

W.K.

file

This Instrument Prepared By and Return To:
Thomas L. Hayslett, III, Esq.
Miller & Martin PLLC
Suite 1000, Volunteer Building
832 Georgia Avenue
Chattanooga, Tennessee 37402-2289

Instrument: 2005010500242
Book and Page: G1 7803 982
Deed Recording Fee \$10.00
Data Processing Fee \$2.00
Total Fees: \$12.00
User: KHOWARD
Date: 06-JAN-2006
Time: 03:50:42 P
Contact: Pam Hurst, Register
Hamilton County Tennessee

**FIRST AMENDMENT TO MASTER DEED AND
DECLARATION OF COVENANTS AND RESTRICTIONS
FOR THE CLARK CENTRE CONDOMINIUMS**

(Cross Reference: Book 7735, Page 933;
Plat Book 80, Page 158-164; Plat Book 81, Page 16-17)

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THIS FIRST AMENDMENT TO MASTER DEED AND DECLARATION OF COVENANTS AND RESTRICTIONS FOR THE CLARK CENTRE CONDOMINIUMS (the "First Amendment") is executed to be effective as of this 6th day of December, 2005, by The Clark Centre, LLC ("Developer"), a Tennessee limited liability company.

Background:

A. Developer has and is developing condominiums commonly known as The Clark Centre Condominiums pursuant to that Master Deed recorded at Book 7735, Page 933, Register's Office of Hamilton County, Tennessee (the "Master Deed").

B. The condominiums are reflected on Plat of record at Plat Book 80, Pages 158 to 164 (the "Original Plat").

C. The Original Plat contained a scrivner's error in designating the physical location of the first floors (i.e., main, ground level floors) of Units 106 and 107.

D. Developer recorded an amendment to the Original Plat to correct such scrivner's error, such amendment being recorded at Plat Book 81, Pages 16 to 17 (the "Plat Amendment").

Amendment:

NOW THEREFORE, for and in consideration of the mutual benefits provided herein by this First Amendment, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree that the above recitals are true and correct and are herein incorporated, and further agree as follows:

G.M.

1. The Plat Amendment is hereby incorporated into the Master Deed by reference, and the defined term "Plat," as defined in Section 2(ee) of the Master Deed, shall be deemed to include and refer to both the Original Plat and the Plat Amendment.

2. Except as expressly hereby amended, the Master Deed remains in full force and effect without amendment thereto.

3. Developer is executing this First Amendment pursuant to its authority to unilaterally amend the Master Deed at any time so long as it continues to own any Unit, all pursuant to Section 19(b) of the Master Deed.

IN WITNESS WHEREOF, Developer has executed this First Amendment to be effective as of the date first above written.

THE CLARK CENTRE, LLC, a Tennessee limited liability company

By: *[Signature]*
Darren Kennedy, President/Chief Manager

STATE OF TENNESSEE)

COUNTY OF HAMILTON)

Before me, PRESTON M. JONES, of the state and county aforementioned, personally appeared the within named Darren Kennedy, to me known (or proved to me on the basis of satisfactory evidence), and who acknowledged to me that he is the President/Chief Manager of THE CLARK CENTRE, LLC, the within named bargainor, a Tennessee limited liability company and that for and on behalf of said bargainor, being first duly authorized so to do by bargainor, he executed and delivered the within instrument on the date and in the year therein mentioned, for the purpose therein contained, by personally signing the name of the company as President/Chief Manager.

WITNESS my hand and official seal, at office, this 24th day of DECEMBER, 2005.



[Signature]
NOTARY PUBLIC

My Commission Expires: 10/8/08

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Instrument: 2005110300302
Book and Page: GI 7735 933
Deed Recording Fee \$335.00
Data Processing Fee \$2.00
Total Fees: \$337.00
User: EGORDON
Date: 03-NOV-2005
Time: 01:52:38 P
Contact: Pam Hurst, Register
Hamilton County Tennessee

This Instrument Prepared By and Return To:
Thomas L. Hayslett, III, Esquire
Miller & Martin PLLC
Suite 1000, 832 Georgia Avenue
Chattanooga, Tennessee 37402

MASTER DEED AND DECLARATION OF COVENANTS AND RESTRICTIONS FOR THE CLARKE CENTRE CONDOMINIUMS

THIS MASTER DEED AND DECLARATION OF COVENANTS AND RESTRICTIONS FOR THE CLARKE CENTRE CONDOMINIUMS (the "Master Deed") and the Exhibits which are attached hereto and made a part hereof, are made and executed as of the 31st day of October, 2005, by The Clarke Centre, LLC ("Developer") a Tennessee limited liability company, which does hereby declare as follows:

Background:

A. Developer owns that certain parcel of land more particularly described in Exhibit "A" attached hereto and made a part hereof, including all buildings and other improvements and permanent fixtures as are thereon located (together with all rights and privileges belonging or in anywise appertaining thereto hereinafter collectively "Property"). Developer desires to establish the Property as a horizontal property regime pursuant to the Tennessee Horizontal Property Act, Tennessee Code Annotated §66-27-101, et seq., as now or hereafter amended (hereinafter "Act"), and pursuant to this Master Deed.

NOW, THEREFORE, the Developer declares that all of the Property is herewith established as a horizontal property regime pursuant to the Act and this Master Deed, and from the date of recording this Master Deed, the Property shall be held, converted, hypothecated, encumbered, leased, used, occupied, and improved subject solely to the provisions of the Act and to the following covenants, conditions, restrictions, uses, limitations and obligations contained herein, and the Charter, By-laws, and other exhibits attached hereto and made a part hereof, all of which are declared and agreed to be covenants both running with and burdening the Property, binding upon and benefitting the Association, its successors and assigns, and each and every

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present or future Unit Owner of all or any interest in the Property and their respective grantees, successors, heirs, executors, administrators and other personal representatives, devisees and assigns.

The Developer hereby further declares as follows:

1. **NAME AND DESCRIPTION.** The Property and/or Building shall be named and may be commonly referred to as The Clarke Centre Condominiums, and it shall be a mixed-use condominium complex containing both residential space and commercial space for retail or other business activities.
2. **DEFINITIONS.** Certain terms as used in this Master Deed and the Charter, By-laws and other exhibits attached hereto and made a part hereof shall be defined as set forth hereinbefore and as follows, unless the context clearly indicates otherwise:
 - (a) "Assessments" means charges levied against Units and Unit Owners in accordance with this Master Deed and the By-laws for purposes of covering, retroactively or prospectively, Common Expenses. Assessments may include, but shall not be limited to, both Regular Assessments, Special Assessments, and Specific Assessments.
 - (i) "Regular Assessment" means a charge against each Unit Owner and the Unit Owner's Condominium representing that portion of the Common Expenses attributable to such Unit Owner and the Unit Owner's Condominium as provided for in this Master Deed, as more particularly described in Section 7(a)(i).
 - (ii) "Special Assessment" means a charge levied in accordance with Section 7(a)(ii).
 - (iii) "Specific Assessment" means a charge levied in accordance with Section 7(a)(iii).
 - (b) "Association" means The Clarke Centre Condominium Association, Inc., a Tennessee not-for-profit corporation.
 - (c) "Board" or "Board of Directors" means the Board of Directors of the Association.
 - (d) "Building" means the primary structure located and/or to be located on the Parcel, containing the Units.
 - (e) "Business" means and includes, without limitation, any occupation, work, or commercial activity undertaken on an ongoing basis which involves the merchandising, selling and promoting of goods and products and/or the rendering or providing of assistance, consultation or services to Persons for the purpose of generating a profit.

(f) "By-laws" means the By-laws of the Association attached hereto as Exhibit "D" and by this reference made a part hereof, as amended from time to time.

(g) "Charter" means the Charter of the Association attached hereto as Exhibit "C" and by this reference made a part hereof, as amended from time to time.

(h) "Commercial Unit" means the Units to be used and occupied for the purpose of conducting a Business. At the time of the recording of this Master Deed, the Commercial Units are to be located on the first floor of the Building. Developer may, but shall not be required to, hold the Commercial Units for lease.

(i) "Common Elements" means General Common Elements and Limited Common Elements.

(j) "Common Expenses" means the proposed or actual expenses of the administration, management, maintenance, operation, repair or replacement of and additions to the Common Elements (provided that the cost of repair and replacement of General Common Elements shall be apportioned amongst all Units, while the cost of repair and replacement of Limited Common Elements shall be apportioned amongst only those Units served by the Limited Common Element being repaired or replaced); the proposed or actual expenses incurred by the Association or the Board in the course of administering its duties and functions hereunder or under the By-laws, resolutions, or rules and regulations of the Association (including legal fees, accounting fees, and any other professional or consulting fees); and any other expenses incurred in conformance with the Act, this Master Deed and the By-laws, including reserves assessed by the Board, expenses agreed upon as Common Expenses by a Majority of the Unit Owners, and expenses declared to be Common Expenses by this Master Deed or in accordance with the By-laws.

(k) "Condominium" means an estate in real property in the Property consisting of a fractional undivided fee interest in common with the other Unit Owners in the Common Elements, together with a separate fee interest in a Unit and all appurtenant rights, title and interests (including, without limitation, the Limited Common Elements of the Unit). Such fractional undivided interest in common with each Unit Owner shall correspond to the Unit Owner's Percentage Interest (defined below) and shall not be changed except as provided in this Master Deed.

(l) "Director" means a member of the Board of Directors of the Association.

(m) "Easement" shall mean a grant of one or more property rights by a property owner to and/or for use by Developer, the Association, a Unit Owner, the public, or any other Person.

(n) "First Mortgage" means a Recorded Mortgage which constitutes a first in priority lien on the Property or any portion thereof or any interest of a Unit Owner in the Property or in a Unit and the Unit's appurtenant undivided interest in the Common Elements.

(o) "First Mortgage" means a Lender that is the holder of a First Mortgage.

(p) "General Common Elements" means and includes all of the following items, to the extent same are not part of the definition of Unit or a Limited Common Element, roofs and foundations of any Building; perimeter walls, columns and girders, and interior wall framing and studs, to the point where the framing and/or studs meet the interior wallboard or sheetrock (but exclusive of any interior wallboard or sheetrock), regardless of location (including within the boundaries of a Unit) and whether exterior or interior, if existing on the date hereof; hallways, lobbies, elevators (unless serving only one Unit), mechanical equipment areas, storage areas, stairways, walkways, driveways, parking areas, gardens, recreational areas and facilities which are now or hereafter contained within the Property, to the extent same are not either Limited Common Elements or expressly designated as separate Units or parts of Units; pipes, ducts, flues and chutes, conduits, wires, and other utility installations; the entirety of any improvements on the Property which do not contain Units (such as parking garages and maintenance buildings). For additional information regarding the scope of and responsibility for General Common Elements, see Exhibit "A-1" hereto attached and herein incorporated.

(q) "Institutional Lender" means a Lender (herein defined) that is a banking association or banking corporation organized under the laws of the United States or under the laws of any state, an insurance company, a mortgage company, a trust company, a credit union, a savings and loan association, any corporation with total assets in excess of \$50,000,000, or any organized entity holding or purchasing Mortgages in a recognized secondary market.

(r) "Insurance Trustee" means a lending institution in the metropolitan Chattanooga, Tennessee area with trust powers, designated by the Board to hold insurance proceeds in trust.

(s) "Lender" means any owner or holder, or any successor or assign thereof, of a Recorded Mortgage on the Property, or any portion thereof, or any interest of such Unit Owner, including an Institutional Lender.

(t) "Lender Approval" means the written consent from a number First Mortgagees holding First Mortgages against not less than two-thirds (2/3) of the Units actually encumbered by a First Mortgage.

(u) "Limited Common Elements" means the following Common Elements, but only to the extent that they serve more than one Unit but less than all Units in a Building: any pipes, ducts, flues and chutes, conduits, wires, and other utility installations or any portion of same; vestibules, balconies or patios, decks, porches, entryways, stairways, walkways, and storage areas; windows (even if serving only a single Unit). For additional information regarding the scope of and responsibility for Limited Common Elements, see Exhibit "A-1" hereto attached and herein incorporated.

(v) "Managing Agent" means the management company or entity or individual manager, if any, hired by the Board to maintain, repair, replace, administer and operate the Property, or any part thereof, to the extent deemed advisable by the Board.

(w) "Master Deed" means this Master Deed, by which the Property is submitted to the provisions of the Act, as hereinafter provided, as the Master Deed may be amended from time to time.

(x) "Majority Approval" means the approval by vote in accordance with the By-laws of Unit Owners representing more than fifty percent (50%) of the Percentage Interests of the Association, or more than 50% of the number of Directors entitled to vote (in the case of action by the Board), subject to quorum and other voting procedures set forth in the By-laws.

(y) "Mortgage" means a mortgage or deed of trust covering a Unit and the undivided interest in the Common Elements appurtenant thereto.

(z) "Occupant" means a person or persons in lawful possession of a Unit, regardless of whether said person is a Unit Owner.

(aa) "Parcel" means the parcel or tract of land submitted as provided herein to the provisions of the Act and more particularly described on Exhibit "A".

(bb) "Parking Area" means the parking garage located on the Parcel.

(cc) "Percentage Interest" means, as to any Unit Owner, that Unit Owner's undivided percentage interest in the Common Elements and that Unit Owner's pro rata share of Common Expenses, as determined by using the Unit Square Footage Method.

(dd) "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

(ee) "Plat" means the plats and drawings of all Units in the Property submitted to the provisions of the Act, said Plat being Recorded at Plat Book 80 Pages 158 to 164 in the Register's Office of Hamilton County, Tennessee, and being herein incorporated by reference (at the time of recording this Master Deed, it is known that an amendment to the Plat will be recorded hereafter to correct a scrivener's error with regard to the designation of Units 106 and 107). "Plat" also includes any future revisions of or supplements to the Plat. In interpreting the Plat or any deed or other instrument affecting a Building or Unit, the boundaries of the Building or Unit constructed or reconstructed in substantial accordance with the Plat shall be conclusively presumed to be the actual boundaries rather than the description expressed in the Plat, regardless of the settling or lateral movement of the Building and regardless of minor variances between boundaries shown on the Plat and those of the Building or Unit.

(ff) "Property" means all the land, property and space comprising the Parcel as described on Exhibit "A", and all improvements and structures erected, constructed or contained

therein or thereon, including the Buildings, Common Elements and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, submitted to the provisions of the Act.

(gg) "Record", "Recording", "Recorded" or "Recordation" refers to the records or recording in the Office of the Register of Deeds in Hamilton County, Tennessee.

(hh) "Reserve Fund" shall have the meaning set forth in Section 7(c) of this Master Deed.

(ii) "Residential Unit" means a Unit to be used and occupied independently as a residence by a single person or by a family members, all of whom are related to each other by blood, adoption or marriage. At the time of the recording of this Master Deed, the Residential Units are to be located on the Second and Third floors of the Building.

(jj) "Two-Thirds Approval" means the approval by vote in accordance with the Bylaws of Unit Owners representing at least sixty-six and two-thirds percent (66.66%) of the Units entitled to vote on any matter before the Association, subject to quorum and other voting procedures set forth in the Bylaws.

(kk) "Unit" shall mean "Apartment" as defined in the Act, but shall not include the Common Elements. Specifically, "Unit" means a part of the Property designated and intended for any type of independent use so specified as a Unit and listed on Exhibit "B" attached hereto. The boundary lines of each Unit shall be the entirety of any interior sheetrock, plaster board or other wallboard material; the top surface of the uppermost unfinished floor (i.e., including the carpet, linoleum or other floor covering); the entirety of any sheetrock, plaster board or other ceiling-board material forming the ceilings; and all doors and door frames and trim, whether interior or located in perimeter walls. The Unit shall include both the portions of a Building within such cubic boundary lines and the space so encompassed. A Unit shall not include the studs and framing of any walls which are located within the boundaries of a Unit and are existing on the date hereof. A Unit shall not include pipes, ducts, flues and chutes, wires, conduits and other utility installations running through any wall or partition, structural or otherwise, for the furnishing of utilities or other services, but shall include fixtures and finishings to the foregoing once same enter the boundaries of a Unit. The Unit shall include any furnace, hot water heater and air conditioning compressor exclusively serving only that Unit, if any, whether or not located within the boundaries of that Unit. A Unit shall include all improvements and decorating contained within the designated boundaries of a Unit including any plumbing, lighting, and electrical fixtures, wall and floor coverings, paneling, molding, tiles, wallpaper, paint, finished flooring, cabinets, countertops and any other materials constituting any part of the finished interior surfaces of the walls, floors and ceilings constituting the perimeter boundaries of such area. A Unit shall include balconies and patios serving only that Unit. For additional information regarding the scope of and responsibility for Units, see Exhibit "A-1" hereto attached and herein incorporated.

(ll) "Unit Owner" means the person or persons whose estates or interests, individually or collectively, have an aggregate fee simple ownership of a Unit and of the undivided interest in the Common Elements appurtenant thereto, but shall not include those having an interest in a Unit merely as security for the performance of an obligation. Unless specifically provided otherwise herein, the Association shall be deemed a Unit Owner so long as it is the legal title holder of any Unit.

(mm) "Unit Square Footage" means the square footage assigned by Association to a Unit for the purpose of establishing the undivided Percentage Interest in the Common Elements appurtenant to such Unit. The Association shall use the Unit Square Footage, as shown on Exhibit "B" attached hereto and made a part hereof, in all such assignments of the undivided Percentage Interest in the Common Elements and such factors as Units being located at different elevations, or having different views, or having different amenities or other characteristics that might result in differences in market value, will not be taken into consideration in determining the undivided interest in the Common Elements. In the event that the Board ever elects to re-measure the respective "Unit Square Footage", then the horizontal boundary line of a Unit will be deemed to be the outermost stud face of a perimeter wall of a Unit, exclusive of the square footage of that portion of the Unit, if any, comprising a bay window alcove and shall not include attic space, foundation or crawl space or leased storage space. Unit Square Footage shall include all enclosed deck, patio, or balcony space of a Unit and shall include the floor space of any loft areas within a Unit. The Board shall determine the Unit Square Footage for each Unit, and the Board's determination in each instance, if reasonable, shall be conclusive. The Board shall maintain a registry of the "Unit Square Footage" assigned to each Unit.

(nn) "Unit Square Footage Method" means the method of arriving at the undivided Percentage Interest in the Common Elements to be assigned or reassigned to each Unit, which shall be accomplished by dividing (i) the Unit Square Footage of each Unit by, (ii) the sum of the Unit Square Footage of all of the Units submitted to the provisions of the Act.

3. DESCRIPTION AND USE OF UNITS.

(a) General Description. All Units are described in the Plat. Each Unit is identified by specific designation on the Plat, and no Unit bears the same Unit designation as any other Unit. Every deed, lease, Mortgage or other instrument shall legally describe a Unit by its identifying number as shown on the Plat and every such description shall be deemed good and sufficient for all purposes, as provided in the Act.

(b) General Use of Units. Units shall at all times be used in compliance with (i) applicable law including relevant zoning and land use ordinances from time to time adopted by the City of Chattanooga and any successor thereto, and (ii) this Master Deed and the By-laws, and (iii) rules and regulations adopted by Board from time to time.

(c) Commercial Activities Prohibited by Residential Unit Owners. Residential Units may be used only for single-family residential purposes. Residential Unit Owners shall not use their Units, the Common Elements or the Limited Common Elements for or

in connection with the conduct of any trade, business, professional or commercial activity of any kind or nature whatsoever. No Residential Unit shall house a number of Occupants which exceeds twice the number of bedrooms contained in such Unit.

(d) Use of Commercial Units. Commercial Units may be used only for conducting a Business. The type of businesses that may be conducted within the Commercial Unit shall however be compatible with the residential nature of the Property and such that the Business shall not significantly diminish the use and enjoyment of the Property by the residents. Such compatibility shall be determined by Developer, until Developer no longer owns a Unit or until Developer transfers his rights to the Association, and thereafter by the Association, in its sole and absolute discretion. Examples of compatible Businesses include: financial institutions, executive or professional offices, real estate brokerage or sales agencies, leasing companies, travel agencies, upscale restaurants and/or casual dining establishments, and upscale retail stores. In the event the present or future occupant of a Commercial Unit desires to engage in a type of Business not permitted by this Master Deed, then the occupant shall petition the Board for a waiver of such restriction, which waiver shall not be unreasonably withheld if such proposed Business is compatible with.

4. ASSOCIATION OF UNIT OWNERS, THE BOARD, AND ADMINISTRATION OF THE PROPERTY.

(a) The Association. There has been formed, pursuant to the Charter attached hereto and made a part hereof as Exhibit "C", the Association which Association shall be the governing body for the administration and operation of the Property, as provided in the Act, this Master Deed and the By-laws. The Association shall consist of all Unit Owners, and each Unit Owner shall be a member of the Association so long as he is a Unit Owner. The Association shall have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Association is organized, and to do every other act not inconsistent with law which may be appropriate to promote and attain the purposes set forth in the Act, this Master Deed or the By-laws. All of the Unit Owners irrevocably constitute and appoint the Association, in their names, as attorney in fact to effectuate the above. This power is coupled with an interest and may not be revoked. The By-laws for the Association shall be the By-laws attached to this Master Deed and made a part hereof as Exhibit "D". The fiscal year of the Association shall be determined by the Board and may be changed from time to time as the Board deems advisable. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the sole benefit of the Unit Owners, and all funds received by the Association shall be held and applied by it for the use and benefit of Unit Owners in accordance with the provisions of the Master Deed and By-laws. A Unit Owner's membership shall automatically terminate when he ceases to be a Unit Owner. Upon the conveyance or transfer of a Unit Owner's ownership interest to a new Unit Owner, the new Unit Owner shall simultaneously succeed to the former Unit Owner's membership in the Association. The aggregate number of votes in the Association shall at all times be 100, with each Unit Owner's vote being equal to his Percentage Interest. Developer may vote for all Units it owns. Unless otherwise specified, all actions may be taken by Majority Approval. In the event of co-

ownership of an individual Unit, the co-owners shall designate for the Association the person whose vote controls for such Unit.

(b) The Board; Developer as the Board. The Association shall be governed by the Board of Directors. Subject to the Act and this Master Deed, the Board shall have standing to act in a representative capacity on behalf of the Association, exercising all rights and powers of the Association without a vote of the Association. Developer shall exercise the sole and exclusive authority of the Board and the Association, including the authority to enforce and/or amend the provisions of this Master Deed, until the Developer both (i) no longer owns any Residential Units, and (ii) has sold Units representing more than 80% of the total Percentage Interests, unless the Developer transfers his authority to the Board at an earlier date.

(c) Powers. In addition to such powers as may be necessary and convenient for the administration and governance of the Association and in addition to such powers as may be provided for in the Bylaws, the Association, acting by or through the Board, has the power and authority to:

(i) Maintain, repair, replace, construct, reconstruct, improve, and otherwise manage all of the Common Elements so as to keep them in good repair and condition and to conduct such other activities as may be determined by the Association to promote the health, safety, and welfare of the Unit Owners.

(ii) Contract for goods and/or services for all Common Elements and the Association in connection with the performance of the administrative and managerial duties of the Association.

(iii) Contract and pay for casualty, liability, property damage and other insurance on behalf of the Association to insure against claims which may arise against the Members, Association, Developer and Board.

(iv) Pay any real and personal property taxes and other assessments that are or could become a lien upon any of the Common Elements, unless separately assessed to the Unit Owners.

(v) Fix, levy, collect and enforce the collection of all charges, dues, or assessments made pursuant to the terms of this Master Deed and otherwise enforce the terms and provisions of this Master Deed.

(vi) Prepare and review budgets and financial statements as prescribed in the By-laws and otherwise administer the financial affairs of the Association.

(vii) Delegate to committees, officers, employees or agents any of the Association's duties or powers under this Master Deed, the Charter, By-laws or Rules.

(viii) To approve the Businesses operating in the Commercial Units, as provided in Section 3 of this Master Deed.

(ix) Employ professionals and consultants to advise and assist the officers and Board in the performance of their duties and responsibilities for the Association.

(x) Enter upon any Limited Common Elements as necessary in connection with construction, maintenance or emergency repair for the benefit of any of the Common Elements or the Unit Owners in common.

(xi) Maintain any property or facilities owned by Developer and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and Unit Owners, such property and facilities to remain a part of the area to be maintained by the Association until such time as Developer revokes the privilege of use and enjoyment by written notice to the Association.

(xii) Purchase, hold, or dispose of any real or personal property in connection with the affairs of the Association; to borrow money in the name of the Association and cause to be executed and delivered, in the Association's name, promissory notes, or bonds in conjunction therewith and to pledge or mortgage any property of the Association as collateral for any such borrowings; to maintain and use bank accounts for purposes of the Association.

(xiii) Execute such documents and perform such acts as may be necessary or appropriate to accomplish its administrative or managerial duties.

(d) General Limitations on Powers. In limitation of the powers and duties delegated to the Association in the By-laws or this Master Deed, the Association shall be prohibited from taking any of the following actions except upon Majority Approval of the Association (Majority Approval of the Board alone being insufficient to authorize these actions):

(i) Incur aggregate capital expenditures in any fiscal year in excess of Fifty Thousand and No/100Dollars (\$50,000.00); provided, however, starting with the fiscal year that begins in 2006 and for each fiscal year thereafter, such amount shall be increased at the commencement of each fiscal year by five percent (5%) of the amount applicable during the then preceding fiscal year.

(ii) Sell any property of the Association during any fiscal year having an aggregate fair market value greater than Fifteen Thousand and No/100 Dollars (\$15,000.00); provided however, starting with the fiscal year that begins in 2006 and for each fiscal year thereafter, such amount shall be increased at the commencement of each fiscal year by five percent (5%) of the amount applicable during the then preceding fiscal year.

(iii) Pay compensation to Directors or officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a director or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

(iv) Borrow money or incur indebtedness for the purposes of the Association, and/or to cause to be executed and delivered, in the Association's name, promissory notes, or bonds, which will individually or in the aggregate with all other loans then outstanding exceed Fifty Thousand and No/100 (\$50,000.00) Dollars.

(v) Increase the annual budget of the Association by more than 10% of the annual budget for the immediately preceding fiscal year (except that the Board shall not need Majority Approval of the Association to increase the annual budget to cover costs beyond the reasonable control of the Board, such as insurance).

(e) Rules. In addition to the use restrictions contained in this Master Deed and whether or not expressly contemplated herein, the Association shall have the power to adopt from time to time rules and regulations governing the use of the Common Elements and such other matters as the Association reasonably determines, provided that such rules and regulations shall not be inconsistent with this Master Deed (the "Rules"). No Rule may be adopted that would unreasonably interfere with or inhibit the operation of a Business in a Commercial Unit, so long as the Business is in compliance with this Master Deed and is compatible with the residential nature of the Property. The Rules shall have the same force and effect as if set forth herein. A copy of the Rules shall be retained by the secretary of the Association and shall be available for inspection by any Unit Owner during reasonable business hours.

(f) Managing Agent. The Board may, but shall not be required to, contract with an experienced professional management company to assist the Board in the management and operation of The Clarke Centre and may delegate such of its powers and duties to the management company as it deems to be appropriate except as limited herein. Only the Board can approve an annual budget or supplemental budget, and only the Board can impose an assessment on any Unit or authorize foreclosure of an assessment lien. Any contract with a management company, or any other contract to provide for services, shall have a term no longer than one (1) year (but may be renewable by agreement of the parties for successive one year periods) and shall be terminable by the Board without payment of a termination fee, with or without cause.

(g) Indemnification. The Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being of having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or commitment made or

action taken in good faith on behalf of the Association. The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee members may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

(h) **Nonliability.** Neither the Association nor the Board, and its members, officers or persons serving on a board-appointed committee shall be liable to any Unit Owner or to any other Person for any loss, damage or injury arising out of or resulting from their acts and omissions in performance of their respective powers and duties under this Master Deed.

5. OWNERSHIP OF THE UNITS AND APPURTENANT PERCENTAGE INTERESTS IN THE COMMON ELEMENTS. Each Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership. Each Unit Owner shall, as an appurtenance to the ownership interest in each Unit, be entitled to the undivided Percentage Interest of ownership in the Common Elements allocated to the respective Unit by the Board, as set forth in Exhibit "B". Such undivided Percentage Interest has been computed utilizing the Unit Square Footage Method and shall remain constant unless hereafter diminished or otherwise changed, adjusted or reallocated by amendment to this Master Deed. Said ownership interest in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective Percentage Interests. Except as provided in this Master Deed, the ownership interest in the Common Elements shall remain undivided, and no Unit Owner shall bring any action for partition or division of the Common Elements, and any agreement or covenant to the contrary shall be void. The undivided interest in the Common Elements declared to be an appurtenance to each Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Unit. The ownership of each Unit shall not be conveyed, transferred, encumbered or otherwise affected separate from the undivided percentage ownership in the Common Elements corresponding to said Unit. The undivided percentage ownership in the Common Elements corresponding to any Unit shall be deemed conveyed, transferred, encumbered or otherwise affected with that Unit, even though the legal description in the instrument conveying, transferring, encumbering or otherwise affecting said Unit may refer only to the fee title to that Unit and not expressly mention or describe the percentage ownership in the Common Elements corresponding to that Unit. Notwithstanding anything to the contrary herein, the Limited Common Elements shall be an appurtenance only to the Units which they serve, and only the Unit Owners of the served Units shall have an undivided percentage ownership interest in such Limited Common Elements, with the Percentage Interest being apportioned amongst all Unit Owners served by the Limited Common Elements.

6. USE OF LIMITED AND GENERAL COMMON ELEMENTS. Each Unit Owner and/or Occupant shall have the right to use the Common Elements (except for the Limited Common Elements and further except for any portion of the Property subject to leases, easements, licenses, and concessions made by or assigned to the Board) in common with all

other Unit Owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of a Unit or the Property. Subject to Rules adopted by the Association or the Board, such right to use the Common Elements shall extend to not only each Unit Owner and/or Occupant of a Unit, but also their agents, tenants, family members, invitees and licensees. However, the Limited Common Elements designated as serving exclusively a single Unit or one or more adjoining Units are hereby assigned to such Unit or Units and the exclusive use and possession of such Limited Common Elements are reserved to the Unit Owners and Occupants of such Unit or Units. Such rights to use the Common Elements, including the Limited Common Elements, shall be subject to and governed by the provisions of the Act, Master Deed, By-laws and rules and regulations of the Association.

7. COMMON EXPENSES AND ASSESSMENTS; LIEN PRIORITY.

(a) Prorata Sharing; Assessments. Each Unit Owner shall be liable for its proportionate share of the Common Expenses, and the proportionate share of the Common Expenses for each Unit Owner shall be in the same ratio as his Percentage Interests in the Common Elements. The Association may impose Assessments upon Units and Unit Owners in such amounts and at such times as determined by the Board, in accordance with the By-laws, for purposes of paying Common Expenses, providing reserves for Common Expenses or for any other reasonable purpose determined by the Board or the Association. The monthly assessment payable with respect to each Unit may be adjusted by the Board as permitted in this Master Deed and the By-laws with such adjustments (whether upward or downward) being customarily implemented by the Board at the beginning of the Association's next fiscal year. No Unit Owner shall be exempt from payment of any Assessment or any proportionate share of the Common Expenses by waiver or non-use or non-enjoyment of the Common Elements or by abandonment of his Unit, and such Assessments and proportionate share of the Common Expenses are a personal obligation of the Unit Owner for which such Unit Owner shall have personal liability.

(i) Regular Assessments. Prior to the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses to be incurred by the Association during such year in performing its functions under this Master Deed and the Charter and By-laws of the Association, including a reasonable provision for contingencies, less any expected income and any surplus from the prior year's fund. A Regular Assessment sufficient to pay such estimated net Common Expenses shall then be levied against all. If the sums collected prove inadequate for any reason, including nonpayment of any Special or Specific Assessments, the Board may, at any time and from time to time, levy Special Assessments to make up for such deficiency.

(ii) Special Assessments. In addition to the Regular Assessments authorized above, the Board may establish, levy and collect Special Assessments against the Units as follows:

(1) for the purpose of the defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair, replacement or

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addition of capital improvements for Common Elements, including the necessary fixtures and personal property related thereto, subject to the limitations of the powers of the Board set forth herein;

(2) to cover unbudgeted Common Expenses or Common Expenses in excess of those budgeted as part of the Regular Assessments under Section 6.3 above; or

(3) to enable the Board to carry out the functions of the Association under this Master Deed and under the Charter and By-laws of the Association.

(iii) Specific Assessments; Commercial Unit Expenses. The Board shall have the power to levy Specific Assessments against a particular Unit or Units constituting less than all Units within the Property as follows:

(1) To cover costs of maintenance, repair, or replacement of Limited Common Elements servicing the Unit(s) subject to the specific assessment.

(2) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Unit Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Unit Owners (which might include, without limitation, handyman service, pest control, etc.), which Assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Unit Owner.

(3) to cover costs incurred in bringing the Unit into compliance with the terms of this Master Deed, any applicable Supplemental Master Deed, the By-laws or Rules, or costs incurred as a consequence of the conduct of the Unit Owner or occupants of the Unit, their licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing before levying a Specific Assessment under this subsection (b).

(4) Because Common Expenses associated with maintenance, repair and upkeep of certain Common Elements more closely associated either with the Commercial Units or with the Residential Units (such as lobbies, entryways, décor, parking areas) may more greatly impact one type of Unit than the other (for reasons of the level of use and human traffic, the level of finish quality, the type of services being provided, etc.) the Association shall use its best efforts to allocate equitably and fairly any such extraordinary expenses between the Commercial Units or the Residential Units (whichever is more greatly benefited, as the case may be), including through the use of Specific Assessments. Any such Specific Assessments shall be based on actual costs incurred by the Board.

(b) Liens.

(i) Lien for Assessments. Effective upon the Recording of this Master Deed there is then and thereafter a lien attached against each and every Unit for each and every Unit's Assessments and share of Common Expenses (and late fees, interest, and costs associated therewith), both payable and to be paid and whether or not any delinquency exists as of the time of Recording this Master Deed. If any Unit Owner shall fail or refuse to make any such payment of the Assessments or Common Expenses within ten (10) days of receipt of notice of such delinquency or within twenty (20) days of mailing of notice of such delinquency, whichever shall occur first, the amount thereof, together with such accelerated amounts as are provided in the By-laws, and together with late charges and interest in the amounts set forth in the By-laws or the rules and regulations of the Association, and together with all expenses, including attorneys' fees incurred by the Board in any proceeding brought to collect such unpaid amounts, shall be obligations of the Unit Owner and shall, without the necessity of Recording any lien instrument, automatically be enforceable as a lien in favor of the Association, enforceable by the Board, on the interest of such Unit Owner in the Property and his Unit; provided, however, that the Board, at its option, may Record a notice of such lien to provide public notice of its existence, and such notice of lien shall relate back to the date of Recording this Master Deed. The Board may assess the costs of Recording all liens against the associated Unit Owner. The Board may enforce a lien for Assessments or Common Expenses in accordance with the provisions of this Master Deed titled "Remedies," or as otherwise herein provided.

(ii) Priority with Institutional Lender. Any lien in favor of the Association for Assessments or Common Expenses (and late fees, interest, and costs associated therewith), which lien, for the purposes of this Master Deed and the By-laws, shall be deemed to attach on the date of Recording this Master Deed, shall be subordinate to the lien of any First Mortgage held by an Institutional Lender, provided that such First Mortgagee has requested an estoppel certificate as required by Section 7(b) hereof and further provided that all outstanding and unpaid Assessments or Common Expenses associated with the Unit are paid and brought current prior to Recording such First Mortgage. If such First Mortgagee obtains title to a Unit or any other interest in the Property by reason of foreclosure or deed in lieu of foreclosure, such First Mortgagee, its successors or assigns, shall take such Unit or other interest in the Property free of any claims for unpaid Assessments or Common Expenses, except for the amount of said Assessment or proportionate share of such Common Expenses which becomes due and payable from and after the date on which such First Mortgagee either takes possession of the Unit or the interest encumbered by such First Mortgage, or accepts a conveyance, transfer or assignment of the Unit or of any interest therein (other than as security) in lieu of any foreclosure of such First Mortgage, or forecloses or

files suit to foreclose its First Mortgage or causes a receiver to be appointed to take possession of the Unit. Notwithstanding the foregoing, upon foreclosure of a Unit any proceeds realized in excess of the amount necessary to pay off the First Mortgage shall then be applied towards any lien for Assessments or Common Expenses until same are brought current. This Section shall not prevent the Association from enforcing any rights to which it is entitled against the prior Unit Owner. The priority given to certain First Mortgagees by this provision shall not be amended, modified or rescinded without Lender Approval. Notwithstanding anything to the contrary contained in this Master Deed, no Mortgage (whether a First Mortgage or otherwise) shall have priority over a lien for Assessments and Common Expenses if the Board or the Association has Recorded, separately from this Master Deed, a notice of lien for an actual delinquency prior to the recording of such Mortgage.

(iii) Priority with Non-Institutional Lender and Second Mortgages.

The lien hereby created for Assessments and/or Common Expenses (and late fees, interest, and costs associated therewith), regardless of when or whether a separate notice of lien for an actual delinquency is Recorded, shall not be subordinate to but shall have priority over both any First Mortgage that is not held by an Institutional Lender and any Mortgage other than a First Mortgage, and any such Lender's interest in the Unit(s) shall be subject to the lien for Assessments and Common Expenses and upon foreclosure or any transfer in lieu of foreclosure the proceeds from same shall first be used to remove, by payment in full, the lien for Assessments and Common Expenses.

(iv) Removal of Liens Upon Transfer or Refinancing. Upon any sale, transfer, or other conveyance of a Unit, or upon the refinancing of any debt secured by a Mortgage encumbering a Unit, the Unit Owner is hereby required to remove, by payment in full, any and all liens for Assessments and Common Expenses encumbering the Unit, and the Board is hereby authorized, without liability, to intervene into any such sale or refinancing to ensure compliance with this provision. If a Unit Owner fails to remove, by payment in full, any and all liens for Assessments and Common Expenses encumbering a Unit then such lien shall continue to encumber the Unit and the purchaser or transferee shall become liable for the unpaid amounts.

(c) Estoppel Certificates; Collection. A Unit Owner shall have the right to acquire from the Board an estoppel certificate showing the amount of unpaid Assessments or Common Expenses with respect to his Unit. Any Lender accepting a Mortgage against a Unit must request from the Board an estoppel certificate showing the amount of unpaid Assessments or Common Expenses with respect to such Unit prior to accepting the Mortgage. In the case of a First Mortgage held by an Institutional Lender, requesting such an estoppel certificate from the Board is hereby declared to be a condition precedent to obtaining priority over any liens, whether or not Recorded or then existing, for Assessments or Common Expenses. The Association may not enforce against a Lender who relies on such certificate any indebtedness as of that date in

excess of the amount shown thereon. A purchaser of a Unit shall have the right to acquire from the Association an estoppel letter effective on the date of closing of the Unit, showing the amount of unpaid Assessments or Common Expenses with respect to the Unit and any such unpaid amounts shall, if not paid prior to closing, remain as an encumbrance against the Unit and the purchaser of the Unit shall as of closing, be jointly and severally liable with the transferor for such amounts. In addition the Board, upon request of a Unit Owner or a prospective purchaser of a Unit, shall prepare and deliver a letter stating either that there are no delinquent or unpaid Assessments, fees or other obligations outstanding in respect to such Unit, or enumerating any outstanding and unpaid delinquent Assessments, fees and other obligations. The Association shall have the right to exercise and to enforce any and all rights and remedies as provided or available at law or in equity for the collection of unpaid Assessments or other obligations owing to the Association by its former Unit Owners.

(d) Capital Reserve Fund. The Board may establish reserve funds ("Reserve Fund") for the improvement or replacement of Common Elements to be funded by Assessments.

(e) Assessments Paid in Advance Upon Purchase. Upon the purchase of a Unit the purchaser shall pay to the Association his first two (2) months Assessments in advance. The closing agent administering the purchase/sale is hereby directed to collect this amount at closing and to disburse such amount to the Association; however if such closing agent fails to adhere to this subsection, the Association may immediately collect such amount from the purchaser. In order to facilitate this advance payment of Assessments, all Unit owners must notify the Association in writing of a pending sale of a Unit not less than five (5) days prior to such sale.

(f) Applicability of Assessments to Units Owned by Developer. Notwithstanding anything to the contrary herein contained, (i) Residential Units owned by Developer shall not be subject to Assessments of any nature, and (ii) each Commercial Unit owned by Developer shall only be subject to Assessments after such time as Developer enters into a lease for any such Commercial Unit with a third party for the use and occupancy thereof.

8. MORTGAGES AND OTHER LIENS.

(a) Liens on Units and Property. Each Unit Owner shall have the right, subject to the provisions herein, to make or create, or cause to be made or created, one or more Mortgages or other liens on or affecting his respective Unit together with his respective ownership interest in the Common Elements, provided however that, from the date this Master Deed is Recorded, no Unit Owner shall have the right or authority to make or create, or cause to be made or created, any Mortgage or other lien on or affecting the Property or any part thereof, except to the extent of his own Unit and the respective percentage interest in the Common Elements appurtenant thereto. If requested by the Association, a Unit Owner must provide the name of any and all Lenders holding a Mortgage against his Unit(s).

(b) Mechanic's Liens. Subsequent to the Recording of this Master Deed, no liens of any nature shall be created or arise against any portion of the Property except liens

against any individual Unit or Units and except liens created by Developer or the Association in the development of the Property and the reconstruction of or repairs to the Building Units or Common Elements. No labor performed or materials furnished with the consent or at the request of a particular Unit Owner shall be the basis for the filing of a mechanic's lien claim against any Unit other than the Unit on which the labor was performed or to which materials were furnished. If the performance of the labor or furnishing of the materials is expressly authorized by the Board, each Unit Owner shall be deemed to have expressly authorized and consented to such performance of labor and furnishing of materials, and each Unit Owner shall be liable for the payment of his Unit's proportionate share of any due and payable indebtedness, as set forth in the Act.

9. **SEPARATE REAL ESTATE TAXES.** Real estate taxes, special assessments, and any other special taxes or charges of the State of Tennessee or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed and levied upon real property, shall be separately assessed upon each Unit, and its corresponding Percentage Interest in the Common Elements, as provided in the Act. In the event that such taxes, special assessments or charges for any year are assessed and levied upon the Common Elements, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective Percentage Interest in the Common Elements and in said event such taxes shall be a Common Expense. Without limiting the authority of the Board provided for elsewhere herein, the Board acting on behalf of all Unit Owners shall have the power to seek relief from or to collect from the Unit Owners their proportionate shares of any such taxes, special assessments or charges, whether assessed and levied on each Unit separately or on the Property as a whole, and to charge and collect all expenses incurred in connection therewith as a Common Expense.

10. **INSURANCE.** The expense of all insurance maintained by the Association shall be a Common Expense.

(a) **Hazard Insurance.** The Board shall have the authority to and shall obtain insurance for the Property, including the Common Elements, but exclusive of Units, against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard "all-risk" coverage provisions, for the full insurable replacement cost of same, as a Common Expense, and against such other hazards and for such amounts as the Board may deem advisable. Insurable replacement cost shall be deemed the cost of restoring the foregoing to substantially the same condition in which they existed prior to damage or destruction; except that neither the Association nor the Board shall be obligated to insure against lost rental income of any Unit Owner. Insurance coverage maintained by the Board or the Association shall be written in the name of the Association, for the benefit of each of the Unit Owners in direct ratio to said Unit Owner's respective percentage of ownership interest in the Common Elements, as set forth in the Master Deed, and for the holders of Mortgages on each Unit, if any. Each such policy of insurance shall also contain, if possible, a waiver of subrogation rights by the insurer against the Association, its employees and agents, and against individual Unit Owners, their servants, agents and guests. Each such policy also shall contain, if possible, a waiver of any rights of the insurer to contributions from hazard insurance purchased by a Unit Owner covering the contents and

furnishings of his Unit. The Board shall notify all Persons insured under such policy in the event of any cancellation thereof.

(b) Liability Insurance. The Board shall have authority to and shall obtain comprehensive public liability insurance, in such amounts as it deems desirable, and worker's compensation and other liability insurance as it deems desirable, insuring the Unit Owners (except as limited in this subsection), individually and severally, any mortgagee of Record, the Association, its officers, Directors and the Board, and the Managing Agent, if any, and their respective employees and agents and all Persons acting as their respective agents, against liability in connection with the ownership, existence, use or management of the Property. The Unit Owners shall be included as additional insureds but only with respect to the Common Elements. Each such policy of insurance shall cover claims of one or more insured parties against other insured parties and shall also contain a waiver of subrogation rights by the insurer against such insured Persons or entities. Each such policy also shall contain, if reasonably possible in the determination of the Board, a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association or any other Unit Owner.

The comprehensive public liability insurance shall cover all the Common Elements, public ways and commercial spaces owned by the Association whether or not the same are leased to a third party. Coverage shall be for at least \$2,000,000 for bodily injuries, including deaths of persons, in any single occurrence, \$300,000 for property damage arising out of a single occurrence and \$3,000,000 annual aggregate. Coverage under this policy shall include, without limitation, 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, and legal liability arising out of lawsuits related to employment contracts of the Association. Such policies must provide that they may not be canceled or substantially modified by any party without at least ten (10) days prior written notice to the Association and to each holder of a First Mortgage which is listed as a scheduled holder of a First Mortgage in the insurance policy.

(c) Fidelity Insurance. The Board shall have authority to and may obtain fidelity coverage to protect against dishonest acts on the part of officers, Directors, trustees, and employees of the Association and all others who handle or are responsible for handling funds of the Association, including the Managing Agent. Such insurance shall name the Association as the insured and shall be in an amount sufficient to provide protection which is in no event less than one and one-half times the Association's estimated annual operating expenses and reserves.

(d) Other Insurance. The Board shall also have authority to and may obtain such insurance and for such amounts as it deems desirable, including without limitation, directors' and officers' liability insurance for the Board and officers of the Association, and to increase insurance limits in such amounts, from such sources and in such forms as it deems desirable, insuring the Property and each member of the Board and officer of the Association, and each member of any committee appointed pursuant to the By-laws of the Association against