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**DECLARATION AND MASTER DEED  
OF THE ARLINGTON AT DUNDEE CONDOMINIUM REGIME**

This Declaration and Master Deed of The Arlington at Dundee Condominium Regime is made and entered into this 28<sup>th</sup> day of July, 2006, by Arlington, LLC, a Nebraska limited liability company, hereinafter referred to as "Declarant."

**WITNESSETH:**

WHEREAS, pursuant to the terms of the Nebraska Condominium Act (hereinafter referred to as the "Act"), Arlington, LLC, the sole record owner of the Property legally described in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property") does hereby subject the Property to the condominium form of ownership as "The Arlington at Dundee Property Condominium Regime," as provided for in the Act and in this Declaration and Master Deed of The Arlington at Dundee Condominium Regime (hereinafter referred to as the "Declaration").

WHEREAS, by virtue of the recording of this Declaration, the Property shall be owned, held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the provisions of this Declaration and the Act and every grantee of any interest in said Property, by acceptance of a deed or other conveyance of such interest, and every Owner of any portion of the Property, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall own and take subject to the provisions of the Act and this Declaration and shall be deemed to have consented to the terms hereof.

WHEREAS, in addition to the formation of this Condominium, to be comprised of the Property aforementioned, Arlington, LLC hereby further reserves unto itself and its successors and assigns acting as Declarant, Special Declarant Rights, as defined in the Act, to include by way of example and not limitation, the right to exercise Development Rights, as defined in the Act, including the right and option, but not the obligation, in its own discretion and by its own act, to (i) relocate the boundaries of any Unit or Units, and (ii) further subdivide any

one or more of the Units into additional Units, Common Elements or both, all as further provided in Article XV of this Declaration and pursuant to the terms of the Act.

WHEREAS, in furtherance of the plan of condominium ownership and the purposes and intents thereof, Declarant, sole owner of the Property hereby submitted to the Act and this Declaration, together with all Improvements constructed thereon, hereby makes this Declaration which shall apply to, govern, control and regulate the sale, resale, or other disposition, acquisition, ownership, use and enjoyment of the Property and the Improvements located thereon, and does hereby specify, agree, designate and direct that this Declaration and all of its provisions shall be and are covenants to run with the Property herein described and shall be binding on the present owner of the Property and all its successors and assigns and all subsequent owners of the Property and Improvements constructed thereon, together with their grantees successors, heirs, executors, administrators, devisees and assigns.

NOW, THEREFORE, Declarant, as the owner of the Property located in Omaha, Douglas County, Nebraska, and as described in Exhibit "A" attached hereto, for the purposes above set forth, does hereby declare said Property and all Improvements and facilities constructed thereon to be a condominium property regime hereunder known as The Arlington at Dundee Condominium Regime, under the Act and in furtherance thereof declares and provides:

#### ARTICLE I - DEFINITIONS

The following terms, as used herein or elsewhere in any of the Condominium documents relating to The Arlington at Dundee Condominium Regime, unless otherwise provided, are defined as follows:

- 1.1 Allocated Interests means the undivided interest in the Common Elements and Common Expense Liability allocated to each Unit.
- 1.2 Articles of Incorporation means the Articles of Incorporation of the Association as the same now exist or may be hereafter amended.
- 1.3 Association means The Arlington at Dundee Property Owners Association, Inc.
- 1.4 Association's Board of Directors, Board of Directors or Board means the Board of Directors of the Association, the members of which shall be elected from time to time as provided in this Declaration and Bylaws and the Articles of Incorporation and shall be elected pursuant to the terms of the Act. The Board of Directors shall be the governing body of the Association and may sometimes be referred to as the Board or the Executive Board.
- 1.5 Bylaws mean the Bylaws of the Association which may be amended from time to time.
- 1.6 City means the City of Omaha, Nebraska.
- 1.7 Common Elements means all portions of the Condominium other than the Units.
- 1.8 Common Expenses means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
- 1.9 Common Expense Liability means the liability for Common Expenses allocated to each Unit pursuant to the terms of this Declaration and the Act.

1.10 Condominium, Condominium Regime or Condominium Project means the Real Estate described in Exhibit "A" attached hereto and incorporated herein by this reference, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions.

1.11 Declarant means Arlington, LLC, and its successors and assigns that succeed to any Special Declarant Rights inclusive of the Developments Rights.

1.12 Declaration means this Declaration and Master Deed of The Arlington at Dundee Condominium Regime, as such may be amended from time to time.

1.13 Development Guidelines or Guidelines shall mean the design and development guidelines and standards and the review and approval procedures that may be prepared and issued from time to time by the Committee pursuant to Article VI, below, for the purpose of assisting the Unit Owners and Purchasers in preparing development and improvement plans for a Unit within the Condominium Regime.

1.14 Development Rights means any right, or combination of rights, reserved by the Declarant in this Declaration to add Real Estate to the Condominium, to create Units, Common Elements or Limited Common Elements within the Condominium, to subdivide Units or convert Units into additional Units, Common Elements or both; or to relocate the boundaries of any Unit within the Condominium Regime, including the rights reserved to Declarant as set forth in Article XV below.

1.15 Dispose or Disposition means a voluntary transfer to a Purchaser of any legal or equitable interest in a Unit, but does not include the transfer or release of a security interest.

1.16 Eligible Mortgagee means any first mortgage instrument recorded or filed in the office of the Register of Deeds of Douglas County, Nebraska, encumbering a Unit or any portion thereof as security for the performance of an obligation given in good faith and for valuable consideration which is not a fraudulent conveyance under Nebraska law, but does not mean any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code or an encumbrance affecting any leasehold interest in a Unit (such as leasehold mortgage).

1.17 Identifying Number means a symbol or address which identifies only one Unit in the Condominium Project.

1.18 Improvements shall mean all buildings, structures, underground installations, slope and grade alterations, lighting, elevators, walkways, gutters, storm drains, drainageways, utilities, driveways, screening walls, walls, exterior doors, windows, window boxes, awnings, stairs, stairwells, decks, patios, balconies, plantings, planted trees and shrubs, sidewalks, poles, flags, signs, storage or display areas, loading areas, docks, fountains, water features, facilities and all other structures or improvements of every type and kind.

1.19 Limited Common Element means a portion of the Common Elements allocated by this Declaration, the Bylaws or by the Act for the exclusive use of one or more but fewer than all of the Units.

1.20 Managing Agent means the Person, company, or other legal entity who undertakes the duties, responsibilities and obligations of the management of the Association and the Condominium which Managing Agent

may be employed or terminated by a vote of the Board of Directors, subject to any outstanding contract rights as might exist.

1.21 Parking Facility shall mean the ten single car garages and the parking lot consisting of two (2) uncovered stalls which are part of the Condominium.

1.22. Parking Spaces shall include the parking spaces located within the Parking Facility.

1.23 Period of Declarant Control shall commence with the recording of this Declaration and shall continue until the earlier of (i) sixty (60) days after the date by which ninety (90%) percent of the Units have been conveyed to Unit Purchasers, or (ii) two (2) years after the date the Declarant has ceased to offer Units for sale in the ordinary course of its business.

1.24 Person means a natural person, corporation, partnership, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity; provided, however, that for a land trust, "Person" means the beneficiary of the trust rather than the trustee of the trust.

1.25 Plan or Plans means the drawings that contains the information required by the provisions of the Act and as set forth on Exhibit "B".

1.26 Purchaser means any Person other than a Declarant or a Person in the business of selling Real Estate for his own account, who by a voluntary transfer acquires a legal or equitable interest in a Unit, other than (a) a leasehold interest, including renewal options of less than twenty (20) years, or (b) as security for an obligation.

1.27 Qualified Lender means any Eligible Mortgagee, its successors, assigns, affiliates or subsidiaries, a holder, insurer or governmental guarantor of an Eligible Mortgagee; provided that any such insurer or governmental guarantor has given notice to the Board, in writing, of the existence of such status.

1.28 Real Estate means any leasehold or other estate or interest in, over, or under land including structures, fixtures, and other improvements and interest which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real Estate" includes parcels with or without upper or lower boundaries, and spaces which may be filled with air or water and specifically includes the Property.

1.29 Special Declarant Rights means rights reserved for the benefit of the Declarant as defined in the Act, including but not limited to, to complete Improvements indicated on the Plans filed with the Declaration; to exercise any Development Rights; to maintain sales offices, management offices, advertising signs for the Condominium Project, and models; to use easements through the Common Elements (including the Limited Common Elements) for the purpose of making Improvements within the Condominium Project; to create or add additional Units, Common Elements, or both; to relocate the boundaries between any of the Unit or Units; to subdivide any Unit or Units; or to appoint or remove any officer of the Association, or any member of the Board of Directors during the Period of Declarant Control.

1.30 Super-Majority Vote shall mean sixty-seven (67%) percent or more of the votes entitled to be cast by the members of the Association at any regular or special meeting of the Association called for that purpose.

1.31 Unit means a physical portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described in Article II, below, in the Plans and pursuant to the Act.

1.32 Unit Owner or Owner shall mean the fee simple interest owner of any Unit or Units, including, without limitation, one who is buying a Unit or Units under a recorded contract, but excluding Mortgagees and others who hold such title merely as security. Owner shall not include a Lessee of a Unit or Units.

#### ARTICLE II - CONDOMINIUM UNITS

2.1 The Units. The Condominium Units shall be legally described as shown on the Plans. The ~~Condominium Regime consists of 14 Units~~. Each Unit includes an Allocated Interest that is appurtenant thereto. The Units are further identified on the Plans recorded pursuant to the terms of this Declaration and the Act. Each Unit's appurtenant percentage of undivided interest in the Common Elements shall be allocated as set forth in Exhibit "C" attached hereto and incorporated herein by this reference. The calculation of this allocation, shall be originally calculated by the Declarant as follows: the Allocable Interest, for each Unit in the Common Elements, other than the Limited Common Elements, is based upon a fraction, the numerator of which is the total square footage of the Unit, and the denominator of which is the total square footage of all of the Units and the Limited Common Elements assigned and allocated to the Units pursuant to Section 5.2 within the Condominium Regime except for the Parking Facility. The Declarant shall calculate any reallocation of the percentage interests upon the creation of any additional Units, the relocation of the boundaries of any Units, the conversion of Units into Common Elements or the conversion of Common Elements into Units using the above described formulas. For purposes of voting, each Unit is allowed one (1) vote, regardless of the number of Persons having an interest in such Unit. The Common Expense Liability shall be based on the operation and maintenance costs for these Common Elements and the amount of the assessment will change on a yearly basis according to these costs. Each Unit may be described by its Identifying Number or symbol as shown on the Plans and as set forth in this Declaration and shall be deemed good and sufficient for all purposes and shall be deemed to convey, transfer, encumber or otherwise affect the Unit Owner's corresponding Allocated Interests even though the same is not expressly mentioned or described therein. Ownership of each Unit and the Unit Owner's corresponding share in the Common Elements shall not be separated. Other than the Declarant, no Unit Owner may relocate the boundaries of any Unit or further subdivide or combine any one or more the Units, except as set forth in Section 6.6(a) below.

2.2 Dimension of Units. The Units and their dimensions are depicted on the Plans referred to hereinabove which Plans are incorporated herein by this reference. Except as otherwise provided herein, and as otherwise set forth in Article III, which describes the Common Elements, each Unit includes that part of the structure which lies within the following boundaries:

(a) Horizontal (Upper and Lower): The Units will be stacked one on top of the other. The upper horizontal boundary of each of the uppermost Units shall be in the horizontal plane of the lowermost unfinished surface of the roof, such that the roof, and all of its support systems (including but not limited to tongue and groove planking, wood purlins and beams), shall not be deemed to be included within the boundaries of the Unit. The lower horizontal boundary of each such uppermost Unit is the horizontal plane of the upper surface of the

wood joists of such Unit such that the wood sub-floor and sound boards are included in the Unit such that the concrete sub-floor and concrete framing thereunder shall not be a part of the Unit. The upper horizontal boundary of any Unit which has a Unit above it and a Unit below it is the horizontal plane or planes coinciding with the lowermost portion of the concrete floor, concrete joist and concrete beams as part of the ceiling thereof. The lower horizontal boundary of a Unit with Units above and below is the horizontal plane of the upper surface of the floor. The lower horizontal boundary of the Common Elements below the first floor shall be the horizontal plane of the dirt floor beneath the concrete floor.

(b) Vertical (Perimetrical): The vertical boundary (perimetric) of each Unit is the unfinished interior perimeter wall surfaces of all such walls; provided that where there are windows or doors, the boundary is the exterior surface of such doors and windows when enclosed, and where any such boundary separates one Unit from another Unit, the vertical boundary (perimetric) between such shall be the center line of the walls separating such Units. Repairs and finishes on such walls shall be maintained by each individual Unit. Stud replacement shall be divided equally by each adjoining Unit, unless such repair shall be caused by such Unit Owner or its occupants, guests, invitees, agents and contractors.

(c) The horizontal and vertical boundaries above identified shall be extended to their intersections with each other.

2.3 Further Definition of Units. Included in the Units are systems, equipment, installations and facilities of the Unit which are exclusively used for the benefit of a particular Unit, whether situated within or outside of a particular Unit's boundaries, including, but not limited to the following:

(a) All internal walls or partitions which are contained wholly within a Unit shall be deemed part of the Unit;

(b) All central and appurtenant installations for services such as electrical, power, light, telephone, gas, hot and cold water and heat (including all ducts, pipes, valves, wires, cables and conduits used in connection therewith or any replacements thereof) which exclusively service a Unit;

(c) Fans, vents and exhausts and all piping, ducts and equipment which exclusively service a Unit wherever the same may be located;

(d) All exterior windows, doors, shutters, awnings, window boxes, balconies, and glass windows which exclusively service a Unit;

(e) Light fixtures, wiring, risers, electrical feeders, switches, and electrical meters exclusively servicing a Unit;

(f) Gas meter, gas piping, risers, fittings, valves including any gas system exclusively servicing a Unit;

(g) All other facilities or fixtures located within or immediately connected to a Unit which exclusively serve or benefit or are necessary for the existence, maintenance, operation or safety of the particular Unit.

(h) 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 walls, floors, or ceilings within the designated boundaries of any Unit are a part of that Unit.

No Unit shall include any piping, wiring, ductwork, machinery, equipment or other materials used exclusively by any other Unit.

### ARTICLE III - COMMON ELEMENTS

3.1 Common Elements The Common Elements of the Condominium are as follows:

(a) The Real Estate upon which the structures containing the Condominium Units are located, and such structures themselves, including the foundations, exterior walls, roofs, gutters, downspouts, chutes, chases, flues, ducts, wires, conduits, bearing walls, bearing columns, fire suppression and detection systems, whether situated partially within or outside the boundaries of any Unit, including without limitation all piping, fittings, valves and sprinkler heads, or any other fixtures which lie partially within and partially outside of the designated boundaries of a Unit and which serve more than one Unit and are not otherwise assigned or allocated to any one or more Units as a Limited Common Element.

(b) Except as may be shown on the Plans, the Common Elements shall include, without limitation, each and every stairway, elevators, elevator equipment, boilers, cooling systems, trash chutes, laundry services, exercise room, storage area, the utility area and facilities now or hereafter erected, constructed or installed on or in the Property and any adjacent public right-of-ways that the Association is responsible for maintaining, including without limiting the generality of the foregoing, trees, shrubs, lawns, decorative urns and planters, pavements, sidewalks, storm and water systems, sewage lines, and all utility installations, and pipes, wire and conduits and connections for television, electricity, light, water and plumbing and other utilities, except those items that are exclusively within or for the benefit of a particular Condominium Unit and not used to service any Unit other than that particular Condominium Unit.

(c) All other appurtenances not herein specifically designated which are not enclosed within the boundaries of a Condominium Unit as is hereinabove delineated in Article II of this Declaration.

3.2 Undivided Interest in Common Elements. The Owner of each Unit shall own an undivided interest in the Common Elements as a tenant (or tenants) in common with all the other Unit Owners, and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements for the purposes incidental to the use and occupancy of said Unit, and such other incidental uses as may be permitted by this Declaration, which right shall be appurtenant to and run with such Person's or Persons' Unit. The extent and amount of percentage of such ownership shall be expressed by a percentage amount, the particular percentage amount, also sometimes referred to herein as "share", appertaining to each Unit being set forth in Exhibit "C" attached hereto and made a part hereof. The percentage interest appurtenant to the Unit may change in the event any Unit is converted to a Common Element, any Common Element is converted to a Unit or the boundaries of any Unit are relocated as

authorized by the Act and this Declaration.

3.3 Allocated Share of Common Elements. The percentage interest or share allocated to each Unit shall be determined as set forth in Article II, above. Each Owner, by acceptance of the deed to a Unit, expressly agrees to the allocation and reallocation of the percentage interest set forth hereinabove or by exercise of any other Special Declarant Right. Allocations and reallocations of the percentage interest may be subject to minor variations attributable to rounding off. The respective percentage interest shall be computed to three significant figures so the sum of the percentage interests of all Units equals one hundred (100%) percent.

#### ARTICLE IV - COVENANTS

4.1 No Partition of Common Elements. As long as the Property is subject to the provisions of the Act, the Common Elements shall remain undivided, and no Unit Owner or Owners shall bring any action for partition or division of the Common Elements; and any agreement to the contrary shall be null and void. Provided, however, nothing herein contained shall prevent partition of a Condominium Unit as between any Persons who are Co-Owners thereof, if such right of partition shall otherwise be available, but such partition shall not be in kind.

4.2 No Severance of Ownership. No Owner shall execute any deed, mortgage, lease or other instrument affecting title to his or her Unit Ownership without including therein both his or her interest in the Unit and his or her corresponding Allocated Interests, including his or her share in the Common Elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other, shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

#### ARTICLE V - EASEMENTS AND LIMITED COMMON ELEMENTS

5.1 Encroachments. In the event that, by reason of construction, settlement or shifting of any building or structure, any part of the Common Elements encroaches or shall hereafter encroach upon any part of any Unit, or any part of any Condominium Unit encroaches or shall hereafter encroach upon any part of the Common Elements, or if by reason of the design or construction of any Condominium Unit it shall be necessary to a Unit Owner to use or occupy, for normal uses and purposes, any portion of the Common Elements, consisting of an unoccupied space within the Property and adjoining his or her Unit, valid easements for the maintenance of such encroachment and for the use of such adjoining space are hereby established and shall exist for the benefit of such Condominium Unit and the Common Elements, as the case may be, so long as all or any part of the building containing such Unit shall remain standing; provided, however, that in no event shall a valid easement for an encroachment be created in favor of any Condominium Owner or in favor of the Owners of the Common Elements if such encroachment occurred because of the willful conduct of said Condominium Unit Owner or the Owners of the Common Elements, as the case may be. In the event any structure is partially or totally destroyed and then rebuilt, minor encroachments of part of the Common Elements because of construction shall be permitted and valid easements for said encroachment and the maintenance thereof shall exist.



5.2 Limited Common Elements. Unless the context of this Declaration otherwise requires, Limited Common Elements shall be as provided in the Act and assigned and allocated exclusively to the Units so served. The Association shall be expressly empowered and authorized to license Parking Spaces to Owners of Units. In furtherance of the foregoing, a valid exclusive easement is hereby declared and established for the benefit of those Owners of a Unit having a licensed Parking Space, consisting of the exclusive right to use and enjoy the Limited Common Elements hereby established, including, but not limited to, the Parking Facility, as shown on the Plans. Unit Owners may, with the prior written consent of the Association, reallocate, convey and transfer their licensed Parking Spaces among or between their Units by assignment, lease, easement or license. The Association shall be expressly empowered and authorized to license storage spaces located on the basement level to Owners of Units.

5.3 Easement to Unit Owners. Except as to the use of any Unit or Limited Common Elements that are assigned and allocated to the Unit or that are assigned and allocated exclusively to any other Unit or Units, perpetual easements are hereby established for all Unit Owners, their families, guests, invitees, mortgagees and servants for the use and enjoyment of all Common Elements and Limited Common Elements (described in Section 5.2(a), above), subject to such rules and regulations as may from time to time be established by the Association herein provided. Except for the rights of the Declarant herein, no Owner of a Unit shall have any right to access, occupy or use any Limited Common Elements exclusively assigned and allocated to any other Unit.

5.4 Utility Easements.

(a) The Association shall maintain all utility lines and facilities located in, on, or under the Common Elements, except for those lines and facilities maintained by utility companies (public, private or municipal) and those required to be maintained by the Owners pursuant to subsection (b), below, or the Association. The Association shall pay all charges for utilities supplied to the Condominium Property, except those metered or charged separately to the Condominium Units.

Accordingly, if any utility line or facility which the Association is required to maintain, repair or replace becomes clogged, stopped-up, damaged, destroyed or otherwise requires repair, the Association shall furnish such maintenance, replacement or repair, including repair of any collateral damage or loss in the Common Elements or any improvements therein. However, if it can be determined that the cause of such clogging, stoppage, damage, destruction or repair originated in any particular Unit (or was caused by an act of an Owner or any of his/her agents, guests, or members of his/her family, whether or not such act was negligent or culpable), the Association may charge the Owner of the Unit the cost of the repair, replacement or maintenance. If one or more Owners fail to pay such costs, the Association may collect them by levying a special assessment upon the Unit or Units of the Owners who are responsible therefore under the provisions of this subsection. Except as otherwise provided herein, the Association shall not be responsible for damage to any Unit or personal property located therein caused by a damaged or defective utility line or facility.

In the event of a failure or inability of the Board to take timely action to maintain, replace or repair utility lines or facilities for which it is responsible (including repair of any collateral damage or loss in the Common Element), the Owners of any Unit or Units served by the lines or facilities shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon Units, Common Elements or Limited

Common Elements which these lines, facilities or any portion thereof are located to repair, replace or maintain them (including collateral damage as provided above). The Association shall reimburse the Owner(s) for the reasonable and necessary costs incurred by the Owner(s) in making such maintenance, repair or replacement. If entry onto the Common Elements, Limited Common Elements or Units is required hereunder, the party making such entry must give reasonable notice to the Association and/or Owner of such Unit as applicable.

(b) Unless maintained by a utility company, an Owner shall be deemed to own the utility lines and facilities and outlets of all utility lines and facilities located within and serving only his/her Unit, and shall be responsible for the maintenance of such utility lines, facilities and outlets.

(c) Whenever such utility lines or facilities serve more than one Unit, the Owner of each Unit served by the lines or facilities shall be entitled to the full use and enjoyment of the portions of the lines or facilities as service his/her Unit.

5.5 Easements in Gross. The Property shall be subject to a perpetual easement in gross to the Association provided herein, its successors and assigns, for ingress and egress, to perform its obligations and duties as required by this Declaration. Should it be necessary to enter any Condominium Unit to repair a Common Element or Limited Common Element, the employees, agents, contractors, subcontractors, or workmen shall be entitled to entrance during reasonable hours with 24 hours prior written notice, unless it is reasonably believed by the Board that an emergency exists which requires such entrance without advanced notice, by exhibiting to the Condominium Owner or any Person or Persons occupying such Unit under authority of such Condominium Unit Owner, an order signed by any member of the Board of Directors or signed by the Managing Agent.

5.6 Granting of Easements. The Association, acting through the Board shall have the power to grant rights and restrictions, in the Common Elements or Limited Common Elements, such as the rights to grant utility easements, licenses, or similar rights, including easements for cable television, under, through or over Common Elements, or Limited Common Elements, as may be reasonably necessary to or desirable for the ongoing development or operation of the Condominium.

5.7 Easements in Units. To the extent that any utility line, pipe, wire or conduit serving any Unit shall be wholly or partially within the boundaries of another Unit, such other Units shall be burdened with and there hereby is reserved and created an easement for the use, maintenance, repair and replacement of such utility line, pipe, wire or conduit, such easement to run to the benefit of the Unit or Units served by the same.

5.8 Sales Office. The Declarant, its duly authorized agents, representative and employees shall have an easement for the maintenance of a sales office and/or model Units on the Property so long as Declarant owns or occupies any Condominium Unit primarily for the purpose of sale. Such sales offices and/or model Units may be maintained in such number and size as determined by the Declarant and may be located and relocated in Units and/or in any improvements on the Common Elements. By execution hereof, the Declarant does hereby specifically reserve an easement for the use of the Common Elements as may be located within the Property as a sales and marketing office of the Declarant during the development of the Property, and for one (1) year after the last Condominium Unit located on the Property is sold, which easement shall be for exclusive use of the Common

Elements unto the Declarant, to the exclusion of use of such Common Elements by any Owner. Exercise of the rights of such easement shall be by Declarant and its designees.

5.9 Easement for Improvements. Declarant shall have and does hereby reserve a transferable easement on and over the Common Elements for the purpose of making improvements contemplated by this Declaration on the Property, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

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

5.11 Restoration of the Condominium. The benefited party of any easement granted hereunder shall have the duty and obligation to repair and restore the servient portion of the Condominium to the condition which existed prior to the exercise of such easement rights.

#### ARTICLE VI - ARCHITECTURAL AND OPERATIONAL CONTROL COMMITTEES

6.1 Committee Composition. There shall be an Architectural and Operational Control Committee which shall consist of three (3) Persons ("Committee").

6.2 Appointment. The members of the Committee shall be selected as follows:

(a) Until the expiration of the Period of Declarant Control, Declarant shall have the right to appoint and remove all members and alternate members of the Committee. The Declarant may temporarily or permanently relinquish its right to appoint all or some of the Committee members and alternates at any time.

(b) After Declarant relinquishes its appointment rights or following the expiration of the Period of Declarant Control, the Committee shall be appointed by the members of the Board. The Committee shall, without further act or deed of the Declarant, exercise all rights of Declarant to enforce and implement the Development Guidelines and to perform Declarant's obligations under this Article and, at such time, all obligations of Declarant under this Article shall automatically terminate, and except as otherwise provided herein, all rights and obligations of Declarant under this Article shall vest in the Committee.

6.3 Terms of Office. The term of all Committee members appointed by Declarant shall be set by Declarant. The term of all Committee members appointed by the Board shall be two (2) years and shall have staggered terms as set forth in the Bylaws. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members whose terms have expired may be reappointed. A member of the Committee shall not be required to satisfy any particular qualifications for membership and may be a member of the Board, an officer of the Association, an Owner, Lessee, an officer or employee of Declarant, or a Person who is not a member or Owner or Lessee or otherwise affiliated with the Condominium Property Regime.

6.4 Resignations; Vacancies. Any member of the Committee may, at any time, resign from the Committee upon written notice to Declarant, so long as Declarant has the sole right to appoint any member, or upon written notice to the remaining Committee members, and to the Board when the right to appoint any members is

vested in the Board. Vacancies on a Committee of members appointed by Declarant, however caused, shall be filled by Declarant so long as Declarant has the right to appoint members. Vacancies on a Committee of members appointed by the Board, however, caused, shall be filled by the Board in the same manner set forth in Section 6.2, above.

6.5 Power, Duties and Responsibilities

The Committee shall have the following power, duties and responsibilities with respect to the Units, the Common Elements and the Limited Common Elements assigned and allocated to any one or more of the Units:

- (i) all of the powers and authority conferred upon it by this Declaration and the Articles and Bylaws;
- (ii) to hire and retain services of engineers or other consultants and professionals as they deem necessary to perform the duties of the Committee;
- (iii) to perform the functions required of it by this Declaration;
- (iv) to consider and act upon all Applications and the plans, specifications and other documents submitted to it pursuant to Article VII, below, with respect to decisions relating to the Condominium;
- (v) to adopt Development Guidelines;
- (vi) to make and to enforce reasonable rules and regulations governing the use of the Condominium;
- (vii) to approve the relocation of the boundaries of any Unit or further subdivide or combine any one or more of the Units; and
- (viii) to perform all other duties delegated to and imposed upon it by this Declaration and Bylaws.

Notwithstanding the foregoing, only the Board shall determine the compensation, if any, to be paid to the members of the Committee.

6.6 Meetings. The Committee shall meet as often as it, in its sole discretion, shall deem necessary to properly perform its duties hereunder. The vote or written consent of any two members shall constitute an act by the Committee. The Committee shall keep written records of all actions taken by it.

6.7 Development Guidelines. In addition to any architectural and development standards set forth herein, the Committee may, from time to time, and in their reasonable discretion, draft, propose, adopt and amend their respective Development Guidelines. Such Development Guidelines, and any amendments thereto, shall supplement, interpret and implement the provisions hereof by setting forth: (a) the standards and procedures for Committee review, and (b) guidelines for Improvements which shall include, but not be limited to, guidelines for architectural design of Improvements, floor plans, landscape plans, color schemes, signage, exterior lighting, finishes and materials for use in each portion of the Condominium. The Development Guidelines shall initially be adopted by the Declarant. After the expiration of the Period of Declarant Control, any amendment to the Development Guidelines must be approved by a majority vote of the Unit Owners.

**ARTICLE VII - ARCHITECTURAL CONTROL AND REGULATION OF IMPROVEMENTS****7.1 Approval of Plans.**

(a) Approval Required. Except for any Improvements constructed and installed by Declarant, no Improvement shall be constructed, created, placed, expanded, added to, maintained or permitted to remain within the Condominium Regime (excluding the interior of any Unit), and no alterations or other work which alters the exterior appearance of any Unit, Limited Common Element or Common Element, until the plans and specifications and other documentation as may be required by Development Guidelines for said Improvements and alterations, which may include without limitation floor plans, materials, colors, signage, exterior lighting and any other information needed to accurately describe the exterior appearance or functional characteristics of said Improvements (the "Application"), have been submitted to and approved in writing by the Committee. Three sets of the Application shall be filed with the Committee. Improvements approved in writing by Declarant prior to the recording of this Declaration shall be deemed to have been approved by the Committee.

(b) Filing Fee. As a means of defraying its expenses, the Committee may institute and require a reasonable filing fee to accompany the Application for each building or other construction project submitted. If resubmission of an Application is necessary, the Committee may require an additional filing fee.

(c) Governmental Regulations. All Applications for Improvements submitted to each Committee hereunder shall comply with any and all laws, rules, regulations or ordinances applicable to the Property which have been promulgated by any local, state, federal or other governmental agency or authority.

(d) Basis for Approval. The Committee shall have the right to disapprove the Application submitted to it, whether a preliminary or final submittal, if any part of it is:

- (i) not in accordance with this Declaration or the Development Guidelines or the Plans;
- (ii) incomplete;
- (iii) not in compliance with relevant approval requirements or regulations of local, state, federal or other governmental agencies;
- (iv) deemed by the Committee to be contrary to the best interests of the Condominium or the Owners; or
- (v) incompatible with the architectural style, quality or aesthetics of existing Improvements or development plans for proposed Improvements, based in part on the criteria set forth in subsections (w) through (z) below in this Subsection 7.1(d).

The Committee shall not unreasonably withhold its approval of an Application submitted to it. In this connection, each Committee may also base its approval or disapproval on criteria which may include, but are not limited to, the following: (w) conformity and harmony of external design with neighboring structures; (x) effect of location of proposed Improvements on the other Units within the Condominium; (y) adequacy of screening of trash

8.2 Prohibited Uses - All Units, Common Elements and Limited Common Elements. In addition to all restrictions now existing against said Property and all Improvements now or hereafter constructed thereon, the use, occupancy and operation of the Units, Common Elements and including Limited Common Elements is hereby expressly restricted as follows:

(a) Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any part of the Property, except that dogs, cats or other usual household pets may be kept by the respective owners in their respective Units, provided that they are not kept, bred, or maintained for any commercial purpose and do not endanger the health or unreasonably disturb the Owner of any Unit, or any resident thereof. The Board of Directors shall make reasonable rules and regulations for the accommodation of pets.

(b) Use of Property. Except for the right of ingress and egress, the Owners of Units are hereby prohibited and restricted from using any property outside of their respective Units, except as may be allowed by the Association's Board of Directors or as expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners within the Condominium Regime and is necessary for the protection of the Owners.

(c) Antennas. No television antenna or radio receiver, satellite dish, or other similar device shall be attached to or installed on any portion of the Property without the written approval of the Board, unless contained entirely within the interior of a Unit. No radio or television signals, nor any other form of electromagnetic radiation, shall be permitted to originate from any Unit, which may unreasonably interfere with the reception of television or radio signals within the Condominium; provided, however, that Declarant and the Association shall not be prohibited from installing equipment necessary for the operation of any master antenna, security, cable television, mobile radio, or other similar systems within the Condominium.

(d) Vehicles, Etc. No vehicles shall be parked on the Common Elements or the Limited Common Elements, other than in authorized Parking Spaces, and no vehicle repairs, other than emergency repairs or repairs of a minimal nature needed to be performed to move a vehicle off the Property, shall be allowed on the Property. No vehicles shall be parked or stored on blocks or other such devices on the Common Elements, Limited Common Elements or any other portion of the Condominium. No vehicles shall be parked so as to obstruct the fire lanes or roadways as may exist within the Condominium. The Association is expressly authorized to tow away, at an offending owner's expense, any vehicle which is in violation of this Section, or which is placed on the Condominium Property in violation of the rules and regulations governing parking as may be adopted by the Board of Directors. No boats, boat trailers, campers, canoes, recreational vehicles, vehicles used primarily for recreational purposes, vehicles primarily used for commercial purposes, or vehicles with commercial writings on their exterior shall be stored, allowed to remain, or parked on any portion of the Condominium, except in an area, if any, designated by the Board of Directors or except as otherwise permitted by the Association's Board of Directors or Declarant. The Unit Owners Committee shall have the right to designate areas within the Condominium for the parking of motorcycles and bicycles.

(e) Signs. Except as placed or erected by Declarant or his assigns, agents or successors, no signs, billboards or objects shall be erected, placed, or permitted to remain on the Property, nor shall such Property

8.8 Leasing of Units. A Unit Owner may lease his or her Unit (but not less than his or her entire Unit) at any time and from time to time provided that:

- (i) No Unit may be leased for transient or hotel purposes or for an initial term of less than ninety (90) days;
- (ii) No Unit may be leased or subleased without a written lease or sublease;
- (iii) A fully executed copy of such lease or sublease shall be furnished to the Board for approval of the Committee no less than ten (10) days prior to the date the lessee or sublessee is to obtain possession of the Unit. In the event the Board does not object to the lease in writing within five (5) days after the lease has been furnished to the Board, the lease shall be deemed to have been approved by the Board;
- (iv) The rights of any lessee of a Unit shall be subject to, and each such lessee shall be bound by, the covenants, conditions and restrictions set forth in the Declaration, Bylaws and Rules and Regulations, and a default thereunder shall constitute a default under the lease or sublease; provided, however, that the foregoing shall not impose any direct liability on any lessee or sublessee of a Unit to pay any Common Expenses or special assessments on behalf of the Owner of that Unit;
- (v) Seventy (70%) percent or more of the Units shall be owner occupied.

Notwithstanding the foregoing, the provisions of Section 5.8 shall not apply to a holder of a Eligible Mortgage who is in possession of a Unit following a default in such mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure.

8.9 Lawful Use. No improper or unlawful use shall be permitted on any part of the Condominium. All valid laws, zoning ordinances, and regulations of all government bodies having jurisdiction over the Condominium shall be observed. Any violation of such laws, zoning ordinances or regulations shall be a violation of this Declaration.

8.10 Nuisances and Offensive Activity. No Owner, lessee, occupant, or other Person shall create a nuisance within the Condominium Regime, or use any portion of the Condominium Regime for any activity or purpose which is considered by the Board, its sole and absolute discretion, to be objectionable due to sound, odor, visual effect or physical impact and which in the opinion of the Board will disturb or tend to disturb other Owners or lessees in the Condominium, or which is deemed by the Board or any committee to constitute a nuisance. Included among the uses or activities prohibited because of their detrimental effect upon the general appearance, enjoyment and use of the Condominium are, without limitation, the following:

- (i) Any public or private nuisance.
- (ii) Any excessive vibration, noise, sound or disturbance that is objectionable due to intermittence, beat, frequency, shrillness, loudness or pulsating effect.
- (iii) Any lighting which is flashing or intermittent or is not focused downward or away from any Unit within the Condominium, unless otherwise approved by the Board.

be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Unit. No Unit Owner shall display a "for rent" or "for sale" sign without the express written consent of the Board.

(f) Miscellaneous Prohibited Uses. No Unit shall be used for the operation and maintenance of a second hand store, odd lot, closeout or liquidation store, auction house, flea market, an adult book store, adult theater, adult amusement facility, or any facility selling or displaying pornographic materials or having such displays. No Unit shall be occupied, operated or maintained in an unsanitary or hazardous condition.

8.3 Security and Frozen Pipes. Should a Unit become vacant, the Owner is responsible for securing the Unit while it is unoccupied, including engaging all locks, providing security lighting, and heating the interior sufficient to keep pipes from freezing. Insurance claims or costs incurred by the Association, the Board or the Committee for frozen pipe damage in unheated Unit may be offset by a special assessment levied against the Unit in an amount equal to the damage claim.

8.4 Unightly Appearances. No offensive or unsightly appearance shall be maintained or allowed to exist on those portions of any Unit visible from the exterior of the Condominium or Common Areas i.e. halls, etc. All equipment, garbage cans, and storage areas shall be kept in a manner so as to conceal them from view of neighboring Units and streets, unless otherwise authorized by the Association's Board of Directors; provided, however, exterior personal patio furnishings, such as chairs, grills and swings, located within a Unit's balcony, patio, porch, terrace, or deck shall be permissible, subject to the rules and regulations of the Association. Provided further, however, that nothing shall be permitted which in the opinion of the Association's Board of Directors jeopardizes the structural integrity of any deck or other part of the Condominium, or which presents risk of damage to adjacent property.

8.5 Acts Affecting Insurance. An Owner shall not permit or suffer anything to be done or kept in his or her Unit which will increase the rate of insurance acquired by the Association or which will otherwise obstruct or interfere with the rights of other Owners.

8.6 Trash Containers and Collection. No garbage or trash shall be placed or kept on the Condominium except in covered containers of a type, size and style which are approved by the Association. The Association shall have the right to subscribe to a trash service for the use and benefit of the Association and all Owners; and to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection. The Association shall have the right to require all Owners to place trash and garbage in containers located in areas designated by the Association. No incinerators shall be kept or maintained in any Unit. All rubbish, trash, and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon. If trash dumpsters are used to facilitate trash, rubbish and garbage removal, all such trash, rubbish and garbage shall be placed therein for removal from the Property.

8.7 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon the Condominium except such machinery or equipment as is usual and customary in connection with the Declarant's sales, marketing, maintenance or construction of the Improvements which are within the permitted uses of such Property, and any use except that which Declarant or the Association may require or permit for the operation and maintenance of the Common Elements and Units.