

**ORIGINAL
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MASTER CONDOMINIUM DECLARATION

FOR

THE WATERFRONT MASTER CONDOMINIUM

Made and Established on April 4, 2006

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This Master Condominium Declaration for The Waterfront Master Condominium is made and established on April 4, 2006, by Declarant;

RECITALS:

- A. Declarant is the fee simple owner of the Property.
- B. Declarant desires to create a Condominium pursuant to the provisions of the Act.
- C. Declarant intends hereby to establish a plan for the individual ownership of estates in real property consisting of the Units and the appurtenant undivided interests in the Common Elements.

NOW, THEREFORE, Declarant does hereby submit the Property to the provisions of the Act and the Condominium established hereby and does hereby publish and declare that the following terms, provisions, covenants, conditions, easements, restrictions, reservations, uses, limitations and obligations are hereby established and shall be deemed to run with the Property and shall be a burden and benefit to Declarant, the Master Association, the Owners, the Sub-Unit Owners and their respective heirs, legal representatives, successors and assigns:

ARTICLE I

Definitions

Section 1.1 Terms Defined. As used in this Master Declaration, the following terms shall have the meanings set forth below:

"Access Easement." An easement as more particularly described in Section 3.6(a) of this Master Declaration.

"Acquired Property." As defined in Section 12.2 of this Master Declaration.

"Act." The Uniform Condominium Act, Texas Property Code, Chapter 82, Section 82.001 et seq., as amended from time to time.

"Additional Assessments." Assessments established by the Master Association to cover Charges owed to the Master Association by one or more Owners or by one Owner to another Owner, pursuant to the Governing Documents.

"Affiliate." As defined in Section 82.003(a)(1) of the Act.

"Allocated Interests." The undivided interests of each Owner in the Common Elements and the Common Expenses allocated to each Unit as reflected on Exhibit "C" attached to this Master Declaration (except as Common Expenses may otherwise be allocated pursuant to the Allocation Document), as the same may be reallocated in accordance with the Reallocation Percentages, as required from time to time, pursuant to the provisions of this Master Declaration.

"Allocation Document." The document entitled "The Waterfront Master Condominium Maintenance and Capital Expense Allocations" executed of even date herewith by Declarant and which is incorporated herein by reference for all purposes.

"Approved Flags." As defined in Section 3.1(b) of this Master Declaration.

"Assessments." The Monthly Assessments, Special Assessments and Additional Assessments, owing to the Master Association by an Owner or levied against a Unit by the Master Association.

"Board of Directors." The board of directors of the Master Association named in the Certificate of Formation and their successors as duly elected and qualified from time to time.

"Building." Collectively and individually, the Hotel Tower and the Residential Tower, including the Structure thereof.

"Bylaws." The bylaws of the Master Association, adopted by the Board of Directors, as amended from time to time.

"Certificate of Formation." The Certificate of Formation of the Master Association filed with the Secretary of State of Texas, as amended from time to time.

"Charges." Any costs, expenses, dues, interest, fees, late fees, fines, collection costs, attorney's fees and any other sums arising under the Governing Documents owing to the Master Association or an Owner from one or more Owners or a Tenant, other than Common Expenses.

"Common Elements." All portions of the Condominium, including both the General Common Elements and the Limited Common Elements, but excluding the Units.

"Common Elements Easement." An easement as more particularly described in Section 3.6(b) of this Master Declaration.

"Common Expenses." Expenses for which the Master Association is responsible, including those related to: (i) maintenance and repair of the applicable Common Elements (including those allocated in accordance with the Allocation Document); (ii) casualty, public liability and other insurance coverages required or permitted to be maintained by the Master Association under the Governing Documents; (iii) Governmental Impositions levied and assessed against the Common Elements; (iv) utilities relating to the applicable Common Elements; (v) professional services, such

as management, accounting and legal services and (vi) such other costs and expenses as may be reasonably related to the proper maintenance, care, operation and management of the Common Elements, but excluding any services for security to all or any portion of the Common Elements except as otherwise agreed by the Owners, and the administration of the Master Association.

"Condominium." The form of real property established by this Master Declaration with respect to the Property located in the County, in which portions of the Property are designated for individual ownership or occupancy and the remainder of the Property is designated for common ownership or occupancy solely by the Owners of such portions, and initially consisting of two Units, being the Hotel Unit and the Residential Unit and containing a maximum of two Units.

"Condominium Records." The records and books maintained by the County Clerk in the County where condominium declarations and condominium plats and plans are filed in accordance with Section 82.051(d) of the Act.

"Construction Easement." An easement more particularly described in Section 3.6(c) of this Master Declaration.

"County." Travis County, Texas.

"Damaged Unit." One or more Units damaged or destroyed by fire or other casualty.

"Declarant." High Street Rainey, L.P., a Texas limited partnership, whose address for notice is 400 W. 15th Street, Suite 1100, Austin, Texas 78701, and any successor or assignee of Declarant evidenced by a written instrument filed for record in the Condominium Records assigning the rights, powers, authority and obligations of Declarant hereunder, and any successor of Declarant in ownership of the Residential Unit by virtue of the exercise of the right of first refusal in favor of the Owner of the Hotel Unit described in the Notice of Repurchase Right and Right of First Refusal executed by the Owner of the Hotel Unit and the Owner of the Residential Unit and recorded in the Real Property Records.

"Designee." A Person acting at the request of another Person, including contractors, subcontractors, employees, agents, representatives and licensees.

"Development Agreement." That certain Development Agreement contemplated to be executed by the Hotel Unit Owner and the Residential Unit Owner governing the development of certain Improvements on the Land.

"Development Rights." A right or combination of rights to: (i) convert portions of the Residential Unit into Common Elements or convert the Common Elements into the Residential Unit (and, if Declarant reacquires the Hotel Unit after its initial conveyance to a third party, convert portions of the Hotel Unit into Common Elements or convert the Common Elements into the Hotel Unit); or (ii) withdraw or add real property from or to the Condominium.

"Dispute." Any claim, grievance or other dispute arising out of or relating to: (i) the interpretation, application or enforcement of the Governing Documents; (ii) any conflict or dispute arising between or among two or more Owners; (iii) the proper party to bear a maintenance cost or expense or a capital expenditure or the proper amount of the expense, fee or Assessment to be charged or collected; (iv) the rights, obligations and duties of any Owner under the Governing Documents; (v) the authority of the Master Association or Declarant, under any Legal Requirement or under the Governing Documents, to: (a) require any Owner to take any action or not to take any action involving such Owner's Unit or (b) alter, subtract from, or add to, the Common Elements; (vi) the interpretation or enforcement of any warranty; (vii) the failure of the Owners to mutually prepare a Master Budget; (viii) the failure of the Owners to agree upon Special Assessments; (ix) the failure of the Owners to agree with respect to any matter concerning the Common Elements which is the subject of Owner approval under the Governing Documents or (x) the failure of the Master Association, in accordance with the Legal Requirements and the Governing Documents to: (v) properly conduct elections; (w) give adequate notice of meetings or actions; (x) properly conduct meetings, (y) allow inspection of books or records, or (z) maintain the Common Elements. The following shall not be considered "Disputes" unless all parties shall otherwise agree to submit the matter to arbitration pursuant to Article X of this Master Declaration: (i) any suit by the Master Association to obtain a temporary restraining order and such ancillary relief as the court may deem necessary to maintain the status quo and preserve the Master Association's ability to enforce the provisions of this Master Declaration; (ii) any suit between the Owners that does not include the Master Association, if such suit asserts a dispute that would constitute a cause of action independent of this Master Declaration and other Governing Documents; (iii) any disagreement that primarily involves title to any Unit or the Common Elements or (iv) any suit in which the applicable statute of limitations would expire within 180 days of the giving of notice as provided in Article X of this Master Declaration unless the Persons against whom the Dispute is made agree to toll the statute of limitations for a period of time necessary to comply with Article X of this Master Declaration.

"Easements." Collectively, those Easements described in Section 3.6 and Section 3.7 of this Master Declaration.

"Fitness Facility." The area designated as the Fitness Facility on the Map.

"General Common Elements." All portions of the Common Elements that are not Limited Common Elements, including those more particularly described in Section 2.2(c) of this Master Declaration.

"Governing Documents." Individually and collectively, the Act, Allocation Document, Certificate of Formation, Bylaws, the Master Declaration, and Regulations.

"Governmental Authority." Any and all applicable courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental entity (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"Governmental Impositions." All real estate and personal property taxes, assessments, standby fees, excises and levies, and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which at any time prior to or after the execution hereof, may be assessed, levied or imposed upon the Condominium or any Unit therein by any Governmental Authority.

"Hotel." The hotel contemplated to be operated within the Hotel Unit.

"Hotel Terrace." The area shown on the Map which is part of the Hotel Unit.

"Hotel Tower." Any building located on the Land in which the Hotel Unit is located.

"Hotel Unit." The Unit as more particularly described in Section 2.2(a) of this Master Declaration, as shown on the Map.

"Hotel Unit Development Plans." The plans and schematics for the proposed construction and development of the Hotel Unit and the Hotel Unit Limited Common Elements, in form acceptable to the Owner of the Residential Unit, to be approved by the Owner of the Residential Unit as provided in Section 5.4(a) of this Master Declaration and which shall be maintained in the records of the Master Association.

"Hotel Unit Signage Area." The area shown and designated as the Hotel Unit Signage Area on the Map.

"Improvements." The Building and its infrastructure, and the pavement, fencing, landscaping, facilities, Systems and man-made objects of every type, existing or in the future placed on the Land, including all cable television, cellular phone, internet and other utility or communication installations or equipment.

"Insurance Proceeds." Any and all proceeds that an Owner or the Master Association is entitled to receive from an insurance company as a result of a casualty loss, including such proceeds in connection with a casualty loss to a Unit, the Common Elements or to improvements within an Easement area established pursuant to this Master Declaration.

"Insurance Trustee." The Master Association acting in the capacity of a trustee in accordance with the provisions of Section 6.5 of this Master Declaration to negotiate losses under any property insurance policies required to be obtained by the Master Association in this Master Declaration.

"Land." That certain real property located in the County and more particularly described in Exhibit "A" attached to this Master Declaration, together with all and singular the rights and appurtenances pertaining thereto, including any additional real property that becomes part of the Property, but excluding, to the extent appurtenant, the Easements.

"Legal Requirements." Any matters of record and any and all then-current judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to any Owner's use and enjoyment of the Condominium, any Unit or the Property, including zoning ordinances, subdivision and building codes, flood disaster laws and applicable architectural barrier, health and environmental laws and regulations.

"Limited Common Elements." Those portions of the Common Elements that are allocated by this Master Declaration and the Map for the exclusive use of less than all of the Units, including those more particularly described in Section 2.2 of this Master Declaration.

"Maintenance Standard." Good repair in a first class condition, including the operation, upkeep, repair and restoration, ordinary wear and tear excepted, to the extent necessary to maintain the Condominium or Unit, as applicable, in a condition reasonably suitable for its intended purpose.

"Manager." Any professional manager or management company with whom the Master Association contracts for the day-to-day management of either or both of the Property or the administration of the Master Association and the Condominium.

"Map." The plats and plans described on Exhibit "B" attached to this Master Declaration and made a part of this Master Declaration, including a survey plat of the Land and dimensional drawings that horizontally and vertically identify and describe the Units and the Common Elements.

"Master Association." The Waterfront Master Condominium Association, Inc., a Texas non-profit corporation organized under the Act and the Texas Non-Profit Corporation Act and created for the purposes and possessing the rights, powers, authority and obligations set forth in the Governing Documents.

"Master Budget." A budget prepared by the Owners that includes the anticipated Common Expenses, and any Additional Assessments for the ensuing fiscal year.

"Master Declaration." This Master Condominium Declaration for The Waterfront Master Condominium, and all amendments hereto, which shall be recorded in the Condominium Records.

"Monthly Assessment." Assessments established and collected by the Master Association pursuant to Article VII of this Master Declaration for payment of the Common Expenses when due.

"Mortgagee." Any Person that is the holder, insurer or guarantor of any bona fide indebtedness which is the result of an arm's length negotiation, that is secured by a first lien or encumbrance upon a Unit and which has provided the Master Association with written notice of its name, address and a description of the Unit encumbered thereby.

"Owner." Any Person (including Declarant) owning fee title to a Unit, but excluding: (i) any Person having an interest in a Unit solely as security for an obligation and (ii) a Sub-Unit Owner.

"Past Due Rate." The maximum lawful rate of interest under Texas law or, if no maximum lawful rate exists, the rate of 18% per annum.

"Person." Any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other legal entity, including any Governmental Authority and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Priority Lien Indebtedness." Any bona fide indebtedness, which is the result of an arm's-length negotiation, that is secured by a first lien or encumbrance upon the Property and/or a Unit; and which shall include, with respect to Sub-Units used for residential purposes, subordinate financing in connection with a purchase or refinancing of such Sub-Unit or home equity loan or reverse mortgage loan secured by such Sub-Unit and such other indebtedness with respect to such Sub-Units as is approved by the Sub-Unit Condominium Association as Priority Lien Indebtedness.

"Property." The Land and the Improvements.

"Real Property Records." The records of the office of the county clerk of the County where instruments concerning real property are recorded.

"Reallocation Percentage." The percentage of the undivided interest of each Owner in the Common Elements as set forth on a supplemental Declaration (if applicable), determined by dividing (i) the square footage of a Unit by (ii) the combined total square footage of all Units, which measurement of the square feet within each Unit shall be done in the same manner as the measurement used to establish the initial Allocated Interests set forth on Exhibit "C" attached to this Master Declaration.

"Regulations." The rules and regulations of the Master Association initially adopted by the Board of Directors and as amended from time to time, relating to the appearance, use and occupancy of the Property, including the exterior appearance, use and occupancy of the Units, and certain construction on the Property.

"Rents." Any and all rental or other income received by an Owner in connection with the leasing of such Owner's Unit or the granting or licensing of a right to use all or any portion of such Unit.

"Residence." A residential living unit within the Hotel Unit, whether existing as a Sub-Unit, a timeshare unit, a cooperative apartment or otherwise.

"Residential Tower." Any building located on the Land in which the Residential Unit is located.

"Residential Unit." The Unit as more particularly described in Section 2.2(b) of this Master Declaration, as shown on the Map.

"Residential Unit Signage Area." The area shown and designated as the Residential Unit Signage Area on the Map.

"Residential Unit Development Plans." The approved plans and schematics for the proposed construction and development of the Residential Unit and the Residential Unit Limited Common Elements, which are listed on Exhibit "D" hereto and which shall be maintained in the records of the Master Association.

"Roof Easement." An easement as more particularly described in Section 3.6(d) of this Master Declaration.

"Shared Facilities." Certain infrastructure and other facilities within the Condominium, to be constructed pursuant to the Development Agreement, such as roads, sidewalks, streetscapes, lighting, utilities, signage and hike and bike trail improvements.

"Signage." Any exterior signage, lettering, decorations, banners, advertising or marketing media, awnings, canopies, window covering, or any other form of exterior expression, including any of the foregoing within the interior of the Hotel Unit if the same is visible from the exterior of the Hotel Unit.

"Signage Easement." An easement as more particularly described in Section 3.6(e) of this Master Declaration.

"Signage Rights." The right to use Signage on the Property, as described in Section 3.3, Section 3.6(d) and Section 3.6(e) of this Master Declaration.

"Skin." The exterior surface of the Improvements or the portions thereof, as applicable, not including the roof.

"Special Assessments." Assessments established and collected from time to time by the Master Association pursuant to Section 7.1(c) of this Master Declaration, when due.

"Special Declarant Rights." Rights reserved for the benefit of Declarant to: (i) complete the Improvements excluding those Improvements within the Hotel Unit and the Hotel Unit Limited Common Elements (unless Declarant reacquires the Hotel Unit after the initial conveyance of the Hotel Unit by Declarant to a third party), but including the Shared Facilities, shown on the Map; (ii) exercise any Development Right; (iii) maintain the sales and management and leasing offices and models described in Section 3.1(c) of this Master Declaration and use signs advertising any Unit owned by Declarant, and Sub-Units within any such Unit, if any, or the Condominium as described in Section 3.3 of this Master Declaration; and (iv) use any Easement for the purpose of making improvements within the Condominium.

"Structure." All foundations, footings, columns, flat slabs, sheer walls, girders, support beams, post tension cables or rods and including any and all other structural components that support, uphold or are a part of the Building or other Improvement.

"Sub-Unit." A portion of any Unit or a Sub-Unit designated for separate ownership as created and identified in a Sub-Unit Declaration for a Sub-Unit Condominium executed by the Owner of such Unit or Sub-Unit and recorded in the Condominium Records.

"Sub-Unit Condominium." A condominium which may be formed by an Owner, pursuant to a Sub-Unit Declaration, the name of which is to be determined by the Owner prior to conveying or leasing the first Sub-Unit, and which may designate a Sub-Unit Condominium Association to act on behalf of all Sub-Unit Owners.

"Sub-Unit Condominium Association." A Texas non-profit corporation created as a part of a Sub-Unit Condominium to act on behalf of the Sub-Unit Owners.

"Sub-Unit Declaration." A condominium declaration, and all recorded amendments thereto, executed by an Owner for the purpose of forming a Sub-Unit Condominium within a Unit or Sub-Unit which is recorded in the Condominium Records.

"Sub-Unit Owner." Any Person who holds fee simple title to a Sub-Unit, together with an undivided interest in the common elements of a Sub-Unit Condominium, but excluding a Person having an interest in a Sub-Unit solely as security for an obligation.

"Support Easement." An easement as more particularly described in Section 3.6(f) of this Master Declaration.

"Systems." All fixtures, utilities, equipment, pipes, lines, wires, computer cables, conduits, circuits, junction boxes, hangers, pull boxes, terminal points, electronic devices, air compressors, air handlers, chillers and other systems used in the production, heating, cooling and/or transmission of air, water, gas, electricity, communications, waste water, sewage, audio and video signals, and other utility services including the main switch gear conduits, plumbing chases and mechanical shafts on the Property.

"Systems Easement." An easement as more particularly described in Section 3.6(g) of this Master Declaration.

"Taking." The taking or threat of taking of all or a portion of the Property for any public or quasi-public use, by eminent domain proceedings or otherwise, by a Governmental Authority or by an action in the nature of eminent domain (whether permanent or temporary) or the sale or other transfer of the Property in lieu thereof.

"Tenant." Any Person having the right to occupy a Unit or a portion of a Unit pursuant to a lease or other occupancy agreement granted by an Owner, or pursuant to a sublease, to the extent not prohibited by the Governing Documents.

"Unit." A physical portion of the Condominium that is designated for separate ownership or occupancy (the boundaries of which are depicted on the Map), which, to the extent applicable, is contained within the perimeter walls, floor, ceiling, windows and doors of a Unit depicted on the Map, and includes: (i) all the Systems that exclusively serve such Unit, (ii) the Skin surrounding such Unit and (iii) the finish materials, fixtures and appliances contained in the Unit but excludes (x) any portion of the Structure and (y) any Systems that serve more than one Unit, all as subject to and further described in Section 82.052 of the Act, but not including the individual Sub-Units of a Sub-Unit Condominium unless specifically so provided.

"Utility Easement." An easement as more particularly described in Section 3.6(h) of this Master Declaration.

ARTICLE II

General Provisions

Section 2.1 Creation of Units; Map.

(a) The Units. The Property is hereby divided into fee simple estates composed of two separately designated Units, being the Hotel Unit and the Residential Unit, and each such Unit's undivided interest in and to the Common Elements. Each Unit, together with such Unit's undivided interests in the Common Elements is for all purposes a separate parcel of and estate in real property. The separate parcels of and estates in real property designated hereby shall be created on the date of filing of this Master Declaration in the Condominium Records, and shall continue until this Master Declaration is revoked or terminated in the manner provided in this Master Declaration. This Master Declaration is not a time share declaration and Declarant expressly declares that it is not submitting the Property to a time share regime.

(b) The Map. The Map sets forth the following: (i) a general description and diagrammatic plan of the Condominium; (ii) the location and dimension of all real property subject to the Development Rights; (iii) all major Improvements, including each Unit, showing its location within the Building and floor(s); and (iv) such other information as is desirable or required pursuant to the Act, including a certification as to compliance with the Act. DECLARANT SHALL NOT BE LIABLE TO ANY OWNER OR ANY SUB-UNIT OWNER AS A RESULT OF ANY DISCREPANCIES IN ACTUAL UNIT MEASUREMENTS FROM THOSE SET FORTH ON THE MAP OR IN ANY PURCHASE CONTRACT TO WHICH DECLARANT IS OR WAS A PARTY, AND EACH OWNER AND EACH SUB-UNIT OWNER, BY ACCEPTING A DEED TO A UNIT OR SUB-UNIT, AS APPLICABLE, WAIVES ANY SUCH CLAIM OR CAUSE OF ACTION. Upon completion of the construction of the Improvements within a Unit, or the exercise of any Development Right, if deemed necessary by Declarant, Declarant (without the joinder of any other Owner or Mortgagee) shall file an amendment to this Master Declaration and the Map, amending the Map and this Master Declaration to reflect the actual measurements for each Unit, any modifications to the

Units, Common Elements or Property, and amending Exhibit "C" attached to this Master Declaration to reflect the Allocated Interests based upon completion of construction.

Section 2.2 Description of Units and Common Elements. Subject to the reservations and Easements created by Declarant in this Master Declaration, the Units shall consist of the following and any logical extension thereof as determined in Declarant's reasonable judgment:

(a) Hotel Unit. As depicted on the Map, the Hotel Unit shall consist of:

(i) Levels P3, P2, P1 and Levels 1 through 25 of the Hotel Tower, including the Hotel Terrace on Level 4 of the Hotel Tower, but excluding the Fitness Facility on Level 4 of the Hotel Tower;

(ii) The roof of the Hotel Tower; and

(iii) All other walls, floors, ceilings, hallways, lobbies, windows, doors, elevators and other Improvements that serve the Hotel Unit exclusively, to the extent the same do not constitute the Structure; and

(iv) Hotel Unit Limited Common Elements: As depicted on the Map, the Limited Common Elements appurtenant to the Hotel Unit shall include the following: the exterior areas identified on sheet 1 of the Map as Limited Common Elements of the Hotel Unit.

(b) Residential Unit: As depicted on the Map, the Residential Unit shall consist of:

(i) Levels 1 through 22 of the Residential Tower;

(ii) The roof of the Residential Tower; and

(iii) All other walls, floors, ceilings, hallways, lobbies, windows, doors, elevators and other Improvements that serve the Residential Unit exclusively, to the extent the same do not constitute the Structure; and

(iv) Residential Unit Limited Common Elements: As depicted on the Map, the Limited Common Elements appurtenant to the Residential Unit shall include the following: the exterior areas identified on sheet 1 of the Map as Limited Common Elements of the Residential Unit.

(c) General Common Elements. As depicted on the Map, the General Common Elements shall include all the Common Elements that are not Limited Common Elements, including the Land and the Fitness Facility.

(d) Descriptions Subject to Map. The descriptions of the Units and the Common Elements set forth in this Section 2.2 represent the general intention of

Declarant; provided, however, if a discrepancy exists between the above descriptions and the Map, the Map shall control.

Section 2.3 Subsequent Sub-Unit Condominiums.

(a) Creation of Sub-Units. Each Owner shall have the option and ability to create a Sub-Unit Condominium within the boundaries of its Unit. Sub-Units may be further subdivided only if permitted pursuant to the applicable Sub-Unit Declaration. The creation of any Sub-Unit Condominium will not modify any obligations, limitations, rights, benefits or burdens established in this Master Declaration, except as set forth in Section 2.3(c) of this Master Declaration.

(b) Sub-Unit Condominium Association. If an Owner elects not to form a Sub-Unit Condominium Association upon the creation of a Sub-Unit Condominium, all rights of the Sub-Unit Owners in and to the Allocated Interests of the Unit from which the Sub-Unit Condominium is created shall be as specified in the Sub-Unit Declaration, as limited below. If not so specified, a majority of the Allocated Interests of the Unit from which the Sub-Unit Condominium is created (calculated for the Sub-Units in the same manner as the Allocated Interests) shall exercise all rights of the Sub-Unit Owners provided that only one Sub-Unit Owner shall be designated to act as their representative, which designated representative shall be the member of the Master Association representing such Sub-Unit Condominium. The Master Association shall be required to deal only with such designated representative, and if a majority of the Allocated Interests of the Unit represented by the Sub-Unit Owners shall be unable to agree, or if they shall fail to designate a representative to act on their behalf, such Sub-Unit Condominium will not be entitled to have a representative as a member of the Master Association and the Allocated Interests of the Unit from which the Sub-Unit Condominium is created shall have no vote or ability to exercise any rights under this Master Declaration, including bringing legal action against the Master Association, until such time as a majority of such interests have agreed and so designated their representative.

(c) Obligations of Sub-Unit Owners and Sub-Units. Except as otherwise provided in this Master Declaration, upon the filing of a Sub-Unit Declaration, any and all obligations (including the obligations to pay Assessments), liabilities, limitations, rights, benefits, or burdens as established in this Master Declaration and that are vested or that may in the future become vested in the Owner filing such Sub-Unit Declaration and upon such Unit, shall automatically become the obligations (including the obligations to pay Assessments), liabilities, limitations, rights, waivers, benefits or burdens of any Sub-Unit Owner and its Sub-Unit to the extent of such Sub-Unit Owner's allocated interest in the Sub-Unit Condominium's common elements or as otherwise provided in the Sub-Unit Declaration. The Owner that files such Sub-Unit Declaration and the Unit that is subdivided shall be relieved of all of such obligations (including the obligations to pay Assessments), liabilities, limitations, rights, waivers, benefits or burdens in relation to each Sub-Unit acquired by a Sub-Unit Owner except with respect to those Sub-Units that are owned by the Owner that files such Sub-Unit Declaration. Any Owner that files a Sub-Unit Declaration agrees to include a provision in the Sub-Unit Declaration, which provision will state the following:

"Upon the filing of this Sub-Unit Declaration and acceptance of a deed to a Sub-Unit, any and all obligations (including the obligations to pay Assessments as provided in the Master Declaration), liabilities, limitations, rights, waivers, benefits or burdens that are vested or that may in the future become vested in or upon the Declarant of this Sub-Unit Declaration in relation to the Sub-Unit, pursuant to the Master Declaration are hereby assumed by such Sub-Unit Owners and Declarant, with respect to Sub-Units retained by Declarant, until Declarant sells such Sub-Units to other Sub-Unit Owners, and shall automatically be the obligations (including the obligations to pay Assessments as defined in the Master Declaration), liabilities, limitations, rights, waivers, benefits or burdens of the Sub-Unit Owners (including Declarant, as applicable) and the Sub-Units, except as otherwise provided in the Master Declaration and, with respect to the Easements contained in the Master Declaration, herein. EACH SUB-UNIT OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS THE SUB-UNIT DECLARANT FROM SUCH SUB-UNIT OWNER'S SHARE OF ANY AND ALL LIABILITIES, COSTS, EXPENSES (COMMON OR OTHERWISE), ADDITIONAL ASSESSMENTS AND ASSESSMENTS RELATING OR APPERTAINING TO SUCH SUB-UNIT OWNER'S SUB-UNIT."

Section 2.4 Allocation of Interests in Common Elements. The initial Allocated Interests have been determined by dividing the square footage of each Unit by the square feet of all Units and are shown opposite the Units in Exhibit "C" attached to this Master Declaration. The Common Elements shall remain undivided.

Section 2.5 Inseparability of Units; No Partition. Each Unit shall be inseparable, and shall be acquired, owned, conveyed, transferred, leased and encumbered only as an entirety, except for the (i) creation of one or more Sub-Unit Condominiums as permitted in this Master Declaration and (ii) provisions of Section 3.2 and Section 3.6 of this Master Declaration. In no event shall a Unit be subject to physical partition, and no Owner shall bring or be entitled to maintain an action for the partition or division of a Unit or the Common Elements. Any purported conveyance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements without the Unit to which such Common Elements are allocated is void *ab initio*, with the exception of the conveyance of any Sub-Unit in a Sub-Unit Condominium in accordance with the terms and conditions of the Sub-Unit Declaration establishing the Sub-Unit Condominium, if and when same is created.

Section 2.6 Permissible Relationships; Description.

(a) Ownership of Units. A Unit may be acquired and held by more than one Person in any form of ownership recognized by the Legal Requirements.

(b) Description of Units. Any contract or other instrument relating to the acquisition, ownership, conveyance, transfer, lease or encumbrance of a Unit shall legally describe such Unit as follows: "____ Unit of The Waterfront Master Condominium, located in Travis County, Texas," with further reference to the recording data for this Master Declaration (including the Map and any amendments to this Master Declaration in the Condominium Records). Every such description shall be good and sufficient for all purposes to acquire, own, convey, transfer, lease, encumber or otherwise deal with such Unit, and any such description shall be construed to include all incidents of ownership relating to a Unit. Any contract or other instrument relating to the acquisition, ownership, conveyance, transfer, lease or encumbrance of a Sub-Unit in any Sub-Unit Condominium shall legally describe such Sub-Unit as follows: "____ Unit [insert appropriate Sub-Unit name], a Condominium located in the [insert Unit name] Unit within The Waterfront Master Condominium, located in Travis County, Texas."

Section 2.7 Mortgage of Unit. An Owner shall be entitled from time to time to mortgage or encumber a Unit by creating a lien or liens covering a Unit and all of such Unit's rights under this Master Declaration under the provisions of a mortgage or deed of trust, but any lien created thereby shall be subject to the terms and provisions of this Master Declaration, and any mortgagee or other lienholder which acquires a Unit through judicial foreclosure, public sale or any other means shall be subject to the terms and provisions of this Master Declaration. An Owner that mortgages its Unit shall notify the Master Association, giving the name and address of said Owner's mortgagee, and the Master Association shall maintain such information.

ARTICLE III

Uses, Reservations and Restrictions

Section 3.1 Permitted Uses. The uses allowed (and prohibited) in the Units shall be:

(a) Residential Unit. Except as otherwise provided in the Governing Documents, the Residential Unit and each Sub-Unit thereof shall only be used for purposes consistent with all applicable Legal Requirements. The Residential Unit shall not be used as a time share facility or a vacation club.

(b) Hotel Unit. The Hotel Unit shall be used and occupied solely for residential use and hotel purposes, including paid transient uses and retail and restaurant and bar use incidental thereto, but will not be used as a time share facility or a vacation club and shall not contain more than 341,945 gross square feet of air conditioned space or more than 266 hotel rooms. The Hotel Unit shall not contain more than 40 Residences. Furthermore, any such Residences must contain an average of at least 1,600 net saleable square feet of air conditioned space, and no individual Residence may consist of less than 1,400 net saleable square feet of air conditioned space; provided, however, that if the Hotel Unit Owner is unable to transfer its obligation to satisfy the City of Austin's moderate income housing requirements to the Residential Unit, then two Residences in the Hotel Unit may contain less than 1,400 net saleable square feet of air conditioned space to satisfy such requirement. The following flags are approved flags for the initial operation of the Hotel: Westin by Starwood, Renaissance by Marriott, or any hotel

operated by Kimpton Hotel and Restaurant Group to a standard at least that of Kimpton's Hotel Solamar in San Diego as of October 31, 2005 ("Approved Flags"). Any flag other than an Approved Flag utilized for the initial operation of the Hotel must be at least a Four Diamond operator (as rated by AAA) and shall be subject to Residential Unit Owner's prior written consent. The Residential Unit Owner's consent shall not be required for any change in the flag after initial opening of the Hotel (which subsequent hotel operator need not be an Approved Flag). Notwithstanding the foregoing, in the event that Declarant reacquires the Hotel Unit or any portion thereof after the initial conveyance of the Hotel Unit by Declarant to a third party, Declarant and its successors and assigns shall be entitled to use the Hotel Unit for any purposes consistent with all applicable Legal Requirements and all restrictions and requirements with respect to the Hotel Unit and approval rights of the Owner of the Residential Unit contained in this Section 3.1(b) shall no longer apply.

(c) Sales, Leasing and Management Office; Model Unit. Each Owner shall have the right, within its Unit or any Sub-Unit thereof, to maintain a model unit and a sales, leasing and/or management office in connection with the sale, leasing and/or management of such Sub-Units, in such location as determined by such Owner. Each Owner shall have the right to relocate such model units and/or offices within its Unit from time to time.

Section 3.2 Leases. The Units (or portions thereof) may be leased.

Section 3.3 Signage Rights.

(a) Each Owner shall have the right to erect Signage on the Skin within its respective Unit and directional and identification signage within the Limited Common Elements appurtenant to its Unit provided that such Signage: (i) is in compliance with the Legal Requirements, (ii) is not flashing nor produces a disturbing noise and (iii) with respect to directional and identification signage within the Limited Common Elements and General Common Elements, such signage shall be consistent throughout the Property. The Owners shall cooperate to establish a program for consistent directional and identification signage throughout the Common Elements. The requirements in subparagraphs (i) and (ii) above shall also apply to Signage within the Roof Easement and the Signage Easement. Each Owner shall have the right to erect directional and identification Signage within the General Common Elements, subject to the approval of the other Owner, not to be unreasonably withheld. The directional and identification signage described above shall include signage designating any model unit and/or sales, leasing and/or management office and advertising the sale or leasing of Sub-Units within any Unit.

(b) With respect to all Signage, each Owner shall be responsible, at its sole expense, for (A) obtaining and maintaining all necessary permits and approvals required under all applicable Legal Requirements with respect to the erection and maintenance of its Signage, (B) keeping and maintaining, or causing to be kept and maintained, its Signage in good condition and repair and (C) keeping or causing to be kept all lighting and other equipment in connection with its Signage in good working order and condition.

The Master Association may remove any such Signage, as necessary, in connection with any of its maintenance and repair or other obligations under this Master Declaration or may require the Unit Owner to do so. The Owner of the Unit utilizing the Signage Rights shall be responsible for the cost of repairing Common Elements or Units if such repairs are necessitated by use or misuse of their respective Signage Rights. The Master Association does not insure equipment or improvements installed pursuant to the Signage Rights and is not liable to any Owner or any other Person for any loss or damage from any cause to the equipment or improvements installed pursuant to the Signage Rights. **THE OWNERS SHALL INDEMNIFY THE MASTER ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND MEMBERS, INDIVIDUALLY AND COLLECTIVELY, AGAINST LOSSES DUE TO ANY AND ALL CLAIMS FOR DAMAGES OR LAWSUITS, BY ANYONE, ARISING FROM THE USE OR MISUSE OF THEIR RESPECTIVE SIGNAGE RIGHTS.** The Owners are hereby permitted to assign their respective Signage Rights to their Tenants.

Section 3.4 Compliance with the Governing Documents. Each Owner, by accepting a deed conveying title to a Unit, any Sub-Unit Owner by accepting a deed conveying title to a Sub-Unit and any Tenant by execution of a lease or by occupancy of a Unit or a Sub-Unit shall automatically be deemed to have agreed to strictly comply with the provisions of the Governing Documents and all the Legal Requirements. A failure or refusal of an Owner, a Sub-Unit Owner or a Tenant to so comply with any such provisions, after written notice, shall constitute a Dispute (to the extent so included within the definition of "Dispute" set forth in Section 1.1 above) that shall be resolved in accordance with Article X of this Master Declaration.

Section 3.5 Rights of Declarant. In accordance with, and only if permitted by, the Act, Declarant reserves the Development Rights and the Special Declarant Rights, at all times while Declarant or any Affiliate of Declarant owns any Unit (or portion thereof). Declarant shall not exercise any of the foregoing rights in a manner that would materially adversely affect the Hotel Unit without the prior written consent of the Hotel Unit Owner. Development Rights may be exercised as to different portions of the Property at different times. Declarant provides no assurance whether any Development Right will be exercised, the portions of the Property as to which Development Rights may be exercised or as to the order of exercise of any Development Rights. The exercise of any Development Right in any portion of the Property does not obligate Declarant to exercise that Development Right in any other portion of the Property.

Section 3.6 Easements. Each Owner accepts a deed conveying title to a Unit subject to the Easements granted and reserved, as applicable, in this Section 3.6, which Easements (and all related rights and obligations related to such Easements arising on or after the date of any transfer) shall run with the Condominium.

(a) **Access Easement.** Declarant hereby grants and reserves a perpetual, assignable and non-exclusive Access Easement (i) over, on and across each Unit as may reasonably be necessary for the benefit of each Unit and the Master Association, as applicable, for: (1) the maintenance, repair or replacement of any of the Common Elements thereon or accessible therefrom; (2) the use of a Unit and its appurtenant Common Elements by its Owner, provided no other reasonable means of access exists;

(3) the exercise by Declarant of the Special Declarant Rights or the performance of any obligations of Declarant under the Governing Documents; (4) the making of emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit; (5) the evacuation of all or any part of the Property in the event of an emergency, and (6) such other reasonable purposes as are deemed by the Master Association to be necessary for the performance of the obligations of the Master Association as described herein and in the Bylaws, (ii) for the benefit of the Residential Unit, over, on and across the Hotel Terrace and the elevators and public areas of the Hotel Unit as may be required by Architectural Barriers Texas Accessibility Standards for access to and from Davis Street (the Owner of the Hotel Unit agrees to reasonably cooperate with the Owner of the Residential Unit to allow for the placement of associated signage required by the Architectural Barriers Texas Accessibility Standards in connection therewith), (iii) for the benefit of the Residential Unit, over, on and across the Hotel Terrace in the area designated on the Map for access to and from the Fitness Facility, and (iv) for the benefit of the Residential Unit, over, on and across the driveways and curb cuts which are Limited Common Elements appurtenant to the Hotel Unit to the extent necessary for access to and from Davis Street in the event that access via the shared access point to and from Davis Street is unavailable.

The Master Association, the Manager, and each Owner may enter a Unit or Sub-Unit and the Common Elements to the extent reasonably necessary in case of an emergency originating in or threatening the Unit or any other Unit whether or not the Owner, Sub-Unit Owner or Tenant of such Unit is present at the time. The Person making such entry shall take reasonable precautions to protect such premises and any inventory, fixtures and other personal property contained therein from damage and theft. This right of entry may be exercised by any Manager, the Owners, the Master Association and their directors, officers, agents and employees, and by all police officers, firefighters and other emergency personnel in the performance of their respective duties. Also, the Master Association may enter a Unit to perform installations, alterations or repairs to the mechanical, electrical or utility services which, if not performed, would affect the use of other Units or the Common Elements; provided that, if possible, requests for any entry shall be made in advance and at a time convenient to the Owner or manager of the affected Unit and further subject to the foregoing limitations. In case of an emergency, the right of entry is immediate and if an Owner refuses to provide entry, such Owner is liable for the cost of repairs to the Unit or the Common Elements caused by the Master Association's, any Manager's, or another Owner's chosen method of access under such circumstances.

(b) Common Elements Easement. Declarant hereby grants and reserves a perpetual, assignable and non-exclusive Common Elements Easement over, on and across the Common Elements for the benefit of each Unit (which is an intended beneficiary of such Common Element) and the Master Association for ingress and egress from each Unit, and for the use of the Common Elements, including the making of necessary inspections, tests, repairs, improvements or replacements thereon required for an Owner or its Designees to fulfill any of its warranty obligations, provided, however, that nothing in this Section 3.6(b) shall be deemed or construed as any Owner making or offering any warranty, all of which are disclaimed, and provided that such use of the Common

Elements Easement shall not unreasonably interfere with the other Owner's use thereof. The Common Elements Easement shall be maintained by the Master Association in accordance with the Maintenance Standard and Section 5.2 of this Master Declaration.

(c) Construction Easement. Declarant hereby grants a non-exclusive Construction Easement over and across the Property as reasonably necessary for the Hotel Unit Owner and the Residential Unit Owner for: (i) the construction, repair, replacement and reconstruction of Improvements within the Hotel Unit and the Hotel Unit Limited Common Elements and the Residential Unit and the Residential Unit Limited Common Elements, respectively, (ii) the construction of the Shared Facilities by the Residential Unit Owner (and the Hotel Unit Owner in accordance with the terms of the Development Agreement), (iii) the construction of the Fitness Facility by the Hotel Unit Owner (and the Residential Unit Owner in accordance with the terms of the Development Agreement), and (iv) the storage of construction materials and equipment upon the Common Elements in connection therewith.

In connection with the Construction Easement, the Hotel Unit Owner, with respect to the construction and development of the Hotel Unit and the Hotel Unit Limited Common Elements and the Residential Unit Owner, with respect to the construction and development of the Residential Unit, the Residential Unit Limited Common Elements and the Shared Facilities, shall have the following rights:

- (i) the right to conduct any activity or operations on or in connection with the Property that it determines to be necessary or advisable;
- (ii) the right to enter upon the Property and operate thereon such vehicles and equipment as shall be necessary for such purposes.

Provided, however, that neither Owner, in utilizing the Construction Easement, shall unreasonably interfere with construction access to the other Owner's Unit or the Common Elements without undue burden or cost or delay in schedule for contractors of the other Owner, and pedestrian and vehicular access over the sidewalks and driveways within the Condominium and from Davis Street to such Owner's Unit and Sub-Unit Owner's Sub-Unit, including the garage (including all access required by Governmental Requirements) must be open at all times for Owners, Sub-Unit Owners, Tenants and their agents and employees.

(d) Roof Easement. Declarant hereby grants a perpetual and exclusive Roof Easement over, on and across the roof of the Hotel Tower and the Residential Tower for the benefit of the Hotel Unit and the Residential Unit, respectively, for (i) the placement, use and maintenance of air conditioning condensor units, (ii) the placement, use and maintenance of satellite and telecommunications equipment; (iii) the placement, use and maintenance of Signage thereon, and (iv) any other purpose necessary or convenient in connection with the use or operation of such Unit. Each Owner shall have the right to all Rents associated with any such use described above. The portions of the Roof Easement used by an Owner shall be maintained by such Owner and the remaining portions of the

Roof Easement shall be maintained by the Master Association in accordance with the Maintenance Standard and Section 5.1 and Section 5.2 of this Master Declaration.

(e) Signage Easement. Declarant hereby grants a perpetual, assignable and exclusive Signage Easement over, on and across certain portions of the Common Elements, as shown on the Map, (i) for the benefit of the Residential Unit for the purpose of erecting and maintaining signage in the Residential Unit Signage Area advertising the operations of the Residential Unit; (ii) during the initial development of the Residential Unit, for the benefit of the Residential Unit for the purpose of erecting and maintaining signage in the Residential Unit Project Signage Area advertising the Residential Unit and its contractors and vendors; and (iii) for the benefit of the Hotel Unit in the Hotel Unit Signage Area, provided such easement may only be utilized by the Hotel Unit Owner at such time as (and if) there is a direct connection at such corner of the Land to a hike and bike trail. Signage within the Signage Easement for the benefit of an Owner shall be subject to the approval of the other Owner, not to be unreasonably withheld.

(f) Support Easement. Declarant hereby grants and reserves a perpetual, assignable and non-exclusive Support Easement over, on and across the Structure for the benefit of each Unit for support of all portions of the Improvements. The Structure shall be maintained by the Master Association in accordance with the Maintenance Standard and Section 5.2 of this Master Declaration.

(g) Systems Easement. Declarant hereby grants and reserves a perpetual, assignable and non-exclusive Systems Easement over, on and across the Systems for the benefit of each Owner and the Master Association for the use of and the connection to any portion of the Systems intended for such Owner's or the Master Association's use, except for any portion of the Systems that are intended to exclusively service a Unit. The Systems which serve more than one Unit shall be maintained by the Master Association in accordance with the Maintenance Standard and Section 5.2 of this Master Declaration.

(h) Utility Easement. Declarant hereby grants a perpetual, assignable and non-exclusive Utility Easement over, on and across the Common Elements: (i) for the benefit of utility companies supplying utility service to the Condominium for supplying utility service to any part of the Condominium and (ii) for the benefit of the Master Association for the right to grant additional Utility Easements over the Common Elements. The Master Association may record an easement agreement or easement relocation agreement in the Condominium Records, specifically locating or relocating any Utility Easement subsequent to the recordation of this Master Declaration, and each Owner, by acceptance of the deed to a Unit, hereby grants the Master Association an irrevocable power of attorney, coupled with an interest, with full power and authority to locate or relocate any Utility Easement.

(i) Sub-Unit Easements to Benefit Sub-Units. Upon and simultaneously with the filing of a Sub-Unit Declaration in the Condominium Records, the Owner of a Unit will, in accordance with the Sub-Unit Declaration, designate all or a portion of the Unit Owner's rights to the Access Easement, the Common Elements Easement, the Roof

Easement, the Signage Easement, the Support Easement and the Systems Easement, to the Sub-Unit Owners as the common elements of the Sub-Unit Condominium.

(j) Miscellaneous. None of the Easements granted or reserved in this Section 3.6 shall be used in a manner which materially adversely affect the structural integrity of the Improvements. Except as specifically provided in this Section 3.6, notwithstanding the assignability of the Easements, no Easement may be assigned to any Person that is not the Owner, Sub-Unit Owner or Tenant of the Unit or Sub-Unit that is benefited by the respective Easement or, as to collateral assignments, a mortgagee of such Unit, nor shall any Owner that is benefited by an Easement grant a sub-easement or a license to any area covered by any Easement; provided, however, that this prohibition shall not prohibit any Owner from granting leases or licenses with respect to use of the Skin or Roof Easement of such Unit. Use and availability of any facilities or areas covered by the Easements are subject to the Regulations. No Owner shall unreasonably interfere with the other Owner's use of its Unit, Sub-Unit Owners' use of their Sub-Units or the Common Elements or the development thereof in connection with its use of any Easement.

Section 3.7 Encroachments. If, as a result of the original construction, reconstruction, repair, shifting, settlement or other circumstance, any portion of the Common Elements encroaches upon a Unit, a perpetual easement over, on and across such Unit for such encroachment and for the maintenance of the same is hereby granted and conveyed to the Master Association by each Owner at the time each Unit is conveyed to the Owner. If as a result of the original construction, reconstruction, repair, shifting, settlement or other circumstance any portion of a Unit encroaches upon the Common Elements, or upon any adjoining Unit, an irrevocable and perpetual easement for such encroachment and for the maintenance of the same over, on and across such Unit, or such portion of the Common Elements, as applicable, is hereby granted to the Owner of such Unit. Such easement shall not relieve an Owner of liability in case of the Owner's willful misconduct nor relieve an Owner or any other Person of liability for failure to adhere to the Map, and such encroachments and easements shall not be considered or determined to be encumbrances either upon a Unit or upon the Common Elements.

Section 3.8 No-Build Zone. No Improvements within either the Hotel Unit or the Residential Unit may be constructed within the area of Common Elements designated on the Map as the "No-Build Zone". This restriction shall terminate in the event that the Declarant, after the initial conveyance of the Hotel Unit to a third party, reacquires the Hotel Unit.

ARTICLE IV

Matters Regarding the Master Association

Section 4.1 General. The Master Association has been incorporated as a nonprofit corporation under the Texas Nonprofit Corporation Law. In addition to the powers conferred on the Master Association under the Texas Nonprofit Corporation Law, the Master Association may take all actions authorized by the Governing Documents. Any and all actions taken by the Master Association pursuant to the Governing Documents are binding on all Owners. The board of directors of any Sub-Unit Condominium Association shall, at the organizational meeting of the board of directors of the Sub-Unit Condominium Association, appoint one of its members as

the sole representative of the Sub-Unit Condominium as member of the Master Association and to make decisions (including with respect to consents and approvals of the Owner of such Unit) and exercise rights of the Owner of such Unit under this Master Declaration. The other Owner and the Master Association shall be required to deal only with such appointed representative and if no member of the board of directors of a Sub-Unit Condominium Association is appointed by the board of directors of the Sub-Unit Condominium Association, neither the Sub-Unit Condominium nor any Sub-Unit shall have any vote or ability to exercise any rights under this Master Declaration, including bringing legal action against the Master Association or other Owner until such time as the board of directors of the Sub-Unit Condominium Association has agreed and so designated their representative or a representative is otherwise designated as described in Section 2.3(b) above. This Master Declaration is not intended to place any limitations or restrictions on the power of the Master Association or the Board of Directors except as set forth in this Master Declaration or the Governing Documents.

Section 4.2 Allocation of Votes in the Master Association. Each Owner will automatically be a member of the Master Association. The voting procedures for the members shall be as set forth in the Governing Documents. Unless a different allocation of votes is required by the Act, each member shall be entitled to one vote on each matter submitted for a vote of the members; provided, however, that no matter that may come before a meeting of the members of the Master Association, may be approved without the affirmative vote of both the Hotel Unit Owner and the Residential Unit Owner. The procedures for the election of Directors shall be as set forth in the Governing Documents. If a Unit is subdivided pursuant to the provisions of Section 2.3 of this Master Declaration, the Sub-Unit Condominium shall have only the number of votes in the Master Association that the subdivided Unit was entitled to as a member of the Master Association prior to the Unit being subdivided.

Section 4.3 Right of Action by Owners and the Master Association; Release. The Owners and any Sub-Unit Condominium Association (excluding the Sub-Unit Owners), acting collectively or individually, shall have the right to maintain actions against the Master Association for its failure to comply with the provisions of the Act, this Master Declaration or the Bylaws or its failure to perform its duties and responsibilities hereunder; provided, however, except as otherwise provided in the Governing Documents, no other action shall be brought against the Master Association by the Owners or against the Master Association or its affiliates, parents, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties, by any Sub-Unit Condominium Association. The Master Association shall not have the power to institute, defend, intervene in, settle or compromise litigation or administrative proceedings in the name of any Unit Owner. Subject to the Master Association's obligations under the Governing Documents, and except as otherwise provided by the Governing Documents, each Owner hereby releases, acquits and forever discharges the Master Association, and any Sub-Unit Condominium Association and each Sub-Unit Owner hereby releases, acquits and forever discharges the Master Association and its affiliates, parents, members, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties and assigns and agrees to hold such Persons harmless of and from any and all claims, damages, liabilities, costs and/or expenses (including reasonable attorneys fees) relating to the construction of, repair or restoration of, or the sale to the Owners or Sub-Unit Owners of the Units, any Sub-Unit or the Common Elements. This release shall release and forever discharge the Master Association, any Sub-Unit

Condominium Association and their respective affiliates, parents, members, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties and assigns, as applicable, from all claims and causes of action, whether statutory or under the common law, known or unknown, now accrued, or that arise in the future.

Section 4.4 Limitation of Liability of Officers and Directors of the Master Association. No officer or director of the Master Association shall be liable to any Owner of any Unit, any Sub-Unit Owner or any Tenant, for any claims, actions, demands, costs, expenses (including attorneys' fees), damages or liability, of any kind or nature, except as otherwise expressly set forth in the Governing Documents and such officers and directors shall be indemnified in accordance with the provisions of the Governing Documents.

ARTICLE V

Maintenance, Alterations, Taxes and Utilities

Section 5.1 Maintenance.

(a) Maintenance of Units. All maintenance, repairs and replacements of, in or to any Unit, ordinary or extraordinary, foreseen or unforeseen, including maintenance, repair and replacement of all Systems which are part of such Unit, shall be performed by the Owner of such Unit in accordance with the Maintenance Standard.

(b) Maintenance of Common Elements. Except as otherwise provided in the Governing Documents, all the Common Elements shall be maintained by the Master Association in accordance with the Maintenance Standard, the cost and expense of which shall constitute a Common Expense and shall be payable as may be set forth herein or in the Allocation Document for which an allocation is provided. The Master Association shall maintain an adequate reserve fund for such purposes in the amounts set forth in the Master Budget, to be funded by Monthly Assessments rather than by a Special Assessment; provided, however, that the Master Association may require Special Assessments for such purposes in accordance with Section 7.1(c) of this Master Declaration. Nothing in this Master Declaration shall be deemed or construed as relieving any Owner from liability or responsibility for damage to the Common Elements caused by the negligence or misconduct of an Owner or an Owner's occupants or invitees.

(c) Allocation Document. The Owners have determined that certain maintenance functions and capital expenditures shall be the responsibility of the designated Unit Owners and that the expenses associated therewith and certain Common Expenses shall be allocated in a manner other than by the Allocated Interests. Declarant and such Owners have allocated such expenses and designated the responsible Unit Owner in the Allocation Document. A copy of Allocation Document shall be maintained in the records of the Master Association and shall be binding upon all the Owners, Sub-Unit Owners, Tenants, Mortgagees and any other party at any time having any interest in the Condominium. The Owner identified on the Allocation Document as responsible for the particular maintenance function shall have the responsibility for performing such maintenance function in accordance with the Maintenance Standard and the other

applicable Owners shall be responsible for their applicable cost percentage reflected on the Allocation Document as Additional Assessments. The Allocation Document may be amended or modified only upon the affirmative vote or consent of all affected Owners as to the responsibility to perform such work, and all Owners sharing the applicable cost, as to the cost sharing provisions set forth therein. Any Owner may request that the allocations specified in the Allocation Document be reviewed annually and the Owners shall in good faith determine whether adjustment to the allocations are appropriate. Regularly scheduled maintenance expenses may not, in the aggregate for work performed by any Owner, be incurred in excess of the aggregated budgeted amounts for such expenses without the consent of all of the Owners sharing the cost thereof.

(d) Limitation of Liability. The Master Association shall not be liable: (i) for injury or damage to any person or property caused by the elements or by the Owner or occupant of any Unit, or any other Person, or resulting from any utility, rain, snow or ice which may leak or flow from or over any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment which the Master Association is responsible to maintain hereunder; (ii) to any Owner or Sub-Unit Owner or occupants of any Unit or Sub-Unit for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements or (iii) to any Owner or Sub-Unit Owner or occupants of any Unit or Sub-Unit for any damage or injury caused in whole or in part by the Master Association's failure to discharge its responsibilities under this Section 5.1.

Section 5.2 Failure of Owner to Maintain Unit or Easements. If the Master Association or any Owner fails or neglects to maintain, repair or clean its Unit or the area covered by the Easements as required by Section 5.1 and Section 3.6, respectively, of this Master Declaration, and such failure or neglect (i) affects an Owner or the exterior appearance of the Property, and (ii) continues for 20 days (or earlier in the event of an emergency) after the Owner's receipt of written notice of such neglect or failure from the Master Association (or an Owner, if the obligation is required to be performed by the Master Association), then the Master Association (or an Owner, if the obligation is required to be performed by the Master Association) acting on its own behalf may, but shall not be obligated to, enter the Unit or upon the area covered by the Easement, as applicable, and take appropriate steps to perform, or cause to be performed, the maintenance, repair, cleaning and replacement in the manner as required by this Master Declaration; provided, however, that if the Master Association declines to perform such maintenance on behalf of the defaulting Owner, any other Owner shall have the right to enter such Unit or upon the area subject to such Easement and perform or cause to be performed the maintenance required by this Master Declaration. The defaulting Owner or the Master Association, as the case may be, shall, upon demand, reimburse the Master Association or the Owner making such repairs or maintenance, as applicable, for all costs and expenses incurred in exercise of its rights in this Master Declaration.

Section 5.3 Disputes. Any Dispute arising among the Owners as to the proper person to bear a maintenance cost or expense shall be resolved in accordance with Article X of this Master Declaration.

Section 5.4 Additions, Alterations or Improvements by Owners.

(a) Development of the Hotel Unit and Hotel Unit Limited Common Elements shall be subject to the approval of the Hotel Unit Development Plans by the Owner of the Residential Unit. The Owner of the Hotel Unit shall not develop or construct any improvements to the Hotel Unit or Hotel Unit Limited Common Elements prior to receiving such approval. After the Owner of the Hotel Unit has obtained such approval, no material deviation from the Hotel Unit Development Plans may be made in connection with any construction within the Hotel Unit or the Hotel Unit Limited Common Elements, including any material alterations, additions or other Improvements, without the consent of the Residential Unit Owner, which will not be unreasonably withheld. Changes to the floor plan and layout within the Hotel Unit shall not be considered a material deviation. The Owner of the Hotel Unit shall have the right, provided that there is no material adverse effect on the Residential Unit without the prior written consent of the Residential Unit Owner, to convert portions of the Hotel Unit into Common Elements or convert the Common Elements into the Hotel Unit. Notwithstanding the foregoing, in the event that Declarant reacquires the Hotel Unit or any portion thereof after the initial conveyance of the Hotel Unit by Declarant to a third party, Declarant and its successors and assigns shall have the right to deviate from the Hotel Unit Development Plans in the initial development of the Hotel Unit and as to any alterations, improvements, or reconstruction thereof without the necessity of obtaining consent from the Owner of the Residential Unit or the Master Association.

(b) The Hotel Unit Owner has approved the Residential Unit Development Plans. No material deviation from the Residential Unit Development Plans may be made in connection with any construction within the Residential Unit or the Residential Unit Limited Common Elements, including any material alterations, additions or other Improvements, without the consent of the Hotel Unit Owner, which will not be unreasonably withheld. Changes to the floor plan and layout within the Residential Unit shall not be considered a material deviation.

(c) In no event shall any such alteration, improvement, or change interfere with the structural support of any Unit, the Common Elements or any System serving another Unit. All work done in accordance with this Section 5.4 shall be done in compliance with all Legal Requirements and the Governing Documents.

(d) THE OWNER, MAKING OR CAUSING TO BE MADE SUCH ADDITIONS, ALTERATIONS OR IMPROVEMENTS, AGREES, AND SHALL BE DEEMED TO HAVE AGREED, FOR SUCH OWNER, TO HOLD THE MASTER ASSOCIATION, DECLARANT AND ALL OTHER OWNERS HARMLESS FROM AND TO INDEMNIFY THEM FOR ANY LIABILITY OR DAMAGE TO THE PROPERTY RESULTING FROM SUCH ADDITIONS, ALTERATIONS OR IMPROVEMENTS. ANY OTHER OWNER SUBMITTING PLANS HEREUNDER, BY DISSEMINATION OF THE SAME, AND ANY OWNER, BY ACQUIRING TITLE TO THE SAME, AGREES NOT TO SEEK DAMAGES FROM THE OTHER OWNER, ARISING OUT OF THE OWNER'S REVIEW OF ANY PLANS HEREUNDER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE OWNER SHALL NOT BE RESPONSIBLE FOR REVIEWING, NOR SHALL ITS REVIEW OF ANY PLANS

BE DEEMED APPROVAL OF, ANY PLANS FROM THE STANDPOINT OF THE STRUCTURAL SAFETY, SOUNDNESS, WORKMANSHIP, MATERIALS, USEFULNESS, CONFORMITY WITH BUILDING OR OTHER CODES OR INDUSTRY STANDARDS OR COMPLIANCE WITH THE GOVERNING DOCUMENTS AND ALL LEGAL REQUIREMENTS.

Section 5.5 Mechanic's Liens; Indemnification. No labor or services performed or materials furnished and incorporated in a Unit or any Common Element shall be the basis for the filing of a lien against any Unit of any Owner not expressly consenting to or requesting the same, or against the Common Elements. **EACH OWNER (TO THE EXTENT ARISING THROUGH SUCH OWNER) SHALL INDEMNIFY AND HOLD HARMLESS EACH OF THE OTHER OWNERS AND THE MASTER ASSOCIATION FROM AND AGAINST ALL LIABILITIES AND OBLIGATIONS ARISING FROM THE CLAIM OF ANY MECHANIC'S LIEN AGAINST THE UNIT OF SUCH OWNER, THE UNIT OF SUCH OTHER OWNERS AND/OR THE COMMON ELEMENTS.** All contracts for labor, services and/or materials with respect to any of the Units shall be in compliance with the provisions hereof.

Section 5.6 Taxes.

(a) Payment of Governmental Impositions. Each Owner shall be responsible for and shall pay when due all Governmental Impositions lawfully levied or assessed against such Owner's Unit, except to the extent such Governmental Impositions are being actively and diligently contested in good faith by appropriate legal proceedings, and if requested by the Master Association, have been bonded or reserved in an amount and manner satisfactory to the Master Association. Any Governmental Impositions lawfully levied or assessed with respect to the Property not separately assessed to the Owners or the Sub-Unit Owners, as applicable, shall constitute a Common Expense and shall be payable by the Master Association or the Sub-Unit Condominium Association, respectively, when due.

(b) Notice to Taxing Authorities. Declarant shall give written notice to the appropriate taxing authorities of the creation of the Condominium established pursuant to this Master Declaration. Each Owner shall promptly request and diligently pursue from the applicable taxing authority separate tax parcel status and a separate tax identification number for its Unit. The declarant under any Sub-Unit Declaration shall agree in the Sub-Unit Declaration to give written notice to the appropriate taxing authorities of the creation of a Sub-Unit Condominium established by the Sub-Unit Declaration.

(c) Units and Sub-Units Not Separately Assessed. If any Governmental Impositions with respect to the Property are not separately assessed to the Owners of a Unit or the Sub-Unit Owners, each Owner or Sub-Unit Owner shall pay its respective allocated portion of such Governmental Impositions (which allocations shall be determined in the manner set forth in this Master Declaration or in the Sub-Unit Declaration, as applicable) when requested by the Master Association or Sub-Unit Condominium Association, respectively (but in no event prior to 20 days or later than ten days before the date of delinquency, without any additional notice or grace period) to

permit the Master Association or the Sub-Unit Condominium Association to make full payment of such Governmental Impositions prior to the date on which such Governmental Impositions would become delinquent; provided that neither the Master Association nor any Sub-Unit Condominium Association shall require any Owner or Sub-Unit Owner to make any payment to the Master Association or the Sub-Unit Condominium Association for Governmental Impositions to the extent such amounts have already been deposited by such Owner or Sub-Unit Owner in accordance with any escrow arrangement.

(d) Failure to Pay Governmental Impositions. The Master Association or any Mortgagee may pay the portion of Governmental Impositions that any Owner or Sub-Unit Owner has failed to pay when due, and the Master Association or such Mortgagee shall have a lien against such Unit or Sub-Unit, as applicable, to secure repayment thereof, that may be enforced by any means available at law or in equity, including non-judicial foreclosure sale of such Unit or Sub-Unit in accordance with Texas Property Code Section 51.002 (as now written or hereafter amended); provided, however, no such lien for delinquent Governmental Impositions shall be valid until a notice of such lien is duly recorded in the Real Property Records of the County, notwithstanding any applicable statute, law (including case law), equitable doctrine, ordinance or regulation that permits any such lien to attach absent such recordation in the Real Property Records. Each Owner and each Sub-Unit Owner, by its acquisition of such Unit or Sub-Unit, as applicable, grants a power of sale in connection with such lien in favor of the Master Association or any Mortgagee that makes payment of the Governmental Impositions on behalf of a defaulting Owner or Sub-Unit Owner. Any lien pursuant to this Section 5.6(d) shall have the same priority as a lien by the Master Association for Assessments; provided that any such lien for delinquent Governmental Impositions shall be subordinate to the lien of any Priority Lien Indebtedness encumbering such Unit or Sub-Unit, as applicable, provided that such Priority Lien Indebtedness was recorded prior to the date such lien for Governmental Impositions was duly recorded (notwithstanding any applicable statute, law (including case law), equitable doctrine, ordinance or regulation that permits any such lien to attach absent such recordation in the Real Property Records).

(e) This Section 5.6 shall terminate and be of no further force or effect whatsoever, upon the later of the date upon which (i) each of the Hotel Unit and the Residential Unit shall be separately assessed and billed as a separate tax parcel by the tax assessor and (ii) all the Governmental Impositions due and owing prior to all Units being separately assessed and billed as a separate tax parcel by the tax assessor have been paid in full to the appropriate taxing authority.

Section 5.7 Utilities. Each Owner shall be responsible for and shall pay all charges for gas, electricity, water and other utilities relating to such services used or consumed at or with respect to the occupancy of its Unit, to the extent such charges are separately metered by the respective utility companies. Any utility charges not so separately metered, and charges relating to such services used in connection with the use and maintenance of the Common Elements, shall constitute a Common Expense and be payable by the Master Association.

ARTICLE VI

Insurance

Section 6.1 Requirements. All insurance coverage required to be obtained pursuant to this Article VI or purchased at the election of an Owner or the Master Association shall:

(a) be issued by responsible insurance companies licensed to do business in the State of Texas and shall be rated by Best's Insurance Guide (or any successor publication of comparable standing) as "A-,VI" or better; and

(b) provide that insurance trust agreements shall be recognized.

Section 6.2 Insurance by the Master Association. Commencing upon the first conveyance of any Unit to an Owner other than Declarant, the Master Association shall, to the extent reasonably available, obtain and maintain:

(a) insurance coverage required pursuant to the Act;

(b) A "master" or "blanket" policy of property insurance insuring against all risks of direct physical loss commonly insured against including fire and extended coverage, covering all Common Elements (excluding the Land, foundation and other items normally excluded from coverage) including Systems which constitute a part of the Common Elements and any other personal property belonging to the Master Association with a waiver of depreciation. Such "blanket" or "master" policy shall insure, for 100% of the full replacement value of the items covered, against loss or damage by fire or other perils normally covered by the standard extended coverage endorsement available in the State of Texas and against all other perils customarily covered with respect to condominium projects which are similar to the Property in construction, location, and use, including all perils normally covered by the standard "all risk" endorsement;

(c) A commercial general liability insurance policy covering all Common Elements in the amount of at least \$10,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence (\$10,000,000 aggregate);

(d) Director's and officers liability insurance for officers and directors of the Master Association in the amount of at least \$5,000,000 and blanket fidelity bonds for all officers, directors, trustees and employees of the Master Association and all other Persons handling or responsible for funds of or administered by the Master Association on such terms and with such surety or sureties, conditions, penalties or securities as shall be deemed proper by the Master Association, provided that if the Master Association has delegated some or all of the responsibility for the handling of funds to a Manager, the Manager shall also be covered by its own fidelity insurance policy providing the same coverages as required to be maintained by the Master Association; and

(e) at the expense of the Owner incurring such Priority Lien Indebtedness, such other insurance (or additional coverage) as such Owner's Mortgagee shall require.

The Master Association shall carry such other or additional insurance in such amounts and against such risks as the Master Association shall reasonably deem necessary with respect to the Common Elements or operation of the Master Association. In addition, each insurance policy maintained by the Master Association shall provide that: (i) each Owner is named as an insured under such policies with respect to liability arising out of the Owner's ownership of an undivided interest in the Common Elements or membership in the Master Association; (ii) no action or omission by any Owner (or any Sub-Unit Owner), unless validly exercised on behalf of the Master Association, will void the policy or be a condition to recovery under the policy and (iii) such policy is primary insurance if at the time of a loss under the policy any Owner (or Sub-Unit Owner) has other insurance covering the same property covered by the policy. Unless indicated otherwise, the premiums for all insurance coverages maintained by the Master Association pursuant to this Section 6.2 shall constitute a Common Expense, and shall be payable by the Master Association.

Section 6.3 Insurance on Residential Unit. The Residential Unit Owner shall provide and maintain, at its sole cost and expense, such insurance in such amounts and against such risks as the Residential Unit Owner shall deem necessary with respect to the improvements, facilities and contents within the Residential Unit. To the extent that the property insurance and/or commercial general liability insurance required to be maintained by the Master Association pursuant to Section 6.2 above is not reasonably available during the period of any of such Owner's construction, renovation or alteration to its Unit, the Limited Common Elements appurtenant to its Unit, the General Common Elements or the Shared Facilities, as applicable, such Owner shall maintain or cause its contractor to maintain "Builder's All-Risk Completed Value" or "Course of Construction" insurance and commercial general liability insurance, including products – completed operations, policies for any such Improvements under construction, renovation or alteration in such amounts and on such forms, including endorsements, as are typically carried for similar condominium projects in Austin, Texas, and each Owner and the Master Association shall be named as an additional insured on such policies.

Section 6.4 Insurance on Hotel Unit. The Hotel Unit Owner shall provide and maintain, at its sole cost and expense, such insurance in such amounts and against such risks as the Hotel Unit Owner shall deem necessary with respect to the improvements, facilities and contents within the Hotel Unit. To the extent that the property insurance and/or commercial general liability insurance required to be maintained by the Master Association pursuant to Section 6.2 above is not reasonably available during the period of any of such Owner's construction, renovation or alteration to its Unit, the Limited Common Elements appurtenant to its Unit, the General Common Elements or the Shared Facilities, as applicable, such Owner shall maintain or cause its contractor to maintain "Builder's All-Risk Completed Value" or "Course of Construction" insurance and commercial general liability insurance, including products – completed operations, policies for any such Improvements under construction, renovation or alteration in such amounts and on such forms, including endorsements, as are typically carried for similar condominium projects in Austin, Texas, and each Owner and the Master Association shall be named as an additional insured on such policies.

Section 6.5 Master Association as Insurance Trustee for the Owners. By acceptance of a deed to a Unit, each Owner shall be deemed to have irrevocably appointed the Master Association as the Insurance Trustee. All property insurance policies required to be

obtained by the Master Association as described in this Article VI shall be issued in the name of the Master Association as Insurance Trustee for the Condominium. Loss payable provisions shall be in favor of the Insurance Trustee as a trustee for the Master Association, each Owner and each such Owner's Mortgagee. The Insurance Trustee shall not be liable for the payment of premiums, nor the renewal or sufficiency of policies, except those policies required to be purchased and maintained by the Master Association pursuant to this Article VI. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated in this Article VI and in Article VIII below, and for the benefit of each Owner, including Declarant, and such Owner's Mortgagee, if any.

Section 6.6 Other.

(a) The Master Association shall not be liable for failure to obtain any insurance coverage required by this Master Declaration or for any loss or damage resulting from such failure, if such failure is because such insurance coverage is not reasonably available.

(b) The Master Association shall not obtain any policy of insurance where: (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against any Owner or Mortgagee or become a lien against the Condominium; (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders or members or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Master Association from collecting the Insurance Proceeds.

(c) The insurance purchased by the Master Association pursuant to this Article VI shall not cover claims against any Owner or its Designees due to accidents occurring within a Unit, or casualty, theft or loss to the contents of a Unit.

(d) Each Owner, their Tenants and their respective Designees waive any claim they might have against the other Owners, their Tenants and their respective Designees, the members of the Board of Directors, any Manager or the Master Association, and the members of the Board of Directors, any Manager or the Master Association waive any claim they might have against an Owner, their Tenants and their respective Designees, for (i) any damage to or theft, destruction, loss or loss of use of any property or (ii) to the extent the same is insured against under any insurance policy maintained by the Master Association, any damage due to personal or bodily injury, **REGARDLESS OF WHETHER THE NEGLIGENCE OF THE OTHER OWNER, ITS TENANTS, OR THEIR RESPECTIVE DESIGNEEES, ANY MEMBER OF THE BOARD OF DIRECTORS, ANY MANAGER OR THE MASTER ASSOCIATION (AS APPLICABLE) CAUSED SUCH (X) DAMAGE TO OR THEFT, DESTRUCTION, LOSS OR LOSS OF USE OF, ANY PROPERTY OR INCONVENIENCE OR (Y) DAMAGE TO THE PERSON OR PERSONS DESCRIBED HEREIN.** Each Owner shall cause its respective insurance carrier to endorse all applicable property insurance policies waiving each such carrier's rights of recovery under subrogation or otherwise against the other Owners, their Tenants and their respective Designees, the members of the Board of Directors, any Manager and the Master Association and the

members of the Board of Directors, any Manager and the Master Association shall cause their respective insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the Owners, their Tenants and their respective Designees.

ARTICLE VII

Assessments

Section 7.1 Monthly and Special Assessments by the Master Association. The Master Association shall possess the right, power, authority and obligation to establish a regular Monthly Assessment for payment of the Common Expenses and such Special Assessments as provided for in this Master Declaration. In addition, the Master Association shall have the right, power, authority and obligation, to establish Monthly Assessments, Special Assessments and Additional Assessments, as described in Section 5.1(c) and Section 8.1 of this Master Declaration.

(a) **Common Expenses.** The Master Association shall possess the right, power, authority and obligation to establish a regular Monthly Assessment to pay all Common Expenses when due and to maintain an adequate reserve fund for such purposes pursuant to the Master Budget. Such Monthly Assessments so established shall be payable by the Owners on the first day of each calendar month, and shall be applied to the payment of Common Expenses for which the Master Association is responsible, including maintenance, repair and care of the Common Elements.

(b) **Budget for Common Expenses.** Prior to the commencement of each fiscal year of the Master Association, the Owners shall prepare a Master Budget with respect to the Common Expenses anticipated to be incurred in the upcoming fiscal year, including Additional Assessments. Based upon such Master Budget, the Association shall provide each Owner with a statement setting forth each Owner's monthly share thereof and the date as of which such Monthly Assessment commences to be payable. No further communication shall be necessary to establish the amount of each Owner's obligation regarding the Monthly Assessment payable hereunder, and the failure of the Owners to timely prepare such Master Budget shall in no event excuse or relieve an Owner from the payment of the Monthly Assessments contemplated hereby, in which case, each Owner shall continue to pay to the Master Association an amount equal to such Owner's Monthly Assessment as established pursuant to the most recent Master Budget prepared by the Owners. If the Owners cannot agree on a Master Budget, the same shall constitute a "Dispute."

(c) **Special Assessments by Association.** In addition to the Monthly Assessments contemplated by Section 7.1(a) and Section 7.1(b) of this Master Declaration, if the Owners both agree that a Special Assessment is necessary or appropriate to pay non-recurring Common Expenses relating to the proper maintenance, care, alteration, improvement, and replacement of the Common Elements, the operation and management of the Condominium or the administration of the Master Association, the Owners shall inform the Master Association thereof and the Master Association shall

have the right, power and authority and obligation to establish a Special Assessment therefor. If the Owners cannot agree on a Special Assessment, the same shall constitute a "Dispute."

Section 7.2 Additional Assessments. The Master Association shall possess the right, power, authority and obligation to establish an Additional Assessment sufficient to pay Charges due to an Owner as set forth in the Master Budget or the Master Association for the ensuing year. Additional Assessments so established shall be payable by the applicable Owners on the first day of each calendar month to the Master Association, which will in turn deliver the same to the Owner which incurred such Charges.

Section 7.3 Obligation to Pay Assessments. Each Owner shall be personally obligated to pay the Owner's share of all Assessments duly established pursuant to this Master Declaration to the Master Association. Upon the conveyance or transfer of a Unit, the former Owner shall continue to be personally liable for such unpaid Assessment. No Owner shall be entitled to exemption from liability for the Owner's obligation to pay such Assessments by waiver of the use and enjoyment of the Common Elements or the facilities as to which any Additional Assessments relate, by an abandonment of the Unit or by any other action or otherwise. Any Assessment not paid within five days of the date due shall bear interest at the Past Due Rate, and shall be recoverable by the Master Association, together with interest as aforesaid and all costs and expenses of collection, including reasonable attorneys' fees, by suit in a court of competent jurisdiction sitting in the County. It shall be the responsibility of the Master Association to collect any such delinquent Assessment, the existence of which shall be made known by written notice delivered to the defaulting Owner and, where requested, the Owner's Mortgagee.

Section 7.4 Lien to Secure Payment of Assessments. Declarant hereby reserves and assigns to the Master Association a lien, pursuant to the provisions of the Act, against each Unit, the Rents, if any, payable to any Owner and the Insurance Proceeds to which an Owner may be entitled to secure the payment of all Assessments, which lien shall be and constitute a lien and encumbrance, in favor of the Master Association, upon such Unit, the Rents, and any Insurance Proceeds. The liens established in this Master Declaration shall be prior and superior to all other liens and encumbrances subsequently created upon such Unit, Rents and Insurance Proceeds, regardless of how created, evidenced or perfected, other than the lien securing the payment of Priority Lien Indebtedness (provided such lien was recorded prior to the date on which the Assessment became delinquent) and the liens for Governmental Impositions. The liens and encumbrances created in this Master Declaration may be enforced by any means available at law or in equity, including a non-judicial foreclosure sale of the Unit of a defaulting Owner; such sale to be conducted in the manner set forth in Texas Property Code Section 51.002 (as now written or as hereafter amended). Each Owner, by acquisition of such Unit, and each Sub-Unit Owner, by acquisition of such Sub-Unit Owner's Sub-Unit, grants to the Master Association a power of sale in connection with the Master Association's liens. By written resolution, the Master Association may appoint, from time to time, an officer, agent, trustee or attorney of the Master Association to exercise the power of sale on behalf of the Master Association. The Master Association may bid for and purchase the Unit, as a Common Expense, at any such foreclosure sale. Payment of proceeds resulting from such foreclosure sale to be applied toward outstanding Assessments shall be in the following order of priority: first, Assessments owing to

the Master Association including all costs, expenses and attorneys' fees relating to the foreclosure; and second, Assessments owing to the Owners levying Additional Assessments. The foreclosure of a lien encumbering a Unit in order to satisfy the Priority Lien Indebtedness will extinguish the subordinate lien for any Assessments which became payable prior to the date of such foreclosure sale, provided that in no event shall a defaulting Owner be relieved from liability incurred for past Assessments. In connection with enforcement of lien rights with respect to any Unit that is subdivided pursuant to the provisions of this Master Declaration, the Master Association hereby grants a license (which will be set forth in any Sub-Unit Declaration) to the Sub-Unit Condominium Association to collect a pro rata (or otherwise allocated) portion of Assessments from each Sub-Unit Owner, and the Sub-Unit Condominium Association shall remit such collections to the Master Association. If a Sub-Unit Condominium Association fails to timely collect any portion of the Assessments due from a Sub-Unit Owner, then after the Master Association gives 30 days notice to the Sub-Unit Condominium Association, the license to the Sub-Unit Condominium Association to collect any portion of the Assessments from such Sub-Unit Owner shall terminate, and the Master Association may enforce its lien as against the applicable Sub-Unit without the joinder of the Sub-Unit Condominium Association.

Section 7.5 Commencement of Obligation to Pay Assessments. Each Owner shall be obligated to commence payment of all Assessments against such Unit on the date the Unit is conveyed to the Owner. If such date is other than the first day of a month, then such Owner shall be obligated to pay only a pro rata share of the Assessment against such Unit based on the number of days during such month that the Owner will hold title to the Unit.

Section 7.6 Notice of Default. If an Owner defaults in the Owner's monetary obligations to the Master Association, the Master Association may notify other lienholders and any Sub-Unit Condominium Association for such Unit of the default and the Master Association's intent to foreclose its lien. The Master Association shall notify any holder of a recorded lien or duly perfected mechanic's lien against a Unit which has given the Master Association a written request for notification and any Sub-Unit Condominium Association for such Unit of the Owner's monetary default or the Master Association's intent to foreclose its lien.

Section 7.7 Alternative Actions. Nothing contained in this Master Declaration shall prohibit the Master Association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien.

Section 7.8 Statement of Expenses and Access to Records. Upon request, the Master Association shall promptly provide any Owner, contract purchaser or Mortgagee with a written statement of all unpaid Assessments due with respect to such Unit. The Master Association may impose a reasonable charge for the preparation of such statement to the extent permitted by the Act. The Master Association shall make available during normal business hours for inspection, upon request by the Owners, Mortgagees, Tenants, prospective purchasers and any of their authorized agents, current copies of the books, records and financial statements of the Master Association (including, if such is prepared, the most recent annual audited financial statement available). Any Owner or Mortgagee may have an audited statement of the Master Association prepared at its own expense.

Section 7.9 Subordination of Lien for Assessments. The lien for the payment of Assessments shall be subordinate to the lien of any mortgage or deed of trust that secures Priority Lien Indebtedness that was recorded prior to the date any such Assessment becomes delinquent under the provisions of this Master Declaration.

ARTICLE VIII

Loss and Obsolescence

Section 8.1 Loss or Damage. The following provisions shall govern if the Common Elements or any part thereof, are damaged or destroyed by fire or other casualty: (a) prompt written notice of any substantial damage or destruction shall be given (i) by the affected Owner or Owners to the Master Association and (ii) by the Master Association to all of the Mortgagees; (b) the Master Association shall promptly proceed with the full restoration and repair of such damage or destruction unless (i) the Condominium is terminated; (ii) repair or replacement would be illegal under any Legal Requirement; or (iii) the Owners holding at least 100% of the votes in the Master Association vote not to rebuild; (c) the amount by which such restoration and repair costs exceed collectible Insurance Proceeds shall be and constitute a Special Assessment payable by the Owners within 60 days of the date notice of such Special Assessment is delivered by the Master Association, in accordance with Section 7.1(c) of this Master Declaration; (d) any excess Insurance Proceeds remaining after such restoration and repair, or any insurance or sales proceeds available absent such restoration and repair, shall be received and held in trust by the Insurance Trustee in separate accounts for each Owner, as their interests may appear (with any proceeds attributable to Limited Common Elements allocated among the Owners of the Units to which such Limited Common Elements were assigned in this Master Declaration and any other proceeds allocated in accordance with the Allocated Interests of the Owners), and distributed as follows: (i) first, to the payment of any Governmental Impositions in favor of any assessing entity having authority with respect to the Common Elements or such Unit; (ii) second, to the payment of the balance of the Priority Lien Indebtedness of such Owner; (iii) third, to the payment of any delinquent Assessment with respect to such Unit and (iv) the balance, if any, to each Owner entitled thereto.

Section 8.2 Damaged Units. The following provisions shall govern in relation to a Damaged Unit: (a) prompt written notice of any substantial damage or destruction shall be given by the Owner of the Damaged Unit to the Master Association and the Mortgagee of the Damaged Unit; (b) the Owner of the Damaged Unit shall promptly proceed with the full restoration and repair of such damage or destruction unless: (i) the Condominium is terminated; (ii) repair or replacement would be illegal under any Legal Requirement or (iii) the Owners holding at least 100% of the votes in the Master Association, including the Owner of the Damaged Unit, vote not to rebuild and (c) the Owner of each Damaged Unit shall pay all costs of such restoration, repair and replacement or rebuilding in excess of the net proceeds of the collectible Insurance Proceeds.

Section 8.3 Intentionally Omitted.

Section 8.4 Obsolescence of Common Elements. If the Owners holding not less than 100% of the votes in the Master Association, at a meeting of the Master Association duly called for purposes of considering same, that the Common Elements, or any part thereof, (or any

Systems which serve only, or are a part of, individual Units), are obsolete, the Master Association shall promptly proceed with the necessary replacements and improvements thereto pursuant to a budget established for such purpose, and the cost thereof shall be and constitute a Special Assessment payable by all the Owners within 30 days of the date notice of such Special Assessment is delivered to them by the Master Association.

Section 8.5 Obsolescence of the Property. If the Owners holding not less than 100% of the votes in the Master Association, at a meeting of the Master Association duly called for purposes of considering same, determine that the Property is obsolete, the Master Association, after first obtaining the written consent of 100% of the Mortgagees, shall promptly proceed with the sale thereof in its entirety. Any proceeds from such sale shall be received, held and applied for and on account of the Owners as provided in the Act.

Section 8.6 The Master Association as Attorney-in-Fact. Each Owner, by acceptance of a deed to a Unit, hereby irrevocably makes, constitutes and appoints the Master Association, and each and every one of its successors in interest hereunder, as the Owner's true and lawful attorney-in-fact, for and in the Owner's name, place and stead, upon the damage or destruction of the Common Elements, or any part thereof, or upon any determination by the Owners made pursuant to this Article VIII, to take any and all actions, and to execute and deliver any and all instruments, as the Master Association may, in its sole and absolute discretion, deem necessary or advisable to effect the intents and purposes of this Article VIII, hereby giving and granting unto the Master Association full power and authority to do and perform all and every act whatsoever requisite or necessary to be done in and about the premises as fully, to all intents and purposes, as an Owner might or could do, hereby ratifying and confirming whatsoever the Master Association may do by virtue hereof. The Master Association is hereby authorized, in the name and on behalf of all the Owners, to do and perform all actions necessary or appropriate to effect the intent and purposes of this Article VIII as aforesaid, including the power and authority to make and settle claims under any insurance policies maintained by the Master Association, contract for and with respect to restoration and repair work, contract for and with respect to replacements and improvements to the Common Elements (to the extent authorized as contemplated by Section 8.4 of this Master Declaration), to contract for and with respect to a sale of the Property (to the extent contemplated by Section 8.5 of this Master Declaration) and to execute and deliver all instruments necessary or incidental to any such actions.

Section 8.7 Matters Relating to Restoration and Repairs. Any restoration and repair work undertaken by the Master Association or an Owner pursuant to this Article VIII shall be performed in a good and workmanlike manner in order to restore the Improvements to a condition similar to that existing prior to such damage or destruction; provided, however, that in no event shall the Master Association be responsible for restoring, repairing or replacing any improvements to a Unit made by an Owner, or the contents located in such Unit. All such restoration and repair work, whether done by the Master Association or an Owner, shall be effected in a manner so as to observe all vertical and horizontal Unit boundaries existing prior to such damage or destruction.

ARTICLE IX

Condemnation

Section 9.1 General Provisions. If all or any part of the Property is subject to a Taking, the Master Association and each Owner affected thereby shall be entitled to participate in proceedings incident thereto at their respective expense. The Master Association shall give such notice as it receives of such proceeding to all the Owners and to all the Mortgagees which have requested such notice; provided, however, that the failure of the Master Association to give such notice shall not prejudice the right of any Mortgagee to participate in such proceedings. The expense of participation in such proceedings by the Master Association shall be a Common Expense. The Master Association is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Master Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. Any restoration or repair of the Property following a partial Taking shall be performed in accordance with the provisions of this Master Declaration and shall follow, as nearly as possible, the original plans and specifications for the Property, unless otherwise approved by all the Mortgagees.

Section 9.2 Taking of All or Substantially All of One Unit. If a Unit (or a substantial part thereof such that the remnant may not practically or lawfully be used for any purpose permitted by this Master Declaration) is subject to a Taking, the Owner and any Mortgagee of such Owner shall be entitled to the award for such Taking, including the award for the value of such Owner's interest in the Common Elements, whether or not such Common Element interest is acquired, and, after payment thereof, such Owner and any Mortgagee of such Owner shall be divested of all interest in the Property. In such event, the condemned Unit's entire Allocated Interest shall be automatically reallocated to the remaining Unit. A remnant of a Unit remaining after part of a Unit is the subject of a Taking described in this Section 9.2 shall be a Common Element. If no repair or rebuilding shall be required, or if none be undertaken, the remaining portion of the Property shall be resurveyed, if necessary, and this Master Declaration shall be amended to reflect such Taking. This Master Declaration shall in all circumstances be amended to reflect the re-allocated Allocated Interests following the Taking.

Section 9.3 Partial Taking of a Unit. If only a portion of a Unit is subject to a Taking, such that the remaining portion of such Unit can practically and lawfully be used for any purpose permitted by this Master Declaration, the Owner shall be entitled to the award for such Taking, including the award for the value of such Owner's interest in the Common Elements, whether or not such Common Element interest is acquired, and the Allocated Interest of the Unit subject to such Taking shall be reduced and the Allocated Interest of the other Unit shall be increased in accordance with the Reallocation Percentage. The Owner of such Unit, at its sole cost and expense, shall promptly repair, restore and rebuild the remaining portions of such Unit as nearly as possible to the condition which existed prior to such Taking.

Section 9.4 Taking of Common Elements. If an action is brought to effect a Taking of all or any portion of the Common Elements together with or apart from any Unit, the Board of Directors, in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect

thereto, or to convey such property to the condemning authority in lieu of such condemnation proceeding unless the action involves a material portion of the Common Elements in which case the agreement of all the Owners shall be required. With respect to any such Taking of the Common Elements only, all damages and awards shall be determined for such Taking as a whole and not for any Owner's interest therein. After the damages or awards for a Taking of the Common Elements are determined, such damages or awards shall be held by the Master Association, acting as trustee for each Owner, and their Mortgagees, as their interests shall appear, and any amounts not used for repair or restoration of the remaining Common Elements shall be divided among the Owners in proportion to each Owner's Allocated Interest before the Taking, except that such portion of any such award attributable to the condemnation of a Limited Common Element shall be divided among the Owners of the Units served by such Limited Common Elements, as such Owners' interests existed in the Limited Common Elements condemned. The Owners shall determine by the affirmative vote or written consent of the Owners holding not less than 100% of the votes in the Master Association either to rebuild or repair the remaining Common Elements or to take such other action as the Owners may deem appropriate. If it is determined that such Common Elements should be replaced or restored by obtaining other land or building additional structures, this Master Declaration and the Map attached hereto shall be duly amended by instrument executed by the Board of Directors on behalf of the Owners and recorded in the Condominium Records.

Section 9.5 Taking of Several Units. If an eminent domain proceeding results in the Taking of all or part of multiple Units, then the damage and awards for such Taking shall be determined and paid for each Unit as described in Section 9.2 and Section 9.3 above, and the following shall apply: (a) the Master Association shall determine which of the Units damaged by such Taking may be practically and lawfully used for any purpose permitted by this Master Declaration, taking into account the nature of the Property and the reduced size of each Unit so damaged; (b) if the remaining Owners shall determine by the affirmative vote or written consent of the remaining Owners holding not less than 100% of the votes in the Master Association, with the written consent of 100% of the Mortgagees, that it is not reasonably practicable to operate the undamaged Units and the damaged Units which can be practically and lawfully used for any purpose permitted by this Master Declaration as a mixed-use condominium project in the manner provided in this Master Declaration, then the Property shall be deemed to be regrouped and merged into a single estate owned jointly in undivided interests by all the remaining Owners, as tenants-in-common, in the percentage of the Allocated Interest of each Owner (after reallocation in accordance with the procedures described in Section 9.2 and Section 9.3 above) and (c) if the Condominium is not so terminated, then the damages and awards made with respect to each Unit which can be practically and lawfully used for any purpose permitted by this Master Declaration shall be applied to repair and reconstruct such Unit as provided in Section 9.3. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed pro rata against the Owners of those Units which are being repaired or reconstructed. With respect to those Units which may not be practically or lawfully used for any purpose permitted by this Master Declaration, after payment of the award, such Owner and any Mortgagee of such Owner shall be divested of all interest in the Property and the condemned Unit's entire Allocated Interest shall be automatically reallocated to the remaining Unit. A remnant of a Unit remaining after part of a Unit is the subject of a Taking, if the remnant of such Unit cannot be practically or lawfully used for any purposed permitted by this Master Declaration, shall be a Common Element. If no repair or rebuilding shall be required, or if none be undertaken, the remaining

portion of the Property shall be resurveyed, if necessary, and this Master Declaration shall be amended to reflect such Taking. This Master Declaration shall in all circumstances be amended to reflect the re-allocated Allocated Interests following the Taking.

Section 9.6 Complete Taking of Property. If all of the Property is the subject of a Taking, all damages and awards shall be held by the Master Association, acting as trustee, for the accounts of all the Owners and their Mortgagees, as their interests shall appear, and shall be paid to or for the accounts of the Owners in proportion to their Allocated Interests and this Condominium shall terminate upon such payment.

Section 9.7 Payment of Awards and Damages. Any damages or awards provided in this Article IX to be paid to or for the account of any Owner by the Master Association, acting as trustee, shall be applied first to the payment of any Governmental Impositions past due and unpaid with respect to that Unit; second, to any Priority Lien Indebtedness on that Unit; third, to the payment of any Assessments charged to or made against the Unit and unpaid; and finally to the Owner.

ARTICLE X

Matters for Mediation and Arbitration

Section 10.1 Mediation. All Disputes except those relating to equitable remedies, which shall not be resolved within 15 days after same have arisen (unless such greater time is provided elsewhere in the Governing Documents) shall be submitted for, or determined by non-binding mediation. Mediation of any Dispute shall be initiated by any Owner making a written demand therefor to the other Owner and the Master Association; provided, however, if the Master Association is a party to any such Dispute the Master Association shall have the right to elect not to be governed by the provisions of this Article X, by giving to the Owner or Owners, within ten days after the Master Association's receipt from such Owner or Owners of a demand for mediation of a Dispute, written notice of the Master Association's election not to be governed by the provisions of this Article X and to instead exercise the Master Association's remedies at law or in equity. With respect to such mediation, the parties shall, within ten days after delivery of such written demand for mediation, appoint a mediator who is: (a) a reputable person actively engaged in the commercial real estate industry for a continuous period of not less than ten years and (b) is in no way affiliated, or has had material business dealings with any Owner or any officer or director of the Master Association. If the parties are unable to agree upon a mediator, a mediator having the qualifications set forth above shall be appointed by the then presiding judge of the United States District Court of the Austin Division of the Western District of Texas, or such other service as may be recommended by the Austin Bar Association. Such mediation shall occur within 30 days after the mediator has been appointed and shall occur at a mutually acceptable location in Austin, Texas. The costs of such mediation services shall be shared equally (but each party shall bear the cost of their own travel and attorneys' fees); provided, however, that if the Dispute is not resolved pursuant to such mediation the provisions of Section 10.2 of this Master Declaration shall govern the payment of attorneys' fees and costs and expenses of mediation and arbitration under this Article X.

Section 10.2 Final Offer Arbitration. If the parties are unable to resolve any Dispute at mediation, no later than 30 calendar days after the parties have reached an impasse at mediation, the parties shall submit their Dispute to binding arbitration. The parties agree to select a single impartial arbitrator from a list taken from the American Arbitration Association of commercial arbitrators, and if they cannot agree on an arbitrator, each party shall select a person and those two so selected shall then select the single impartial arbitrator who shall thereafter serve as arbitrator. The issues in dispute shall be submitted as "baseball" or final-offer arbitration, whereby each party shall submit what it deems to be its most reasonable position to the arbitrator and the arbitrator shall select one of those two positions. The arbitrator shall have no discretion to select or award a position other than to select one of those submitted by the parties. To the extent rules governing arbitration are deemed necessary by the arbitrator (or by agreement of the parties); the current Rules for Commercial Mediation and Arbitration promulgated by the American Arbitration Association shall apply. The decision of the arbitrator shall be rendered no later than ten days from the initiation of the arbitration procedure. The parties may resort to any court of competent jurisdiction for enforcement of, or any other action relating to, the arbitrator's award. The party or parties whose position is not selected or awarded shall be responsible for all attorneys' fees, costs and expenses (incurred in connection with the mediation and arbitration of a Dispute under this Article X) of the party whose position is selected or awarded for the arbitration of the Dispute under this Article X.

Section 10.3 Exclusive Remedy. With respect to any Dispute subject to arbitration under this Article X, it is agreed that the arbitration provisions of this Article X shall be the sole remedy of the Owners involved in such Dispute under this Master Declaration. Notwithstanding any other provisions of this Master Declaration, the foregoing agreement to arbitrate shall be specifically enforceable under prevailing arbitration law. The foregoing agreement to arbitrate shall not constitute any agreement or consent to arbitration of any dispute, claim, controversy or matter that does not constitute a "Dispute" as such term is defined in this Master Declaration or not described in this Section 10.3 or with any Person not named or described in this Master Declaration, provided that any arbitration proceeding initiated under the terms of this Section 10.3 may, at the request of any party, be joined or consolidated with other arbitration proceedings involving additional parties if the Dispute and the subject of such other proceedings arise out of common or interrelated factual occurrences. Any award of the arbitrator shall be final and binding upon the Owners involved in the Dispute and such Owners' Mortgagees, and a non-appealable judgment thereon may be entered by any court having jurisdiction.

Section 10.4 Sub-Unit Representation. The Sub-Unit Condominium Association (or other designated representative of the Sub-Unit Condominium) shall be the sole representative on behalf of all Sub-Units within a Sub-Unit Condominium in any mediation or arbitration proceeding.

ARTICLE XI

Miscellaneous

Section 11.1 Revocation or Termination of Master Declaration. Except as provided in Section 9.6 of this Master Declaration, this Master Declaration may be revoked or the Condominium established hereby may be terminated only by an instrument in writing, duly

approved, executed and acknowledged by those Owners holding not less than 100% of the votes in the Master Association, with the written consent of 100% of the Mortgagees. Any such instrument of revocation or termination shall be duly filed of record in the County. If the Property is to be sold upon termination, the agreement effecting such termination shall also set forth the terms of such sale and comply with the provisions of the Act.

Section 11.2 Amendment to Master Declaration. This Master Declaration may be amended at a meeting of the Owners at which the amendment is approved by those Owners holding not less than 100% of the votes in the Master Association, with the written consent of not less than 100% of the Mortgagees. Such amendment shall be evidenced by a written instrument executed and acknowledged by an officer of the Master Association on behalf of the consenting Owners and by the Mortgagees and filed of record in the County. An Owner may, with the consent of the other Owner not to be unreasonably withheld, amend this Master Declaration or the Bylaws in any manner necessary to meet the requirements of the Federal National Mortgage Association, the Federal National Home Loan Mortgage Corporation, the Federal Housing Administration or the Veterans Administration.

Section 11.3 Partial Invalidity. If any provision of the Governing Documents shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall in no way impair or affect the validity or enforceability of the remainder of the Governing Documents.

Section 11.4 Conflicts. If any of the provisions of the Governing Documents shall be in conflict with the provisions of the Act or the Texas Non-Profit Corporation Act or the Texas Business Corporation Act, the provisions of such statutes shall control. If a conflict exists between the provisions of the Governing Documents, such documents shall control in the following order:

- (a) the Allocation Document;
- (b) this Master Declaration;
- (c) the Certificate of Formation;
- (d) the Bylaws and
- (e) the Regulations.

Each Unit Owner and any Sub-Unit Owner acknowledges that such Unit Owner and Sub-Unit Owner has been given the opportunity to review the documents listed above in this Section 11.4(a) through (e) and has had the opportunity to confer with counsel in connection with the purchase of a Unit or Sub-Unit as applicable.

Section 11.5 Captions and Exhibits. Captions used in the various articles and sections of this Master Declaration are for convenience only, and they are not intended to modify or affect the meaning of any of the substantive provisions hereof. All exhibits are incorporated in and made a part of this Master Declaration.

Section 11.6 Usury. It is expressly stipulated and agreed to be the intent of Declarant that at all times the terms of this Master Declaration, the Bylaws and the Regulations shall comply strictly with the applicable Texas law governing the maximum rate or amount of interest

payable under any provision of this Master Declaration, the Bylaws, or the Regulations. If the applicable law is ever judicially interpreted so as to render usurious any amount contracted for, charged, taken, reserved or received pursuant to this Master Declaration, the Bylaws, the Regulations or any other communication or writing by or between Declarant, the Master Association and the Owners related to the matters set forth in this Master Declaration, the Bylaws, or the Regulations, then it is the express intent of Declarant that all amounts charged in excess of the maximum rate allowed by Texas law shall be automatically canceled, *ab initio*, and all amounts in excess of the maximum rate allowed by Texas law theretofore collected shall be refunded, and the provisions of this Master Declaration, the Bylaws, or the Regulations shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law. The Owners hereby agree that as a condition precedent to any claim seeking usury penalties against Declarant, the Master Association or any billing Owner, any Person will provide written notice to Declarant, the Master Association or any billing Owner, advising Declarant, the Master Association or any billing Owner in reasonable detail of the nature and amount of the violation, and Declarant, the Master Association or any billing Owner shall have 60 days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to a Person or crediting such excess interest against the obligation then owing by such Person to Declarant, the Master Association or any billing Owner.

Section 11.7 Use of Number and Gender. Whenever used in this Master Declaration, and unless the context shall otherwise provide, the singular number shall include the plural, the plural number shall include the singular and the use of any gender shall include all genders.

Section 11.8 Governing Law. THIS MASTER DECLARATION AND THE BYLAWS, CERTIFICATE OF FORMATION, AND REGULATIONS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY ACTION BROUGHT IN CONNECTION WITH THE CONDOMINIUM SHALL BE IN TRAVIS COUNTY, TEXAS.

Section 11.9 Notice. All notices or other communications required or permitted to be given pursuant to this Master Declaration shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee or (iv) by telefacsimile to the addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. For purposes of notice, the addresses of Declarant, the Master Association and each Owner shall be as set forth below, the address of each Mortgagee shall be the address provided to the Master Association; provided, however, that any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of 30 days' notice to the Master Association and the other Owner in the manner set forth herein:

Declarant: High Street Rainey, L.P.
400 W. 15th Street, Suite 1100
Austin, Texas 78701

Master Association: The Waterfront Master Condominium Association, Inc.
602 Davis Street
Austin, Texas 78701

Hotel Unit Owner High Street Rainey, L.P.
400 W. 15th Street, Suite 1100
Austin, Texas 78701

Residential Unit Owner: High Street Rainey, L.P.
400 W. 15th Street, Suite 1100
Austin, Texas 78701

Section 11.10 Estoppel Certificates. Each Owner, from time to time, shall have the right to require the Master Association (as to all items listed below) and the other Owner (to the extent applicable) to deliver to the requesting Owner a written statement addressed to the requesting Owner and its Mortgagee or purchaser of its Unit, as applicable, without payment of any fee or cost certifying: (a) this Master Declaration is unmodified and in full force and effect (or if modified that this Master Declaration as so modified is in full force and effect); (b) this Master Declaration attached to the certificate is a true and correct copy of this Master Declaration and all amendments hereto; (c) the date through which all Assessments have been paid by the Owner requested to provide the certificate and by the Owner requesting such certificate; (d) to the knowledge of the certifying party, neither the certifying party nor the requesting party is in default of any of its obligations under this Master Declaration (or if the certifying party knows the certifying party or requesting party to be in default, specifying the defaults and the remaining cure period, if any); (e) the certifying party holds no existing liens against the requesting party's Unit and (f) such other matters as are reasonably requested by the requesting Owner.

ARTICLE XII

Mortgagee Protection Provisions

Section 12.1 Notice Provisions. All Mortgagees shall be entitled to receive the following notices in writing from the Master Association or any Owner exercising rights affecting that Mortgagee's borrower's rights under this Master Declaration or affecting the Mortgagee's rights, as the case may be, which notice shall be sent promptly following the occurrence of the applicable event:

(a) notice of any proposed action which requires the consent of Mortgagees, which notice shall be given not less than 30 days prior to the desired effective date of such action;

(b) notice of default by the Owner (the beneficial interest in which Unit is held by that Mortgagee) in the performance of such Owner's obligations, delinquency in

the payment of Assessments owed by such Owner or Governmental Impositions which remains uncured for a period of 60 days after notice thereof;

(c) notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond required to be maintained hereunder by the Master Association or by any Owner;

(d) notice of any damage or destruction to or Taking of any portion of the Condominium that affects either a material portion of the Property or a Unit, the beneficial interest in which is held by that Mortgagee, which notice shall be given promptly upon the Master Association's obtaining knowledge of such damage or destruction;

(e) 60 days' notice prior to the Master Association instituting any foreclosure action on any Unit; and

(f) 30 days' notice prior to the effective date of (a) any proposed material amendment to this Master Declaration or the Map; (b) any termination of an agreement for professional management of the Property following any decision of the Owners to assume self-management of the Property and (c) any proposed termination of the Condominium.

Section 12.2 Cure Rights. Any Mortgagee shall have the right, but not the obligation, at any time prior to the termination of this Master Declaration, and without payment of any penalty, to do any act or thing required of such Mortgagee's borrower hereunder; and to do any act or thing which may be necessary or proper to be done in the performance and observance of the agreements, covenants and conditions of such Owner hereof. All payments so made and all things so done and performed by any Mortgagee shall be effective to prevent a default under this Master Declaration as the same would have been if made, done and performed by Declarant or any Owner instead of by said Mortgagee. Any event of default under this Master Declaration which in the nature thereof cannot be remedied by Mortgagee shall be deemed to be remedied if: within 30 days after receiving written notice from the non-defaulting party setting forth the nature of such event of default, or prior thereto the Mortgagee shall have: (a) acquired the property owned by the defaulting party (the "Acquired Property") or commenced foreclosure or other appropriate proceedings in the nature thereof, and shall thereafter diligently prosecute any such proceedings, (b) fully cured any default in the payment of any monetary obligations owed the non-defaulting party hereunder within such 30 day period and shall thereafter continue to perform faithfully all monetary obligations of such Owner hereunder and all such non-monetary obligations which do not require possession of the Acquired Property and (c) after gaining possession of the Acquired Property following a foreclosure or deed in lieu thereof, the Mortgagee performs all future obligations of the defaulting party hereunder as and when the same are due.

Section 12.3 No Invalidity of Mortgage Lien. No violation of this Master Declaration by, or enforcement of this Master Declaration against, any party shall affect, impair, defeat or render invalid the lien of any mortgage that secures any Priority Lien Indebtedness.

Section 12.4 Mortgagee Requirements. The Master Association agrees to cooperate reasonably with any requesting party in regard to the satisfaction of requests or requirements by a Mortgagee; provided, however, such cooperation shall be at the sole cost and expense of the requesting party, and provided, further, that no party shall be deemed obligated to accede to any request or requirement that materially and adversely affects its rights under this Master Declaration.

Section 12.5 Unpaid Assessments. Each Person holding a mortgage secured by any Priority Lien Indebtedness encumbering any Unit, which Person obtains title to such Unit pursuant to judicial foreclosure, or the powers provided in such mortgage, or a deed in lieu of foreclosure, shall take title to such Unit free and clear of any claims for unpaid Assessments against such Unit which accrued prior to the time such Person acquires title to such Unit, except as otherwise set forth in Article VII above.

Section 12.6 Books and Records. All Mortgagees, upon written request, shall have the right to (a) examine the books and records of the Master Association, including current copies of this Master Declaration, the Bylaws and the Regulations and financial statements, during normal business hours; (b) require the Master Association to submit an annual audited financial statement for the preceding fiscal year within 120 days of the end of the Master Association's fiscal year, if one is available, or have one prepared at the expense of the requesting entity if such statement is not otherwise prepared by the Master Association; (c) receive written notice of all meetings of the Owners and (d) designate in writing a representative to attend all such meetings.

Section 12.7 Priority of Rights. No provision of this Master Declaration shall be construed or applied to give any Owner priority over any rights of any Mortgagee in the case proceeds or awards are not applied to restoration but are distributed to the Owners in the case of a casualty loss, or Taking of, a Unit and/or the Common Elements.

Section 12.8 Required Percentage. Any required percentage of Mortgagees in this Master Declaration shall mean and refer to such percentage of the face amount of the indebtedness held by such Mortgagees and not the number of such Mortgagees.

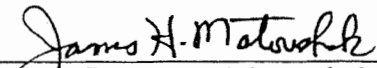

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IN WITNESS WHEREOF, Declarant has duly executed this Master Declaration on the day and year first above written.

DECLARANT:

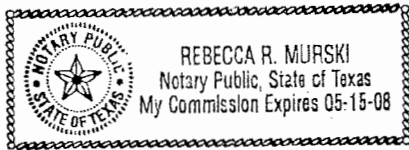
HIGH STREET RAINEY, L.P.,
a Texas limited partnership

By: High Street Rainey GP, Inc.,
a Delaware corporation,
its general partner

By: James H. Matoushek  
Name: James H. Matoushek
Title: Executive Vice President

THE STATE OF TEXAS §
 §
COUNTY OF Travis §

This instrument was acknowledged before me on the 24th day of March, 2006, by James H. Matoushek, Exec. V. P. of HIGH STREET RAINEY GP, INC., a Delaware corporation, general partner of HIGH STREET RAINEY, L.P., a Texas limited partnership, on behalf of said corporation and limited partnership.



Rebecca R. Murski
Notary Public - State of Texas

My Commission Expires:
5-15-08

List of Exhibits:

- Exhibit "A" - Legal Description of the Land
- Exhibit "B" - Description of Map
- Exhibit "C" - Allocation of Ownership Interests
- Exhibit "D" - Approved Schematics of Residential Unit and Residential Unit Limited Common Elements

EXHIBIT "A"

Property Description

Lot 1, RED RIVER ADDITION, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Volume 78, Page 94 of the Plat Records of Travis County, Texas.

EXHIBIT "B"

Description of Map

That certain Condominium Map of The Waterfront Master Condominium, located in Travis County, Texas, recorded on April 4, 2006, as Document Number 2006061211 of the Deed Records of Travis County, Texas.

EXHIBIT "C"

Allocation of Ownership Interests

The Allocated Interests mean the undivided interests of each Owner in the Common Elements and the Common Expenses allocated to each Unit as reflected on this Exhibit "C" (except as the Common Expenses may otherwise be allocated pursuant to the Allocation Document), as may be reallocated in accordance with the Reallocation Percentages as required from time to time pursuant to the provisions of this Master Declaration.

<u>UNIT NAME AND NUMBER</u>	<u>SQUARE FEET</u>	<u>ALLOCATED INTEREST (%)</u>
Hotel Unit – Unit 1	341,945	58.07%
Residential Unit – Unit 2	246,922	41.93%
TOTAL:	588,867	100%

EXHIBIT "D"

Approved Schematics of Residential Unit and Residential Unit Limited Common Elements

Schematic Design Package for The Shore-Austin Residential, as prepared by WDG Habib Architecture, Inc., dated October 18, 2005, as supplemented by roof plan prepared by WDG Habib Architecture, Inc. submitted December 8, 2005 by Jamil Alam, as supplemented by Schematic Terrace Level Plan prepared by RTKL dated December 7, 2005.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2006 Apr 04 02:44 PM 2006061232

BENAVIDESV \$208.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

MASTER CONDOMINIUM DECLARATION

Exhibit D – Schematics of Residential Unit and Residential Unit Limited Common Elements