

KING FARM CONDOMINIUM

DECLARATION

\_\_\_\_\_, 1998

# 54767 MPK  
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DECLARATION

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List of Exhibits

- Exhibit A - Description of the Land Subject to the Condominium
- Exhibit B - Allocation of Percentage Interests and Votes
- Exhibit C - Bylaws
- Exhibit D - Land That May Become Subject to Condominium Regime After Expansion

# KING FARM CONDOMINIUM

## DECLARATION

THIS DECLARATION, made this \_\_\_\_\_ day of \_\_\_\_\_, 199\_, by KING PARTNERS LIMITED PARTNERSHIP, a Maryland limited partnership having an address at 6401 Golden Triangle Drive, Suite 200, Greenbelt, Maryland 20770 (hereinafter collectively referred to as the "Declarant").

WITNESSETH, THAT WHEREAS Declarant is the owner, in fee simple, of certain real property, situate and lying in Montgomery County, Maryland, which is hereinafter more particularly described (the "Property"); and

WHEREAS, Declarant intends to construct thereon certain improvements, which improvements consist of one building containing a total of twelve (12) residential Condominium Units and certain other improvements consisting of up to fifty (50) parking Condominium Units, forty-six (46) storage Condominium Units and the appurtenances thereto; and

WHEREAS, Declarant intends by this Declaration to subject such land, improvements and appurtenances to a horizontal property regime pursuant to Sections 11-101, et seq. of the Real Property Article of the Annotated Code of Maryland (the "Maryland Condominium Act"); and

WHEREAS, the Declarant desires to reserve the right hereafter to subject to such condominium regime additional land, together with the improvements thereon, as more particularly described herein, and the appurtenances thereto, thereby expanding such condominium; and

WHEREAS, Declarant has filed on the \_\_\_ day of \_\_\_\_\_, 199\_ in the office of the Clerk of the Circuit Court for Montgomery County, Maryland, the "Condominium Plat - \_\_\_\_\_" consisting of \_\_\_ (\_\_\_) sheets (the "Plats") prepared by \_\_\_\_\_, dated \_\_\_\_\_, 19\_\_\_, which Plats are recorded in Plat Book No. \_\_\_\_\_ through \_\_\_\_\_; and

NOW, THEREFORE, Declarant hereby declares that all the Property described in Exhibit A attached hereto, together with all improvements hereinafter constructed thereon, and all rights, alleys, ways, privileges and appurtenances thereto (all of which land, improvements and appurtenances are hereinafter referred to collectively as the "Condominium"), is subject to a regime established under the provisions of the Maryland Condominium Act.

UPON THE TERMS and subject to the conditions which are hereinafter set forth:

## ARTICLE I. DEFINITIONS

1.1 Specific Definitions. As used in the provisions of this Declaration, each of the following terms shall be deemed to have the meaning which is hereinafter ascribed to it:

(1) "Act" shall mean the statutes entitled "The Maryland Condominium Act" codified as Title 11 of the Real Property Article of the Code, as from time to time amended.

(2) "Assessment" shall mean an amount assessed by the Council against a Unit Owner with respect to a Unit, pursuant to the provisions of Section 5.5.

(3) "Balcony Limited Common Elements" shall have the meaning ascribed to it by the provisions of subsection 3.3.2.

(4) "Board of Directors" shall mean the board of directors of the Council, as defined herein.

(5) "Bylaws" shall mean those bylaws, the initial form of which is referred to in the provisions of Section 5.1 and is attached hereto as Exhibit C, as from time to time amended.

(6) "Code" shall mean the Annotated Code of Maryland as presently enacted.

(7) "Common Elements" shall mean all of the Condominium except the Units.

(8) "Common Expenses" shall mean the aggregate of any and all expenses which are incurred by the Council in the exercise of the rights and powers, and in the discharge of the duties, which are vested in, exercisable by or imposed upon the Council under the Act, the Declaration or the Bylaws. Common Expenses shall include all insurance deductibles paid in connection with any required insurance.

(9) "Common Profits" shall mean all profits realized by the Council.

(10) "Condominium" shall have the meaning given to it hereinabove until such time as it is expanded to include one or more Future Phases and, thereafter, the meaning shall be expanded to include each Future Phases, respectively.

(11) "Condominium Plat" shall mean, collectively, those plats hereinabove referred to, together with any amendatory plats thereto.

(12) "Contract Purchaser" shall mean any person who enters into a contract which entitles such person to purchase a Unit from the Declarant or any other Unit Owner, but who does not hold the legal title of record to such Unit.



(13) "Council" shall mean the Council of Unit Owners, the entity described in the provisions of Section 5.2 hereof.

(14) "Declaration" shall mean this instrument, as from time to time amended.

(15) "Declarant" shall mean King Partners Limited Partnership, a Maryland limited partnership, and each person or entity to whom or which either such named entities or other person who is the Declarant expressly assigns its rights as the Declarant hereunder in the manner set forth in Section 10.2 hereof.

(16) "Eligible Mortgagee" shall mean a Mortgagee who has requested the Council to notify it on any proposed action that requires the consent of a specified percentage of Eligible Mortgagees.

(17) "Future Phases" shall have the meaning ascribed to it by the provisions of Section 7.1 hereof.

(18) "General Common Elements" shall have the meaning ascribed to it by the provisions of Section 3.3.3.

(19) "Limited Common Elements" shall have the meaning ascribed to it by the provisions of Section 3.3.2.

(20) "Mortgage" shall mean any mortgage or deed of trust encumbering any Unit, and any other security instrument used from time to time in the locality of the Condominium, provided that such mortgage, deed of trust or other form of security instrument has been recorded among the Land Records of Montgomery County, Maryland.

(21) "Mortgagee" shall mean the party secured by a Mortgage and any private, public or quasi-public entity guaranteeing or insuring any Mortgage.

(22) "Mortgagee in Possession" shall mean any person who is either (a) a Mortgagee which has possession of a Unit as a result of a default under a Mortgage held by such person, or (b) the Unit Owner of a Unit as the result of the conveyance to such person of the Mortgagor's equity of redemption therein either as the result of a foreclosure proceeding under a Mortgage, or in lieu of such foreclosure proceeding.

(23) "Parcel" shall mean that tract of land described in Exhibit A hereto.

(24) "Patio Limited Common Elements" shall have the meaning ascribed to it by the provisions of Section 3.3.2.



(25) "Person" shall mean any natural person, trustee, corporation, partnership or other legal entity.

(26) "Rules and Regulations" or "Rules" shall mean the rules and regulations from time to time adopted by the Council pursuant to the Bylaws, as from time to time in effect.

(27) "Unit" shall have the meaning ascribed to it by the provisions of Section 3.2.

(28) "Unit Owner" shall mean any person or combination of persons (including, by way of example rather than of limitation, the Declarant) who holds the legal title to a Unit under a deed or other instrument; provided, that (a) no lessee or Contract Purchaser shall, merely by virtue of such person's status as such, be deemed to be a Unit Owner; and (b) no Mortgagee shall be deemed to be the Unit Owner of a Unit unless and until such Mortgagee acquires of record the Mortgagor's equity of redemption.

(29) "Votes" shall mean the votes which under the provisions of Section 5.3 hereof, the Unit Owners are entitled to cast in their capacities as such at meetings of the Council.

1.2. General Definitions. Any other term to which meaning is specifically ascribed by any provision of this Declaration shall for purposes of this Declaration and the Bylaws be deemed to have such meaning.

1.3. Consistency With Act. Any term to which meaning is specifically ascribed by any provision of this Declaration or the Bylaws, and which is used in the Act, wherever possible shall be construed in a manner which is consistent with any construction of such term as so used in the Act. Where such consistency of construction is not possible, the definitions set forth hereinabove shall govern to the extent allowed by law.

## ARTICLE II. NAME.

The Condominium shall be known as "King Farm Condominium".

## ARTICLE III. UNITS AND COMMON ELEMENTS.

3.1. General. The Condominium shall be comprised of Units and Common Elements. There shall be residential Units and parking Units, and the term "Units" shall collectively refer to all such Units.

3.2. Units.

3.2.1. So long as the Condominium has not been expanded pursuant to the provisions of Article VII hereof, the Condominium shall contain twelve (12) residential Units and up to fifty (50) parking Units and up to forty-six (46) storage Units.

3.2.2. The location within the Condominium, and the dimensions of each Unit are shown on the Condominium Plat and are more particularly defined by the provisions of this Article III.

3.2.3. Each Unit shall have and be known by a number or letter, or combination thereof, corresponding to the number or letter, or combination thereof, shown with respect to it on the Condominium Plat, together with the street address or building number of the building in which the Unit is located.

3.2.4. Except as may be otherwise provided herein, each Unit shall consist of all of the following:

(a) The space bounded by and contained within:

(i) with respect to the vertical limits, the following portions of the vertical perimetrical walls enclosing such Unit:

(A) the interior edge of the stud of the vertical perimetrical walls enclosing such Unit; and

(B) with respect to any window opening or doorway opening to the outside surface of any of the said walls, the exterior surface (in the closed position) of the outermost window (including storm window), or the outermost door, set within such opening;

(ii) with respect to the upper horizontal limit, the uppermost surface of the drywall constituting the ceiling of such Unit, provided, however, that with respect to those Units having vaulted ceilings, the upper limit is not a horizontal plane but is as shown on the Plat; and

(iii) with respect to the lower horizontal limit, the bottom surface of the gypcrete or other underlayment or, with respect to a Unit located on the terrace (lowermost level of a building, the upper surface of the concrete slab; and

(b) Any circuit breaker panel, electrical meter, gas meter and any and all gas or electrical installations and fixtures (including, by way of example rather than of limitation, any outlets, meters, switches, lampholders or other electrical or gas service terminals, wherever located) which exist for the exclusive use of such Unit, and all wiring and conduits running from any such circuit breaker panel to any such installation or fixture.

(c) All of the equipment for the heating and air conditioning of such Unit and the heating of water, including all mechanical equipment and appurtenances located outside such Unit which are designed, designated or installed to serve only that Unit, and all of their controls and control wiring.

(d) All duct work running from such heating and air conditioning equipment to its outlets into such Unit, and any such outlets.

(e) All sprinkler heads located within such Unit, but not the sprinkler lines to which such heads are connected, which shall be General Common Elements.

(f) All fireplaces within such Unit, but not the fireplace flues which shall be General Common Elements, nor the exterior fluestacks which shall also be General Common Elements.

(g) All range hoods or bath fans for such Unit, and all duct work connecting the same to any common exhaust duct serving such Unit as well as other Units, provided, however, that any exhaust ducts connecting any common exhaust duct to the exterior of any building shall be deemed to be a General Common Element.

(h) All bathroom and kitchen plumbing fixtures and connections thereto for such Unit, including, by way of example rather than of limitation, all sinks, faucets, commodes, bathtubs, shower stalls, hot or cold water pipes or drain pipes connecting any of the same with any common water or drain pipes serving such Unit as well as other Units.

(i) All regular windows, storm windows, screens, sliding doors and regular doors which are set within any of the walls of such Unit.

(j) Any smoke detectors serving such Unit.

(k) All floor coverings, wall furnishings and all improvements, fixtures and installations of every kind and nature whatsoever located within the boundaries of such Unit as hereinabove set forth, as well as all improvements, fixtures and installations specifically designated by the provisions hereof as being part of such Unit, but not located within such boundaries.

(l) All antennas servicing such Unit.

3.2.5. Anything contained in the foregoing provisions of this Section 3.2 to the contrary notwithstanding, whenever there is located within the boundaries of a Unit, as described hereinabove, either (a) any loadbearing or structural wall, partition or column, or (b) any main, duct, stack, raceway, wire, conduit, line, drain, pipe, meter or other similar thing or device used in providing any utility or service to any portion of the Condominium other than, or in addition to,

such Unit, such Unit shall not include the loadbearing or structural portions of such wall, partition or column, or such thing or device, but such loadbearing or structural portions of such wall, partition or column, or such thing or device shall be a General Common Element.

3.2.6. Each Unit shall have all of the incidents of real property under applicable law. Nothing in the provisions of this Declaration shall be deemed to confer upon (a) any Unit Owner, by virtue of his status as such, or (b) any other person having any other interest in such Unit, by virtue of such interest, any interest in any other Unit.

3.3. The Common Elements.

3.3.1. The Common Elements (a) shall consist of all of the Condominium other than Units the legal title to which is held by a person other than the Council, and (b) shall be comprised of the Limited Common Elements and the General Common Elements.

3.3.2. The Limited Common Elements.

(a) The Limited Common Elements shall consist of those Common Elements which are designated as Limited Common Elements on the Condominium Plat and shall be comprised of the following classes of Limited Common Elements:

(i) "Patio Limited Common Elements" which shall include each of those Limited Common Elements, if any, located on the ground surface specifically designated by such name on the Condominium Plat; and

(ii) "Balcony Limited Common Elements" which shall include each of those Limited Common Elements, if any, constituting decks or porches (other than screened in porches) specifically designated by such or a similar name on the Condominium Plat.

(b) The exclusive right to use, and the absolute obligation to maintain in a manner acceptable to the Board of Directors (subject to the provisions of Section 6.4.1(e) hereof), each of the Balcony Limited Common Elements and Patio Limited Common Elements shall be, and is hereby, reserved and restricted exclusively to the Unit Owner of the Unit immediately adjacent to such Limited Common Elements.

3.3.3. The General Common Elements. The General Common Elements shall consist of all of the Common Elements including, without limitation, (a) all fireplace flues in or serving fireplaces in Units, but not the fireplaces themselves, and (b) all aspects of all elevators other than the Limited Common Elements. Notwithstanding the foregoing, each Unit Owner shall have the absolute obligation to clean the fireplace flue and the interior of the fireplace chimney serving his Unit.

3.3.4. Ownership of the Common Elements. The Common Elements shall be owned by all of the Unit Owners, each of whom shall have that undivided percentage interest therein which is established pursuant to the provisions of Article IV hereof.

3.4. Presumption as to Existing Physical Boundaries of Units and Common Elements.

The existing physical boundaries of any Unit or Common Element which is constructed or reconstructed in such a way that such existing physical boundaries substantially conform to the boundaries shown on the Condominium Plat shall conclusively be presumed to be the boundaries of such Unit or Common Element, regardless of whether (a) there has occurred any shifting, settlement or lateral movement of the building or other portion of the Condominium within or upon which such Unit or Common Element is located, or (b) there exists any minor variation between the boundaries shown on the Condominium Plat and the existing physical boundaries.

3.5. Encroachment.

If any of the improvements included within the Common Elements encroach upon any Unit, or if any of the improvements included within a Unit encroach upon another Unit or the Common Elements, as a result of any construction, reconstruction, repair, shifting, settlement or movement of any building or other improvement forming part of the Condominium which occurs for any reason (including, by way of example rather than of limitation, the partial or total destruction thereof by fire or other casualty, or as a result of the condemnation or other taking thereof through the exercise or threatened exercise of a power of eminent domain) an easement for such encroachment and for the maintenance of the improvements so encroaching shall exist for so long as such improvements exist.

ARTICLE IV. PERCENTAGE INTERESTS.

4.1. General. Each Unit Owner, by virtue of his ownership of a Unit, shall own (a) an undivided percentage interest in the Common Elements (as they from time to time exist), and (b) a percentage interest in the Common Expenses and Common Profits, each of which shall be determined in accordance with the provisions of this Section.

4.2. Percentage Interests in Common Elements and Common Expenses and Common Profits.

4.2.1. Each Unit Owner's undivided percentage interest in the Common Elements shall equal the percentage which is set forth with respect to his Unit in a schedule attached hereto as Exhibit B.

4.2.2. Each Unit Owner's percentage interest in the Common Expenses and Common Profits shall equal the percentage which is set forth with respect to his Unit in Exhibit B.

4.3. Percentage Interests After Expansion. From and after any expansion of the Condominium pursuant to the provisions of article VII, each Unit Owner's undivided percentage interest in the Common Elements, and each Unit Owner's percentage interest in the Common Expenses and Common Profits, thereby automatically shall no longer equal the said respective fractions set forth with respect to his Unit in Exhibit B, but shall thereby automatically become and (until any further such expansion) thereafter remain equal to that fraction (expressed as a percentage), with respect to residential Units, determined by dividing the total square footage of the Residential Unit in question by the total square footage of all residential Units in the Condominium after such expansion and multiplying such resulting number by "95", and with respect to parking Units, determined by dividing the total square footage of the parking Unit in question by the total square footage of all parking Units in the Condominium after such expansion and multiplying such resulting number by "5". Upon each, if any, further such expansion, each Unit Owner's said percentage interests shall in like fashion thereby in each instance automatically become and (until any further such expansion) thereafter remain equal to that fraction which is then determined through the use of such formula.

4.4. Characteristics of Percentage Interests. The percentage interests which are created by the foregoing provisions of this Section may not be separated from the respective Units to which they are appurtenant, shall have a permanent character, and shall not be changed unless and until:

4.4.1. each Unit Owner and each Mortgagee has consented thereto in writing (except where such change is made pursuant to the provisions of this Article IV and Article VII, or Section 11-107(d) of the Act), and

4.4.2. this Declaration has been amended to effect such change through the recordation of an appropriate amendatory instrument among the Land Records of Montgomery County.

4.5. Relationship of Unit to Percentage Interests. Any instrument, matter, circumstance, action, occurrence or proceeding which in any manner affects a Unit shall also affect, in a like manner, the undivided percentage interest in the Common Elements and the percentage interest in the Common Expenses and Common Profits which are appurtenant to such Unit.



ARTICLE V. THE BYLAWS; THE COUNCIL OF UNITS OWNERS;  
VOTES; COUNCIL PROPERTY; ASSESSMENTS.

5.1. The Bylaws. The affairs of the Condominium shall be governed in accordance with the Bylaws, the initial form of which is attached as Exhibit C hereto, is to be recorded among the Land Records of Montgomery County simultaneously herewith, and may be amended from time to time in accordance with the provisions thereof and of the Act, this Declaration and such Bylaws.

5.2. The Council of Unit Owners.

5.2.1. The affairs of the Condominium shall be governed by The Council of Unit Owners of King Farm Condominium, Incorporated, an entity which is both a council of unit owners under the provisions of the Act and a nonstock corporation organized and existing under the law of Maryland.

5.2.2. The membership of the Council shall be comprised of and limited to all of the Unit Owners.

5.2.3. The Council shall have the rights, powers and duties which are vested in, exercisable by or imposed upon it by the provisions of this Declaration, the Bylaws, its Articles of Incorporation or applicable law.

5.3. Votes.

Each Unit Owner shall be entitled to cast at meetings of the Council the number of votes set forth on Exhibit B regardless of whether the Condominium has been expanded. The Votes which a Unit Owner is entitled to cast shall be appurtenant to, and may not be separated from, his Unit. Nothing in the foregoing provisions of this paragraph shall be deemed (i) to prohibit any Unit Owner from giving a proxy to cast such Votes to any person in accordance with the provisions and subject to the limitations of this Declaration and the Bylaws, or (ii) to alter or impair the operation and effect of any provision of this Declaration, the Bylaws or applicable law pursuant to which a Unit Owner's exercise of such right may be conditioned upon his having furnished to the Council any information which he is required to furnish under any such provision.

5.4. Council Property. Except for his ownership of a percentage interest in the Common Expenses and Common Profits pursuant to the provisions of this Declaration, no Unit Owner shall, by virtue of his status as such or as a member of the Council, have either (a) any right, title or interest in or to any of the Council's property or other assets, or (b) any right to possess, use or enjoy any such property or other assets, other than as is expressly conferred upon him by the provisions of the Act, this Declaration, the Bylaws or the Council.

5.5. Assessments. The Council shall obtain funds for the payment of Common Expenses from time to time by levying assessments (each of which is hereinafter referred to as an "Assessment") against the Unit Owners and their respective Units in proportion to their respective percentage interests in the Common Expenses and Common Profits, all upon the terms, for the purposes and subject to the conditions which are set forth in the provisions of the Act, this Declaration and the Bylaws.

ARTICLE VI. CONTROL OF, AND RIGHTS IN,  
COMMON ELEMENTS AND UNITS

6.1. Conveyance or Dedication by Council of Easements or Other Rights in the Common Elements

6.1.1. The Council may grant to any person an easement, right-of-way, license, lease in excess of one (1) year, or similar interest in the Common Elements, if and only if such grant is approved by the affirmative vote of Unit Owners holding in the aggregate at least sixty-six and two-thirds percent (66-2/3%) of the number of Votes held by all of the Unit Owners, and with the express written consent of the Mortgagees of those Units as to which the Unit Owners vote affirmatively.

6.1.2. Notwithstanding the foregoing, the Board of Directors may grant easements, rights-of-way, licenses, leases in the Common Elements in excess of one (1) year or similar interests for the provision of utility services or communication systems for the exclusive benefit of Units within the Condominium, provided that such grant is first approved by the affirmative vote of a majority of the Directors and further provided that such grant is otherwise in compliance with all of the applicable requirements of Section 11-125(f) of the Act.

6.1.3. Each Unit Owner, purchaser, heir, assignee or other transferee of or to the legal or beneficial title to, or any other interest in, any Unit shall be conclusively presumed, by his acceptance thereof, irrevocably to have appointed the Council to be his attorney-in-fact, with full and irrevocable power and authority (which shall be deemed to be coupled with an interest and to survive his disability), in the name of and on behalf of the Condominium, the Council and/or such Unit Owner, purchaser, heir, assignee or other transferee, to take any of the following actions:

(a) grant, convey or dedicate (i) to any one or more public or quasi-public governmental authorities or utility companies, any and all licenses, easements and/or rights-of-way in, over and through the Common Elements for the construction, installation, use, operation, maintenance, repair and replacement of any and all sanitary, sedimentary control or storm sewer lines, drains, culverts, ponds or pumping stations, water lines, mains, or pumping stations, electrical lines or cables, telephone or television lines or cables, gas lines or mains, and other similar facilities, for similar or other purposes, all as the Council considers appropriate for the provision of any utility or utility service to the Condominium, and (ii) to Montgomery County,

WSSC or any other governmental body, any land then forming part of the Common Elements which is improved or to be improved by a roadway, sidewalk or parking area;

(b) convey the legal title to, or an interest in, any or all of the Common Elements to or at the direction of any governmental or quasi-governmental authority either (i) through the condemnation thereof or the exercise of any power of eminent domain with respect to the same, or (ii) under threat of such condemnation or exercise and in lieu thereof (after which grant, conveyance or dedication that portion of the Common Elements which is the subject of the same shall not form part of the Common Elements);

(c) grant easements, rights-of-way, licenses, leases in excess of one (1) year and other similar interests provided such grant has been approved in accordance with the provisions of subsections 6.1.1 or 6.1.2;

(d) grant to the Declarant an easement in, over and through the Common Elements for the construction, installation, use, operation, maintenance, repair and replacement of any improvement of the types enumerated in the provisions of Section 6.3;

(e) execute, enseat, acknowledge, deliver and record on behalf of and in the name of the Condominium, the Council and/or such Unit Owner, purchaser, heir, personal representative, successor, assign or other transferee, any and all documents, the execution, enseatment, acknowledgment, delivery or recordation of which in the name of and on behalf of the same is deemed appropriate by the Council in order to effectuate the provisions of this Section 6.1 or to exercise any of the rights and powers granted to the Council under this Section 6.1; and

(f) grant to the Declarant, for the benefit of any adjacent property, an easement in, over and through the Common Elements for the construction, installation, use, operation, maintenance, repair and replacement of any improvement.

6.1.4. Any instrument executed by the Council pursuant to the aforesaid power of attorney shall contain a certification that such instrument, or the transactions contemplated thereby have been approved by Unit Owners having the requisite number of Votes to approve such instrument or transaction, if such instrument or transaction requires such approval.

## 6.2. Easements Benefiting Units.

6.2.1. Each Unit shall have the benefit of a perpetual easement for the lateral and vertical support of the improvements included within such Unit, which easement shall burden the Common Elements and each other Unit.

6.2.2. Each Unit shall have the benefit of a perpetual, non-exclusive easement for the use of:

(a) each main, duct, exhaust system, stack, raceway, wire, conduit, line, drain pipe, sprinkler pipe, or other device located within the Common Elements or another Unit and used providing any utility or service to the first such Unit; and

(b) each sidewalk, parking lot, corridor, stairway or entranceway which from time to time is part of the General Common Elements for unrestricted ingress and egress to and from his Unit.

6.2.3. Each Unit shall have the benefit of a non-exclusive easement for the use of the General Common Elements; provided that:

(a) such use is in accordance with applicable law and the provisions of this Declaration, the Bylaws and the Rules and Regulations;

(b) no person other than the Council may construct, reconstruct, alter or maintain any structure or make or create any excavation or fill upon, or remove any tree, shrub or other vegetation from, or otherwise damage, the General Common Elements; and

(c) no person shall without first obtaining the Council's consent do anything within the General Common Elements which will cause an increase in any premium paid by the Council for liability or other insurance with respect to the General Common Elements, or the cancellation of any such insurance.

6.2.4. The conveyance of the title to any Unit having the benefit or the burden of an easement created by any of the provisions of this Declaration shall constitute a conveyance of such benefit or burden, without the necessity of any reference thereto in any instrument by which such conveyance of title is made. No such benefit or burden may be conveyed other than with a conveyance of the title to such Unit. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of an individual interest in the Common Elements is void unless the Unit to which that interest is allocated is also transferred.

6.3. Development and Other Easements.

6.3.1. The Declarant shall have, and the Declarant hereby reserves, irrevocable, non-exclusive easements in, over and through the Common Elements:

(a) for pedestrian and vehicular ingress and egress to and from each public roadway which at any time abuts the Condominium, from and to each Unit, for access by (i) the Declarant and its personal representatives, successors and assigns as owner of any adjacent property and of each respective Unit or other portion thereof, (ii) any contractor, subcontractor, real estate agent or broker utilized by the Declarant, and (iii) their respective agents, officers, employees, and invitees, all for any purpose consistent with applicable law in connection with the construction, replacement, repair, maintenance, development or marketing of such respective Unit (even if not then a part of the Condominium);

(b) for the construction, installation, maintenance, repair, replacement and use of any or all utility lines and facilities, to and from their respective points of connection with those respective public utility liens and facilities to which the same are to be connected, from and to each Unit for the benefit of (i) the Declarant and its personal representatives, successors and assigns as owner of any adjacent property or any Unit or other portion thereof, and (ii) their respective agents, employees, invitees, visitors and guests; and

(c) for the construction, installation, maintenance, repair and replacement of advertising signs, construction trailers and sales trailers and for the storage of construction materials anywhere on the Common Elements and for the use of any Unit owned by the Declarant or any affiliate of the Declarant as a model unit, sales office or management office, in connection with the sale, leasing, management, development and marketing of the Units in the Condominium.

6.3.2. The Declarant shall have, and the Declarant hereby reserves, easements in, over and through the Common Elements and the Units for the purpose of servicing and performing warranty work on the Units and the Common Elements, for the purpose of performing fine grading, seeding, sodding and landscaping, and for the purpose of constructing or modifying other Units.

6.3.3. The burden of such easements shall terminate with respect to the Common Elements when and only when the benefit thereof has terminated with respect to all of the parcels and Units pursuant to the provisions of subsection 6.3.4.

6.3.4. (a) The benefit of such easements shall terminate with respect to any parcel contained within the Condominium, upon the latest to occur of (i) the completion of the construction of the improvements to be constructed by the Declarant within such parcel, (ii) three (3) years after the conveyance of record by the Declarant (to a person who, by virtue of such conveyance, is the Unit Owner of such Unit and has not succeeded to the Declarant's right, title and

interest as the Declarant under this Declaration), of the legal title to each Unit within such parcel, and (iii) the expiration of all warranty obligations of the Declarant with respect to all of the Units and Common Elements contained in such parcel.

6.4. Rights and Responsibilities of Unit Owners and Council.

6.4.1. Rights and Responsibilities of Unit Owner with Respect to Maintenance, Repair and Replacement of Units and Limited Common Elements. Each Unit Owner shall:

(a) maintain, repair and replace all portions of his Unit, except those portions of his Unit, if any, which, under the provisions of this Declaration, are to be maintained, repaired and replaced by the Council, and otherwise keep such Unit in a neat and clean condition;

(b) in accordance with all applicable laws and after obtaining all required permits, maintain, repair and replace (i) the heating and air conditioning system, hot water heater and smoke detector serving his Unit, (ii) all fixtures, equipment and appliances installed in his Unit, (iii) all chutes, flues, ducts, conduits, wires, pipes and other apparatus forming a part of his Unit (other than the portions of such items deemed to be General Common Elements hereunder), and (iv) the sprinkler heads within his Unit, but such maintenance, repair and replacement of the sprinkler heads shall be performed only by a contractor designated by the Council;

(c) wash, maintain, repair and replace the glazing, windows, screens, storm windows, doors (including sliding glass doors and screens installed as part of sliding glass doors) which are a part of his Unit, excluding the exterior finished surface of the entry door and doorframe to such Unit and the exterior finished surface of the window frames to such Unit;

(d) maintain, repair or replace at his own expense any portion of his Unit which may cause injury or damage to any other Unit or the Common Elements;

(e) make all routine repairs and perform all ordinary maintenance with respect to the Balcony Limited Common Elements and Patio Limited Common Elements appurtenant to such Unit Owner's Unit and keep such Balcony Limited Common Elements and Patio Limited Common Elements in a neat and clean condition and free of standing water; provided, however, that all structural repairs and replacements to (including any repair or replacement of the structure thereof, including any retaining walls) and all exterior painting of such Balcony Limited Common Elements and Patio Limited Common Elements shall be the obligation of the Council;

(f) exercise his rights and perform his duties under the provisions of the Act, the Bylaws and this Declaration in such manner and at such hours as will not unreasonably disturb any other Unit Owner;

(g) prior to performing any repair work of any kind, the responsibility for which lies with the Council, furnish the Council with written notice of the same (provided that the Council's failure to take action on any such notice shall not be deemed a waiver by it of its said responsibility, a consent by it to the taking of such action, or an agreement by it to bear the expense of such work; and further provided, that the Unit Owner shall abide by any terms specified by the Council relating to the conduct of such work);

(h) clean the fireplace flue and interior of the fireplace chimney serving his Unit notwithstanding the fact that such items are General Common Elements; and

(i) pay any expense which is duly incurred by the Council in making any repair or replacement of the Common Elements which is not covered by insurance and results from the willful or negligent act or failure to act of such Unit Owner or of any tenant, Contract Purchaser, family member, invitee or other occupant or user of his Unit.

6.4.2. Responsibilities of Council with Respect to Maintenance, Repair and Replacement of Common Elements.

(a) Except as may be otherwise provided in paragraphs (e) and (h) of subsection 6.4.1, the Council shall maintain, repair and replace all General Common Elements and Limited Common Elements, including all maintenance and repair responsibilities within any public utility easements affecting the Property, all structural repairs and replacements to Limited Common Elements and all exterior painting of same, the costs of all of which shall be Common Expenses. In order to facilitate the performance by the Council of its maintenance and repair obligations under this Declaration, the Declarant shall provide one or more manuals to the Council which describe, in a clear and understandable manner, how complex facilities which are part of the Common Elements (i.e., stormwater management facilities and large recreational facilities) function and which provide instructions on how to inspect and perform routine maintenance on such facilities. The Declarant shall provide each such manual or manuals to the Council within six months of the completion of the respective facility.

(b) In particular, the Council (i) shall paint and maintain the exterior surfaces of all exterior doors, door frames and window frames, except that the replacement and cleaning of all glass and glazing therein shall be the responsibility of the Unit Owner, (ii) shall paint or stain the exterior surfaces of all Balcony Limited Common Elements which, in either event, are of wooden construction, and (iii) shall paint, maintain and clean the internal lobbies and stairwells of each condominium building.

(c) The Council shall maintain, repair and periodically clean the portions of fireplace flues deemed to be General Common Elements, the costs of which shall be a Common Expense.

(d) In the event that any portion of the Common Areas are designated as reforestation areas (or are similarly designated), the Council and each Unit Owner acknowledges and agrees that such areas must be treated as indicated by the Declarant and/or any governmental authority or any other organization having jurisdiction.

6.5. Control of Common Elements. Anything contained in the foregoing provisions of this Section to the contrary notwithstanding, the Council may:

6.5.1. borrow money to improve the Common Elements in accordance with the provisions of this Declaration, and secure its repayment by subjecting any or all of the General Common Elements to the lien of a mortgage or by pledging all or any portion of the Assessments; provided that anything contained in the provisions of such mortgage to the contrary notwithstanding, if there is a default in the performance of the borrower's obligations thereunder, the mortgagee's remedies on a count of such default shall, as to the property covered by such lien, be limited to those of (a) taking possession of any or all of the same, (b) thereafter charging admission or other fees as a condition to the continued use thereof by the Unit Owners, their family members and guests, and (c) if necessary and if not prohibited by applicable law, opening the enjoyment thereof to the general public or any segment thereof until such debt is satisfied;

6.5.2. take such steps as are reasonably necessary to protect such property against foreclosure under such mortgage (including, by way of example rather than of limitation, that of opening the enjoyment thereof to the general public or any segment thereof, as aforesaid);

6.5.3. may adopt reasonable Rules and Regulations as it deems appropriate with respect to the use of the Common Elements, including the Limited Common Elements, by Unit Owners, their family members, invitees and guests or any other person, in accordance with the provisions of the Bylaws and the Act; and

6.5.4. may not alter or remove any sidewalks or ramps intended to provide access for Units initially constructed for use by a handicapped person without the prior written consent of the Unit Owner of such Unit and shall at all times designate by appropriate signage one parking space in close proximity of such Unit as "handicapped parking."

6.6. Right of Entry.

6.6.1. The Council, acting through the Board of Directors, its officers, or any management company for the Condominium, and their duly authorized representatives and employees, may enter any Unit whenever such entry is reasonably necessary in order (a) to install, inspect, maintain, repair or replace any of the Common Elements to which access can reasonably be obtained only through such entry, or (b) to maintain, repair or replace any portion of such Unit if such maintenance, repair or replacement is the responsibility of the Council or is necessary to prevent injury or damage to any other Unit or to the Common Elements or, with respect to antennas that are part of a Unit, to maintain or repair same, at the applicable Unit Owner's expenses, if such



Unit Owner fails to properly maintain any such antenna . Such costs incurred by the Council shall become the Unit Owner's obligation and shall be payable and may be enforced in the same manner as Assessments for Common Expenses.

6.6.2. Except in the event of an emergency situation, the Board of Directors or the Manager shall provide reasonable notice prior to exercising such right of entry. Exercise of such right of entry either following reasonable notice or in the event of an emergency situation shall not constitute a trespass by the Council, the Board of Directors, the Manager or their respective agents and employees.

6.7. Management of Condominium.

6.7.1. The Council may enter into an agreement with a professional management company to provide management services to the Council for the Condominium. Such agreement:

(a) shall expressly provide that the Council may, without the consent of any other party thereto and without payment of any termination fee or penalty, terminate such agreement: (i) for cause at any time provided that it has given to each other party thereto written notice of its intention to do so by not later than thirty (30) days before the effective date of such termination, and (ii) without cause at any time provided that it has given to each other party thereto written notice of its intention to do so by not later than ninety (90) days before the effective date of such termination;

(b) shall be for a term of not more than one (1) year; and

(c) if provision is made therein for a renewal of such agreement from time to time by agreement of the parties thereto, shall provide that no such renewal provision and no such renewal or combination of renewals made pursuant thereto shall be effective to bind the Council to such agreement for longer than (1) year from the date of such renewal or combination of renewals.

6.7.2. Anything contained in the foregoing provisions of this subsection to the contrary notwithstanding, the Council shall not effectuate any decision by it both (a) to terminate any such management agreement, and (b) thereafter to assume or undertake the management of the Condominium without utilizing or employing professional management services with respect to the same, without obtaining the prior approval of Eligible Mortgagees who represent at least fifty-one percent (51%) of the Votes of Units that are subject to Mortgages held by Eligible Mortgagees.

6.8. Proceeds of Insurance.

6.8.1. Receipt and Distribution of Proceeds by Council. The Council shall:

(a) receive any proceeds which are payable under any policy of casualty or physical damage insurance held by it, and shall hold and distribute the same in trust for the purposes set forth in this Section, for the benefit of the Unit Owners, their respective Mortgagees, the Council and any other insured thereunder; and

(b) not make any distribution of any such proceeds directly to a Unit Owner where a mortgagee endorsement is noted on the certificate of insurance covering his Unit, but shall make any such distribution only to such Unit Owner and his Mortgagee jointly.

6.8.2. Adjustment of Losses. Each Unit Owner shall be deemed to have delegated to the Council his right to adjust with the insurer all losses which are payable under policies purchased by the Council.

6.8.3. Repair or Reconstruction Following a Casualty.

(a) Except as may be otherwise provided by the Act, or this Declaration, if any of the improvements which are insured by the Council are damaged or destroyed, they shall be fully and promptly repaired and restored by the Council using any proceeds of insurance which are payable on account of the same and are held by the Council, and each Unit Owner shall be liable for the payment of the deductible provided for in any such policy or policies in effect except to the extent that such deductible is deemed to be a Common Expense by the Council.

(b) The Council (subject to the operation and effect of the provisions of Section 6.10) shall be responsible for restoring such improvements to and only to substantially the same condition as they were in immediately prior to the occurrence of any damage to, or the destruction of, the same. If, as a result of such repair or reconstruction, any change is made in the location of the improvements within any Unit or the Common Elements, the Council shall record among the Land Records of Montgomery County an amendment to the Condominium Plat which relocates the boundaries of such Unit or the Common Elements so as to conform to the location of such improvements as so changed, and shall hold a power of attorney from each Unit Owner and Mortgagee for such purpose.

6.8.4. Estimate of Cost of Repair. Immediately after the occurrence of any damage to, or the destruction of, any or all of the Condominium which the Council is required to repair, the Board of Directors shall obtain a reliable and detailed estimate of the cost thereof (including, by way of example rather than of limitation, the cost of any professional service or bond which the Board of Directors desires to obtain in connection with such repair).

6.8.5. Construction Fund. Any proceeds of insurance received by the Council as a result of any damage to, or the destruction of, the Condominium, and any other sums received by the Council from any Unit Owner as a result thereof, shall constitute a construction fund which shall be disbursed by the Council in payment of the costs of the reconstruction and repair thereof, in the following manner:

(a) If the amount of the estimated cost of reconstruction and repair of the damaged or destroyed portion of the Condominium is less than One Hundred Thousand Dollars (\$100,000.00), such construction fund shall be disbursed from time to time by the Council in payment of such cost upon authorization by the Board of Directors; provided that at the written request of any Mortgagee which is a beneficiary of any such fund, such fund shall be disbursed in the manner set forth in the provisions of paragraph (b) of this subsection.

(b) If the amount of the estimated cost of reconstruction and repair of the damaged or destroyed portion of the Condominium is not less than One Hundred Thousand Dollars (\$100,000.00), such construction fund shall be disbursed in payment of such cost upon the approval of such disbursement by an architect or professional engineer licensed to practice in Maryland and employed by the Council to supervise such reconstruction and repair, from time to time as such reconstruction and repair progress. Such architect or professional engineer shall be required to furnish to the Council a certificate giving a brief description of the services and materials supplied by each contractor, subcontractor, materialman, architect, engineer or other person who has rendered services or furnished materials in connection with such reconstruction and repair, and stating (1) that the sum requested by each such person in payment therefor is justly due and owing, and does not exceed the value of the services and materials furnished; (2) that there is, to the best of such architect's or engineer's knowledge, information and belief, no other outstanding debt incurred for such services and materials as so described; and (3) that the cost, as reasonably estimated by such architect or engineer, for so much of such repair and reconstruction as remains to be done after the date of such certificate does not exceed the amount which will remain in such construction fund after the payment therefrom of the sum so requested.

(c) If any amount remains in such construction fund after the reconstruction or repair of such casualty damage has been fully completed and all of the costs thereof have been paid, such portion shall be distributed to the Unit Owners and their insured Mortgagees, as their respective interests may appear.

6.9. Substantial or Total Destruction.

6.9.1. Grounds for Not Reconstructing. Any portion of the Condominium which is damaged or destroyed shall be repaired and reconstructed unless (a) the Condominium is terminated pursuant to the provisions of the Act and this Declaration, (b) the reconstruction and repair of such portion would be illegal under any applicable Maryland or local health or safety statute or ordinance, or (c) at least eighty percent (80%) of the Unit Owners (including every Unit

Owner of a Unit which would not be reconstructed) vote not to reconstruct such portion at a special meeting of the Council held pursuant to the provisions of the Bylaws.

6.9.2. Distribution of Proceeds. If pursuant to the provisions of subsection 6.9.1. such damage or destruction is not to be repaired or reconstructed, subject to the provisions of Section 8.6 hereof, the net proceeds of any insurance which are payable to the Council as a result of such damage or destruction shall be held in one fund, which shall be used or distributed by the Council as follows:

(a) the net proceeds attributable to damaged Common Elements shall be used to restore such damaged Common Elements to a condition compatible with the remainder of the Condominium;

(b) the net proceeds attributable to Units and Limited Common Elements which are not to be rebuilt shall be distributed to the Unit Owners of such Units in accordance with the provisions of the Act; and

(c) the remainder of such net proceeds shall be distributed to all of the Unit Owners in proportion to their respective undivided percentage interests in the Common Elements.

6.10. Conflicts. Except to the extent otherwise required by the Act or by HUD, VA or FNMA rules and/or regulations, the provisions of subsections 6.9 shall govern in lieu of any provisions of the Act concerning restoration and repair and the use of insurance proceeds.

## ARTICLE VII. EXPANSION OF CONDOMINIUM

7.1. Reservation of Right to Expand. The Declarant hereby reserves, for a period of seven (7) years after the date hereof, the right (which shall be exercisable in its sole discretion, but only in accordance with the provisions of this Section) to expand the Condominium by subjecting to the Condominium regime, and thereby adding to the Condominium from time to time, Future Phases, which are designated and delineated on the Condominium Plat as Future Phase 2 through and including Future Phase 5, respectively, together with all of the respective improvements thereon, and all of the respective rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging or in anyway appertaining (each of which Future Phases, together with such improvements thereon and appurtenances thereto, hereinafter sometimes is referred to as a Future Phase and in the plural, one or more of them sometimes is referred to hereinafter as "Future Phases"). Such Future Phases may be added to the condominium in such order as the Declarant, in its sole and absolute discretion, from time to time may determine. All of the real property comprising Future Phase 2 through and including Future Phase 5 is more particularly described in Exhibit D attached hereto. Future Phases may, in the sole discretion of the Declarant, include additional parking and/or storage Units in an amount determined by Declarant;

provided, however, that the maximum number of parking Units that may be added to the Condominium is fifty (50), and the maximum number of storage Units that may be added to the Condominium is forty-six (46).

7.2. Effectiveness of Expansion. Any such expansion shall be accomplished by, and shall be and become effective upon and only upon,

7.2.1. the amendment of this Declaration by the recordation among the Land Records of an appropriate amendatory instrument which expressly states:

(a) the number of Units and the land to be included by way of such expansion;

(b) the undivided percentage interest in the Common Elements and the percentage interest in the Common Expenses and Common Profits of each Unit Owner after such expansion, which percentage interests shall be recalculated in accordance with the provisions of Section 4.3 hereof; and

(c) the number of Votes which each Unit Owner is entitled to cast at meetings of the Membership after such expansion, as determined in accordance with the provisions of Article V.

7.2.2. the amendment of the Condominium Plat by the recordation among the Land Records of an appropriate amendatory plat (consisting of one or more sheets) setting forth the detail and information as to the Future Phases, the Units and the Common Elements added to the Condominium by such expansion, the setting forth of which therein is required by applicable law to effectuate such expansion.

7.3. Documentation. Except to the extent that the form and contents of any such amendatory instrument or plat are dictated by the Declaration and/or by applicable law, they may be determined by the Declarant in the exercise of its sole discretion, and the effectiveness of neither any such expansion nor the execution or recordation of any such instrument or plat shall be conditioned upon any person (other than the Declarant) having consented thereto or joined therein (including, by way of example rather than of limitation, any Unit Owner). The Declarant shall be entitled to execute and/or record any such instrument or plat and/or take any other action with respect thereto which, in the Declarant's opinion, is necessary or desirable to effectuate the provisions of this Section.

7.4. Buildings and Common Elements in the Future Phases. The boundaries of each of the Future Phases and the outlines of those portions thereof which, if added to the Condominium, as aforesaid, will constitute buildings or be part of the Common Elements, are shown in general terms on the Condominium Plat, but may by such amendment be revised in any manner not inconsistent with the provisions of this Declaration and the Act. Any and all development and improvements in

each of the Future Phases shall be consistent, in terms of quality of construction, with the improvements of Phase 1.

7.5. Maximum Number of Units. The maximum number of residential Units which may be added to the Condominium as the result of any such expansion shall be eighty (80) resulting in a total of ninety-two (92) residential Units in the Condominium when fully expanded. The maximum number of parking Units which may be added to the Condominium as a result of any such expansion shall be fifty (50) resulting in a total of fifty (50) parking Units in the Condominium when fully expanded. The maximum number of storage Units which may be added to the Condominium as a result of any such expansion shall be forty-six (46) resulting in a total of forty-six (46) storage Units in the Condominium when fully expanded.

7.6. Effect of Expansion. Upon any such expansion of the Condominium,

7.6.1. the title to the Future Phase thereby added to the Condominium shall be and thereafter remain subject to the operation and effect of the provisions of this Declaration, to the same extent as if it were part of the Condominium on the date hereof;

7.6.2. each Mortgage in effect immediately before such expansion shall, automatically and without the necessity of any action by any party thereto, be deemed to encumber the undivided percentage interest in the Common Elements which is appurtenant to that Unit, the title to which is encumbered by such Mortgage, as and only as such undivided percentage interest and the Common Elements exist immediately after such expansion; and

7.6.3. liens arising in connection with the Declarant's ownership of, and construction of improvements upon, the Condominium property to be added by expansion must not adversely affect the rights of existing Unit Owners or the priority of any first Mortgage on Units in the existing Condominium property.

7.7. Substantial Completion. Anything contained in the provisions of this Article VII to the contrary notwithstanding, any improvement shown on the Condominium Plat, as the same may be amended pursuant to the provisions of this Declaration, shall be substantially complete before an expansion of the Condominium adding the Future Phase in which such improvement is located. All such improvements shall be consistent in quality of construction with any comparable improvements in the Condominium.

7.8. HUD, VA, FHA, FNMA, FHLMC and/or GNMA Approval. Anything to the contrary contained in this Declaration notwithstanding, no expansion of the Condominium (or merger with any successor condominium regime) shall be effected without the prior written approval of HUD, VA, FHA, FNMA, FHLMC and/or GNMA if such agencies insure or guarantee any Mortgages on Units and if such agencies require such approval. In the event of any conflict between any rules, regulations or requirements of HUD, VA, FHA, FNMA, FHLMC and/or GNMA and any provision of this Declaration or the Bylaws or in the event of any omission of any

requirement of HUD, VA, FHA, FNMA, FHLMC and/or GNMA from this Declaration or the Bylaws, this Declaration and/or the Bylaws shall be deemed to be modified such that the HUD, VA, FHA, FNMA, FHLMC and/or GNMA rule, regulation or requirement shall control in the event of a conflict or this Declaration and/or the Bylaws shall be deemed to be supplemented in the event of any such omission.

#### ARTICLE VIII. RIGHTS OF MORTGAGEES.

##### 8.1. General.

8.1.1. Regardless of whether a Mortgagee in Possession of a Unit is the Unit Owner thereof, (a) it shall have, in addition to its rights hereunder as a Mortgagee, all of the rights under the provisions of this Declaration, the Condominium Plat, the Bylaws and applicable law which would otherwise be held by such Unit Owner, subject to the operation and effect of anything to the contrary contained in its Mortgage, unless such rights are exercisable only by a Unit Owner pursuant to applicable law, and (b) the Council and any other Unit Owner or person shall be entitled, in any matter arising under the provisions of this Declaration and involving the exercise of such rights, to deal with such Mortgagee in Possession as if it were the Unit Owner thereof.

8.1.2. Any Mortgagee in Possession of a Unit shall (subject to the operation and effect of the provisions of this Declaration, the Bylaws or applicable law) bear all of the obligations under the provisions thereof which are borne by the Unit Owner thereof; provided, that nothing in the foregoing provisions of this subsection 8.1.2 shall be deemed in any way to relieve any Unit Owner of any such obligation, or of any liability to such Mortgagee in Possession on account of any failure by such Unit Owner to satisfy any of the same.

8.2. Rights of First Refusal. Any Mortgagee in Possession shall be exempt from any right of first refusal or similar restriction held by the Council.

8.3. Priority over Assessment. The interest in a Unit held by a Mortgagee thereof under its Mortgage shall be:

8.3.1. free of any claim or lien for any Assessment which is levied against such Unit prior to the recordation of such Mortgage (unless prior to such recordation a statement of lien [as that term is defined by the provisions of Section 14-201 of the Maryland Contract Lien Act, and sufficient for the purposes thereof] covering such Assessment is recorded); and

8.3.2. free of any such claim or lien arising after such recordation of such Mortgage, and before such Mortgagee is a Mortgagee in Possession of such Unit.

8.4. Actions Conditioned on Mortgagee's Approval.

8.4.1. Unless at least two-thirds (2/3rds) of the first Mortgagees (based upon one vote for each first Mortgage owned) have given their prior written approval thereof, the Council shall not by act or omission:

(a) except pursuant to the provisions of Sections 11-107(d) and 11-115 of the Act, partition or subdivide, or seek to partition or subdivide, any Unit;

(b) seek to abandon, partition, subdivide, encumber, sell or transfer any of the Common Elements (provided, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements, or pursuant to other provisions of this Declaration, shall not be deemed to be prohibited by the foregoing provisions of this subsection); or

(c) except pursuant to the provisions of Sections 11-107(d) and 11-115 of the Act or pursuant to Article VII hereof, change the undivided percentage interests in the Common Elements or the percentage interests in the Common Elements and Common Profits of a Unit; or

(d) use any proceeds derived from hazard insurance and paid to the Council on account of any damage to or destruction of any of the improvements within any Unit or the Common Elements, for other than the repair, replacement or reconstruction of such improvements, except to the extent and in the manner provided by the Act in the event that:

(i) the Condominium is terminated pursuant to Section 10.3 hereof;

(ii) repair or replacement would be illegal under any state or local health or safety statute; or

(iii) eighty percent (80%) of the Unit Owners, including every Unit Owner of a Unit which would not be rebuilt and every Unit Owner to whom the use of a Limited Common Element which would not be rebuilt is assigned, vote not to rebuild.

8.5. Right to Inspect, to Receive Audited Statement and to Receive Notice.

8.5.1. Right to Inspect and to Receive Audited Statement. A Mortgagee shall, upon written request of the Council, be entitled to (a) inspect the Council's books and records during normal business hours, and (b) receive an annual audited financial statement of the Council within ninety (90) days following the end of any fiscal year of the Council.

8.5.2. Right to Notice. A Mortgagee, upon written request of the Council (which request must state the name and address of the Mortgagee and the Unit number of the Unit which its Mortgage encumbers) shall be entitled to be given timely written notice by the Council of:



- (a) any proposed action of the Council which, under the provisions of subsection 6.7.2 or 10.3.4 requires the consent of a specified percentage of Eligible Mortgagees;
- (b) any proposed termination of the Condominium Regime;
- (c) any condemnation or eminent domain proceeding or casualty loss affecting either a material portion of the Condominium or the Unit securing its Mortgage;
- (d) any default in the performance by the Unit Owner of the Unit on which such Mortgagee holds a Mortgage of any obligations (including, without limitation, the obligation to pay Assessments) under the Declaration, Bylaws or Rules and Regulations which is not cured within sixty (60) days;
- (e) any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Council; or
- (f) the interests in the General or Limited Common Elements appertaining to any Unit or the liability for Common Expenses appertaining thereto.

8.6. Rights in Event of Damage or Destruction.

8.6.1. If any part or all of a Unit is damaged substantially, destroyed or made the subject of any condemnation or eminent domain proceeding, or the acquisition thereof is otherwise sought by any condemning authority, each Unit Owner and each Mortgagee shall have such rights in connection therewith as are set forth in the provisions of the Act and this Declaration (including, by way of example rather than of limitation, those of such provisions which govern the disposition or distribution of the proceeds thereof, any resulting reallocation of the respective undivided percentage interests in the Common Elements, percentage interests in the Common Expenses and Common Profits and the Votes which are appurtenant to the Units, and any restoration or repair of the Condominium necessitated thereby). Without limitation upon the foregoing, Mortgagees shall have the following protections in connection with destruction and/or taking in condemnation of the Condominium property:

- (a) Any restoration or repair of the Condominium after a partial condemnation or damage due to an insurable hazard is required to be substantially in accordance with the Declaration and the original plans and specifications unless the approval of Mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to Mortgages held by Mortgagees are allocated, is obtained.
- (b) Any election to terminate the Condominium regime after substantial destruction or a substantial taking in condemnation of the Condominium property requires the approval of Mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to Mortgages held by Mortgagees are allocated.

8.6.2. Nothing in the provisions of this Declaration, the Bylaws or the Condominium Plat shall entitle the Unit Owner of a Unit or any other party to priority over any Mortgagee of such Unit in the distribution with respect to such Unit of the proceeds of (a) any insurance which accrue as a result of any such damage or destruction, or (b) any award or settlement made as a result of any such condemnation, eminent domain proceeding or acquisition.

ARTICLE IX. [INTENTIONALLY DELETED.]

ARTICLE X. GENERAL.

10.1. Effectiveness. This Declaration shall become effective upon and only upon its having been executed and acknowledged by the Declarant and recorded among the Land Records of Montgomery County.

10.2. Assignment.

10.2.1. The Declarant shall be entitled at any time to assign to any person or persons any or all of its right, title and interest hereunder (including, by way of example rather than of limitation, the Declarant's rights (and any proxy) under, or he'd pursuant to, the provisions of Articles VI and VII) by an instrument which makes specific reference to this subsection, and is executed and delivered by the Declarant and recorded among the Land Records of Montgomery County. Notwithstanding any such assignment, the Declarant shall remain liable for the performance of the obligations of the Declarant hereunder.

10.2.2. The Declarant from time to time hereafter may permit any right which it holds under the provisions of this Declaration to be exercised on its behalf by any of its officers, directors, employees or agents.

10.3. Amendment and Termination.

10.3.1. Except as provided in subsections 10.3.2 and 10.3.3 and in addition to the requirements of subsection 10.3.4 hereof, and except as provided in Article VII, this Declaration and the Condominium Plat may be amended with and only with the prior, express written consent thereto of eighty percent (80%) of the Unit Owners, acting in accordance with the provisions of the Act.

10.3.2. Notwithstanding the provisions of subsection 10.3.1, this Declaration and the Condominium Plat may be amended with and only with the prior express, written consent thereto of each Unit Owner and each Mortgagee acting in accordance with the provisions of the Act if:

(a) such amendment would effect a change in (i) the boundaries of any Unit, (ii) the individual percentage interest in the Common Elements or the percentage interest in the Common Expenses and Common Profits which is appurtenant to any Unit, or (iii) the number of Votes held by the Unit Owner of any Unit;

(b) such amendment would permit any Unit to be used for other than a residential use;

(c) such amendment would modify in any way rights expressly reserved for the benefit of the Declarant (including, without limitation, the provisions of Section 6.3, Article VII, Section 10.2 and paragraph 10.3.3(c) or provisions required by any governmental authority (including, without limitation, Section 7.7, Article VIII and subsection 10.3.4) or provisions for the benefit of any public utility, any such amendment also requiring the express written consent of the Declarant, regardless of whether the Declarant is then a Unit Owner;

(d) such amendment would redesignate General Common Elements as Limited Common Elements (or vice versa); or

(e) such amendment would modify this subsection 10.3.2.

10.3.3. Anything contained in any of the provisions of this Declaration to the contrary notwithstanding:

(a) for purposes of the provisions of subsection 10.3.1, an amendment of the Bylaws in accordance with the provisions thereof shall not be deemed an amendment of this Declaration;

(b) the Bylaws may be amended by and only by the affirmative vote of Unit Owners having at least sixty-six and two-thirds percent (66-2/3%) of the total number of Votes then held by all of the Unit Owners;

(c) the Declarant may, without obtaining the consent thereto of any Unit Owner or Mortgagee, amend this Declaration, the Bylaws or the Condominium Plat if and only if such amendment is (in the Declarant's reasonable opinion) necessary to correct obvious typographical, mathematical or similar errors therein; and

(d) nothing in the foregoing provisions of subsections 10.3.1 and 10.3.2 shall be deemed in any way to require the consent of each Unit Owner and each Mortgagee to any amendment of this Declaration made pursuant to the provisions of Section 11-107(d) or Section 11-115 of the Act, so long as such amendment is made in accordance with such provisions of the Act.

10.3.4. Anything contained in any of the provisions of this Declaration notwithstanding, this Declaration and the Condominium Plat may be amended with and only with the approval of Eligible Mortgagees who represent at least fifty-one percent (51%) of the Votes of Units that are subject to Mortgages held by Eligible Mortgagees if the amendment would effect a change in:

- (a) Voting rights;
- (b) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, and/or the priority of assessment liens;
- (c) reduction in reserves for maintenance, repair and replacement of the Common Elements;
- (d) responsibility for maintenance and/or repairs;
- (e) reallocation of the individual percentage interests in the Common Elements or the rights to use Limited Common Elements and General Common Elements;
- (f) redefinition of the boundaries of Units other than as referred to in subsection 10.3.3(d);
- (g) conversion of Units into Common Elements or vice versa;
- (h) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium other than in accordance with Article VII;
- (i) hazard or fidelity insurance requirements;
- (j) any restrictions on the leasing or use of Units;
- (k) the imposition of any restrictions on a Unit Owner's right to sell or transfer his Unit;
- (l) a decision by the Council of the Unit Owners to establish self-management;
- (m) any provision requiring the restoration or repair of the Condominium after a casualty or condemnation; and

(n) any provisions that expressly benefit mortgage holders, insurers or guarantors.

10.3.5. Any amendment to this Declaration shall become effective upon and only upon the recordation of an appropriate amendatory instrument or plat among the Land Records of Montgomery County.

10.3.6. Except as is otherwise provided in this Declaration, the Condominium regime may be terminated with and only with (a) the prior express written consent thereto of eighty percent (80%) of the Unit Owners acting in accordance with the provisions of the Act, (b) the approval of Eligible Mortgagees, if such termination is upon substantial destruction of the Condominium or the condemnation thereof, and (c) the approval of Eligible Mortgagees who represent at least sixty-seven percent (67%) of the Votes of Units that are subject to Mortgages held by Eligible Mortgagees, if such termination is for other reasons.

10.3.7. An Eligible Mortgagee shall be deemed to have approved any action referred to in subsections 10.3.4, 10.3.6 or 6.7.2 if the Eligible Mortgagee fails to submit a response to any written proposal with respect to the foregoing within thirty (30) days after such Eligible Mortgagee receives notice of the proposal, provided the notice was delivered by certified or registered mail, with a return receipt requested.

10.4. Waiver. Neither the Declarant nor the Council shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing. Without limiting the generality of the foregoing, no delay or omission by the Declarant or the Council in exercising any such right shall be deemed to be a waiver of the exercise thereof. No such waiver made with respect to any instance involving the exercise of any such right shall be deemed to be a waiver with respect to any other instance involving the exercise thereof, or with respect to any other such right.

10.5. Applicable Law. This Declaration shall be given effect and construed by application of the law of Maryland.

10.6. Headings. The headings of the articles, sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing the contents thereof.

10.7. Severability. No determination by any court, governmental or administrative body or otherwise that any provision of this Declaration, the Bylaws, the Condominium Plat or any amendment thereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other provision thereof, or (b) such provision in any instance which is not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by law, and shall be construed wherever possible as being consistent with applicable law.

10.8. Construction. All references made herein in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well.

10.9. Contract Purchasers and Lessees. Nothing in the provisions of this Declaration or the Bylaws shall be deemed in any way to condition the effectiveness of any action upon the consent thereto or joinder therein of any Contract Purchaser or lessee of a Unit, notwithstanding that such effectiveness may be conditioned upon the consent thereto or joinder therein of the Unit Owner of such Unit.

10.10. Exhibits. Each writing or plat which is referred to herein as being attached hereto as an exhibit or is otherwise designated herein as an exhibit hereto is hereby made a part hereof.

10.11. General Plan of Development.

10.11.1. The provisions of this Declaration, the Bylaws and the Condominium Plat shall conclusively be deemed to be part of a general plan or scheme of development and use for the Condominium and, as such, to be covenants running with, binding upon, benefiting and burdening the respective titles to each Unit and the Common Elements.

10.11.2. Subject to the provisions of the Act, if any Unit Owner, lessee or family member of a Unit Owner or other person fails to comply with any of the provisions of this Declaration, the Bylaws, the Rules and Regulations or the Condominium Plat, such failure shall give rise to a cause of action for the recovery of damages, injunctive relief or both, in the Council and each Unit Owner (including the Declarant if he is a Unit Owner), and the prevailing party shall be entitled to recover all of its expenses incurred in bringing such an action against such person. In addition, each Unit Owner shall have a similar right of action against the Council of Unit Owners if the Council of Unit Owners fails to comply with the provisions of this Declaration, the Bylaws, the Rules and Regulations or the Condominium Plat.

10.11.3. Both the Declarant, by delivering to any person a deed conveying to him the title to a Unit, and such person, by accepting such delivery, shall be deemed thereby to have agreed with each other, the Council and each other Unit Owner, to be bound by the provisions of this Declaration, the Bylaws and the Condominium Plat.

10.12. Liability of Unit Owners.

The liability of each person who, together with one or more other persons, is a Unit Owner or a lessee for the adherence to the terms and the satisfaction of the conditions hereof and of the Bylaws shall be joint and several.

10.13. Notices.

10.13.1. Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to the Declarant, the Council, a Unit Owner or any other person shall be in writing, and shall be provided by first-class mail, postage prepaid, or by hand delivery.

10.13.2. Anything contained in the provisions of this Declaration to the contrary notwithstanding, unless a Unit Owner has notified the Council of its status as such and furnished the Council with its Notice Address in accordance with the provisions of the Bylaws, such person shall have no right under the provisions thereof or of this Declaration (a) to be given any notice, demand, consent, approval, request or other communication or document by the Council, (b) to participate in the consideration of or cast any vote on any question voted upon by the Membership, or (c) otherwise to be recognized as such by the Council.

10.14. Waiver of Reversionary Right. The provisions of this Declaration shall not be construed as conditions subsequent, or as creating a possibility or reverter, and no provision hereof shall be deemed to vest in the Declarant or any other person any reversionary right with respect to any Unit or the Common Elements. Any such reversionary right is hereby expressly waived.

10.15. Declarant's Affirmation Pursuant to Section 11-102.1 of the Act. The Declarant hereby affirms under penalty of perjury that the notice requirements of Section 11-102.1 of the Act, if applicable to this Declaration or to the Condominium, have been fulfilled.

10.16. Declarant's Power of Attorney.

The Declarant hereby reserves for itself, its successors, transferees and assigns, for a period of seven (7) years from the date the first Unit is conveyed to an individual purchaser, or until it conveys title to the last Unit, whichever occurs first, the right to execute on behalf of all contract purchasers, Unit Owners, Eligible Mortgagees, Mortgagees, mortgagees, and other lienholders or parties claiming a legal or equitable interest in the Condominium, any such agreements, documents, amendments or supplements to this Declaration, the Bylaws or the Condominium Plat which may be so required by FNMA, FHA, VA, FHLMC, GNMA or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Condominium, or institutional lender or title insurance company designated by the Declarant.

10.16.1. By acceptance of a deed to any Unit or by the acceptance of any other legal or equitable interest in the Condominium, each and every such contract purchaser, Unit Owner, Eligible Mortgagee, Mortgagee, mortgagee or other lienholder or party having a legal or equitable interest in the Condominium does automatically and irrevocably name, constitute, appoint and confirm the Declarant, its successors, transferees and assigns, as attorney-in-fact for the purpose of executing such agreement, document, amendment, supplement and other instrument(s) necessary to effect the foregoing subject to the limitations set forth herein.

10.16.2. No such agreement, document, amendment, supplement or other instrument which adversely affects the value or substantially alters the floor plan of a Unit, or changes the percentage interest appurtenance to such Unit as determined pursuant to Article IV hereof, or substantially increases the financial obligations of the Unit Owner, or reserves any additional or special privileges for the Declarant not previously reserved, shall be made without the prior written consent of the affected Unit Owner(s) and all owners of any mortgage(s) encumbering the Unit(s) owned by the affected Unit Owner(s). Any such agreement, document, amendment, supplement or instrument which adversely affects the priority or validity of any mortgage which encumbers any Unit shall not be made without the prior written consent of the owners of all such mortgages.

10.16.3. The power of attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to any and all Units and be binding upon the heirs, personal representatives, successors, transferees and assigns of any of the foregoing parties. Further, said power of attorney shall not be affected by the death or disability of any principal and is intended to deliver all right, title and interest of the principal in and to said power of attorney. Said power of attorney shall be vested in the Declarant, its successors, transferees and assigns until the initial conveyance of all Units planned to be within the Condominium of the expiration of same.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed and ensealed on their behalves by their duly authorized representatives, the day and year first above written.

WITNESS:

KING PARTNERS LIMITED  
PARTNERSHIP

By: BA King Limited Partnership,  
General Partner

By: BA King Investment Company,  
General Partner

By: \_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**ACKNOWLEDGEMENT**

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY that on this \_\_ day of \_\_\_\_\_, 1996, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of BA King Investment Company, General Partner of BA King Limited Partnership, General Partner of King Partners Limited Partnership and that he as such \_\_\_\_\_, being authorized so to do executed the foregoing instrument on behalf of such corporation in its capacity as General Partner of BA King Limited Partnership, General Partner for King Partners Limited Partnership for the purposes therein contained by signing the name of the Corporation by himself as such \_\_\_\_\_.

AS WITNESS my hand and Notarial Seal the day and year first above written.

\_\_\_\_\_  
Notary Public

My Commission expires:  
  
\_\_\_\_\_

**CERTIFICATION**

THE UNDERSIGNED hereby certifies that the above instrument was prepared by an attorney admitted to practice before the Court of Appeals of Maryland, or under the supervision of an attorney admitted to practice before the Court of Appeals of Maryland, or by one of the parties named in the instrument.

\_\_\_\_\_  
Mark P. Keener

**JOINDER AND CONSENT OF TRUSTEES**

\_\_\_\_\_ and \_\_\_\_\_, as trustees under that certain \_\_\_\_\_ dated \_\_\_\_\_, 19\_\_, and recorded among the Land Records of Montgomery County, Maryland in Liber \_\_\_\_\_, folio \_\_\_\_\_ (the "Deed of Trust"), hereby join in the aforesaid Declaration of Condominium for the sole purpose of expressing consent thereto and of binding, subjecting and subordinating the Deed of Trust and their interest in the property encumbered by the Deed of Trust to the terms of the aforesaid Declaration of Condominium.

WITNESSETH:

\_\_\_\_\_  
\_\_\_\_\_, Trustee (SEAL)

\_\_\_\_\_  
\_\_\_\_\_, Trustee (SEAL)

STATE OF MARYLAND, COUNTY/CITY OF \_\_\_\_\_, to wit:

I HEREBY CERTIFY, that on this \_\_\_ day of \_\_\_\_\_, 1997, before me, the undersigned Notary Public of the State of Maryland, personally appeared \_\_\_\_\_, known to me (or satisfactorily proved) to be the person who executed the foregoing instrument, and acknowledged that he/she executed the same in the capacity and for the purposes therein recited.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

STATE OF MARYLAND, COUNTY/CITY OF \_\_\_\_\_, to wit:

I HEREBY CERTIFY, that on this \_\_\_\_ day of \_\_\_\_\_, 1997, before me, the undersigned Notary Public of the State of Maryland, personally appeared \_\_\_\_\_, known to me (or satisfactorily proved) to be the person who executed the foregoing instrument, and acknowledged that he/she executed the same in the capacity and for the purposes therein recited.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

EXHIBIT A

DESCRIPTION OF THE LAND  
SUBJECT TO THE CONDOMINIUM

# 54767 MPK  
006100-0042

EXHIBIT B

<u>Building</u>	<u>Unit Designation</u>	<u>Percentage Interest</u>	<u>Votes</u>
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Percentage Interests in residential and parking Units shall be determined in accordance with the terms and conditions of the Declaration. Each residential Unit shall have one (1) vote. Parking Units shall have no votes. Storage Units shall have no Percentage Interest and no Votes.