utility or municipal agency providing such service.

(e) All tangible personal property (including furnishings) reasonably necessary for the operation and maintenance of the Condominium that may be owned by the Association.

Section 4.2 Limited Common Elements. The Limited Common Elements shall be composed of the following:

(a) Those portions of any chute, flue, duct, wire, pipe for water or sewer, conduit, exterior or interior walls, bearing walls, bearing column, or any fixture lying partially within and partially outside the designated boundaries of a Unit, but serving exclusively fewer than all of the Units, which shall be Limited Common Elements allocated exclusively to the Unit(s) served.

(b) Any windows, floor coverings, shutters, awnings, window boxes, non-structural components of balconies and terraces, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside that Unit's boundaries, which shall be Limited Common Elements allocated exclusively to that Unit.

(c) Any portions of the heating, ventilating, and air conditioning systems, including fans, compressors, return air grills and thermostats, whether located inside or located outside the designated boundaries of a Unit, but serving less than all of the Units in the Building, which shall be Limited Common Elements allocated exclusively to the Unit(s) that they serve.

(d) Those areas indicated as Limited Common Elements on the Plans, including, without limitation, that generator that is shown on the Plans as "LCE GENERATOR PAD" and is hereby allocated as Limited Common Area for the exclusive use of Unit 240.

(e) Any areas designated as Limited Common Elements by Declarant pursuant to its exercise of Development Rights as provided in **Article 5**.

Section 4.3 Undivided Interests of Unit Owners in Common Elements. The percentage interest in the Common Elements allocated to each Unit shall be the Allocated Interest for that Unit as set forth on **Exhibit B** attached hereto. The Allocated Interest allocated to each Unit shall not be changed except with the unanimous consent of all the Unit Owners of all the Units and with the consent of all the Mortgagees, except as may be specifically authorized by the Act or elsewhere in this Declaration. In particular, if the Declarant exercises its Development Rights to subdivide, combine and/or create additional Units, Buildings or Limited Common Elements or to convert portions of Units to Common Elements (or vice versa), the Declarant shall have the right to adjust the Allocated Interest for each Unit in accordance with the following formula: the Allocated Interest allocated to each Unit is based on the Unit Area (as defined in **Article 2**) of such Unit divided by the aggregate Unit Area of all Units. In the event that the Declarant exercises said Development Rights, the Supplemental Declarations required by **Section 5.4** of this Declaration shall contain a new allocation of Allocated Interest calculated in accordance with the foregoing formula which shall be substituted for **Exhibit B** attached to this Declaration.

Section 4.4 Reallocation of Limited Common Elements. Limited Common Elements may be reallocated by two or more Unit Owners by an amendment to the Declaration executed by all Unit

Owners between or among whose Units the reallocation is made. The Association, at the expense of such Unit Owners, shall prepare and record the executed amendment in the names of the Unit Owners executing same, in the same manner as a deed in the Public Records.

Section 4.5 Easement in Common Elements. The Common Elements shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the Unit Owners and their Permittees for the use of the Common Elements for the purposes for which such Common Elements are intended, including, without limitation, ingress to and egress from each Unit, and for the furnishing of services and facilities for which the same are reasonably intended. Notwithstanding the foregoing or anything provided herein to the contrary, the Association shall have the exclusive right to establish Rules and Regulations pursuant to which Unit Owners and their Permittees may be entitled to use the Common Elements, including, without limitation, the right to make permanent and temporary assignments of parking spaces, and the right to restrict or prohibit the parking of recreational and/or commercial vehicles in the Common Elements.

Section 4.6 Conveyance of Common Elements. Except in accordance with the provisions of Section 47C-3-112 of the Act and with the consent of the Unit Owners to which are allocated at least eighty percent (80%) of the Allocated Interests in the Common Elements and the consent of at least two-thirds (2/3rds) of the Mortgage Votes, no portion of the Common Elements may be abandoned, partitioned, subdivided, encumbered, sold, conveyed or otherwise transferred. No conveyance or encumbrance of the Common Elements pursuant to Section 47C-3-112, however, shall deprive any Unit of its rights of access or support. Notwithstanding anything herein to the contrary, the Executive Board shall have the authority and power to grant easements, leases, licenses and concessions through, over or with respect to the Common Elements for public utilities or other public purposes consistent with the intended use of the Common Elements by Unit Owners and reasonably necessary to the ongoing development and operation of the Condominium, without a vote or the consent of the Unit Owners or Mortgagees; provided, however, no such grant shall unreasonably interfere with or obstruct the Owners' right of ingress to and egress from the Units.

Section 4.7 Partition. Recognizing that the proper use of a Unit by its Unit Owner(s) is dependent upon the use and enjoyment of the Common Elements in common with the Unit Owners of all other Units, and that it is in the interest of all Unit Owners that the ownership of the Common Elements be retained in common by the Unit Owners, it is hereby declared that the Allocated Interest in the Common Elements appurtenant to each Unit shall remain undivided and no Unit Owner shall bring or have any right to bring any action for partition or division.

Section 4.8 Encroachments. To the extent any Unit or Common Element encroaches on any other Unit or Common Element as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement for the encroachment shall exist for so long as the encroachment exists.

ARTICLE 5 SPECIAL DECLARANT RIGHTS

Section 5.1 Special Declarant Rights. Until the expiration of the Special Declarant Rights Period, Declarant will have the following Special Declarant Rights with respect to all of the Condominium Property, in addition to any other such rights reserved in this Declaration:

(a) Development Rights. The right to exercise all "development rights" (collectively, "**Development Rights**") as defined from time to time in the Act with respect to all

of the Condominium Property, including, without limitation, the right or combination of rights hereby reserved by Declarant, as follows:

- (i) the right to complete any improvements shown on the Plans.
 - (ii) the right to add all or a portion of the Additional Property to the Condominium, and to create upon such Additional Property any Units, Common Elements and/or Limited Common Elements, all without the consent of any Unit Owner or Mortgagee. Declarant shall have no obligation of any kind to add any or all of the Additional Property to the Condominium; and the types of buildings and the architectural style, size and construction quality of any Units added to the Condominium may differ from the existing Building and Units. The lien of any deed of trust or mortgage encumbering any portion of any property added to the Condominium pursuant to this Development Right shall be subordinated to the terms and provisions of this Declaration. Declarant shall pay (or if disputed, bond) all taxes and other assessments imposed on any property added by Declarant to the Condominium covering any period prior to the addition of such property. In addition, Declarant shall promptly satisfy or bond any lien arising from the construction of improvements by Declarant and imposed on any portion of the Condominium other than Units owned by Declarant. All improvements intended as additional Units, Common Elements and Limited Common Elements shall be substantially complete prior to the annexation of such improvements.
 - (iii) the right to subdivide an existing Unit(s) owned by Declarant into two or more new Units, or into two or more new Units and new Common Elements and/or Limited Common Elements, and to combine adjoining Units owned by Declarant, without the consent of any Unit Owner or Mortgagee. Declarant's right to subdivide and/or combine Units shall apply to Units created under this original Declaration, as well as to Units which may be created on any additional real estate added to the Condominium pursuant to the exercise of Development Rights.
 - (iv) the right to convert an existing Unit or Units owned by Declarant entirely to Common Elements, without the consent of any Unit Owner or Mortgagee. Declarant's right convert Units to Common Elements shall apply to Units created under this original Declaration as well as to Units which may be created on any additional real estate added to the Condominium pursuant to the exercise of Development Rights.
- (b) Sales Office. The right to maintain one or more sales offices, management offices, and Unit models in Units owned by Declarant and to display advertising signs upon the Common Elements. Any such offices, model Units or signs may be located within such Units owned by Declarant and upon such portions of the Common Elements as Declarant shall select, and Declarant shall have the right at any time and from time to time to relocate any offices, model Units or signs from their previous location to another location. Such rights shall terminate upon the earlier of the expiration of the Special Declarant Rights Period or the cessation of Declarant's (or any successor Declarant's) sales activities in the Condominium.
- (c) Easements to Facilitate Exercise of Development Rights. The Declarant hereby reserves for itself and its successors and assigns a non-exclusive easement upon, across, over, in,

and under the Condominium Property as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or this Declaration, including, without limitation:

- (i) Easements for ingress and egress and for installation, replacement, repair and maintenance of drainage ditches and facilities, all utilities, including but not limited to water, sewer, gas, telephone, and electrical, cable and other communications systems and indoor sprinkler systems; and
- (ii) Easements to store materials on the Common Elements and to make such other use of the Common Elements as may be reasonably necessary or incident to the construction, renovation, maintenance or repair of the Building or other improvements on the Condominium Property.

The Declarant further reserves the right to establish within the Condominium Property from time to time, by dedication or otherwise, utility and other easements, reservations, exceptions and exclusions necessary or convenient for the development, use and operation of any other property of the Declarant, as long as such action does not unreasonably hamper the enjoyment of the Condominium by the Unit Owners. The location of the foregoing easements and rights-of-way may be made certain by the Declarant and the Association by instruments recorded in the Public Records.

Section 5.2 Order of Exercise of the Declarant's Rights. No assurances are made regarding the order in which Development Rights or other Special Declarant Rights will be exercised, if at all, with respect to portions of the Condominium Property or Additional Property. The fact that the Declarant may exercise one or more of the Development Rights or other Special Declarant Rights on one portion of the Condominium Property will not operate to require the Declarant to exercise a Development Right or other Special Declarant Right with respect to any other portion of the Condominium Property.

Section 5.3 Transfer of Special Declarant Rights. The Declarant may, from time to time, transfer all or a portion of the Special Declarant Rights created or reserved under the Condominium Documents to any person or entity, by an instrument evidencing the transfer duly recorded in the Public Records. The instrument shall not be effective unless it is executed by the transferor and the transferee. Upon the transfer of any Special Declarant Rights, the liability of the transferor and the transferee shall be as set forth in Section 47C-3-104 of the Act.

Section 5.4 Supplemental Declaration. In order to exercise the Development Rights contained in **Section 5.1(a)(ii), Section 5.1(a)(iii), and Section 5.1(a)(iv)**, Declarant shall execute and record an amendment to this Declaration in accordance with Section 47C-2-110 of the Act (a "**Supplemental Declaration**"). Any Supplemental Declaration executed and recorded by the Declarant to exercise the above-referenced Development Rights shall contain an amendment or supplement to the Plans identifying any applicable changes made to the Units and Limited Common Elements, and, if applicable, an amendment to **Exhibit B** attached to this Declaration, reallocating the Allocated Interests among all Units in accordance with the formula set forth in **Section 4.3** of this Declaration. Unless otherwise required by law, the Declarant may exercise the Development Rights contained in **Section 5.1(a)(ii), Section 5.1(a)(iii), and Section 5.1(a)(iv)** without the consent or approval of the Association, or any other Unit Owner or Mortgagee, by executing and recording a Supplemental Declaration in accordance with this Section. Any such Supplemental Declaration also may contain such additions to the provisions of this Declaration as may be necessary to reflect the different character of the new Units created by Declarant, so long as such additions are not inconsistent with the overall scheme of

the Declaration, and provided that such additions shall not apply to any Unit created prior to recordation of Supplemental Declaration, or to the Owner or Mortgagee of any such Unit. Declarant shall not be required to execute and record a Supplemental Declaration in order to exercise the Development Rights or Special Declarant Rights unless specifically required in this Declaration.

ARTICLE 6

SUBDIVISION; RELOCATION OF BOUNDARIES; SECOND TIER CONDOMINIUM

Section 6.1 Subdivision. No Unit may be subdivided except (i) with the approval of the Executive Board, or (ii) pursuant to the exercise of Special Declarant Rights as provided in **Article 5** hereof, or (iii) pursuant to Second Tier Condominium Instruments as provided in this **Article 6**. If any Unit is subdivided in accordance with clause (i) or (ii) in the foregoing sentence, the Association, at the requesting Owners' expense, shall cause to be filed an amendment to this Declaration reallocating the Allocated Interest appurtenant to the original Unit between or among the new Units created by the subdivision of the Unit in proportion to the Unit Area contained in each new Unit.

Section 6.2 Relocation of Boundaries. The boundaries between adjoining Units may be relocated upon application to the Association by the Owners of such adjoining Units ("**Adjoining Owners**") and upon approval by the Association of such application; provided, however, that no such relocation of boundaries shall be binding upon any Mortgagee holding a Mortgage on any Unit whose boundaries are relocated, unless consented to in writing by such Mortgagee. Any such application to the Association must be in such form and contain such information as may be reasonably required by the Association, and shall be accompanied by, a plat detailing the proposed relocation of boundaries. Unless the Association determines within thirty (30) days after submission to it of the application that the proposed relocation of boundaries is unreasonable, the application shall be deemed approved. Any relocation of boundaries shall not affect the Allocated Interest allocated to each Unit. Upon approval of the proposed relocation of boundaries, the Association shall cause to be prepared and filed, at the Adjoining Owners' expense, an amendment to this Declaration and a plat that identifies the Units involved, describes and depicts the altered boundaries, and gives the dimensions of the altered Units. Such amendment shall also contain operative words of conveyance and be signed by the Adjoining Owners and consented to by their Mortgagees, if any, and shall be indexed in the Public Records in the names of the Adjoining Owners.

Section 6.3 Second Tier Condominium Instruments Permitted. The Owner(s) of one or more Units may at any time hereafter subject such Unit(s) to Second Tier Condominium Instruments and thereby subdivide the Unit(s) into two or more Second Tier Condominium Units and Second Tier Condominium Common Elements, so long as all of the following conditions are met:

(a) The Second Tier Condominium Instruments must be imposed on the entire Unit(s), subdividing the entire Unit(s) into Second Tier Condominium Units and Second Tier Condominium Common Elements;

(b) The Second Tier Condominium Instruments shall expressly provide for the assignment and assumption of membership rights described in **Section 6.4** of this Article, and the collection and remittance of assessments described in **Section 6.5** of this Article; and

(c) The Second Tier Condominium Instruments shall expressly state that it is subject and subordinate to the provisions of the Condominium Documents, that in the event of a conflict between the provisions of the Second Tier Condominium Instruments and the Condominium Documents, the Condominium Documents shall control; provided, however, nothing herein shall

be construed to prevent the enforcement of additional covenants, conditions, restrictions and easements therein contained that do not contravene the provisions of the Condominium Documents.

Section 6.4 Second Tier Association to Assume Certain Membership Rights. Contemporaneously with the imposition of Second Tier Condominium Instruments on a Unit(s), the Owner(s) of the Unit(s) shall be deemed to have irrevocably assigned to the Second Tier Condominium Association, and the Second Tier Condominium Association shall be deemed to have irrevocably assumed, for so long as the Second Tier Condominium Instruments remain in effect, the following rights of membership in the Association:

- (a) The right to attend member meetings of the Association;
- (b) The right to vote and the right to give or withhold any consent, both as a member of the Association or as an Owner, provided for herein.

Pursuant to the foregoing assignment, the member meetings of the Association may be attended on behalf of the Owners of the Unit(s) subjected to the Second Tier condominium Instruments only by up to three (3) executive board members of the Second Tier Condominium Association. In addition, the Second Tier Condominium Association shall be required to vote and/or give and withhold any consent on behalf of the Owners of the Unit subjected to Second Tier Condominium Instruments in strict accordance with the vote or written consent of the members of the Second Tier Condominium Association. For example, if a matter were presented for a vote by the members of the Association, any Second Tier Condominium Association would be required to first present the matter for a vote or written consent by its members. If votes by the members of the Second Tier Condominium Association were cast, or if written consents of the members of the Second Tier Condominium Association were obtained, as follows: 25% in favor, 50% opposed and 25% abstained; then the Second Tier Condominium Association would be required to cast the Association votes it is entitled to direct in the same proportions.

Section 6.5 Second Tier Associations to Collect and Remit Assessments. Any Second Tier Condominium Instruments shall provide that the Second Tier Association formed pursuant thereto will collect and remit to the Association all Assessments levied by the Association pursuant to this Declaration against the Unit(s) comprising the Second Tier Condominium. In addition, such Second Tier Condominium Instruments shall specify the method of apportioning such Assessments among all Second Tier Condominium Units subjected thereto and shall create a lien against each such Second Tier Condominium Association Unit. Should any Second Tier Condominium Instrument fail to so specify a method of apportionment, Assessments shall be apportioned equally among all Second Tier Condominium Units created pursuant to such Second Tier Condominium Instruments.

Section 6.6 Lien Rights Preserved. The imposition of Second Tier Condominium Instruments shall in no way limit, abridge, allocate or otherwise affect the assessment and lien rights of the Association with respect to the Units provided for in this Article.

Section 6.7 Restriction of Amendments to Second Tier Declaration. No amendment to any Second Tier Declaration that modifies amends or deletes any provisions required by this Declaration or otherwise contravenes the provisions of this Declaration will be effective without the written consent of all of the Unit Owners.

ARTICLE 7
USE OF CONDOMINIUM

The following covenants, restrictions, conditions and limitations as to use and occupancy which shall run with the land shall be binding upon each Unit Owner and such Unit Owner's Permittees.

Section 7.1 Use Restrictions. No Unit may be used for residential purposes. The Units may be used for any other lawful purpose, including but not limited to office, professional, bank, and/or retail and/or office purposes. Subject to the limitations set forth in **Section 7.15** below, Units on the ground floor may be used for Food / Beverage Use (as defined in **Section 7.15** below). Units located on the second (2nd) and third (3rd) floors of the Building may maintain a kitchen within which food may be prepared and served to employees and clients as an incidental and not primary use of the Unit.

Without limiting the foregoing and in addition to any use prohibitions as may be set forth in any deed executed by Declarant initially conveying a Unit to a third party, the following uses shall not be permitted within the Condominium: hookah lounges; smoke or vape shops; medical marijuana dispensaries; drug treatment clinics or facilities; nude or semi-nude dance clubs; massage parlors (excluding day spas, medical treatment and therapeutic facilities allowed by applicable zoning laws) or cinemas or bookstores selling or exhibiting material of a pornographic or adult nature; labor camps; commercial storage of building or construction materials (except temporarily in connection with the repair, maintenance or construction of improvements within the Units by Owners, or Common Elements by the Declarant or the Association, such temporary period not to exceed six (6) months from the commencement of construction of such Units or Common Elements; provided, however, that an Owner that utilizes construction materials and equipment in the ordinary course of its business is excluded from this restriction prohibiting the storage of construction materials so long as such materials are not visible from the exterior of the Unit); community fairs, flea markets, open air stalls or carnivals; fortune telling; taxidermy; animal kennels, or grooming or training services. Except in accordance with all applicable laws and regulations thereunto appertaining, no Unit or other portion of the Condominium shall be used for any business the operation of which would result in the escape, disposal or release of any amount of biologically active, toxic or hazardous wastes, materials, or substances, or any other substance that is prohibited, limited or regulated by any governmental or quasi-governmental authority or that, even if not so regulated, could or does pose a hazard to health and safety of the occupants of the Unit or surrounding property (collectively "**Hazardous Substances**") in violation of any applicable Environmental Laws (as hereinafter defined). No Unit or other portion of the Condominium shall be used for the storage or use of said Hazardous Substances in any manner prohibited by law or otherwise inconsistent with commercially reasonable standards for the storage and use of such Hazardous Substances comparable to other first class buildings used for or containing laboratories using Hazardous Substances, nor shall any Owner allow to be brought into the Units or other portion of the Condominium any such Hazardous Substances except to use in the ordinary course of any Owner's business. All Units and other portions of the Condominium will, at all times, be kept and maintained so as to comply with all existing or hereafter enacted or issued statutes, laws, rules, ordinances, orders, permits, and regulations of all state, federal, local, and other governmental and regulatory authorities, agencies, and bodies applicable to the Condominium, pertaining to environmental matters, or regulating, prohibiting or otherwise having to do with asbestos and all other toxic, radioactive, or hazardous wastes or materials including, but not limited to, the Federal Clean Air Act, the Federal Water Pollution Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as from time to time amended (collectively, the "**Environmental Laws**").

Section 7.2 Leasing of Units. Any lease or rental agreement for a Unit shall be in writing and shall provide that the terms of the lease shall be subject to the provisions of the Condominium