

**MASTER DEED**  
**DECLARATION OF PROPERTY**  
**TO THE HORIZONTAL PROPERTY REGIME**  
**FOR**  
**ERLANGER CITY CENTER COUNCIL OF CO-OWNERS, INC.**

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## EXHIBITS

- “A” - LEGAL DESCRIPTION - INITIAL PHASE
- “B” - PLAT AND DRAWINGS
- “C” - CONDOMINIUM DATA SHEET
- “D” - LEGAL DESCRIPTION - POSSIBLE FUTURE DEVELOPMENT
- “E” - ARTICLES OF INCORPORATION
- “F” - BY-LAWS

**MASTER DEED**  
**DECLARATION OF PROPERTY**  
**TO THE HORIZONTAL PROPERTY REGIME**  
**FOR**  
**ERLANGER CITY CENTER COUNCIL OF CO-OWNERS, INC.**

**WHEREAS**, Triple E Development, LLC, a Kentucky limited liability company, hereinafter referred to as “Developer” is the owner in fee simple of real estate situated in Kenton County, Commonwealth of Kentucky, and more particularly described in Exhibit “A” attached hereto, and by this reference made a part hereof; and

**WHEREAS**, it is the desire of Developer to submit said real estate, together with the improvements thereon constructed and hereinafter described, to the Horizontal Property Regime established by KRS 381.805 to 381.910, as amended; and

**WHEREAS**, the Developer is further establishing for the mutual benefit of all future owners, mortgagees, or occupants of the Condominium Property or any part thereof, certain easements and rights, in, over, and upon such Condominium Property and certain mutually beneficial restrictions and obligations with respect to the use, conduct and maintenance thereof.

**NOW, THEREFORE**, Developer hereby makes the following declarations as to the uses, covenants, restrictions and conditions to which the Condominium Property may be utilized, hereby specifying that said Declaration shall constitute covenants to run with the land and shall be binding upon the Developer and all subsequent owners of all or any part of the Condominium Property, together with their respective grantees, heirs, executors, administrators, devisees, successors or assigns.

**ARTICLE I**  
**DEFINITIONS**

The following words when used in this Declaration shall have the following meanings:

Section 1.01: “Articles of Incorporation” shall mean and refer to the Articles filed with the Secretary of State of the Commonwealth of Kentucky incorporating Erlanger City Center Council of Co-Owners, Inc., as a non-stock, non-profit Kentucky corporation under the provisions of KRS Chapter 273, as the same may be lawfully amended from time to time. A true copy of the Articles as shown in Exhibit “E” is attached hereto and made a part hereof.

Section 1.02: “Board” and “Board of Directors” shall mean and refer to the Board of Directors of the Council as provided in the Articles of Incorporation and By-Laws of the Council.

Section 1.03: “By-Laws” shall mean and refer to the rules and regulations governing the Council. A true copy of the By-Laws as shown in Exhibit “F” is attached hereto and made a part hereof.

Section 1.04: “Common Elements” shall mean and refer to the general common elements of the Project and shall include, if actually built in the Project and except as otherwise provided or stipulated in this Declaration, including any amending or supplementing documents, the following:

- (i) the land, whether leased or in fee simple, on which the building or buildings stand;
- (ii) the foundation, main walls, roof, roof joist space, columns, girders, joists, beams, halls, basements, lobbies, stairways, stairwells, entrances, exits, windows, or communication ways;
- (iii) the yards, gardens, fences, trees, landscaping, and other natural features, including the creek, except as otherwise provided or stipulated;
- (iv) lodgings or offices for maintenance persons or persons in charge of the building or buildings except as otherwise provided or stipulated;
- (v) the compartments or installations of central services such as power, light, gas, water, refrigeration, reservoirs, water tanks, pumps, antenna, sprinkler systems, and the like;
- (vi) the elevators, garbage incinerators and, in general all devices or installations existing for common use;
- (vii) recreational facilities, entranceway monuments, easements, and other facilities available for the common use, in part or in whole, including, but not limited to, the community building, pool and walking paths;
- (viii) private drive, bridge, outdoor parking Elements, driveways, pavement, and sidewalks; and
- (ix) all other elements of or on the Property rationally of common use or necessary to the existence, upkeep, and safety of the Owners and of the Project.

The Common Elements shall not include dedicated streets, if any, adjacent to the Condominium Project.



Section 1.05: “Common Expenses” shall mean, refer to, and include all charges, costs and expenses incurred by the Council for and in connection with the administration of the Project, including, without limitation thereof, operation of the Project, maintenance, repair, replacement and restoration (to the extent not covered by insurance) of the Common Elements; the costs of any additions and alterations thereto; all labor, services, common utilities or other utilities billed to the Council, materials, supplies, and equipment therefore; all liability for loss or damage arising out of or in connection with the Common Elements and their use; all premiums for hazard, liability and other insurance with respect to the Project; all costs incurred in acquiring a Unit pursuant to judicial sale; and all administrative, accounting, legal and managerial expenses. “Common Expenses” shall also include the cost of operation, maintenance, improvements, and replacement of the recreational facilities and equipment, if any. “Common Expenses” shall also include: (i) amounts incurred in replacing, or substantially repairing, capital improvements of the Project, including, but not limited, to roof replacement, and road, driveway and parking lot resurfacing and concrete replacements; (ii) the performance of any maintenance obligations under any easements that are appurtenant to the Condominium Project; (iii) amounts incurred in connection with the maintenance of entrances, fences, landscaping, sprinkler systems, or other improvements for the Condominium Project, whether such improvements are adjacent to, or within, any right of way adjoining the Property; and (iv) all reserve funds or other funds established by the Council.

Section 1.06: “Condominium” or “Condominium Project” or “Project” shall mean and refer to the Erlanger City Center Condominiums development.

Section 1.07: “Council” is the council of co-owners and shall mean and refer to Erlanger City Center Council of Co-Owners, Inc., a Kentucky nonprofit corporation, and its successors and assigns.

Section 1.08: “Declaration” or “Master Deed” shall mean and refer to the instrument establishing the Condominium, as such instrument may be amended from time to time.

Section 1.09: “Developer” shall mean and refer to Triple E Development, LLC a Kentucky limited liability company, and its successors and assigns.

Section 1.10: “Drawings” shall mean and refer to those plans prepared in accordance with KRS 381.835(5); which are designated to show graphically all of the particulars of the building or buildings, including, but not limited to the layout, location, Unit numbers/designation and dimensions of each Unit as well as Common Elements and Limited Common Elements. Said drawings, attached hereto and incorporated herein by reference as Exhibit “B”, bear the verified statement of a professional engineer or architect certifying that said drawings fully and accurately depict the layout, location, Unit numbers and dimensions of the Units as built. Said plans are recorded in the office of the Kenton County, Kentucky Clerk’s Office.

Section 1.11: “Limited Common Elements” means and refers to those Common Elements which are reserved by this Declaration, by the Drawings, by the floor plans, by the Developer, or by agreement of all of Owners, for the use of a particular Unit or Units, to the

exclusion of the other Units. Limited Common Elements are hereby designated to include any parking space or spaces for a particular Unit, if any, and any balcony or patio attached to a Unit and any heating and/or air conditioning equipment servicing a Unit and all other apparatus and installations built or set up to serve only a certain Unit or a certain group of Units. Each Unit Owner shall be entitled to an appurtenant interest in and the exclusive use and possession of those Limited Common Elements, if any, reserved to that Owner's respective Unit or to the group of Units to which that Owner's Unit belongs. The fee ownership of all Limited Common Elements, however, is vested in all Owners.

Section 1.12: "Owner" or "Unit Owner" shall mean and refer to the record owner, whether one or more persons or other legal entities, of a fee simple title to any Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.13: "Property" or "Condominium Property" shall mean and refer to the real estate described in Section 2.01. The term "Property" when used in reference to the computation of the percentage of common interest appurtenant to each Unit, shall mean and refer to the total floor Element of all Units in the completed sections.

Section 1.14: "Member" shall mean and refer to all of those Owners who are members of the Council as provided in Article IV hereof.

Section 1.15: "Unit" shall mean and refer to any condominium unit shown upon any recorded plans of the building or buildings located on the Property. "Unit" shall further mean an enclosed space as measured from interior unfinished surfaces (such as drywall), consisting of one or more rooms occupying all or part of a floor in a building of one or more floors or stories, including heating and air conditioning unit(s), satellite dishes, signage or other tenant specific items placed on the exterior of the building, provided, the Unit has a direct exit to a thoroughfare or to a given Common Element or space leading to a thoroughfare. Units shall be solely for commercial purposes.

When applicable for the sense of this instrument, the singular should be read as including the plural and the male, female, and neuter pronouns and adjectives should be read as interchangeable.

## **ARTICLE II**

### **ESTABLISHMENT OF CONDOMINIUM**

Section 2.01: Property Subject to Initial Declaration. The Property is owned in fee simple. A description of the Property and of the buildings in which the Units are located, is contained in Exhibits "A" and "B" attached hereto and incorporated herein by reference. Exhibit "B" also expresses the respective Element of the Property and of the building. Additional Property may be brought into the Project pursuant to Section 12.01.

Phase I of the Condominium consists of eighteen (18) commercial Units in one (1) commercial building.

Section 2.02: Description of Units. Each Plat and Drawing shall describe each Unit located thereon by exhibit, the type of construction, approximate Element and other data necessary for the proper identification of each Unit, which identification shall graphically be shown by example.

Each Unit shall have a designated street address number. The individual Units shall be designated as shown on Exhibit "C". Each Unit has a direct exit to the Common Elements or Limited Common Elements leading to a public street as shown on Exhibit "B".

All Units consist of a one (1) story structure. Each Unit consists of that part of the building which lies within the boundaries of the Unit, exclusive of interior load-bearing walls and pillars, and any pipes, wires, conduits, ducts, vents and other service and utility lines which are utilized for or serve more than one (1) Unit. The vertical boundaries of each Unit are as set forth in Exhibit "B" (the Plat and Drawings). Where bounded by a wall separating the Unit from a Common Element, such boundary shall include any window or closure in the closed position so that such boundary shall include the unfinished surface of such wall on the Unit side. Where bounded by a wall separating a Unit from another Unit, such boundary shall be the center line of said wall. Horizontal boundaries of each Unit shall be the unfinished surface of the top of the floor and the unfinished surface of the bottom on the ceiling line as shown on Exhibit "B".

Principal materials of construction consist of a poured concrete foundation and supporting exterior walls of glass, brick facing and a roof of sealed down rubber membrane.

Section 2.03: Common Elements. A description of the Common Elements of the building is contained in Exhibit "B", attached hereto and incorporated herein by reference.

Section 2.04: Floor Plans. Simultaneously with the recording of this Declaration, there has been filed in the office of the Kenton County Clerk a set of floor plans of the buildings, showing the layout, location, Unit numbers, and dimensions of the Units, stating the name of the Project and bearing the verified statement of a registered architect or professional engineer certifying that the plans fully and accurately depict the layout, location, Unit numbers, and dimensions of the Units as built.

Section 2.05: Percentage of Common Interest. Appurtenant to each Unit is that Unit's percentage of common interest, as set forth in Exhibit "C" attached hereto and incorporated herein by reference. This percentage is computed by taking as a basis the floor Element of the individual Unit in relation to the floor Element of the Property as a whole (namely, all of the Units). Calculations of square footage are based on useable square footage with load factor increase as shown on the architectural drawings as set forth in Exhibit "B" attached hereto and incorporated herein. Except as otherwise stated in this Declaration and except as otherwise provided by Kentucky law, the percentage of common interest is permanent and shall not be altered without the acquiescence of the Owners representing all the Units of the building. Declarant reserves the right to divide any Unit into two (2) or more Units or to combine all or

part of any Unit with all or part of one (1) or more Units. Such a division or combination shall require an amendment to the Declaration pursuant to Section 14.12, accompanied by drawings shown all particulars of the division or combination as provided in the condominium wall. Such amendment shall specify the square footage of each Unit, the percentage interest in the common elements and the voting power of the Unit or Units resulting from the division or combination, the total of which, in each case, shall equal the square footage interest and power of the former Unit or Units divided or combined. The percentage of interest shall remain constant and shall not be changed except by an amendment pursuant to the Declaration. IF THIS PROJECT IS EXPANDED PURSUANT TO SECTION 12.01, THE PERCENTAGE OF COMMON INTEREST APPURTENANT TO EACH UNIT MAY BE ALTERED WITHOUT THE ACQUIESCENCE OF THE OWNERS REPRESENTING ALL OF THE UNITS OF THE BUILDING OR BUILDINGS, PURSUANT TO THE POWER OF ATTORNEY GIVEN IN THIS DECLARATION.

### **ARTICLE III**

#### **EASEMENTS**

Section 3.01: Easement for Encroachments. The building, all utilities and all other improvements as originally constructed shall have an easement to encroach upon any Unit and upon any deviations in construction from the condominium Drawings contained in this Declaration as a result of the location of the building, utility lines and other improvements crossing boundary lines between and along Units and/or the Common Elements, or as a result of building or improvement movement or alterations or additions from time to time, provided that such alterations or additions comply with the requirements of this Declaration.

If by reason of the construction, repair, restoration, partial or total destruction and rebuilding of a building, or improvements constituting a part of the Condominium Property, any part of the Common Elements shall encroach upon any part of a Unit, or any part of a Unit shall encroach upon any part of the Common Elements, or any part of a Unit shall encroach upon any part of any other Unit; or if by reason of the design or construction or rebuilding of the utilities system within the Condominium Project any pipes, ducts, or conduits serving a Unit shall encroach upon any other Unit, easements in favor of the Unit or Council, as the case may be, for the maintenance of any such encroachment are hereby established, granted and reserved.

Section 3.02: Unit's Utility Easements. Easements are granted in favor of each Unit and Limited Common Elements to and throughout the Common Elements as may be necessary for the use of water, gas, sewer, electric, power, cable television and other utilities and services including power and communication, now or hereafter existing.

Section 3.03: Utility Easements. Easements are reserved and/or granted hereby in favor of the Developer and/or the Council through the Units and the Limited Common Elements and Common Elements for the purpose of installing, laying, maintaining, repairing and replacing any pipes, wires, ducts, conduits, equipment, utility, power or communication lines or equipment, or other components through the walls, floors and ceilings of each Unit and throughout the Limited

Common Elements and Common Elements. Each Unit Owner and/or his respective mortgagee by acceptance of a deed conveying such ownership interest and each mortgagee encumbering such ownership interest, as the case may be, hereby irrevocably appoint Developer, or the Council, as the case may be, his attorney in fact, coupled with an interest, and authorize, direct and empower such attorney, at the option of the attorney, to execute, acknowledge and record for and in the name of such Unit Owner and his mortgagee, such easements or other instruments as may be necessary to effect the purpose of this Section. The easements may be assigned and/or granted by the Developer and/or the Council to any utility or service company.

Section 3.04: General Easement. An easement is hereby reserved and/or granted in favor of the Developer and/or the Council in, on, over and through the Common Elements, the Limited Common Elements and Units for the purposes of maintaining, cleaning, repairing, improving, regulating, operating, replacing, and otherwise dealing with the Common Elements, including all improvements thereon.

Section 3.05: Access Easements. Appurtenant to each Unit is an easement over any Common Element and/or Limited Common Element for necessary pedestrian and vehicular ingress and egress to and from any such Unit over the Common Elements and/or Limited Common Elements, to and from a thoroughfare. This easement is perpetual. The easement shall be over such walkways, driveways, or other ways as are designated by the Developer and/or the Council.

Section 3.06: Easements for Support. Every portion of each Building or other improvement on the Property contributing to the support of another part of any Building or other improvement on the Property shall be burdened with an easement of support for the benefit of all such other Building(s) or improvements on the Property.

Section 3.07: Easement for Retention, Detention and Surface Drainage Elements. The Board, acting on behalf of the Council, may convey easements over the Property to any entity, including cross-easements between Units, for the purpose of constructing, installing, maintaining, and operating retention, detention and surface drainage Elements for the Property, and to any entity for such other purposes as the Board deems appropriate; provided that the exercise of such easement rights shall not unreasonably interfere with the Unit Owners' use and enjoyment of the Property. The Board, acting on behalf of the Council, may grant such easements over all portions of the Property for the benefit of adjacent properties as the Board deems appropriate; provided that the grant of such easements imposes no undue, unreasonable, or material burden or cost upon the Unit Owners.

Section 3.08: Use of Easement. Any use of the rights and easements granted and reserved in this Article shall be reasonable. If any damage, destruction, or disturbance occurs to a Unit, a Limited Common Element, or the Common Elements as a result of the use of any easement or right, the Unit, Limited Common Elements, or Common Elements shall be restored promptly in a reasonable manner at the expense of the person or persons making the use of the easement or right. Before beginning work, the Council may require all or any part of the expected expense to be prepaid by that person or those persons liable for the expense. No easement may be granted across, through, over, or under any Unit, Limited Common Element, or

Common Element, which materially restricts ingress and egress to the Unit, Limited Common Element, or Common Element, unless reasonable alternate ingress and egress is provided or unless the restriction is only temporary.

Section 3.09: Reservation of Access Easement by Developer. The Developer reserves an easement over any real estate now or hereafter brought under the condominium regime, whether or not the easement is reserved in any present or future instrument bringing the real estate under the condominium regime. The easement shall be for access, including ingress and egress for both vehicles and pedestrians, to and from any public street, road, land, walkway or right-of-way and the real estate of Developer which has not been brought under the condominium regime. The easement shall be over the streets, sidewalks, bridges and other access ways of real estate in the condominium regime. The Developer further reserves the right to connect, at Developer's expense, to any street, roadway, walkway or other means of access that are located on the Common Elements of the condominium regime. This reservation of access easements and right of connection shall be construed liberally in favor of the Developer, in order to facilitate the development of real estate that may never be brought under the condominium regime.

Section 3.10: Reservation of Utility Easements by Developer. To benefit land that may or may not be brought under the condominium regime, the Developer reserves any and all sanitary sewer lines, storm sewer lines, storm drainage swells, retention ponds, telephone lines, electricity or other power lines, cable television lines and/or any other lines and/or the accompanying easements. Developer further reserves the right to connect, at Developer's own expense, to any such lines and/or easements. The Developer further reserves easements and/or grants over any Common Elements of the condominium regime at a reasonable location to be designated by Developer, for utilities and/or other services to benefit real estate not brought under the condominium regime. These reservations of easements shall be construed liberally in favor of Developer, in order to facilitate the development of real estate that may never be brought under the condominium regime.

Section 3.11: Easements to Run with Land. All easements and rights described in this Article are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Developer, its successors and assigns, and any Owner, purchaser, mortgagee, and other person or entity now or hereafter having an interest in the Condominium Project, or any part or portion of it.

## ARTICLE IV

### MEMBERS

Section 4.01: Voting; Developer's Proxy Rights.

(a) Each person, group of persons, or entity who is a record Owner of a fee interest in any Unit shall be a Member of the Council provided, however, that any such record Owner who holds such interest solely as security for the performance of an obligation shall not be a Member. Members shall be entitled to one (1) vote for each Unit in which they hold the

interest required for membership. If more than one (1) person, group of persons, or entity is the record Owner of a fee interest in any Unit, then the vote for such Unit shall be exercised as the record Owners among themselves determine. In no event shall more than one (1) vote be cast with respect to any Unit. Membership arises automatically upon the beginning of ownership of a Unit and ceases automatically upon termination of ownership of a Unit. Ownership is not effective for voting, unless it is reflected properly of record in the office of the County Clerk in which this Declaration of Master Deed is recorded and unless the Council has actual notice of the ownership of the Unit.

(b) Notwithstanding the foregoing paragraph or any other provision of this Declaration or the By-Laws, the Developer hereby reserves an interest in each present or future Unit sufficient to support an irrevocable proxy from any present or future Unit Owner, which proxy gives the Developer the right to cast the vote of that respective Unit Owner on any matter (including the election of Directors), and sufficient to support a power of attorney in favor of the Developer, from each Unit Owner, giving the Developer the right to amend the Declaration to expand the Condominium Property by bringing in additional real estate and increasing the number of Units. The proxy and the power of attorney are both irrevocable and may also be used by Developer to effectuate any other rights reserved or given to the Developer under this Declaration or other document or instrument relating to the Project. The proxy and the power of attorney shall expire automatically seven (7) years from the date of the recording of this Declaration. At any time the Developer may voluntarily surrender in writing, placed of record, the proxy and the power of attorney. The proxy rights and power of attorney rights, of the Developer, may be assigned by the Developer without notice to or the consent of the Unit Owners or of the Council.

Section 4.02: Organizational Meeting. The Developer may call an organizational meeting of the Council immediately. At such meeting, the Members shall elect the initial Board of Directors and officers, and may adopt the By-Laws of the Council. One purpose of this provision is to facilitate the sale of mortgages on the Units in the secondary mortgage market.

Section 4.03: Management of Condominium Property. As of the date of this Declaration, Erlanger City Center Council of Co-Owners', Inc. has contracted with an outside management company for the management of the Condominium Property. Notwithstanding anything contained herein to the contrary, during such period as the Developer is an Owner of any of the Units, the Council shall not allow the Condominium to be self-managed by the Members, but the Council shall be required to retain an outside management company. At such time as Developer no longer owns any Units, the Board may retain and employ, on behalf of the Council, an outside management company, which may be Developer, and may delegate to the Management Company such duties as the Board might otherwise be authorized or obliged to perform. The compensation of the Management Company shall be a Common Expense.

**ARTICLE V**  
**ASSESSMENTS**

Section 5.01: Covenant for Assessments. The proportionate share of each Owner of each Unit in the common surplus and the Common Expenses of the Condominium Project is equal to the percentage of common interest appurtenant to the Unit of that Owner. Such percentage of common interest appurtenant to each Unit has been set out in Exhibit "C" to this Declaration. The Developer for each Unit owned by it and each person and/or entity who becomes an Owner of a Unit, whether or not it shall be so expressed in any such deed or other form of conveyance, shall be deemed to covenant and agree to pay to the Council the Unit's share of assessments as fixed, established, and collected from time to time as hereinafter provided. All assessments, together with interest thereon at the rate of eight percent (8%) per annum and cost of collection (including a lien preparation charge, filing fees, court costs, and reasonable attorneys fees) shall be a charge and a continuing lien upon the Unit against which the assessment is made, and shall also be the personal obligation, jointly and severally, of the Owner or Owners of the Unit at the time when the assessment fell due. The figure in Exhibit "C" may change per Section 12.01.

Notwithstanding any other provisions of the Declaration, as permitted under KRS 381.870, the Council, at its organizational meeting, or at any other time, shall have the right to determine that the proportionate share of each Owner of a Unit in the common surplus and the Common Expenses of the Condominium Project are equal, and not based upon, the percentage of common interest appurtenant to the Unit. Such determination that all Units are equal for purposes of assessment shall be based upon a consideration of the following factors: the relative floor Element of the Units; the relative number of occupants in the Units; the demand on public utilities by the occupants of the Units; and, accessibility of the Units to the Common Elements.

Section 5.02: Determination of Amount; Reserves.

(a) The Council shall, from time to time, but not less than once every twelve (12) months, determine the amount of the total assessment necessary to defray the Common Expenses for a given period not to exceed twelve (12) months. The first annual assessment shall begin on the first day of the month immediately following the date of the establishment of the regime. The first assessment shall be for the balance of the calendar year, however, such assessment may be paid on a monthly, quarterly, semi-annual or annual basis. When setting the total assessment, the Council should include both (i) those funds required during the period for general operating purposes, and (ii) those reserve funds estimated to be necessary for future capital improvements. All funds required for general operating purposes under (i) above may be held in the name of the Council. All funds required for reserves for capital improvements under (ii) above shall be held in an account in the name of the Council, for the benefit of all of the Owners of Units in the Condominium Project. Each Unit Owner, by the acceptance of his deed, does authorize the disbursement of any and all of the reserve funds solely upon the written authorization of the Council. The funds held in reserve are appurtenant to each Unit according to the percentage of common interest appurtenant to the given Unit.



(b) Each Unit Owner is liable to pay that percentage of the total assessment that is equal to his Unit's percentage of the common interest, as determined by the Council.

(c) If the Project is expanded during a given year and additional Units are brought into the Project, the new Units shall pay the same assessment on the same basis as existing Units are paying for that assessment year. If, in the Council's sole discretion, such a rate would not be reasonable, the Council may adjust the rate up or down for those new Units until the next annual assessment is made.

Section 5.03: Billing. The Council shall inform the Unit Owners of the amount of the assessments for the Units. Unless otherwise directed by the Council, the Owner of each Unit must pay his Unit's required assessment in advance each month. Payment is to be made to such person at such an address as Council determines. Payment shall be due on the first day of each month, unless Council otherwise directs. Special assessments which may be levied by Council from time to time are due thirty (30) days after the bill for the special assessment has been mailed or otherwise sent out by Council, unless Council otherwise directs. If the Project is expanded and additional Units are brought into the Project during a given assessment year, those additional Units shall begin paying an assessment on the first day of the month immediately following the month after the Units were brought, of record, under the condominium regime.

Section 5.04: Unit Assessments. The Board may levy a Unit Assessment against any Unit(s) to reimburse the Council for costs incurred on behalf of the Unit(s) and the Limited Common Elements assigned to that Unit, including without limitation, costs associated with making repairs that are the responsibility of the Unit Owner; costs of additional insurance premiums specifically allocable to a Unit Owner; costs of any utility expenses chargeable to a Unit Owner but not separately billed by the utility company; and all other charges reasonably determined to be a Unit Assessment by the Board. The Board may also separately meter any common utilities for the Units, and in such event, each Unit Owner shall be responsible for such Unit Owner's share of such utilities.

Section 5.05: Limited Common Element Assessment. An additional assessment may be made by the Council against any Unit to pay any expense resulting from a Limited Common Element benefitting that Unit. The assessment must be reasonable. The assessment should be apportioned among the Units using the Limited Common Element in a fair and reasonable manner.

Section 5.06: General Assessment. The Board may levy a Unit Assessment in the nature of a fine reasonably determined by the Board against the Unit or any Unit Owner who damages any portion of the Condominium Property, violates the Rules or any provision of this Declaration, or suffers or permits his family members, guests, invitees or tenants to damage any portion of the Condominium Property or violate such Rules or provisions of this Declaration. Upon its determination to levy a Unit Assessment, the Board shall give the affected Unit Owner(s) written notice and the right to be heard by the Board or a duly appointed committee thereof in connection with such Unit Assessment, ten (10) days prior to the effective date of the levy of any Unit Assessment.

Section 5.07: Assessment Certificate. The Council shall, upon demand, at any reasonable time, furnish to any Owner liable for assessment a certificate in writing signed by an officer or other authorized agent of the Council, setting forth the status of said assessment; i.e., “current”, and if not current, “delinquent” and the amount due. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid. A reasonable charge to cover labor and materials may be made in advance by the Council for each certificate.

Section 5.08: Non-Payment of Assessment. Any assessment levied pursuant to these covenants which is not paid on the date when due shall be delinquent and shall, together with such interest and other costs as set out elsewhere in this Declaration, thereupon become a continuing lien upon the Unit which shall bind the Unit in the hands of the then Owner and the Owner’s successors and assigns.

If the assessment is not paid within ten (10) days after the due date, the assessment shall bear interest at the rate of eight percent (8%) per annum, and the Council may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Unit, in either of which events interest, costs and reasonable attorney’s fees shall be added to the amount of each assessment. No Owner may waive or otherwise escape liability for the assessments by non-use or waiver of use of the Common Elements or by abandonment of his Unit.

In addition to the eight percent (8%) per annum interest provided above, in the event of any assessment that is not paid within then (10) days after the due date, the delinquent Owner shall pay to the Council a late fee of Twenty-Five and 00/100 Dollars (\$25.00) for each thirty (30) day period (or portion thereof) that such assessment is delinquent. The Board, in its discretion, may change the amount of such late fee from time to time.

The lien of the Council is against not only the Unit but also the percentage of common interest in the Common Elements appurtenant to the Unit, including any funds held for the benefit of the Unit.

Section 5.9: Priority of Council Lien. The lien provided for in this Article shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide first mortgages which have been filed of record, and may be foreclosed in the same manner as a mortgage on real property in an action brought by the Council. In any such foreclosure action, the Owner or Owners of the Unit affected shall be required to pay a reasonable rental for such Unit during the pendency of such action, and the plaintiff in such action is entitled to the appointment of a receiver to collect the same. In any such foreclosure action, the Council shall be entitled to recover its reasonable attorneys; fees and court costs and collection costs, as part of the lien and the Council shall be entitled to become a purchaser at the foreclosure sale.

Section 5.10: Disputes as to Common Expenses, Adjustments. Any Owner who believes that the portion of Common Expenses chargeable to his Unit has been improperly charged against him or his Unit and for which an assessment lien has been filed by the Council, may

bringing an action in an appropriate court of law. The Council in its reasonable discretion may, in order to prevent manifest injustice, adjust (increase or decrease) the assessment for any Unit based upon a consideration of the following factors: the floor Element of the Unit; the number of occupants in the Unit; the demand on public utilities by the occupants of the Unit; and accessibility of the Unit to the Common Elements or Limited Common Elements. The Council in its reasonable discretion may abate or reduce a Unit's assessment for a reasonable period of time, during which a Unit is uninhabitable through no fault of the Owners, as a result of damage or destruction.

Section 5.11: Purchaser at Foreclosure Sale Subject to Declaration, By-Laws, Rules and Regulations of the Council. Any purchaser of a Unit at a foreclosure sale shall automatically become a Member of the Council and shall be subject to all of the provisions of this Declaration, the By-Laws and the Rules and Regulations of the Council.

Section 5.12: Non-Liability of Foreclosure Sale Purchaser for Past Due Common Expenses. When the mortgagee of a first mortgage of record or other purchaser of a Unit as a result of a judicial execution acquires title to the Unit pursuant to the remedies in the mortgage or as a result of foreclosure of the first mortgage, such acquirer of title, its successors and assigns, shall not be liable for more than a six (6) month share of the Common Expenses or other assessments by the Council chargeable to such Unit which became due prior to the acquisition of title to the Unit by such acquirer. Any such lien against such Unit for more than such six (6) month period shall be canceled and voided, and shall become unenforceable. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from the Owners of all of the Units, including that of such acquirer, its successors or assigns. However, the Council's lien rights may be asserted against surplus proceeds of any judicial sale or against any payments made by the mortgagee to the Owner/Mortgagor in the case of a deed in lieu of foreclosure.

Section 5.13: Liability for Assessments Upon Voluntary Conveyance. The personal obligation of each Owner to pay the assessment against his Unit shall not pass to any subsequent grantee who takes title to a Unit. Additionally, the original Owner shall not be released from the obligation of the assessment as a result of a transfer of his Unit. However, any such grantee or proposed grantee shall be entitled to an assessment certificate as described elsewhere in this Article, and such grantee shall not be liable for, nor shall the Unit be conveyed subject to a lien for, any unpaid assessment made by the Council against the grantor in excess of the amount set forth in the assessment certificate for the period reflected in the assessment certificate. This section shall not prejudice the right of the grantee to recover from the grantor the amounts paid by the grantee for the assessment which was also the obligation of the grantor.

Section 5.14: Late Charge. The Council may make a reasonable late charge or charges for any assessment, or installment of an assessment, not paid when due. This late charge shall also be a part of the assessment and shall also be a continuing lien upon the Unit and shall otherwise be treated and collected in the same manner as the assessment.

Section 5.15: Special Assessments. In addition to the annual assessments authorized by this Article, the Council may levy in any assessment year special assessments, for the purpose of

defraying, in whole or in part, the cost of any new construction, reconstruction, unexpected repair or replacement, of a Common Element which cost has not otherwise been provided for in full as part of the annual general assessment. The assessment must have the approval of fifty-one percent (51%) of the Members of the Council. The approval must be made at a meeting of the Members of the Council. Notice of the meeting must have been made to the Members of the Council in a reasonable way at least twenty (20) days prior to the meeting. The notice must contain a reasonable description of the topic of the meeting, including the approximate cost of the improvement. The procedure in this Section shall apply to special assessments under the Declaration that do not already provide a procedure under the Declaration for approval.

Section 5.16: Assessments at Closing. At the time of the closing on the purchase of a Unit from the Developer, the purchaser of such Unit is required to pay a pro rata share of the monthly condominium assessments due in the month of the closing. Additionally, at the time of such closing, each Purchaser of a Unit is required to pay to the Council, a sum equal to two (2) months of the annual assessment due on his Unit(s) as such Purchaser's initial contribution to the working capital of the Council. This amount will be used by the Council for its operating expenses. It is not an advance payment of assessments, and it will not be held in any sort of trust or reserve account.

Section 5.17: Miscellaneous.

- (a) The Council may change the interest rate due on delinquent assessments, except that the rate cannot be changed more often than once every six (6) months. As of its effective date, the new interest rate will apply to all assessments then delinquent.
- (b) The Owner has the sole responsibility of keeping the Council informed of the Owner's current address, if different from the Unit owned. Otherwise, notice sent by Council to the Unit is sufficient for any notice requirement under this Declaration.
- (c) The lien under this Article V arises automatically, and no notice of lien need be recorded to make the lien effective.
- (d) The assessment lien (including the lien for a special assessment), includes all collection costs, including demand letters, preparation of documents, reasonable attorneys' fees, court costs, filing fees, and any other expenses incurred by the Council in enforcing or collecting the assessment.
- (e) Special assessments shall be levied, apportioned and payable as reasonably determined by Council. Such special assessments bear interest and are otherwise enforced in the same manner as the annual assessments.

## ARTICLE VI

### INSURANCE

Section 6.01: Fire and Extended Coverage Insurance. Under the provisions of KRS 381.885, the Board shall have the authority to and shall obtain insurance for all buildings, structures, supplies, machinery, fixtures and equipment and common personal property and supplies now or at any time hereafter constituting a part of the Common Elements or common property of the Condominium, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard “all risk” endorsement, where such is available, in amounts at all times sufficient to prevent the Unit Owners from becoming co-insurers under the terms of any applicable co-insurance clause or provision and not less than one hundred percent (100%) of the current replacement cost of such items (exclusive of land, foundations, footings, excavations, and other items normally excluded from coverage), as determined from time to time by the insurer, with a deductible not greater than the lesser of \$10,000 or 1% of the face amount of the policy. This insurance:

- (a) shall not provide coverage for improvements, alterations, fixtures, appliances and equipment located within Units; interior walls, windows and doors and the frames, sashes, jams and hardware therefore, even though these improvements may be parts of Units; including heating and air conditioning unit(s), satellite dishes, signage or other tenant specific items placed on the exterior of the building; and any other items of personal property for which coverage is required by The Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or any similar holder, insurer or guarantor of first mortgage loans upon Units in the Condominium;
- (b) shall provide that no assessment may be made against a first mortgage lender, or its insurer or guarantor, and that any assessment under such policy made against others may not become a lien on a Unit and its appurtenant interests superior to a first mortgage;
- (c) shall be obtained from an insurance company authorized to write such insurance in the State of Kentucky which has a current rating of Class B/III, or better, or, if such company has a financial rating of Class II, then such company must have a general policy holder’s rating of at least A, all as determined by the then latest edition of Best’s Insurance Reports, or its successor guide, or such higher rating as may, from time to time, be required by The Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or any similar holder, insurer or guarantor of first mortgage loans upon Units in the Condominium; or, if the insurer does not satisfy these rating requirements, that insurer is reinsured by a company that has a B/III or better rating;
- (d) shall provide that its coverage is primary, and be written in the name of the Council for the use and benefit of the individual Unit Owners, or its authorized representative, including any insurance trustee with whom the Council has entered into an

insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Unit Owners’

(e) shall contain or have attached the standard mortgagee clause commonly accepted by institutional mortgage investors in the Element in which the Condominium Property is located, naming the holder, insurer, guarantor or servicer of first mortgages on Units, which must provide that the insurance carrier shall notify all eligible holders of first mortgages named at least ten (10) days in advance of the effective date of any reduction in, cancellation of, or substantial change in the policy, and which standard mortgagee clause must further be endorsed to provide that any loss shall be paid to the Council (or its insurance trustee), as a trustee for each Unit Owner and each such Unit Owner’s mortgagee;

(f) shall contain a waiver of subrogation of rights by the carrier as to the Council, its officers and Directors, and all Unit Owners, and the rights of the various parties to collect pursuant to such insurance shall not be prejudiced by the acts or failure to act of any Unit Owner or person under the control of the Council; and

(g) shall contain such other endorsements and meet such other requirements as are, from time to time, required by The Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or any similar holder, insurer or guarantor of first mortgage loans upon Units in the Condominium;

The cost of this insurance shall be a Common Expense, payable by the Council.

Section 6.02: Liability Insurance. The Council shall obtain and maintain a comprehensive policy of general liability insurance covering all of the Common Elements, insuring the Council, the Directors, and the Unit Owners and occupants, with such limits as the Board may determine, but no less than the greater of (a) the amounts generally required by private institutional mortgage investors for projects similar in construction, location and use, and (b) two million dollars (\$2,000,000), for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a “severability of interest” endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Council, the Board, or other Unit Owners and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements, legal liability arising out of lawsuits related to employment contracts of the Council, and additional coverages as are ordinarily obtained with respect to projects similar in construction, location and use. Each such policy must provide that it may not be canceled or substantially modified by any party, without at least ten (10) days prior written notice to the Council and to each eligible holder of a first mortgage lien upon any Unit.

The cost of this insurance shall be a Common Expense, payable by the Council.

Section 6.03: Insurance Representative: Power of Attorney. Notwithstanding any of the foregoing provisions of this Article, or any requirement relating to property or liability insurance herein, there may be named, under any policy obtained by the Council, as an insured on behalf of

the Council, its authorized representative, including any trustee with whom the Council may enter into an insurance trust agreement, or any successor to such trustee, who shall have exclusive authority to negotiate losses under any such policy. Each Unit Owner, by acceptance of a deed to a Unit, irrevocably appoints the Council or such designated representative, or such successor, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Council, or such designated representative, or such successor, shall receive, hold or otherwise properly dispose of any proceeds of insurance, in trust, for Unit Owners and their first mortgage holders, as their interest may appear. This power is for the benefit of each and every Unit Owner, and their respective first mortgage holders, and the Council, and the Condominium, runs with the land, and is coupled with an interest.

Section 6.04: Unit Owners' Insurance. Any Unit Owner or occupant shall carry such insurance in addition to that provided by the Council pursuant hereto as the Board shall designate, from time to time, subject to the provisions hereof, and provided that no Unit Owner or occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the insurance carried pursuant hereto by the Council. In the event any Unit Owner or occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Unit Owner who acquired or whose occupant acquired such other insurance, who shall be liable to the Council to the extent of any diminution and/or loss of proceeds. Without limiting the foregoing, a Unit Owner or occupant may obtain insurance against liability for events occurring within a Unit, losses with respect to personal property and furnishings, and losses to improvements owned by the Unit Owner or occupant, provided that if the Council obtains insurance for permanent improvements and built-in fixtures and equipment, then the insurance obtained by the Unit Owner with respect to improvements within the Unit shall be limited to the type and nature of coverage commonly referred to as "tenants; improvements and betterments". All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Council, its officers and Directors, and all other Unit Owners and occupants.

Section 6.05: Fidelity Coverage. The Board shall obtain and maintain fidelity coverage for the Council against dishonest or fraudulent acts on the part of the managers, Directors, employees, agents, or volunteers responsible for handling funds belonging to or administered by the Council. The fidelity bond or insurance shall name the Council as the named obligee or insured and shall be written in an amount sufficient to provide protection, which is in no event less than the greater of: (i) 150% of the estimated annual operating expense of the Council, including reserves, (ii) the maximum funds that will be in the custody of the Council or its agent at any time; or (iii) the sum of three (3) months worth of assessments plus the Council's reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The bond or policy shall provide that it shall not be canceled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior written notice to the Council, any insurance trustee, and any holder, insurer, guarantor or servicer on behalf of any holder of any mortgage on a Unit who requires such rights. Any

managing agent that handles funds for the Council shall be required to obtain its own fidelity bond providing similar coverage.

Section 6.06: Other Insurance. The Council shall provide, as a Common Expense, contractual liability insurance, Directors; and Officers; liability insurance and such other insurance as the Board may determine.

## ARTICLE VII

### RECONSTRUCTION, REBUILDING, REPAIR AND EMINENT DOMAIN

Section 7.01: Reconstruction or Repair. Subject to the provisions of Article IX, if any part of the Condominium Project shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined as set forth in this Article.

Section 7.02: Lesser Damage. If Units to which at least thirty-three and one-third percent (33-1/3%) of common interest is appurtenant are found by the Council to be tenable after the casualty the damaged property shall be reconstructed or repaired.

Section 7.03: Major Damage. If Units to which more than sixty-six and two-thirds percent (66-2/3%) of the common interest is appurtenant are found by the Council not to be tenable after the casualty, whether the damaged property will be reconstructed and repaired or the Condominium Project terminated shall be determined in the following manner:

(a) Immediately after the casualty the Council shall obtain reliable and detailed estimates of the cost to rebuild or repair.

(b) Immediately after the determination of the amount of insurance proceeds made available to the Council, the Council shall give notice to all Unit Owners of the casualty, the extent of the damage, the estimated cost to rebuild or repair, the amount of insurance proceeds and the estimated amount of assessments required to pay the excess of the cost of reconstruction or repair over the amount of insurance proceeds. Such notice shall call for a meeting of Unit Owners to be held within thirty (30) days from the mailing of such notice. If the reconstruction and repair are approved at such meeting by the Owners of Units to which seventy-five percent (75%) or more of the common interest is appurtenant, the damaged property will be reconstructed. If not so approved, the Condominium Project shall be terminated. Such approval may be expressed by vote or in writing filed with the Council at or within fourteen (14) calendar days prior to the meeting. The expense of such termination shall be assessed against each Unit Owner in proportion to his percentage of common interest.

Section 7.04: Plans. Any reconstruction or repair must be substantially according to the plans and specifications approved by the Council.

Section 7.05: Responsibility. The responsibility of reconstruction and repair after casualty shall be that of the Council.



Section 7.06: Funds. The funds for the payment of the costs of reconstruction and repair after casualty shall come first from the insurance proceeds. If the insurance proceeds are insufficient, then the Council shall make a special assessment sufficient to pay the excess of the cost of reconstruction or repair over the amount of insurance proceeds. The special assessment shall be against all Unit Owners, payable by each Unit Owner according to his percentage of common interest. In the event that (i) any excess insurance proceeds remain after defraying all costs, or (ii) it is determined that such damage shall not be reconstructed or repaired, then such excess or proceeds shall be distributed to the beneficial owners, remittances to Unit Owners and their mortgagees all being payable jointly to them. No Unit Owner shall receive any portion of his share of any awards or proceeds pursuant to this Article unless and until all liens and Assessments on his Unit have been paid, released or discharged in full.

Section 7.07: Reconstruction in Accordance with Original Plans. Any reconstruction or repair must be substantially in accordance with plans and specifications for the original improvements or as approved by the Unit Owners directly affected, the Board, and a majority of the first mortgagees of the affected Units. The Board shall be responsible for reconstruction and repair. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds.

Section 7.08: Eminent Domain. The Council shall represent the Unit Owners in any condemnation proceedings, negotiations, settlements, or agreements with the condemning authority for acquisition of the Common Elements, or any portion thereof. Each Unit Owner hereby appoints the Board as its attorney-in-fact for such purpose. The taking of a portion of a Unit or of the Common Elements by eminent domain shall be deemed to be proceeds from insurance on account of a casualty and shall be deposited with the Council. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Council and in the event of failure to do so, in the discretion of the Council, a special assessment shall be made against the defaulting Unit Owner in the amount of his award, or the amount of such award shall be set off against the sums hereafter made payable to such Owner. The proceeds of the awards shall be distributed or used in the manner heretofore provided for insurance proceeds except that when the Condominium Project is not to be terminated and one or more Units are taken in part, the taking shall have the effect as elsewhere stated in this Article.

Section 7.09: Unit Reduced by Tenable. If the taking reduces the size of a Unit and the remaining portion of a Unit, in the reasonable discretion of the Council, can be made tenable, the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be effected in the Condominium Project:

- (a) The Unit shall be made tenable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owner of the Unit.
- (b) The balance of the award, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit as their interest appear, the remittance being payable jointly to the Owner and mortgagees. No Unit Owner shall receive any portion of his share of

any awards or proceeds pursuant to this Article unless and until all liens and Assessments on his Unit have been paid, released or discharged in full.

(c) The percentage of common interest appurtenant to each Unit shall be re-determined in the method originally determined, but to reflect the reduction in floor Element in the Condominium Project.

Section 7.10: Unit Untenable. If the taking destroys or so reduces the size of the Unit that, in the reasonable discretion of the Council, it cannot be made tenable, the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be effected in the Condominium Project:

(a) The market value of such Unit immediately prior to the taking shall be paid to the Owner of the Unit and to each mortgagee of the Unit as their interest appear, the remittance being payable jointly to the Owner and mortgagees, provided that the Owner simultaneously conveys by deed all of his right, title, and interest in and to the Unit, including the Unit's percentage of common interest, to the remaining Owners in the Project. Unless otherwise proved to the reasonable satisfaction of Council, the market value of such Unit shall be assumed to be equal to the amount of the award.

(b) The remaining portion of such Unit, if any, shall become a part of the Common Elements and shall be placed in condition for use by all of the Unit Owners in the manner approved by the Council.

(c) The percentage of common interest appurtenant to each Unit shall be re-determined in the manner originally determined, but to reflect the reduction in floor Element in the Condominium Project.

(d) If the amount of the award for the taking is not sufficient to pay the market value of the condemned Unit to the Owner and to refurbish the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by assessments against each Unit Owner remaining after the changes in the condominium effected by the taking. Such assessments shall be made in proportion to each Unit's percentage of common interest as calculated after the taking.

Section 7.11: Amended Master Deed (Declaration). The change in the percentage of common interest appurtenant to each Unit which comes as a result of any exercise of eminent domain or as a result of destruction by casualty shall be evidenced by an amendment to this Master Deed. Each Unit Owner by acceptance of a deed conveying his Unit and each mortgagee encumbering such ownership interest, hereby irrevocably appoints the Developer or the Council, as the case may be, its attorney in fact, coupled with an interest, and authorizes, directs, and empowers such attorney, at the option of the attorney, to represent the Unit Owner and/or each mortgagee in any negotiations, agreement settlements and/or proceedings arising out of any eminent domain or threat thereof; and to execute, acknowledge and record for and in the name of each Unit Owner and/or each mortgagee any amending instruments as may be necessary or desirable to effect the purpose of this Article.

## ARTICLE VIII

### COUNCIL

Section 8.01: Council. The administration of the Project shall be vested in Erlanger City Center Council of Co-Owners, Inc., a Kentucky corporation.

The Owner of any Unit, upon acquiring title, shall automatically become a Member of the Council and shall remain a Member until such time as his ownership of such Unit ceases for any reason, at which time his membership in the Council shall automatically cease. The Council shall have full power and responsibility to administer, operate, sustain, maintain, and govern the Condominium Project including but not limited to the powers and responsibilities to make prudent investments of funds held by it; to make reasonable rules and regulations; to borrow money; to make assessments; to bring lawsuits and defend lawsuits; to enter into contracts; to enforce all of the provisions of this Declaration, the By-Laws and any other documents or instruments relating to the establishment, existence, operation, alteration, or termination of the Condominium Project. The powers of the Council shall be construed liberally.

Notwithstanding any other provision of the Declaration or By-Laws, the Developer shall transfer control of the Council to the Unit Owners not later than the date four (4) months after the sale by Developer of seventy-five percent (75%) of the Units to be constructed on the Condominium Property.

Section 8.02: Board of Directors. Unless otherwise specifically stated in this Declaration, the Council shall act exclusively through its Board of Directors. No vote of the general membership is needed for the Council's actions to be binding, unless this Declaration or the By-Laws specifically state otherwise. Board approval shall be sufficient. The Board shall be chosen by the Council in accordance with the By-Laws and with this Declaration. The Board shall be authorized to delegate the administration of its duties and powers by written contract to a managing agent or administrator employed for that purpose by the Board.

Section 8.03: Books of Account Inspection; Audit. The Council shall keep a detailed account of the receipts and expenditures affecting the Project and its administration, and specifying the maintenance and repair expenses of the Common Elements and any other Common Expenses incurred by or on behalf of the Project. Both the accounts and vouchers accrediting the entries made thereon shall be available for examination by the Unit Owners at such working hours as the Council shall establish and make known. All books and records must be kept in accordance with good accounting procedures and must be audited at least once a year by an auditor outside of the Council.

## ARTICLE IX

### RESTRICTIONS AS TO USE AND OCCUPANCY

The following covenants and restrictions as to the use and occupancy of the Condominium Property shall run with the land and shall be binding upon each Unit and occupant.

Section 9.01: Purpose of Property. The Condominium Property shall be used for commercial and business purposes not inconsistent with the applicable zoning resolutions and such rules and regulations as may be from time to time adopted by the Association. A Unit Owner or occupant may use a portion of his Unit for any purpose consistent with this section provided that the activities thereon shall not unreasonably interfere with the quiet enjoyment or comfort of any other Unit Owner or occupant.

Section 9.02: Declarant's Use. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant to maintain during the period of construction and sale of said Units, upon such portion of the premises as such builder may choose, such facilities as in the sole opinion of said Declarant may be reasonably required, convenient or incidental to the construction and sale of Units, including, but without limitation, a business office, storage Element, construction yards, signs, model Units and sales office.

Section 9.03: Obstruction of Common Elements and Limited Common Elements. There shall be no obstruction of, nor shall anything be stored in the Common Elements and Limited Common Elements.

Section 9.04: Additional Structures. No additional and/or accessory structures of any nature whatsoever shall be erected upon the Common Elements and Limited Common Elements in addition to the building and other improvements on said premises on the date this Declaration is recorded, other than reasonably similar replacements thereof, approved in advance by the Board of the Association.

Section 9.05: Parking. No parking spaces other than those specifically designated for parking in this Declaration, shall be used for parking of any vehicles.

Section 9.06: Hazardous Uses and Waste. Nothing shall be done or kept in any Unit or in the Common Elements and Limited Common Elements which will increase the rate of insurance on the Common Elements and Limited Common Elements or contents thereof without the prior written consent of the Declarant and the Association, as the case may be. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements and Limited Common Elements which will result in the cancellation of insurance on the Common Elements and Limited Common Elements, or contents thereof, or which would be in violation of any law. A Unit Owner shall be responsible for all costs and expenses associated with the disposal of any hazardous substances or wastes utilized by such Unit Owner in connection with the occupancy of his Unit. No waste shall be committed in the Common Elements and Limited Common Elements.

Section 9.07: Exterior Surfaces of Building. Unit Owners shall not cause or permit anything to be hung or placed on the inside or outside of the windows, including reflective-type materials, or placed on the exterior walls of the building and no sign, awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof or any part of the building, Common Elements or Limited Common Elements without prior consent of the Declarant and/or the Association as the case may be.

Section 9.08: Animals and Pets. No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Elements and Limited Common Elements.

Section 9.09: Trash and Storage. Subject to the provisions of Section 13.06, all trash, rubbish, garbage and other materials being thrown away or disposed of by Unit Owners, their guests, tenants, licensees, agents, patients or customers must be placed in the common trash containers provided by the Council. All such trash, rubbish, garbage and other materials and the method of their collection, together with various other matter such as type and size of the private trash containers and whether such trash containers may be located outside of a Unit on days other than collection day, shall be subject to the rules and regulations adopted by the Association. The Association shall have control over all aspects of the method and manner by which trash, rubbish, garbage and other materials are to be removed from the premises and shall have control of the selection of the organization, agent or independent contractor to be responsible for the collection and removal. The outdoor placement or storage, other than by the Association itself, on any portion of the Common Elements and facilities shall be prohibited.

Section 9.10: Nuisances. No noxious or offensive activity shall be carried on in any Unit or the Common Elements and Limited Common Elements nor shall anything be done therein either willfully or negligently, which may be or become an annoyance or nuisance to any of the Unit Owners or occupants.

Section 9.11: Impairment of Structural Integrity of Building. Nothing shall be done in any Unit or in, on or to the Common Elements and Limited Common Elements which would impair the structural integrity or would structurally change any of the building.

Section 9.12: Use of Common Elements and Limited Common Elements. There shall be no playing, lounging or parking of baby carriages, playpens, bicycles, wagons, toys, vehicles, benches, plants, pictures, signage or chairs on any part of the Common Elements and Limited Common Elements not within the bounds of a Unit, except in accordance with the rules and regulations established by the Declarant and/or the Association as the case may be.

No person shall engage in the distributing of any materials on any portion of the Common Elements without the prior written consent of the Association. Additionally, no person shall engage in any demonstration on any portion of the Common Elements, including but not limited to, picketing of any Unit or any facilities which comprise the Condominium Property, marching on the Common Elements, carrying signs or gathering for the purpose of demonstrating without the prior written consent of the Association.

Section 9.13: Alteration of Common Elements and Limited Common Elements. Nothing shall be altered, constructed, removed from or added to the Common Elements and Limited Common Elements except as provided for herein, without the prior written consent of the Declarant and/or the Association, as the case may be.

Section 9.14: Fencing. No fencing or wall shall be permitted on the Common Elements and Limited Common Elements with the exception of those installed by Declarant without the prior written consent of the Association.

Section 9.15: Signage. No sign of any kind shall be displayed to the public view on any Unit except one (1) sign of not more than five (5) square feet advertising the Unit for sale. This paragraph shall not apply to signs used by the Declarant to advertise the Condominium Property during the construction or sale period. Signage identifying the suite number and name of the business is allowed on the inside common hallway but must be approved by Declarant or the Board. Such signage must follow a common theme and size as determined by the Declarant or the Board.

Section 9.16: Architectural Control. No construction shall be commenced, directed or maintained upon the Condominium Property, nor shall any exterior addition to or change or alteration therein be made, except by the Declarant, until the plans and specifications showing the nature, kind, shape, height, color, materials and location of the same shall have been submitted to and approved in writing by the Declarant, and/or the Association's Board. Nothing in this Article shall be deemed to authorize any construction on, addition to, or change in the Condominium Properties, which would be prohibited by this portion of the Declaration.

Section 9.17: Arbitration. In the event of any dispute between Unit Owners regarding the application of these restrictions or any rule or regulation, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time and place for a hearing thereon within thirty (30) days thereafter, and given written notice to each party thereof not less than five days in advance of such hearing. The Board, after hearing such evidence and arguments as it deems proper, shall render a written decision on the matter to each party within thirty (30) days after such hearing. No legal action may be instituted by either party on such a dispute unless the arbitration provided for herein has occurred, or unless both parties have waived the requirement for arbitration.

Section 9.18: Compliance with Covenants, Conditions and Restrictions. Every Unit Owner shall comply strictly with the covenants, conditions and restrictions set forth in this Declaration, with the By-Laws of the Council and with the Rules and Regulations in relation to the use and operation of the Condominium Project. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages and/or for injunctive relief. Such action may be maintained by a Unit Owner, the Council on its own behalf or on behalf of the Unit Owners aggrieved, or by any person or entity who holds a mortgage lien upon a Unit and is aggrieved by such noncompliance. In any case of flagrant or repeated violation by a Unit Owner, he may be required by the Council to give sufficient surety or sureties for his future compliance with said covenants, conditions, restrictions, By-Laws, Rules and Regulations. The

Council may recover all of its costs of enforcement, including court costs and reasonable attorneys' fees, and all of such costs shall be a continuing lien upon the Unit involved.

Section 9.19: Right of Council to Repair. If any Unit Owner fails to maintain his Unit and Limited Common Elements in the manner required herein, and if the Board determines that any maintenance is necessary to ensure public safety, to permit reasonable use or enjoyment of the Common Elements or any other Unit(s) by Unit Owners, or to prevent damage to or destruction of any other part of the Condominium Property, then the Board may authorize its employees or agents to enter the Unit at any reasonable time to complete the necessary maintenance and the Board may levy a Unit Assessment for all reasonable expenses incurred. The Council shall be entitled to enter any Unit or Limited Common Elements to repair or maintain the same and/or any Common Elements adjacent to such Unit or Limited Common Elements.

Section 9.20: Sale of Unit. Except as set forth in Section 9.01(u), the right of a Unit Owner to sell, transfer or otherwise convey that Owner's Unit is not subject to any right of first refusal or similar restriction, and any Unit Owner may transfer that Owner's Unit free of any such limitation. To enable the Council to maintain accurate records of the names and addresses of Unit Owners, each Unit Owner agrees to notify the Council, in writing, within five (5) days after an interest in that Unit Owner's Unit has been transferred to another person. In addition, each Unit Owner agrees to provide to a purchaser of that Owner's Unit a copy of this Declaration, the By-Laws and all effective Rules and Regulations.

Section 9.21: Leasing of Unit. Except as otherwise provided herein, every lease on every Unit in the Property is subject to the following rules and regulations, regardless of whether such provisions are set forth in the lease:

- (a) the lease must be in writing;
- (b) the lease must be for the entire Unit;
- (c) the lease must be for a minimum period of not less than six (6) months. Renewals can be for any length;
- (d) the use of the leased premises is subject to this Declaration, the By-Laws and the Rules and Regulations for the Property;
- (e) within thirty (30) days of occupancy by the tenant, the name and telephone number of the tenant, together with a clear and complete copy of the lease, must be furnished to the management company or to an Officer or Director of the Council;
- (f) the Unit cannot be used as a motel or hotel or otherwise for transient tenants;
- (g) if any Owner (landlord) or tenant is in violation of any of the provisions of the Declaration or By-Laws, or both, including any Rules and Regulations, the Council may

bring an action in its own name or in the name of the Owner, or both, to have the tenant evicted or to recover damages, or both. If the court finds that the tenant is or has violated any of the provisions of the Declaration, the By-Laws of the Council or the Rules and Regulations, the court may find the tenant guilty of forcible detainer despite the fact that the Owner is not a party to the action and/or that the tenant is not otherwise in violation of tenant's lease or other rental agreements with the Owner. For purposes of granting the forcible detainer against the tenant, the court may consider the Owner a person in whose name a contract (the lease or rental agreement) was made for the benefit of another (the Council). The remedy provided by this subsection is not exclusive and is in addition to any other remedy or remedies available to the Council. If permitted by present or future law, the Council may recover all of its costs, including court costs and reasonable attorney's fees, and these costs shall be a continuing lien on the Unit that shall bind the Unit in the hands of the then Unit Owner and the Unit Owner's successors and assigns. Prior to filing for eviction, Council shall give the Tenant and the Owner written notice of the nature of the violation of the Declaration, By-Laws or the other Rules and Regulations, and the Owner and/or Tenant shall have twenty (20) days from the mailing of the notice in which to cure the violation.

By becoming a tenant, each tenant agrees to be bound by the Declaration, the By-Laws and the other Rules and Regulations of the Property, and recognizes and accepts the right and the power of the Council to evict the tenant for any violation by the tenant of the Declaration, the By-Laws and the other Rules and Regulations of the Property.

To protect first mortgage lenders and to encourage first mortgage lenders to make loans on Units in the Property, only subsections (d) and (e) of this Section 9.04 shall apply to a first mortgage lender who has title to the Unit through (a) foreclosure of its first mortgage on the Unit; or (b) a deed in lieu of foreclosure on its first mortgage on the Unit. Any subsequent purchaser from the first mortgage lender is subject to all of the rules and regulations.

Section 9.22: Fines. In addition to any other remedy that it may have, the Council can levy a reasonable fine against a Unit Owner who has violated any Rule or Regulation set out in this Declaration, the By-Laws or made by the Council. Before the fine can be levied, the Unit Owner must be sent written notice of the nature of the violation and be given thirty (30) days after the date of mailing to cure the violation. If the violation is not cured, the Council may levy a fine against the Unit Owner and against the Unit. The fine may be reported as a lien and is otherwise enforceable as an assessment lien, including by foreclosure and including the collection of reasonable attorneys' fees. Each day of the violation may be considered a separate violation.

Section 9.23: Developer's Use. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Developer, or its agents, to maintain during the period of construction and sale of said Units, upon such portion of the Project as said Developer may choose, such facilities as in the sole opinion of said Developer may be reasonably required, convenient or incidental to the construction and sale of Units, including, but without limitation, a business office, storage Element, construction yards, signs, model Units and sales office.



Section 9.24: Severability. Each of the above restrictions and covenants shall be independent of every other. Invalidation of any of the above by judicial proceeding or any other means shall in no way effect the validity of the others.

## ARTICLE X

### UNIT OWNER'S RIGHTS AND RESPONSIBILITIES

Section 10.01: Unit Owner's Responsibilities. Subject to the provisions of Article IX, the responsibilities of each Unit Owner shall include:

- (a) To maintain, repair and replace at his expense all portions of his Unit, and all internal installations of such Unit such as appliances, heating, plumbing, electrical and air conditioning fixtures or installations, and any portion of any other utility service facilities located within the Unit boundaries and any heating or air conditioning equipment, satellite dishes and signage located without or outside the Unit boundaries designed and installed for the exclusive purpose of servicing the Unit.
- (b) To maintain, repair and replace all windows, weather stripping, window frames, screens, trim, blinds, doors, locks, door frames and hardware, garage doors, garage door tracts, hardware and automatic openers, glass surfaces, water sillcock, air conditioning pads, vestibules, porches and stoops and entrances of the Unit and of all associated structures and fixtures therein, which are appurtenances to the Unit. The foregoing includes, without limitation, responsibility for all breakage, damages, malfunctions and ordinary wear and tear of such appliances.
- (c) To maintain, repair and replace exterior light fixtures attached to the Unit, including the replacement of light bulbs.
- (d) To perform his responsibilities in such manner so as not to unreasonably disturb other persons residing within the Condominium Project.
- (e) Not to paint or otherwise decorate or change the appearance of any portion of the building not within the walls of his Unit, without the written consent of the Council.
- (f) To promptly report to the Council or its managing agent any defect or need for repairs, the responsibility for the remedying of which is with the Council.
- (g) Not to make any alterations in the portions of the Unit or the building which are to be maintained by the Council or remove any portion thereof or make any addition thereto or do anything which would or might jeopardize or impair the safety or soundness of the building without first obtaining the written consent of the Council, nor shall any Unit Owner impair the use of any easement without first obtaining the written consents of the Council and of the Owner or Owners for whose benefit such easements exists.

Notwithstanding the above, the Council shall be responsible for the maintenance, repair and/or replacement of the decks and patios even though such items are considered Limited Common Elements.

Section 10.02: Construction Defects. The obligation of the Council and of Owners to repair, maintain and replace the portions of the Condominium Property for which they are respectively responsible shall not be limited, discharged or postponed by reason of the fact that any maintenance, repair or replacement may be necessary to cure any latent or patent defects in materials or workmanship in the construction of the Project. The undertaking of repair, maintenance or replacement by the Council or Owners shall not constitute a waiver of any rights against any warrantor but such right shall be specifically reserved.

Section 10.03: Effect of Insurance or Construction Guarantees. Notwithstanding the fact that the Council and/or any Unit Owner may be entitled to the benefit of any guarantee of material and workmanship furnished by any construction trade responsible for any construction defects, or to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of any construction guarantee or insurance coverage shall not excuse any delay by the Council or any Unit Owner in performing his obligation hereunder.

Section 10.04: Rights of Unit Owners. A Unit Owner's rights include the following:

- (a) A Unit Owner shall have the exclusive ownership to his Unit and shall have a common right to a share, with other co-owners, in the Common Elements of the Condominium Property, equivalent to the percentage representing the floor Element of the individual Unit, in relation to the floor Element of the Property as a whole.
- (b) Each Owner may use the Common Elements in accordance with the purpose for which they are intended. However, each Owner may not hinder or encroach upon the lawful rights of the other Owners to use the Common Elements.

Section 10.05: Share in Funds. The proportionate interest of each Unit Owner in any funds maintained or held by the Council, cannot be withdrawn or separately assigned, but is deemed to be transferred with each Unit even though not mentioned or described in the conveyance.

Section 10.06: Injuries and Damages. Each Unit Owner shall be individually liable for injuries or damages which result from his own negligence or willful misconduct or which occur within his individual Unit, to the same extent and degree as the individual Owner of any other residential property.

Where a judgment arising from a risk common to all of the Owners is in excess of the liability insurance in force, the liability of any co-owner shall not exceed his pro rata share as determined by the percentage that the value of his individual Unit bears to the value of the Condominium Project as a whole. An uncollected share of a judgment shall not be reassessed among the Owners.

## ARTICLE XI

### FEDERAL HOME LOAN MORTGAGE CORPORATION PROVISIONS

Section 11.01: FHLMC. The following provisions are included herein for the benefit of the holders of first mortgages on any Unit in the Condominium Project which is subject to the provisions of this Declaration, in order to permit compliance with the requirements of the Federal Home Loan Mortgage Corporation (FHLMC) as a condition to the purchase of loans on Units in the Condominium Project. The covenants and provisions hereinafter set forth shall run in favor only of the first mortgage holders, and the provisions hereinafter set forth may be altered, amended, revised or rescinded by actions of the Council without approval of the Unit Owners but only without such approval to the extent that such alteration, amendment, revision, or rescission is necessary to comply with the requirements of FHLMC.

Section 11.02: FHLMC Requirements. In addition to any other requirements of this Declaration, or the By-laws of the Council, it is provided as follows:

(a) Unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners (other than the sponsor, Developer or builder) of the individual condominium Units have given their prior written approval, the Council shall not be entitled to:

- (i) by act or omission, seek to abandon or terminate the Condominium Project;
- (ii) change the pro rata interest or obligations of any individual condominium Unit for the purpose of (A) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (B) determining the pro rata share of Ownership of each condominium Unit in the Common Elements;
- (iii) partition or subdivide any condominium Unit;
- (iv) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium Project shall not be deemed a transfer within the meaning of this clause); and
- (v) use hazard insurance proceeds for losses to any Condominium Property (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such Condominium Property, except as provided by statute in case of substantial loss to the Units and/or Common Elements of the Condominium Project.

(b) A first mortgagee, upon request, is entitled to written notification from the Council of any default in the performance by the individual Unit borrower of any obligation under the condominium documents which is not cured within sixty (60) days.

(c) Any agreement for professional management of this Condominium Project, or any other contract providing for services of the Developer (or sponsor or builder), may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

(d) This Project is subject to expansion (phasing, parts or add-ons). In the event that the Project has more than one section (phase, part or add-on), then Section 11.02(a)(ii) and (iv) are deemed waived to the extent necessary to allow the expansion of the Project in accordance with the Project's condominium documents, including this Declaration. No change in the percentage of common interest appurtenant to each Unit may be affected in any case more than seven (7) years after the date of this Declaration.

(e) No Unit Owner, or any other party, has priority over any rights of any first mortgagee of a condominium Unit pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of condominium Units and/or Common Element.

## ARTICLE XII

### ANNEXATION OF ADDITIONAL PROPERTY

Section 12.01: Expandable Project. THIS IS AN EXPANDABLE CONDOMINIUM PROJECT. In other words, additional buildings and land may become a part of this Project at the option of the Developer, its successors and assigns as follows:

(a) The entire Project shall not have more than forty-six (46) commercial Units.

(b) If the Project is expanded, each additional section will come out of the real estate described in Exhibit "D" attached hereto and incorporated herein by reference ("Expansion Property").

(c) The entire Project shall not have more than two (2) sections.

(d) There are no limitations as to whether all or a particular portion of the Expansion Property must be added to the Condominium Project, and if a portion of Expansion Property is added, there are no limitations as to whether all or a portion of the remaining Expansion Property must be added, said determination to be at the sole discretion of the Developer. Furthermore, there shall be no limitation as to when any such additional Expansion Property shall be added, other than those limitations set forth in this Article.

(e) There are no limitations as to the location of any improvements that may be made in any portion of the Expansion Property added to the Condominium Project.

(f) Any structures erected on any portion of the Expansion Property shall be compatible with the structures on the submitted real estate in terms of quality of construction, principal materials to be used and architectural style.

(g) The percentage of common interest appurtenant to each Unit in the Project, shall be redistributed on an as-built basis upon completion of all Units in a given section. The redistribution shall be done by amendment or supplement to this Declaration.

(h) Developer hereby reserves for itself, its successors and assigns, for a period of twelve (12) years from the date hereof, the right to execute on behalf of all contract purchasers, Unit Owners, mortgagees, other lienholders or parties claiming a legal or equitable interest in the Project, including any and all expansions of the Project, any such agreements, documents, amendments, or supplements which may be so required to expand the Project. By acceptance of a deed to any Unit or by the acceptance of any other legal or equitable interest in the Project, including any and all expansions of the Project, each and every contract purchaser, Unit Owner or occupant, or holder of any mortgage or other liens, does automatically and irrevocably name, constitute, appoint and confirm Developer, its successors and assigns, as attorney-in-fact for the purpose of executing such amended Declaration(s), or other instrument(s) necessary or desirable to expand the Project. The power of attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to any and all condominium Units and be binding upon the successors and assigns of any of the foregoing parties. Further, the power of attorney shall not be affected by the death or disability of any principal. The Developer for itself and for its successors and assigns, hereby specifically reserves for a period of twelve (12) years from the date hereof, an interest in any real estate, including every Unit in the Project, and including any expansions to the Project.

This interest reserved by the Developer shall only be such as is necessary to make the power of attorney run with the land and be irrevocable during the twelve (12) year period. This power of attorney includes the right to amend, within the limits elsewhere set out in this Section, the percentage of common interest appurtenant to each Unit. The power of attorney shall be effective and binding whether or not it is specifically reserved in any deed or other instrument.

(i) None of the Expansion Property shall be considered a part of the Project or in any way subject to this condominium regime, until it has been specifically brought into the Project by the recording of an amended or supplemental Declaration (or by this Declaration) signed by the Developer, particularly describing the real estate affected and by the recording of the plat and floor plans required by the law. The annexing instrument shall redistribute the percentages of co-ownership and describe the layout and location of the additional Units. Each amended Declaration shall be filed in the same County Clerk's office as was filed this Declaration.

## ARTICLE XIII

### TERMINATION

Section 13.01: Termination. The condominium regime may be terminated or waived by any method permitted by Kentucky law at the time of the termination or waiver. If Kentucky law permits or is otherwise silent, the condominium regime may also be terminated or waived as set forth in Section 13.03 of this Article.

Section 13.02: Destruction. If it is determined in the manner elsewhere provided that the building(s) shall not be reconstructed because of major damage, or eminent domain, the condominium regime will be thereby terminated without agreement of the Owners.

Section 13.03: Agreement. If the proposed termination or waiver is submitted to a meeting of the Members of the Council and if approved by Owners of the Units appurtenant to which is not less than seventy-five percent (75%) of the interest in the Common Elements, and if a consent to the termination is obtained from each record holder of a first mortgage upon a Unit not later than ninety (90) days from the date of such meeting, then the approving Owners shall have an option to buy all of the Units of the other Owners for the period (“Option Period”) ending on the one hundred twentieth (120th) day from the date of such meeting. Such approvals shall be irrevocable until the expiration of the Option Period, and if the option is exercised, the approvals shall be irrevocable. Such option shall be upon the following terms:

(a) The option shall be exercised during the Option Period by the delivery or mailing by certified mail to each of the record Owners of the Units to be purchased the following instruments:

(i) A certificate executed by the Chairman and Secretary of the Board certifying that the option to purchase Units owned by Owners not approving termination has been exercised as to all of such Units. Such certificate shall state the names of the Unit Owners exercising the option, the Units owned by them and the Units being purchased by each of them.

(ii) An agreement to purchase, upon the terms herein stated, the Unit of the Owner receiving the notice, which agreement shall be signed by the purchasing Unit Owner or Owners.

(b) The sale price for each Unit shall be the fair market value determined by agreement between the seller and purchaser within thirty (30) days from the delivery or mailing of the instruments. In the absence of such agreement the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) Appraisers appointed by the American Arbitration Association, who shall base their determination upon an average of their appraisals of the Unit. A judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the

purchaser. The arbitration must be held within one hundred twenty (120) days from the date of the exercise of the option.

(c) The purchase price shall be paid in cash or upon terms approved by the seller and the Council.

(d) The sale shall be closed within twenty (20) days following the determination of the sale price. Good and marketable title to the Unit must be conveyed by the seller to the purchaser by a general warranty deed, free and clear of all liens and encumbrances except this Declaration.

(e) The closing of the purchase of all of the Units subject to such option shall effect a termination or waiver of the condominium regime without further act except the filing of the certificate hereafter required.

Section 13.04: Certificate. The termination or waiver of the condominium regime in either of the foregoing manners shall be evidenced by a certificate of the Council executed by its President and Secretary certifying as to the facts affecting the termination, which certificate shall become effective upon being recorded in records of the County Clerk of Kenton County, Kentucky.

Section 13.05: Shares of Owners After Termination. After any termination or waiver of the condominium regime the Unit Owners shall own the Condominium Property and all assets of the Council as tenants in common in undivided shares, and their respective mortgagees and lienholders shall have mortgages and liens upon the respective undivided shares of the Unit Owners. Such undivided shares of the Unit Owners shall be the same as the undivided shares in the Common Elements appurtenant to the Owner's Units prior to the termination or waiver.

Section 13.06: Amendment. This Article concerning termination or waiver cannot be amended without the consent of all Unit Owners and of all record Owners or mortgages upon the Units.

## ARTICLE XIV

### MISCELLANEOUS

Section 14.01: Prohibition of Partition. The Common Elements and the Limited Common Elements shall remain undivided and shall not be the object of an action for partition or division of the co-ownership.

Section 14.02: Severability. The invalidity of any Article, Section covenant, restriction, condition, limitation or any other provision of this Declaration or any part of the same, shall not impair, or affect in any manner, the validity, enforceability or effect of the rest of the Declaration.

Section 14.03: Waiver. No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

Section 14.04: Enforcement of Provisions. In addition to any other remedies provided for in this Declaration, the Council, Developer, or any Owner or Owners shall have the right to enforce all restrictions, covenants, conditions, easements, reservations, liens and charges now or hereinafter imposed by or through the provisions of this Declaration, the By-Laws or any Rules or Regulations promulgated by the Council, or as provided by KRS Section 318.883. Enforcement shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrict or enjoin violation or to recover damages, and against the land to enforce any lien created by these covenants. The failure or forbearance by the Council or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. There shall be, and there is hereby created and declared to be, a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or by recovery of damages. All charges incurred by the Council in enforcing these covenants and restrictions (including court costs and reasonable attorneys fees) shall constitute a charge against the person or persons violating or attempting to violate the covenant or restriction, and such charge shall constitute a lien against the Unit of such person or persons, subject to subordination to any first mortgage.

Section 14.05: Liability. Neither the Developer, nor any subsidiary or affiliate of Developer, nor any employee, agent, successor or assign of Developer, or such subsidiary or affiliate, shall be liable for any claim or damage whatsoever arising out of or by reason of any actions performed pursuant to or in accordance with the authority granted or delegated to them or any of them by or pursuant to this Declaration, except with respect to matters as to which it is adjudged to have been negligent.

Section 14.06: Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the establishment and the operation of a condominium development.

Section 14.07: Notices and Demands. Any notice by the Council to a Unit Owner shall be deemed to be duly given, and any demand upon him shall be deemed to have been duly made, if delivered in writing to him personally, or if mailed by certified (or the equivalent) mail, addressed to him at the Unit owned by such Unit Owner, and any demand upon the Board shall be deemed to have been duly made, if in writing and delivered by certified (or the equivalent) mail to an officer of the Council.

Section 14.08: Alteration and Transfer of Interests. The Common Elements and easements appurtenant to each Unit shall have a permanent character and shall not be altered, except as otherwise provided herein, without the consent of all of the Owners, expressed in a recorded amendment to this Declaration. The Common Elements and easements shall not be separated from the Unit to which they appertain, and shall be deemed to be conveyed, leased or



encumbered with such Unit even though such Common Elements or easements are not expressly mentioned or described in the instrument.

Section 14.09: Council and Director Responsibility. In carrying out the provisions of this Declaration, and in the performance of all of the rights, duties and obligations, covenants and conditions, hereunder, specifically including but not limited to, the protection, maintenance and upkeep of Common Elements, the Council, its officers, Directors, servants and employees shall be required to exercise reasonable care only, and shall in no way be deemed absolutely liable, or be deemed insurers.

Section 14.10: Handicapped Accessibility. Notwithstanding the other provisions herein, an Owner may, at his expense, have such reasonable modifications made to the interior and exterior of his Unit and the Common Elements or Limited Common Elements as may be necessary to afford physically handicapped persons full enjoyment of his Unit. Any modifications to be undertaken to the exterior of a Unit or the Common Elements or Limited Common Elements shall comply with the guidelines and regulations of the United States Department of Housing and Urban Development (or any other state or federal law or agency) for buildings and facilities providing accessibility and usability for physically handicapped people; and shall be undertaken pursuant to a contract approved by the Board of Directors. The approved contractor shall provide an adequate performance bond and adequate insurance for the benefit of the Council.

Notwithstanding the other provisions herein, including those requiring approval of the Members of the Council, the Board of Directors of the Council is authorized to make reasonable accommodations to any rules, policies, practices or services as may be necessary to afford a handicapped person equal opportunity to use and enjoy his Unit, including the Common Elements and the Limited Common Elements. Such accommodations may include the establishment of reasonable rules and regulations for the designation of handicapped parking Elements.

Section 14.11: Notice of Mortgages. Any Unit Owner who mortgages his Unit shall notify the Council in such manner as the Council may direct, of the name of his mortgagee and thereafter shall notify the Council of the payment, cancellation or other alteration. Any holder, insurer or guarantor of a first mortgage, upon written request to the Council (which request states the name and address of such holder, insurer or guarantor and the Unit designation or address) (such party shall be known as an eligible holder of a first mortgage) shall be entitled to timely written notice by the Council of:

(a) Any proposed addition or amendment of the Declaration or By-Laws affecting a material change or addition in provisions establishing, providing for, governing or regulating (i) voting, (ii) assessments, assessment liens or subordination of such liens, (iii) reserves or maintenance, repair and replacement of Condominium Property, (iv) insurance or fidelity bonds, (v) rights to use of the Common Elements, (vi) responsibility for maintenance and repair, (vii) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium, (viii) the boundaries or composition of any Unit, (ix) the interests in the Common or Limited Common Elements, (x) the convertibility of

Units into Common Elements or of Common Elements into Units, (xi) the leasing of any Unit or part thereof, (xii) the imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit, or (xiii) any provisions which are for the express benefit of the holder, insurer or guarantor of any first mortgage on a Unit.

- (b) Any proposed termination of the Condominium as a condominium regime;
- (c) Any condemnation or eminent domain proceeding, or casualty loss which may affect a material portion of the Condominium Property or any Unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;
- (d) Any decision by the Council not to restore or repair any portion of the Condominium Property (after damage or destruction or partial condemnation), or not to restore or repair such property in a manner specified by the Declaration or By-Laws;
- (e) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Council;
- (f) Any decision by the Council to renew or rehabilitate the Condominium Property;
- (g) Any decision by the Council to construct significant new capital improvements not replacing existing improvements;
- (h) Times and places of Unit Owners' meetings;
- (i) Any default under the Declaration or By-Laws which gives rise to a cause of action against a Unit Owner whose Unit is subject to the mortgage of such holder or insurer, where the default has not been cured in thirty (30) days;
- (j) Any decision by the Council to establish self-management when professional management had been required previously by an eligible holder of a first mortgage lien; and
- (k) Any proposed action which requires the consent of a specified percentage of holders of first mortgage liens.

No addition or amendment of the Declaration or By-Laws shall be considered material if it is for the purpose of correcting technical errors or for clarification only.

Section 14.12: Amendment of Declaration. Except as otherwise provided, amendment of this Declaration (or any other organizational document relating to the Condominium) shall require (a) the consent of Unit Owners exercising not less than seventy-five percent (75%) of the voting power of Unit Owners, and (b) the consent of eligible holders of first mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by eligible holders of first mortgages appertain. Notwithstanding the foregoing:

(a) the prior written consent of all Unit Owners shall be required for any amendment effecting a change in:

- (i) the boundaries of any Unit;
- (ii) the undivided interest in the Common Elements appertaining to a Unit or the liability for Common Expenses appertaining thereto;
- (iii) the number of votes in the Council appertaining to any Unit; or
- (iv) the fundamental purposes to which any Unit, Common Element or Limited Common Element are restricted;

(b) the consent of eligible holders of first mortgages on Units to additions or amendments to any organizational document relating to the Condominium shall not be required except in those instances, previously described, in which the eligible holders of first mortgages on Units are entitled to written notice of such proposed addition or amendment; and

(c) in any event, Developer reserves the right and power, and each Unit Owner by acceptance of a deed to a Unit is deemed to and does give and grant to Developer a power of attorney, which right and power is coupled with an interest and runs with the title to a Unit and is irrevocable (except by Developer), for a period of ten (10) years from the date of the filing of the Declaration, to amend this Declaration, the By-Laws, the Articles of Incorporation of the Council and any other organizational document relating to the Condominium Documents, to the extent necessary to conform to the requirements then governing the purchase or insurance of mortgages by FHLMC, Federal National Mortgage Association, Government National Mortgage Association, Mortgage Guaranty Insurance Corporation, the Federal Housing Administration, the Veterans Administration, or any other such agency or organization, provided that the appropriate percentage (as described elsewhere herein) of eligible holders of first mortgage liens is obtained, or to correct typographical errors or obvious factual errors the correction of which would not impair the interest of any Unit Owner or mortgagee; and further provided that if there is a Unit Owner other than the Developer, the Declaration shall not be amended to increase the scope or the period of control of the Developer.

An eligible holder of a first mortgage on a Unit who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days after it receives such written notice, (provided that notice was delivered by certified or registered mail, return receipt requested), shall be deemed to have approved such request.

An amendment to this Declaration (or the Drawings or the By-Laws), adopted with the consents hereinbefore provided, shall be executed with the same formalities as this Declaration by an Officer of the Council and shall contain their certification that the amendment was duly adopted in accordance with the foregoing provisions. Any Amendment adopted by the Developer or a duly empowered successor Developer pursuant to authority granted it pursuant to

the Declaration shall be duly executed by it with the same formalities as to execution as this Declaration and shall contain the certification of such signor or signors that such amendment is made pursuant to authority vested in the Developer or any duly empowered successor Developer by the Declaration. Any amendment duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same with the Clerk of Kenton County, Kentucky.

Section 14.13: Gender and Grammar. The singular, whenever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other forms of business organizations, or individuals, men or women, shall in all cases be assumed as though in such case fully expressed.

Section 14.14: Implementation of Amendments. The Council or the Developer, as the case may be, has the power to make any plats, deeds or other instruments necessary or desirable to effectuate an amendment.

Section 14.15: Developer's Consent. For a period of ten (10) years beginning with the date of the recording of this Declaration, no amendment to the Declaration is effective unless it has the written consent of the Developer, which consent must be recorded with the amendment or as a part of the amendment. The consent of the Developer is in addition to the other requirements of this Article. The Developer may at any time surrender in writing the Developer's rights under this Section 15.15.

**IN WITNESS WHEREOF**, Triple E Development, LLC a Kentucky limited liability company, pursuant to a Resolution of the company has authorized the recording of this Declaration, and has further authorized the following member of the company to execute the Declaration this \_\_\_\_ day of \_\_\_\_\_, 2007.

TRIPLE E DEVELOPMENT, LLC,  
a Kentucky limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Exhibit "A"



209 Grandview Drive  
Fort Mitchell, KY 41017  
P 859.261.1113  
F 859.261.1710  
www.bayerbecker.com

**DESCRIPTION:**

0.947 Acres  
Erlanger City Center Office Condominiums  
Phase One

**LOCATION:**

Graves Avenue and Watson Road  
Erlanger Kentucky

**DATE:**

November 28, 2007

Situated in the City of Erlanger, County of Kenton, Commonwealth of Kentucky, being part of a 0.766 acre tract, part of a 2.521 acre tract, all of a 0.086 acre tract, and all of a 0.080 acre tract conveyed to the Triple E Development, LLC in Volume C3383, Page 255 of the Kenton County Clerk's Records at Covington and more particularly described as follows:

Begin at the centerline Intersection of Watson Road and Graves Avenue as shown on Transportation Cabinet plans for Graves Road (project SSP 59-236) dated 1979, sheet 11 of 52, thence with the centerline of Graves Avenue, along a curve to the right having a radius of 190.99 feet, an arc length of 16.67 feet, a chord bearing South 73°37'57" East, and a chord length of 16.66 feet; thence South 71°07'52" East, 12.33 feet; thence leaving the centerline at right angles, North 18°52'08" East, 24.00 feet to the existing North right-of-way line of Graves Road; thence with the existing North right-of-way line of Graves Road (D.B. 849, Pg. 160) North 07°41'46" West, 17.89 feet; thence North 38°01'25" East, 14.69 feet; thence North 26°00'04" West, 24.00 feet to the centerline of Watson Road, North 63°59'56" East, 177.01 feet; thence continuing with the centerline of Watson Road, North 84°47'32" East, 81.71 feet; thence South 74°18'58" East, 79.67 feet; thence South 68°34'28" East, 77.85 feet to the TRUE POINT OF BEGINNING;

thence from the TRUE POINT OF BEGINNING, continuing with the centerline of Watson Road and the North line of the 2.521 acre tract, South 68°34'28" East, 5.72 feet;

thence leaving said centerline and with the Southeast line of the 2.521 acre tract, South 49°11'08" West, 4.02 feet;

thence with said Watson Road and the North line of the 0.766 acre tract, South 61°48'52" East, 192.00 feet; thence South 75°03'52" East, 17.84 feet;

thence with the Southeast line of the 0.766 acre tract, South 49°11'08" West, 28.72 feet to a set mag nail on the existing South right-of-way line of Watson Road;

thence with the existing South right-of-way line of Watson Road, South 60°19'52" East, 21.22 feet to a set iron pin at the Northwest line of a tract conveyed to the City of Erlanger, Kentucky in Deed Book 838, Page 111;

thence leaving the South right-of-way line of Watson Road and with the Northwest line of the City of Erlanger, Kentucky tract, the same being the Southeast line of the above mentioned 0.086 acre tract, South 49°11'08" West, 200.06 feet to a found right-of-way monument on the existing Northeast right-of-way line of Graves Road and the existing Southeast corner of the above mentioned 0.086 acre tract;

thence with the existing North right-of-way line of Graves Road along a curve to the left having a radius of 310.48 feet, an arc length of 135.29 feet, a chord bearing North 58°38'53" West, and a chord length of 134.22 feet to a set iron pin;

thence continuing with the North right-of-way line of Graves Road, North 71°07'52" West, 55.51 feet to a set iron pin;

thence leaving the existing North right-of-way line of Graves Road and through the 2.521 acre tract, North 18°52'08" East, 65.50 feet to a set iron pin;

thence continuing through the 2.521 acre tract and also the 0.766 acre tract South 71°07'52" East, 51.85 feet to a set iron pin;

thence through the 0.766 acre tract North 26°11'07" East, 92.27 feet to a set iron pin;

thence continuing through the 0.766 acre tract, North 30°47'29" East, 13.07 feet to a set mag nail;

thence through the 0.766 acre tract and the 2.521 acre tract North 25°05'34" East, 36.46 feet to the TRUE POINT OF BEGINNING.

Containing 0.947 acres of land and subject to all easements and rights-of-way of record.

All set iron pins are 5/8" x 30" with plastic cap stamped 3275, 3292, 2916, 3638 unless otherwise noted. The reference meridian is Kentucky State Plane Coordinates, North Zone (1601).

The above description was prepared from a survey made on November 3, 2006 under the direction of Chris R. Gephart, Licensed Professional Land Surveyor #3292 in the Commonwealth of Kentucky.

Prior Instrument Reference: Volume C3383, Page 255

## MAPCHECK REPORT

Wed Nov 28 09:50:59 2007

Project: 06k088-000 CPL BND.PCS

MAPCHECK REPORT for 06k088-000 CPL BND

Starting Pth/ Coordinates - North: 5000.0000', East: 5000.0000'

Ending coordinates - North: 5000.0058', East: 5000.0099'

ERROR - North: 0.0058', East: 0.0099', Total: 0.0114', Bearing: N 59°35'53" E

2	S 68°34'28" E 5.7200'	N:4997.9105'	E:5005.3247'
3	S 49°11'08" W 4.0200'	N:4995.2830'	E:5002.2823'
4	S 61°48'52" E 192.0000'	N:4904.5959'	E:5171.5154'
5	S 75°03'52" E 17.8400'	N:4899.9980'	E:5188.7527'
6	S 49°11'08" W 28.7200'	N:4881.2263'	E:5167.0165'
7	S 60°19'52" E 21.2200'	N:4870.7236'	E:5185.4546'
8	S 49°11'08" W 200.0600'	N:4739.9611'	E:5034.0431'

## Curve Parameters

=====

Direction: Left/Counter-clockwise

Radius Pt at N:4516.0000 E:4819.0100

Delta =24°57'57" Left/Counter-clockwise

Radius =310.4800

Arc Length =135.2877

Tangent Length =68.7349

Chord Length =134.2200

Chord Bearing =N 58°38'53" W

PC Tang Bearing=N 46°09'54" W

PT Tang Bearing=N 71°07'52" W

PC-&gt;RP Bearing =S 43°50'06" W

RP-&gt;PT Bearing =N 18°52'08" E

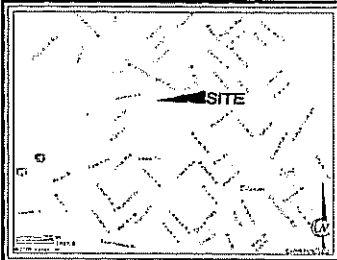
9	N 71°07'52" W 55.5100'	N:4809.7949'	E:4919.4209'
10	N 18°52'08" E 65.5000'	N:4827.7471'	E:4866.8940'
11	S 71°07'52" E 51.8500'	N:4889.7272'	E:4888.0769'
12	N 26°11'07" E 92.2700'	N:4872.9587'	E:4937.1405'
13	N 30°47'29" E 13.0700'	N:4955.7592'	E:4977.8570'
14	N 25°05'34" E 36.4600'	N:4966.9868'	E:4984.5477'
15		N:5000.0058'	E:5000.0099'

Perimeter: 919.5277'

Area: 0.9473 acres 41263.4330 sq ft

Precision: 80380.7458

Exhibit "B"



OWNER  
TRIPLE E DEVELOPMENT, LLC  
435 ERLANGER ROAD  
SUITE 201  
ERLANGER, KY 41018  
(859)342-7333

ENGINEER & SURVEYOR  
BAYER BECKER  
209 GRANDVIEW DRIVE  
FORT MITCHELL, KY 41017  
(859)261-1113

# ERLANGER CITY CENTER OFFICE CONDOMINIUM

2092  
Gr. 5327

## PHASE ONE BUILDING 'A'

CITY OF ERLANGER  
KENTON COUNTY, KENTUCKY  
NOVEMBER, 2007  
GROUP #3047, 3048, 3049

GROSS AREA = 0.947 ACRES  
R/W AREA = 0.108 ACRES  
NET AREA = 0.839 ACRES

SHEET 1 OF 2  
NOTE: THIS PLAT IS A  
2 PAGE DOCUMENT.

**DISCLAIMER CERTIFICATE**

The undersigned, being the owner of the fee simple title and lessor of the real estate herein described, consents to and joins in the submission of such final plat to the respective property records to be known as Erlanger City Center Office Condominium, Phase One, as established by KRS 261.020 to 261.110 as amended, and vacate the streets (or other parcels of land) shown hereon to public use unless otherwise designated on this plat. The undersigned further certifies that title to the property shown hereon was acquired by deed dated May 11, 2007 and recorded in Vol. 63363, Pg. 255 of the Kenton County Clerk's Records at Covington, Kentucky. The undersigned also certifies payment of all taxes and assessments that are a lien on the underlying property on the date of acceptance.

Date: 11/12/07 Owner: Triple E Development, LLC, a Kentucky limited liability company.  
By: Paul Quinn  
As: Attorney

State of Kentucky  
County of Kenton

**MONUMENTS**

- SET 5/8"x30" IRON PIN
- ▲ SET 1/2"x1/2" IRON PIN
- ▲ SET MAG-NAIL/NOTCH
- △ FOUND PK NAIL
- FOUND IRON PIN
- FOUND NOTCH

**OTHER ABERRATIONS USED ON THIS SURVEY**

- SW STORM SEWER
- SW SANITARY SEWER
- EXISTING
- FW FIRE INTERIOR
- NO CONN. STAKE
- TC TRAFFIC CONTROL SIGN

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of Nov, 2007, by Triple E Development, LLC as Grantor.

Carolyn K. Kiser  
Notary Public for the State of Kentucky  
My Comm. Expires 12-12-2007

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
By: \_\_\_\_\_  
As: \_\_\_\_\_  
State of \_\_\_\_\_  
County of \_\_\_\_\_  
The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_ as \_\_\_\_\_.  
(Signature of person taking acknowledgment)  
(Title or Rank)

**LAND SURVEYOR'S CERTIFICATE**

I, Chris R. Gephart, Licensed Professional Land Surveyor #1221 in the Commonwealth of Kentucky, do hereby certify to the best of my knowledge and belief that the survey of the property on the attached plat was made under my direction on November 3, 2008 (Owner's) and August 21, 2007 (Unit Monuments) in accordance with the Code of Professional Practice and General Rules for Professional Engineers and Professional Surveyors. Monuments were found or set by either method of random traverse with unadjusted tapes strip of course of 181.000. The traverse and sidewalk have been adjusted. The survey and the property on which it is based meet the requirements of a Class A survey in the State of Kentucky. The reference meridian is based on Kentucky State Plane Coordinate North Zone 1 (NAD83).

Date: \_\_\_\_\_  
Chris R. Gephart  
Licensed Professional  
Land Surveyor #1221

**PLANNING COMMISSION APPROVAL CERTIFICATE**

Approved by the Kenton County and Municipal Planning and Zoning Commissions, Kenton County, Kentucky, this 12<sup>th</sup> day of November, 2007.

**CLERK AND RECORDERS CERTIFICATE**

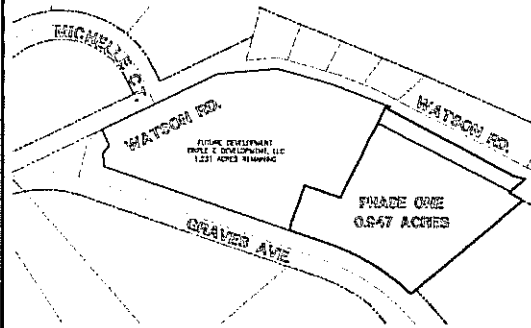
I, Rodney E. Hodge, Clerk of Kenton County, do hereby certify that this plat was filed and recorded in the office of the Clerk of the County of Kenton, Kentucky, on this 12<sup>th</sup> day of November, 2007.

Rodney E. Hodge  
Kenton County Clerk



www.bayerbecker.com  
209 Grandview Drive  
Fort Mitchell, KY 41017 • 859.261.1113  
06/06-000-001

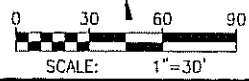
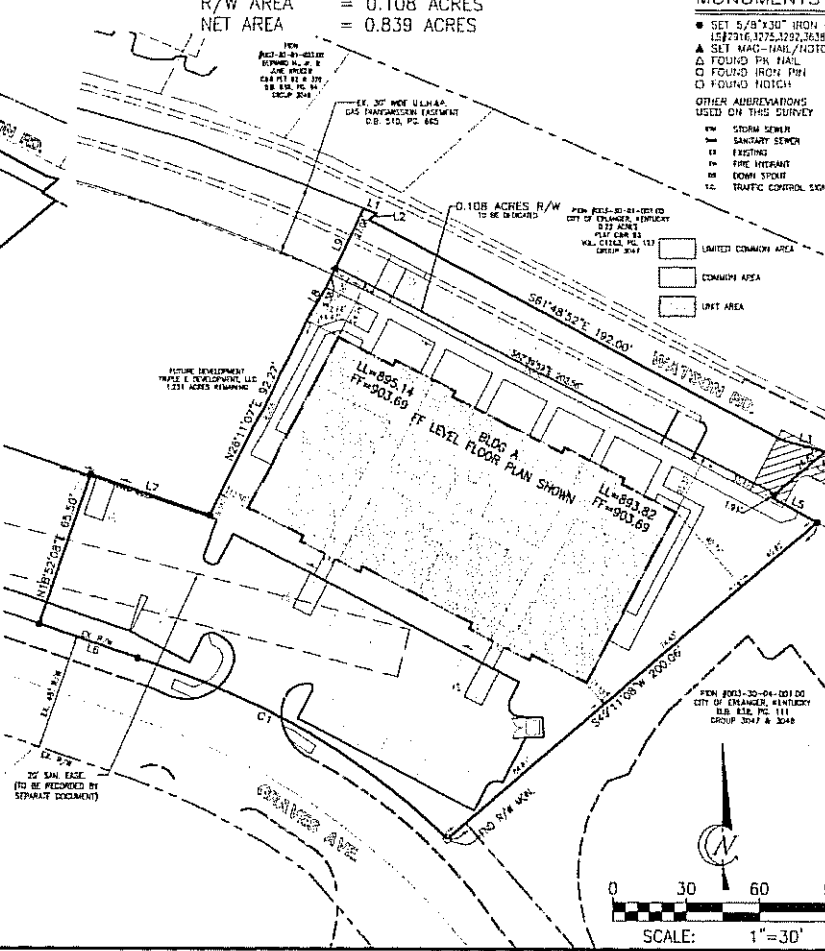
VICINITY MAP - NTS



INDEX MAP  
SCALE: 1"=100'

NUMBER	DIRECTION	DISTANCE
L1	S68°34'28"E	5.72'
L2	S49°11'08"W	4.07'
L3	S75°03'52"E	17.84'
L4	S49°11'08"W	28.72'
L5	S68°19'52"E	21.22'
L6	N71°07'52"W	55.51'
L7	S71°07'52"E	51.85'
L8	N39°47'29"E	13.07'
L9	N25°05'34"E	38.46'

NUMBER	RADIUS	ARC	CHORD DIRECTION	CHORD LENGTH	TANGENT	DELTA
C1	316.48'	135.29'	N58°30'53"W	134.22'	68.73'	24°57'57"



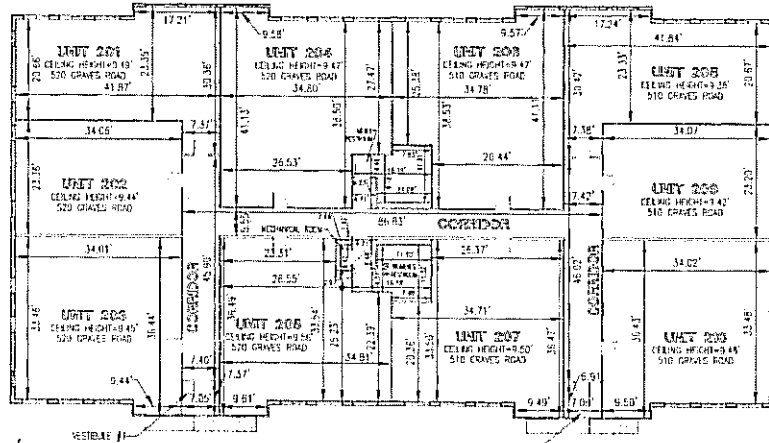
DATE PLOTTED: 11/12/07 11:48 AM



07 NOV 20 AM 0:27

KENTON COUNTY, KENTUCKY

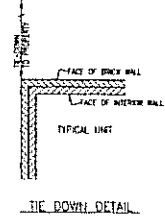
2092A



**FIRST FLOOR**  
(ACCESSIBLE FROM GRAVES ROAD)

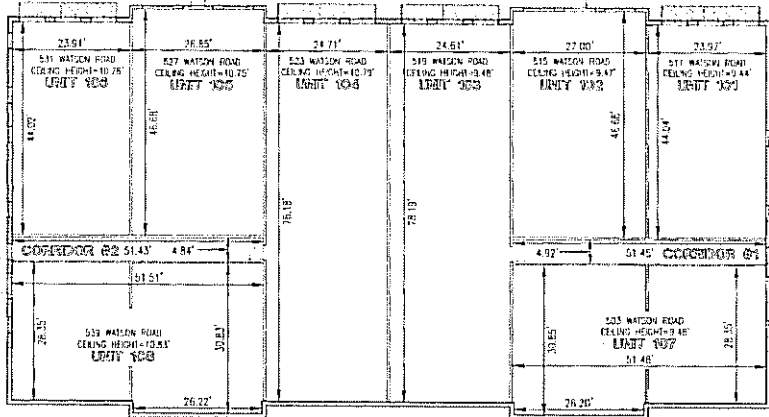
NOTE: ALL MEASUREMENTS ARE TO THE FINISHED SURFACES OF THE UNIT'S PERIMETER WALLS, FLOOR, AND CEILING.

- COMMON AREA
- LIMITED COMMON AREA
- UNIT AREA



**BUILDING INFORMATION**  
PHASE 1

ADDRESS	UNIT #	UNIT AREA	FLOOR ELEVATION	CEILING ELEVATION
516 WATSON ROAD	101	1224.53 FT <sup>2</sup>	805.14	804.28
515 WATSON ROAD	102	1709.33 FT <sup>2</sup>	805.14	804.81
518 WATSON ROAD	103	1824.53 FT <sup>2</sup>	805.14	804.82
513 WATSON ROAD	104	1822.52 FT <sup>2</sup>	803.02	804.81
527 WATSON ROAD	105	1221.52 FT <sup>2</sup>	803.02	804.82
521 WATSON ROAD	106	1203.52 FT <sup>2</sup>	803.02	804.80
523 WATSON ROAD	107	1425.52 FT <sup>2</sup>	805.14	804.82
514 WATSON ROAD	108	1323.52 FT <sup>2</sup>	803.02	804.80
520 GRAVES ROAD	201	943.02 FT <sup>2</sup>	806.19	816.16
522 GRAVES ROAD	202	794.52 FT <sup>2</sup>	806.19	816.12
525 GRAVES ROAD	204	1134.52 FT <sup>2</sup>	806.19	816.14
522 GRAVES ROAD	204	1274.52 FT <sup>2</sup>	806.19	816.14
520 GRAVES ROAD	205	1077.52 FT <sup>2</sup>	806.19	816.25
512 GRAVES ROAD	206	1023.52 FT <sup>2</sup>	806.19	816.18
512 GRAVES ROAD	207	1071.52 FT <sup>2</sup>	806.19	816.15
513 GRAVES ROAD	208	883.02 FT <sup>2</sup>	806.19	816.21
513 GRAVES ROAD	209	782.12 FT <sup>2</sup>	806.19	816.11
513 GRAVES ROAD	210	1142.52 FT <sup>2</sup>	806.19	816.17



**LOWER LEVEL**  
(ACCESSIBLE FROM WATSON ROAD)

**SOUTH ELEVATION**  
(VIEW FROM GRAVES ROAD)

**NORTH ELEVATION**  
(VIEW FROM WATSON ROAD)

**ERLANGER CITY CENTER  
OFFICE CONDOMINIUM  
PHASE ONE  
PHASE ONE  
BUILDING 'A'**  
CITY OF ERLANGER  
KENTON COUNTY, KENTUCKY  
NOVEMBER, 2007



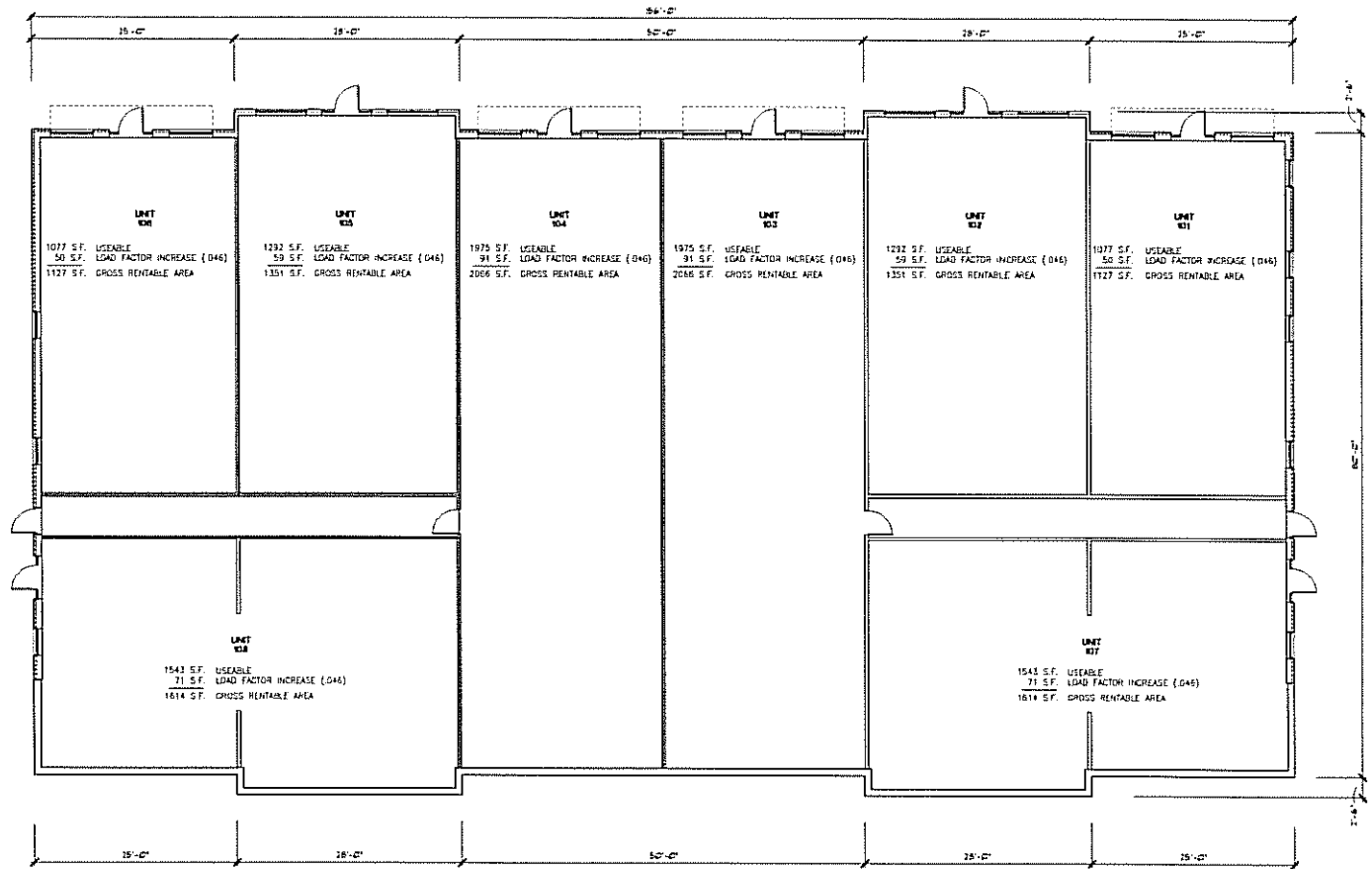
SHEET 2 OF 2  
NOTE: THIS PLAN IS A 2 PAGE DOCUMENT.

SEE SHEET 1 OF 2 FOR APPROVAL CERTIFICATES

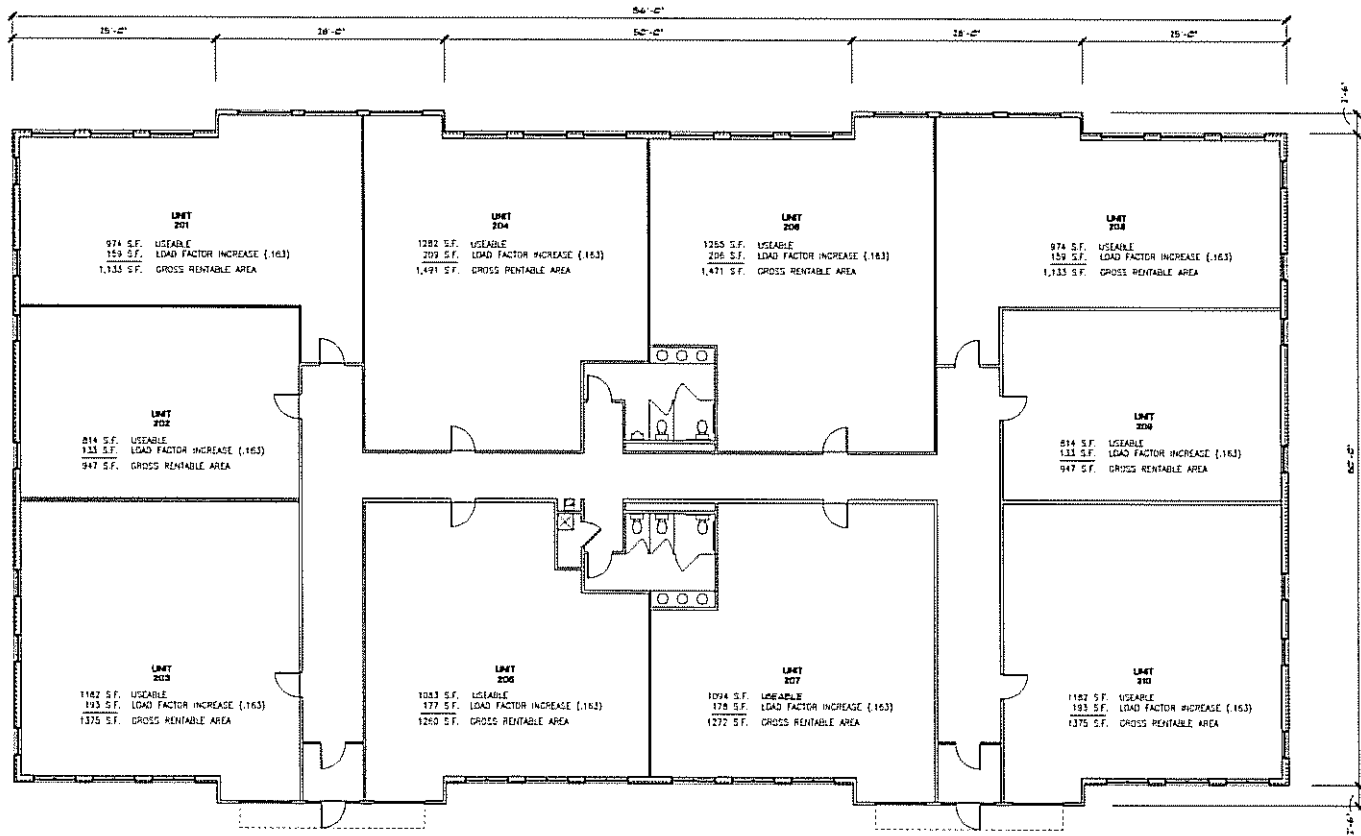
I CERTIFY THAT THESE DRAWINGS OF THE ERLANGER CITY CENTER OFFICE CONDOMINIUM, PHASE ONE, FULLY AND ACCURATELY REFLECT THE LANDS, LOCATIONS, UNIT NUMBERS AND THE DIMENSIONS OF THE UNITS AS SHOWN.  
*J. F. Byer* 11/15/07  
Jay F. Byer, P.E. #15072

www.bayerbecker.com  
209 Grandview Drive  
Fort Mitchell, KY 41017 - 259.261.1113

Exhibit "B" continued



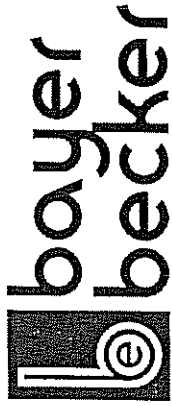
FIRST FLOOR PLAN  
V4' - 1'-0"



**SECOND FLOOR PLAN**  
1/8" = 1'-0"

**EXHIBIT "C"**  
**CONDOMINIUM DATA SHEET**

UNIT NUMBER	UNIT ADDRESS	SQUARE FOOTAGE	% INTEREST IN COMMON AREAS	VOTES
101	531 Watson Rd	1127	4.56%	1
102	527 Watson Rd	1351	5.47%	1
103	523 Watson Rd	2066	8.36%	1
104	519 Watson Rd	2066	8.36%	1
105	515 Watson Rd	1351	5.47%	1
106	511 Watson Rd	1127	4.56%	1
107	539 Watson Rd	1614	6.53%	1
108	503 Watson Rd	1614	6.53%	1
201	520 Graves Rd Ste 201	1133	4.58%	1
202	520 Graves Rd Ste 202	947	3.83%	1
203	520 Graves Rd Ste 203	1375	5.56%	1
204	520 Graves Rd Ste 204	1491	6.03%	1
205	520 Graves Rd Ste 205	1260	5.10%	1
206	510 Graves Rd Ste 206	1471	5.95%	1
207	510 Graves Rd Ste 207	1272	5.15%	1
208	510 Graves Rd Ste 208	1133	4.58%	1
209	510 Graves Rd Ste 209	947	3.83%	1
210	510 Graves Rd Ste 210	1375	5.56%	1
<b>TOTAL</b>		<b>24720</b>	<b>100%</b>	



209 Grandview Drive  
 Fort Mitchell, KY 41017  
 P 859.261.1113  
 F 859.261.1710  
 www.bayerbecker.com

**DESCRIPTION:**

1.238 Acres  
 Erlanger City Center Office Condominiums  
 Phase One Remainder Area

**LOCATION:**

Graves Avenue and Watson Road  
 Erlanger Kentucky

**DATE:**

November 28, 2007

Situated in the City of Erlanger, County of Kenton, Commonwealth of Kentucky, being part of a 0.766 acre tract and part of a 2.521 acre tract conveyed to Triple E Development, LLC in Volume C3383, Page 255 of the Kenton County Clerk's Records at Covington and more particularly described as follows:

Begin at the centerline Intersection of Watson Road and Graves Avenue as shown on Transportation Cabinet plans for Graves Road (project SSP 59-236) dated 1979, sheet 11 of 52, thence with the centerline of Graves Avenue, along a curve to the right having a radius of 190.99 feet, an arc length of 16.67 feet, a chord bearing South 73°37'57" East, and a chord length of 16.66 feet; thence South 71°07'52" East, 12.33 feet; thence leaving the centerline at right angles, North 18°52'08" East, 24.00 feet to a set iron pin on the existing North right-of-way line of Graves Road and the TRUE POINT OF BEGINNING:

thence from the True Point of Beginning and with the existing right-of-way line of Graves Road (D.B. 849, Pg. 160) North 07°41'46" West, 17.89 feet;

thence North 38°01'25" East, 14.69 feet to a set iron pin;

thence North 26°00'04" West, 24.00 feet to a set mag nail in the centerline of Watson Road, the same being the North line of the 2.521 acre tract;

thence with the centerline of Watson Road, North 63°59'56" East, 177.01 feet;

thence continuing with the centerline of Watson Road, North 84°47'32" East, 81.71 feet;

thence South 74°18'58" East, 79.67 feet;

thence South 68°34'28" East, 77.85 feet;

thence leaving said centerline and through the 2.521 acre tract and the 0.766 acre tract, South 25°05'34" West, 36.46 feet to a set mag nail;

thence through the 0.766 acre tract, South 30°47'29" West, 13.07 feet;

thence continuing through the 0.766 acre tract South 26°11'07" West, 92.27 feet to a set iron pin;

thence through the 0.766 acre tract and the 2.521 acre tract North 71°07'52" West, 51.85 feet to a set iron pin;

thence continuing through the 2.521 acre tract South 18°52'08" West, 65.50 feet to a set iron pin on the existing North right-of-way line of Graves Road;

**CIVIL & TRANSPORTATION ENGINEERING**

**LANDSCAPE ARCHITECTURE**

**PLANNING**

**SURVEYING**

thence with the existing North right-of-way line of Graves Avenue, North 71°07'52" West, 267.02 feet to the TRUE POINT OF BEGINNING.

Containing 1.238 acres of land and subject to all easements and rights-of-way of record.

All set iron pins are 5/8" x 30" with plastic cap stamped 3275, 3292, 2916, 3638 unless otherwise noted. The reference meridian is Kentucky State Plane Coordinates, North Zone (1601).

The above description was prepared from a survey made on November 3, 2006 under the direction of Chris R. Gephart, Licensed Professional Land Surveyor #3292 in the Commonwealth of Kentucky.

Prior Instrument Reference: Volume C3383, Page 255

## MAPCHECK REPORT

Wed Nov 28 10:36:33 2007

Project: 06k088-000 CPI remainder.PCS

MAPCHECK REPORT for 06k088.000

Starting Pt#1 Coordinates - North: 5000.0000', East: 5000.0000'

Ending coordinates - North: 5000.0090', East: 4999.9856'

ERROR - North: 0.0090', East: 0.0144', Total: 0.0170', Bearing: N 57°53'36" W  
N 07°41'46" W 17.8900'

2	N 38°01'25" E	14.6900'	N:5017.7289'	E:4997.6042'
3	N 26°00'04" W	24.0000'	N:5029.3010'	E:5006.6530'
4	N 63°59'56" E	177.0100'	N:5050.8719'	E:4996.1317'
5	N 84°47'32" E	81.7100'	N:5128.4710'	E:5155.2257'
6	S 74°18'58" E	79.6700'	N:5135.8877'	E:5236.5984'
7	S 68°34'28" E	77.8500'	N:5114.3505'	E:5313.3021'
8	S 25°05'34" W	36.4600'	N:5085.9125'	E:5385.7722'
9	S 30°47'29" W	13.0700'	N:5052.8935'	E:5370.3100'
10	S 26°11'07" W	92.2700'	N:5041.6659'	E:5363.6193'
11	N 71°07'52" W	51.8500'	N:4958.8654'	E:5322.9028'
12	S 18°52'08" W	65.5000'	N:4975.6339'	E:5273.8392'
13	N 71°07'52" W	267.0200'	N:4913.6538'	E:5252.6563'
17	N 5000.0090'		N:5000.0090'	E:4999.9856'

Perimeter: 998.9900'

Area: 1.2381 acres 53932.0153 sq ft

Precision: 58835.8506

Exhibit "D" continued  
BOOK PAGE 54

DEED

CLERK'S OFFICE  
SHORT FORM  
★ DEED

Know All Men By These Presents:

That Margaret Kohorst, an unmarried widow to whom paid by the  
for and in consideration of One (\$1.00) Dollar love and affection  
grantees herein, the receipt of which is acknowledged, do bargain, sell, and convey to:  
Bernard H. Kroger, Jr. and June Kroger, husband and wife, for their  
joint and natural lives with the remainder in fee simple, to the survivor  
of them, his or her

heirs and assigns forever, the following described Real Estate, in the City of Erlanger  
County of Kenton and Commonwealth of Kentucky, to-wit:  
Present Street Address 520 WATSON RD ERLANGER, KY C&R Plat No. 92 & 326  
Group No. 9049  
Mailing Address

Lying on the southwesterly side of Donaldson Highway and beginning at a  
point in the center line of Watson Road, said point being a corner of the Lewis  
property; thence north 65-24 west 115 feet to a point in the same center line; thence  
south 84-18-29 West 40.06 feet to a point in the same center line of an iron pipe in  
Road; thence north 21-05 east 79.51 feet to a point marked by an iron pipe in  
the southwesterly right-of-way line of the Donaldson Highway; thence south  
66-37 east 183.1 feet along said right-of-way line to a point in same; thence  
south 49 west 69.23 feet to the point and place of beginning.

Subject to all easements of record.

The Grantor, Margaret Kohorst, is the mother of the Grantee, June Kroger.  
Being the same property conveyed to Frank Kohorst and Margaret Kohorst,  
husband and wife, by deed recorded in Deed Book 196, page 8 at the office of  
the Kenton County Clerk in Covington, Kentucky.

Frank Kohorst died on August 25, 1944, and by the terms of his Last Will and  
Testament recorded in Order Book 60, page 404, at the office of the Kenton  
County Clerk in Covington, Kentucky, devised this real estate to his widow,  
Margaret Kohorst, the Grantor herein.

This deed is executed for the purpose of correcting the description in the deed  
heretofore executed between the Grantor and Grantees herein and recorded in  
Deed Book 592, page 499 at the office of the Kenton County Clerk in Covington,  
Kentucky.

Together with all the PRIVILEGES AND APPURTENANCES to the same belonging.  
TO HAVE AND TO HOLD the same to the said Bernard H. Kroger and June Kroger,  
husband and wife, for their joint natural lives with the remainder in fee simple  
to the survivor of them, his or her

Property Transfer Tax  
T. WOOD, Clerk  
\$15.00  
\$15.00

heirs and assigns, forever, the Grantor, her  
COVENANTING with the Grantee s, their  
CLEAR, FREE AND UNINCUMBERED, and that  
same against all legal claims whatsoever.

heirs, executors and administrators, HEREBY  
heirs and assigns, that the TITLE so conveyed is  
will WARRANT AND DEFEND the



CLERK'S OFFICE

FORM DEED

667 2-77

SAH H. TROUBERGH and ALMA F. TROUBERMAN, his wife; and ALAN S. HOLTZWORTH and THAT MARJORIE H. HOLTZWORTH, his wife,

for and in consideration of FIVE THOUSAND FOUR HUNDRED (\$5,400.00) DOLLARS to them paid by the grantees herein, the receipt of which is acknowledged, do bargain, sell, and convey to: THE KENTON-BOONE BOARD OF REALTORS, INC., a Kentucky Corporation, its

successors heirs and assigns forever, the following described Real Estate, in the City of Erlanger, County of Kenton and Commonwealth of Kentucky, to-wit: Group No. 3543 Present Street Address \_\_\_\_\_ Plat No. 611

Mailing Address 520 Watson Rd, Erlanger, Ky

Being all of Lot Number One (1) of the Kohorst Subdivision, as the same is shown on the plat of said subdivision recorded as Original Plat No. 611 of the records in the Kenton County Court Clerk's Office at Covington, Kentucky, said lot fronts 72 feet on the south-westerly side of Donaldson Highway and runs back to Watson Road and having a frontage of 54 feet on Watson Road, and being 175 feet deep on its northwesterly side and 155.75 feet deep on its southeasterly side.

THERE IS EXCEPTED from the above-described property that parcel conveyed in Deed Book 471 at page 221.

Being the same property conveyed to Sam H. Trouberman and Alma F. Trouberman, his wife; and Alan S. Holtzworth and Marjorie H. Holtzworth, his wife, by deed from Mrs. Margaret Kohorst, a single person, dated June 30, 1956, and recorded in Deed Book 446, Page 38, of the Kenton County Clerk's Records at Covington, Kentucky. Said deed omitted the date of death of Frank Kohorst. Frank Kohorst died August 25, 1944. (see deed book 416, Page 238)

Property Transfer Tax Paid \$ 550  
A. T. WOOD, Clerk

Together with all the PRIVILEGES AND APPURTENANCES to the same belonging. TO HAVE AND TO HOLD the same to the said

THE KENTON-BOONE BOARD OF REALTORS, INC., a Kentucky Corporation, its

successors heirs, executors and administrators, HEREBY COVENANTING with the grantee, its heirs and assigns, that the TITLE so conveyed is CLEAR, FREE AND UNINCUMBERED, and that they will WARRANT AND DEFEND the same against all legal claims whatsoever, except taxes and assessments due and payable in the year 1984 and thereafter which the Grantee herein assumes and agrees to pay.

COMMONWEALTH OF KENTUCKY  
TREY GRAYSON  
SECRETARY OF STATE



0679808.09 darmstrong  
NAOI

Trey Grayson  
Secretary of State  
Received and Filled  
11/29/2007 1:42:17 PM  
Fee Receipt: \$8.00

ARTICLES OF INCORPORATION  
Nonprofit Corporation

For the purposes of forming a nonprofit corporation in Kentucky Pursuant to KRS Chapter KRS 273, the undersigned incorporator(s) hereby submit(s) the following Articles of Incorporation to the Secretary of State for filing:

Article I: The name of the corporation is  
Erlanger City Center Council of Co-Owners, Inc.

Article II: The purpose for which the corporation is organized is maintenance, preservation and control of the condominium and the buildings and improvements situated thereon.

Article III: The street address of the corporation's initial registered office in Kentucky is

495 Erlanger Road  
Street 495 Erlanger City KY 41018  
Zip Code

and the name of the initial registered agent at that office is Phillip Drees

Article IV: The mailing address of the corporation's principal office is  
495 Erlanger Road

Street or PO Box Number 495 Erlanger City KY 41018  
Zip Code

Article V: The number of directors constituting the initial board of directors is 3. The names and mailing addresses of the persons who are to serve as the initial board of directors are as follows:

Phillip Drees 495 Erlanger Road Erlanger KY 41018  
Street or PO Box Number City State Zip Code

Adam Chaney 495 Erlanger Road Erlanger KY 41018  
Street or PO Box Number City State Zip Code

KEVIN BRINKMAN 1286 Brightleaf Blvd Erlanger KY 41018  
Street or PO Box Number City State Zip Code

Article VI: The name and mailing address of each incorporator is  
Phillip Drees 495 Erlanger Road

Name Street or PO Box Number City State Zip Code

Name Street or PO Box Number City State Zip Code

Name Street or PO Box Number City State Zip Code

Executed by the incorporator(s) on November 13, 2007  
Date

Phillip Drees  
Signature of Incorporator

Signature of Incorporator

Phillip Drees

Type or print name of registered agent

, consent to serve as the registered agent on behalf of the corporation.

Phillip Drees  
Signature of Registered Agent

Phillip Drees

Type or Print Name & Title

This form does not comply with the 501 (C) status. You should contact the Internal Revenue Service prior to filing the Articles of Incorporation.

**BY-LAWS**  
**OF**  
**ERLANGER CITY CENTER COUNCIL OF CO-OWNERS, INC.**

**ARTICLE I**  
**NAME AND LOCATION**

Section 1.01. The name of the corporation is Erlanger City Center Council of Co-Owners, Inc., a Kentucky nonprofit corporation, hereinafter sometimes referred to as the "Council". The principal office of the corporation shall be located at 495 Erlanger Road, Erlanger, Kentucky 41018, but meetings of Members and Directors may be held at such places within the State of Kentucky as may be designated by the Board of Directors.

**ARTICLE II**

**DECLARATION AND DEFINITIONS**

Section 2.01. "Declaration" shall mean and refer to the "Master Deed, Declaration of Property to the Horizontal Property Regime" applicable to the Property recorded in the office of the Kenton County Clerk.

Section 2.02. As used in these By-Laws, the terms "Articles of Incorporation", "Board" or "Board of Directors", "Common Elements", "Common Expenses", "Condominium Project" or "Project", "Council", "Developer", "Drawings", "Limited Common Elements" or "Limited Common Elements", "Owner" or "Unit Owner", "Property" or "Condominium Property", "Member" and "Unit" shall have the same meaning as each is defined to have in the Declaration.

**ARTICLE III**

**MEETING OF MEMBERS**

Section 3.01. Annual Meetings. The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Council, and each subsequent regular annual meeting of the Members shall be held during the third quarter of the year at a time and place designated by the Board of Directors.

Section 3.02. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of the votes of the membership.

Section 3.03. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least twenty (20) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Council, or supplied by such Member to the Council for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 3.04. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one-fifth (1/5) of the votes of the membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meetings, until a quorum as aforesaid shall be present or be represented.

Section 3.05. Adjourned Meetings. If, at any regular or special meeting of the Members of the Council, there be less than a quorum present, a majority of those Members present and entitled to vote may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called, at which time the quorum requirement shall be one-tenth (1/10) of the votes of the membership of the Council and any business which might lawfully have been transacted at the meeting as originally called may be transacted without further notice.

Section 3.06. Proxies. At all meetings of Members each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Unit.

Section 3.07. Voting. The vote of the majority of those present, either in person or by proxy, shall decide any question brought before the meeting, unless the question is one upon which a different vote is required by provision of the laws of the Commonwealth of Kentucky, the Declaration, the Articles of Incorporation of the Council or these By-Laws.

Section 3.08. Suspension of Voting Privileges. No Member shall be eligible to vote or to be elected to the Board of Directors who is shown on the books of the Council to be more than thirty (30) days delinquent in the payment of any assessment due the Council.

#### **ARTICLE IV**

#### **BOARD OF DIRECTORS - SELECTION - TERM OF OFFICE**

Section 4.01. Number. The affairs of this corporation shall be managed by a Board of three (3) Directors.

Section 4.02. Term of Office. At the second annual meeting, the Members shall elect one (1) Director for a term of one (1) year, one (1) Director for a term of two (2) years and one (1) Director for a term of three (3) years. At each annual meeting thereafter, the Members shall elect Directors for a term of three (3) years.

Section 4.03. Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Council. In the event of death, resignation or removal of a Director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4.04. Compensation. No Director shall receive compensation for any service he may render to the Council. However, any Director may be reimbursed for his actual out-of-pocket expenses incurred in the performance of his duties.

Section 4.05. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

## ARTICLE V

### NOMINATION AND ELECTION OF DIRECTORS

Section 5.01. Nomination. Nomination for election to the Board of Directors may be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Council. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-members.

Section 5.02. Election. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

**ARTICLE VI**  
**MEETINGS OF DIRECTORS**

Section 6.01. Regular Meetings. The Board of Directors shall meet annually within ten (10) days after the annual meeting of Members and in addition to the annual meeting shall meet at regular meetings established as to time and place by resolution of the Board.

Section 6.02. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Council, or by any two (2) Directors, after not less than three (3) days notice to each Director.

Section 6.03. Waiver of Notice. Any requirement of notice to a Director provided under this Article VI may be waived by the Director entitled thereto by written waiver of such notice signed by the Director and filed with the secretary of the Council.

Section 6.04. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

**ARTICLE VII**  
**POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Section 7.01. Powers. The Board of Directors shall have power to:

- (a) adopt and publish rules and regulations governing the use of the Common Elements, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;
- (b) suspend the voting rights and right to use of the recreational facilities, if any, of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Council. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;
- (c) exercise for the Council all powers, duties and authority vested in or delegated to the Council and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;
- (d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

- (e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 7.02. Duties. It shall be the duty of the Board of Directors to:

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is required in writing by one-fourth (1/4) of the Members who are entitled to vote;
- (b) supervise all officers, agents and employees of this Council, and to see that their duties are properly performed;
- (c) as more fully provided in the Declaration, to:
  - 1. fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period;
  - 2. send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and
  - 3. foreclose the lien against any property for which assessments are not paid within thirty (30) days after the due date or to bring an action at law against the Owner personally obligated to pay the same, when, in the sole determination of the Board, foreclosure or an action at law is necessary to collect such assessments and otherwise protect the interest of the Council;
- (d) issue or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (e) procure and maintain adequate liability and hazard insurance on property owned by the Council;
- (f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- (g) cause the Common Elements to be maintained;
- (h) cause the exteriors of buildings to be maintained and such structures to be covered by insurance, all as set out and in accordance with the terms of the Declaration;

- (i) otherwise perform duties imposed by the Declaration.

## ARTICLE VIII

### OFFICERS AND THEIR DUTIES

Section 8.01 Enumeration of Officers. The officers of this Council shall be a president and vice-president who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 8.02 Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 8.03 Term. The officers of this Council shall be elected annually by the Board and each shall hold office for three (3) years unless such officer shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 8.04 Special Appointments. The Board may elect such other officers as the affairs of the Council may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 8.05 Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.06 Vacancies. A vacancy in any office may be filled by appointment of the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer being replaced.

Section 8.07 Multiple Offices. No person shall simultaneously hold more than one (1) office except in the case of special offices created pursuant to Section 8.04. Notwithstanding the foregoing, the offices of secretary and treasurer may be held by the same person.

Section 8.08 Duties. The duties of the officers are as follows:

#### President

- (a) The president shall preside at all meetings of the Board of Directors and shall see that orders and resolutions of the Board are carried out.



Vice-President

(b) The vice-president shall act in the place of the president in the event of such officer's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

Secretary

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Council and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Council together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Council and shall disburse such funds as directed by resolution of the Board of Directors; keep proper books of account; cause an annual audit of the Council books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members.

**ARTICLE IX**

**COMMITTEES**

Section 9.01. The Board of Directors may appoint a Finance and Budget Committee consisting of not more than five (5) persons.

The Board of Directors may also appoint an Architectural and Maintenance Committee, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

**ARTICLE X**

**INDEMNIFICATION AND LITIGATION PROVISIONS**

Section 10.01. In addition to any other right or remedy to which the persons hereinafter described may be entitled, under the Articles of Incorporation, By-Laws, Declaration, any other Agreement, or by vote of the Members or otherwise, the Council shall, and by these presents does, to the fullest extent permitted by law, indemnify any Director or officer of the Council or former Director or officer of the Council who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative

or investigative by reason of the fact that he is or was a Director or officer of the Council against expenses (including reasonable attorneys fees) judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding provided (a) he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Council, and (b) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Council, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

10.02. Litigation. Notwithstanding any other provision of the By-Laws, the Declaration or the Articles, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Unit Owners. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Declaration (including, without limitation, the enforcement of the restrictive covenants or the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article XI of the Declaration, (c) proceedings involving challenges to ad valorem taxation, or (d) counter claims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made pursuant to the procedures set forth in Section 14.12 of the Declaration.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Books and Records. The books, records and papers of the Council shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the By-Laws of the Council shall be available for inspection by any Member at the principal office of the Council, where copies may be purchased at a reasonable cost.

Section 11.02. Fiscal Year. The fiscal year shall begin on the first day of January of every year, except that the first fiscal year of the Council shall begin at the date of incorporation. The commencement date of the fiscal year herein established shall be subject to change by the Board of Directors should corporate practice subsequently dictate.

Section 11.03. Execution of Council Documents. With the prior authorization of the Board of Directors, all notes, contracts and other documents shall be executed on behalf of the Council by either the president or the vice-president, and all checks and other drafts shall be executed on behalf of the Council by such officers, agents or other persons as are from time to time by the Board of Directors authorized so to do.

Section 11.04. Conflict. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of conflict between the Declaration and these By-Laws, the Declaration shall control.

Section 11.05. Amendments. These By-Laws may be amended at a regular or special meeting of the Members, at which a quorum is present, by affirmative vote of not less than seventy-five percent (75%) of the total number of votes held by the Members present in person or by proxy.

FIRST SUPPLEMENT  
TO MASTER DEED DECLARATION OF PROPERTY TO THE HORIZONTAL PROPERTY  
REGIME FOR ERLANGER CITY CENTER COUNCIL OF CO-OWNERS, INC.

This First Supplement to Master Deed Declaration of Property to the Horizontal Property Regime for Erlanger City Center Council of Co-Owners, Inc. ("FIRST SUPPLEMENT") is made and entered into on this 7<sup>th</sup> day of JANUARY, 2008 by the undersigned under the following circumstances:

WHEREAS, on December 18, 2007, Triple E Development, LLC, a Kentucky Limited Liability Company (the "DECLARANT"), as the developer of the Subdivision, executed the Master Deed of Property to the Horizontal Property Regime for Erlanger City Center Council of Co-Owners, Inc. (the "DECLARATION") which Declaration was filed on December 19, 2007 in Book C3588, Page 078 of the Kenton County Clerk's Records, at Covington, Kentucky; and

WHEREAS, the undersigned in accordance with Section 14.12 of the Declaration, as persons or entities enabled to exercise seventy-five percent (75%) of the voting power of both classes of the Association, desire to amend the Declaration;

NOW THEREFORE, the undersigned hereby amend the Declaration as follows:

1. Exhibit "C" of the Declaration is hereby amended to correct the property address designation of the Units.
2. Except as modified by this First Supplement, no changes or revisions are affected in the Declaration as amended; and the Declaration as amended, is hereby reaffirmed by the Incorporation herein by reference of each and every page of the original Declaration.

Recorded	RODNEY ELDRIDGE
COVINGTON	KENTON COUNTY CLERK
Doc type:	SUPPLEMENT TO DECLARATI
Book/page:	C-3605/ 72 7 pg
Doc#:	00 01 10 059 00012
Dt/tm Recorded:	01/10/2008 09:06:41am
Total fees:	93.00 Tax: 0.00
Clerk name:	BONNIE L LOVE





✓ C3588 Pg 123

209 Grandview Drive  
 Fort Mitchell, KY 41017  
 P 859.261.1113  
 F 859.261.1710  
 www.bayerbecker.com

DESCRIPTION:

0.947 Acres  
 Erlanger City Center Office Condominiums  
 Phase One

LOCATION:

Graves Avenue and Watson Road  
 Erlanger Kentucky

DATE:

November 28, 2007

Situated in the City of Erlanger, County of Kenton, Commonwealth of Kentucky, being part of a 0.766 acre tract, part of a 2.521 acre tract, all of a 0.086 acre tract, and all of a 0.080 acre tract conveyed to the Triple E Development, LLC in Volume C3383, Page 255 of the Kenton County Clerk's Records at Covington and more particularly described as follows:

Begin at the centerline Intersection of Watson Road and Graves Avenue as shown on Transportation Cabinet plans for Graves Road (project SSP 59-236) dated 1979, sheet 11 of 52, thence with the centerline of Graves Avenue, along a curve to the right having a radius of 190.99 feet, an arc length of 16.67 feet, a chord bearing South 73°37'57" East, and a chord length of 16.66 feet; thence South 71°07'52" East, 12.33 feet; thence leaving the centerline at right angles, North 18°52'08" East, 24.00 feet to the existing North right-of-way line of Graves Road; thence with the existing North right-of-way line of Graves Road (D.B. 849, Pg. 160) North 07°41'46" West, 17.89 feet; thence North 38°01'25" East, 14.69 feet; thence North 26°00'04" West, 24.00 feet to the centerline of Watson Road, the same being the North line of the 2.521 acre tract; thence with the centerline of Watson Road, North 63°59'56" East, 177.01 feet; thence continuing with the centerline of Watson Road, North 84°47'32" East, 81.71 feet; thence South 74°18'58" East, 79.67 feet; thence South 68°34'28" East, 77.85 feet to the TRUE POINT OF BEGINNING;

thence from the TRUE POINT OF BEGINNING, continuing with the centerline of Watson Road and the North line of the 2.521 acre tract, South 68°34'28" East, 5.72 feet;

thence leaving said centerline and with the Southeast line of the 2.521 acre tract, South 49°11'08" West, 4.02 feet;

thence with said Watson Road and the North line of the 0.766 acre tract, South 61°48'52" East, 192.00 feet;

thence South 75°03'52" East, 17.84 feet;

thence with the Southeast line of the 0.766 acre tract, South 49°11'08" West, 28.72 feet to a set mag nail on the existing South right-of-way line of Watson Road;

thence with the existing South right-of-way line of Watson Road, South 60°19'52" East, 21.22 feet to a set iron pin at the Northwest line of a tract conveyed to the City of Erlanger, Kentucky in Deed Book 838, Page 111;

thence leaving the South right-of-way line of Watson Road and with the Northwest line of the City of Erlanger, Kentucky tract, the same being the Southeast line of the above mentioned 0.086 acre tract, South 49°11'08" West, 200.06 feet to a found right-of-way monument on the existing Northeast right-of-way line of Graves Road and the existing Southeast corner of the above mentioned 0.086 acre tract;

thence with the existing North right-of-way line of Graves Road along a curve to the left having a radius of 310.48 feet, an arc length of 135.29 feet, a chord bearing North 58°38'53" West, and a chord length of 134.22 feet to a set iron pin;

thence continuing with the North right-of-way line of Graves Road, North 71°07'52" West, 55.51 feet to a set iron pin;

thence leaving the existing North right-of-way line of Graves Road and through the 2.521 acre tract, North 18°52'08" East, 65.50 feet to a set iron pin;

thence continuing through the 2.521 acre tract and also the 0.766 acre tract South 71°07'52" East, 51.85 feet to a set iron pin;

thence through the 0.766 acre tract North 26°11'07" East, 92.27 feet to a set iron pin;

thence continuing through the 0.766 acre tract, North 30°47'29" East, 13.07 feet to a set mag nail;

thence through the 0.766 acre tract and the 2.521 acre tract North 25°05'34" East, 36.46 feet to the TRUE POINT OF BEGINNING.

Containing 0.947 acres of land and subject to all easements and rights-of-way of record.

All set iron pins are 5/8" x 30" with plastic cap stamped 3275, 3292, 2916, 3638 unless otherwise noted. The reference meridian is Kentucky State Plane Coordinates, North Zone (1601).

The above description was prepared from a survey made on November 3, 2006 under the direction of Chris R. Gephart, Licensed Professional Land Surveyor #3292 in the Commonwealth of Kentucky.

Prior Instrument Reference: Volume C3383, Page 255

MAPCHECK REPORT

Wed Nov 28 09:50:59 2007

Project: 06k088-000 CPI BND.PCS

MAPCHECK REPORT for 06k088-000 CPI BND

Starting Pt#1 Coordinates - North: 5000.0000', East: 5000.0000'

Ending coordinates - North: 5000.0058', East: 5000.0099'

ERROR - North: 0.0058', East: 0.0099', Total: 0.0114', Bearing: N 59°35'53" E

	S 68°34'28" E 5.7200'	N:4997.9105'	E:5005.3247'
2	S 49°11'08" W 4.0200'	N:4995.2830'	E:5002.2823'
3	S 61°48'52" E 192.0000'	N:4904.5959'	E:5171.5154'
4	S 75°03'52" E 17.8400'	N:4899.9980'	E:5188.7527'
5	S 49°11'08" W 28.7200'	N:4881.2263'	E:5167.0165'
6	S 60°19'52" E 21.2200'	N:4870.7226'	E:5185.4546'
7	S 49°11'08" W 200.0600'	N:4739.9611'	E:5034.0431'
8			

Curve Parameters

=====  
Direction: Left/Counter-clockwise

Radius Pt at N:4516.0000 E:4819.0100

Delta =24°57'57" Left/Counter-clockwise

Radius =310.4800

Arc Length =135.2877

Tangent Length =68.7349

Chord Length =134.2200

Chord Bearing =N 58°38'53" W

PC Tang Bearing=N 46°09'54" W

PT Tang Bearing=N 71°07'52" W

PC->RP Bearing =S 43°50'06" W

RP->PT Bearing =N 18°52'08" E

9	N 71°07'52" W 55.5100'	N:4809.7949'	E:4919.4209'
10	N 18°52'08" E 65.5000'	N:4827.7471'	E:4866.8940'
11	S 71°07'52" E 51.8500'	N:4889.7272'	E:4888.0769'
12	N 26°11'07" E 92.2700'	N:4872.9587'	E:4937.1405'
13	N 30°47'29" E 13.0700'	N:4955.7592'	E:4977.8570'
14	N 25°05'34" E 36.4600'	N:5000.0058'	E:5000.0099'
15			

Perimeter: 919.5277'

Area: 0.9473 acres 41263.4330 sq ft

Precision: 80380.7458



The above described property is now known as Unit Numbers as follows:

UNIT NUMBER	PARCEL IDENTIFICATION NUMBER
101	803-30-04-101.00
102	803-30-04-102.00
103	803-30-04-103.00
104	803-30-04-104.00
105	803-30-04-105.00
106	803-30-04-106.00
107	803-30-04-107.00
108	803-30-04-108.00
201	803-30-04-201.00
202	803-30-04-202.00
203	803-30-04-203.00
204	803-30-04-204.00
205	803-30-04-205.00
206	803-30-04-206.00
207	803-30-04-207.00
208	803-30-04-208.00
209	803-30-04-209.00
210	803-30-04-210.00

of Erlanger City Center Office Condominium, Phase One, Building A.

**EXHIBIT "C"**  
**CONDOMINIUM DATA SHEET**

UNIT NUMBER	UNIT ADDRESS	SQUARE FOOTAGE	% INTEREST IN COMMON AREAS	VOTES
101	511 Watson Road	1127	4.56%	1
102	515 Watson Road	1351	5.47%	1
103	519 Watson Road	2066	8.36%	1
104	523 Watson Road	2066	8.36%	1
105	527 Watson Road	1351	5.47%	1
106	531 Watson Road	1127	4.56%	1
107	503 Watson Road	1614	6.53%	1
108	539 Watson Road	1614	6.53%	1
201	520 Graves Road, Suite 201	1133	4.58%	1
202	520 Graves Road, Suite 202	947	3.83%	1
203	520 Graves Road, Suite 203	1375	5.56%	1
204	520 Graves Road, Suite 204	1491	6.03%	1
205	520 Graves Road, Suite 205	1260	5.10%	1
206	520 Graves Road, Suite 206	1471	5.95%	1
207	520 Graves Road, Suite 207	1272	5.15%	1
208	520 Graves Road, Suite 208	1133	4.58%	1
209	520 Graves Road, Suite 209	947	3.83%	1
210	520 Graves Road, Suite 210	1375	5.56%	1
<b>TOTAL</b>		<b>24720</b>	<b>100%</b>	<b>18</b>