

file

This instrument prepared by and after recording return to:  
Shumacker Witt Gaither & Whitaker, P.C.  
1100 SunTrust Bank Building  
Chattanooga, TN 37402

**MASTER DEED AND DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS  
OF  
RIVER PIER LANDING**

**River Pier Landing, LLC**, a Tennessee limited liability company ("**Developer**"), pursuant to the provisions of the Tennessee Horizontal Property Act, Tennessee Code Annotated sections 66-27-101, *et seq.*, as amended (hereinafter referred to as the "**Act**"), for the purpose of submitting the hereinafter described tract or parcel to a horizontal property regime, does hereby declare as follows:

**WITNESSETH:**

**WHEREAS**, Developer is or shall become the fee simple owner of a certain tract or parcel of land in Chattanooga, Hamilton County, Tennessee, which is more particularly described in EXHIBIT A attached hereto and incorporated herein by this reference, and the improvements presently located or to be constructed thereon as more particularly shown and described on the unit plan on EXHIBIT B attached hereto and incorporated herein by this reference; and

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**WHEREAS**, Developer desires, by recording this Master Deed and Declaration of Covenants, Conditions and Restrictions (this "**Master Deed**"), to establish a horizontal property regime under the provisions of the Act to be known as "**River Pier Landing**."

**NOW, THEREFORE**, Developer does hereby submit the Property, Improvements and Easements to this Master Deed and does hereby establish River Pier Landing as a horizontal property regime under the Act. The Property, Improvements, and Easements shall hereafter be subject to the provisions of the Act, this Master Deed and the Charter and the By-laws of River Pier Landing Condominium Owners Association, Inc. as hereinafter described.

**ARTICLE 1**

**DEFINITIONS**

As used in this Master Deed the terms set forth below shall have the following meanings:

"**Assessment**" means any or all, as the context in which the term is used shall require, of the assessments defined below:

(a) "**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 6.3.

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Hamilton County Tennessee

- (b) **"Special Assessment"** means a charge levied in accordance with Section 6.4.
- (c) **"Specific Assessment"** means a charge levied in accordance with Section 6.5.

**"Association"** means River Pier Landing Condominium Owners Association, Inc., a non-profit corporation formed pursuant to Tennessee law, of which all Unit Owners shall be Members, and which shall operate and manage River Pier Landing.

**"Board"** means the governing body of the Association, as provided in this Master Deed and in the Charter and By-laws of the Association.

**"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.

**"By-laws"** means the By-laws of the Association as amended from time to time.

**"Charter"** means the Charter of the Association as amended from time to time.

**"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 Declaration, the Commercial Units are to be located on the First Floor of the Condominium Building. Developer may, but shall not be required to, hold the Commercial Units for lease and not for resale.

**"Common Elements"** means the entirety of the Property except the Units within a Condominium Building and, without limiting the generality of the foregoing, specifically includes all structural projections within a Unit which are required for the support of a Condominium Building, gas, water and waste pipes, all sewers, all pipes, ducts, flues, chutes, conduits, wires and other utility installations wherever located (except the outlets of such installations when located within the Units), the land upon which any structures are located, the foundations, floor slabs, all weight bearing walls and columns, roofs, common stairways, common corridors, entrances, exits, elevators, elevator shafts and elevator equipment, easements, and all other devices existing for the common use of the Unit Owners that are desirable or normally of common use or necessary to the existence, upkeep, and safety of any Common Elements. The term "Common Area" may be used in the place of Common Elements when the context may require or be appropriate, but such term shall have the same meaning as Common Elements and refer to the same components and items contained in this definition of Common Elements.

**"Common Expenses"** means the actual and estimated costs of maintenance, management, operation, and repair, reconstruction and replacement of the Common Elements and any property or facilities of the Association; unpaid Assessments; management and administration of the Association, including, but not limited to, compensation paid by the

Association to managers, management companies, accountants, attorneys and employees; utilities, garbage pick-up and disposal, landscaping and related services which benefit the Common Elements or property or facilities of the Association; insurance obtained pursuant to this Master Deed; adequate reserves as appropriate; taxes paid by the Association; amounts paid or incurred by the Association in collecting Assessments; and other expenses incurred by the Association for any reason in connection with any of the Common Elements, any property, or facilities of the Association, and in furthering the purposes of the Association or the discharging the obligations imposed on the Association or the Board by this Master Deed, the Charter or the By-laws.

**"Condominium"** means an estate in real property in River Pier Landing 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.

**"Condominium Building"** means the Improvements to be constructed on the Property that will contain the Commercial and Residential Units and the Limited Common Elements applicable to the Residential Units.

**"Developer"** means River Pier Landing, LLC, or any successor who becomes a legal or equitable owner of substantially all of the real estate comprising the Property not previously conveyed to Unit Owners.

**"Development Period"** shall mean and refer to that period of time beginning on the date of this Master Deed and ending three (3) years after the date on which the first Unit is conveyed, whether or not the Developer no longer owns any interest in the Property.

**"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.

**"Eligible Mortgagee"** means the holder of a First Mortgage on a Unit that has submitted a written request to the Association to be notified on any proposed action requiring the consent of a specified percentage of such Eligible Mortgagees.

**"Expandable Regime"** means this horizontal property regime to which Additional Land, as defined in the "Property" definition, may be added and upon which additional Units, Common Elements and Limited Common Elements may be hereafter constructed or created to be governed by the provisions of this Master Deed, a Supplemental Master Deed and the Act.

**"First Mortgagee"** means the Mortgagee of a Mortgage that has priority over any other Mortgage encumbering a specific Condominium. **"First Mortgage"** means a Mortgage that has priority over any other Mortgage encumbering a specific Condominium.

**"Governing Documents"** shall mean and refer to this Master Deed, any Supplemental Master Deeds, and the Charter and By-laws of the Association, as any of the foregoing may be amended from time to time, as well as Rules and such other documents lawfully adopted by the Board or the Unit Owners which further define and or limit the operations of River Pier Landing.

**"Household Pets"** shall mean what are commonly considered to be domestic household animals, including fish, dogs, cats and birds. The term "Household Pet" shall not include exotic animals, farm animals, reptiles, swine, rabbits or fowl, all of which shall be prohibited from the Property.

**"Improvement(s)"** shall mean all structures or other improvement(s) to the Property of any kind whatsoever whether above or below grade, including, but not limited to, buildings, utility driveways, parking areas, landscaping, signs, site lighting, site grading and earth movement and any exterior additions, changes or alterations thereto, whether original or future construction.

**"Limited Common Elements"** means the Limited Common Elements as defined in the Act and shall further also include balconies and terraces designed for the use of an individual Unit and utility lines and heating and air conditioning components designed for the use of an individual Unit together with all necessary ducting, piping, wiring, controls, thermostats and similar installations usable in connection therewith. Exclusive use of the Limited Common Elements is limited to the Unit to which such Limited Common Elements are deemed to be appurtenant.

**"Master Deed"** shall mean this Master Deed and Declaration of Covenants, Conditions and Restrictions and all Exhibits hereto as the same may now or hereafter be amended or supplemented.

**"Material Amendment"** has the meaning ascribed to that term in Section 12.1.

**"Member"** means every Person who holds membership in the Association as provided in Article 3.

**"Mortgage"** means any recorded mortgage or deed of trust that encumbers a Condominium.

**"Mortgagee"** means a mortgagee under a Mortgage and includes the beneficiary under a deed of trust.

**"Percentage Interest"** means the percentage interest allocated to each Unit Owner in accordance with Section 3.2(a)

**"Person"** means a natural person, a corporation, a limited liability company, a partnership, a trustee, or any other legal entity.

**"Property"** means all the land and property described on EXHIBIT A, and any additional land that may be later submitted to River Pier Landing in accordance with and by amendments to this Master Deed (the **"Additional Land"**), and all Improvements and structures erected, constructed or contained therein or thereon, including 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.

**"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 Declaration, the Residential Units are to be located on the Second, Third, Fourth, Fifth and Sixth/Penthouse floors of the Condominium Building.

**"Restaurant Lease"** means that certain restaurant lease dated as of March 29, 2004 by and between River Pier Landing Retail, LLC and The Hennen Group, LLC, a Tennessee limited liability company ("**Hennen**"), pursuant to which Hennen has agreed to lease a Commercial Unit from River Pier Landing Retail, LLC on the terms set forth therein.

**"Rules"** means the rules and regulations to be adopted by the Association pursuant to Article 2.

**"Supplemental Master Deed"** means an amendment or supplement to this Master Deed, including any amendment or supplement filed pursuant to Article 8.

**"Unit"** means that part of the Condominium Building intended for individual ownership and use. Each individual Unit shall consist of the improvements and space therein within the boundary lines for that Unit, as set out on the plans attached as EXHIBIT B hereto, and each Unit has the number, location and dimensions shown on said plans. However, in interpreting said plans and deeds, leases, declarations and other plans, the existing physical boundaries of a Unit shall be conclusively presumed to be its boundaries rather than the description expressed in said plans or on a plat or deed due to the settling or lateral movement of a Condominium Building in which such Unit is located or because of minor variances between boundaries as shown in said plans or on a plat or in the deed, lease or declaration and those plans of the Condominium Building as constructed.

Nothing contained herein shall be construed to include any of the land on which the Improvements are to be built as part of a Unit, because such land is part of the Common Elements. Nothing contained herein shall be construed to include the exterior surface of any exterior wall or any lighting fixtures or appliances on the exterior surface of any exterior walls, because such surfaces and such lighting fixtures and appliances are part of the Common Elements.

The lower boundary of a Unit shall be the unfinished surface of the concrete floor of the Unit. The upper boundary of a Unit other than a Unit located on the Sixth/Penthouse floor of the Condominium Building shall be the the unfinished surface of the concrete ceiling of the Unit. The upper boundary of the Units located on the Sixth/Penthouse floor of the Condominium

Building shall be the unfinished surface of the metal ceiling of those Units. The metal roof structure of the Condominium Building other than the metal ceiling of the Sixth/Penthouse Units shall be Common Elements. The lateral or perimenteral boundaries of the Unit shall be an irregular line which shall follow the unfinished interior surfaces of the sheetrock on the demised walls of the Unit (to include the sheetrock) and the exterior surface of the metal stud furring attached to the exterior perimeter walls of the Unit, and shall extend upward and downward to the upper and lower boundaries of the Unit.

"Unit Deed" means the deed of Developer conveying a Unit to a Unit Owner.

"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, Developer shall be deemed a Unit Owner so long as it is the record owner of any Unit.

## ARTICLE 2

### **RIVER PIER LANDING AND THE ASSOCIATION FOR ITS MEMBERS**

Section 2.1 Name and Description of the Condominium. The Condominium, Building shall be known as River Pier Landing and will be a mixed-use condominium complex containing residential apartments and commercial space for retail or other business activities.

Section 2.2 Description and Function of Association. The Association is a non-profit entity organized and existing under the laws of the State of Tennessee and is charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents, as they may be amended from time to time; provided, however, that no Governing Documents other than this Master Deed shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Master Deed. The Association shall be responsible for the management, maintenance, operation and control of the Property and will be the primary entity responsible for enforcing the provisions of this Master Deed and such Rules regulating the use of the Property as the Board may hereafter adopt.

Section 2.3 General Duties and Powers. In addition to the duties and powers enumerated in the Charter and By-laws, copies of which are attached hereto as EXHIBIT C, and elsewhere in this Master Deed, and without limiting the generality of such duties and powers, the Association acting through the Board shall:

(a) Maintain, repair, replace, construct, reconstruct, improve, and otherwise manage all of the Common Elements and Limited Common Elements so as to keep them in good repair and condition and shall conduct such other activities as may be determined by the Association to promote the health, safety, and welfare of the Unit Owners. Any action necessary or appropriate to the maintenance and upkeep of the Common Elements and Limited Common

Elements shall be taken by the Association only; provided, however, that each Unit Owner shall have the maintenance responsibilities as to the Limited Common Elements appurtenant to his Unit that are specified in Section 4.4 below.

(b) 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.

(c) 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.

(d) 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.

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

(f) Prepare and review-budgets and financial statements as prescribed in the By-laws.

(g) 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.

(h) Formulate and adopt rules and regulations to guide and direct operations in all Common Areas maintained or controlled by the Association.

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

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

(k) 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.

(l) Purchase, hold, or dispose of any real or personal property in connection with the affairs of the Association.

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

Section 2.4 Maintenance of Unit Owner's Property. If a Unit Owner fails to properly perform his maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Unit Owner in accordance with Article 6. The Association shall afford the Unit Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

Section 2.5 Implied Rights; Board Authority. The Association may exercise any other right or power given to it expressly by this Master Deed or the By-laws, or reasonably implied from, or reasonably necessary to effectuate any such right or power. Except as otherwise specifically provided in this Master Deed, the Charter or By-laws, the Rules or by law, all rights and powers of the Association shall be exercised by the Board without a vote of the membership.

Section 2.6 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 with the vote or written consent of the Members whose aggregate Percentage Interest, as defined herein and set forth in EXHIBIT D, is more than fifty percent (50%):

(a) Incur aggregate expenditures of the kind described in Section 6.4 hereof in any fiscal year in excess of Twenty-five Thousand and no/100 Dollars (\$25,000.00); 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.

(b) Sell any property of the Association during any fiscal year having an aggregate fair market value greater than Two Thousand Five Hundred and no/100 Dollars (\$2,500.00), 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.

(c) 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.

Section 2.7 Enforcement by Developer. All of the covenants, conditions, and restrictions contained herein, including the power to impose sanctions for violations of this Master Deed, the By-laws, or Rules in accordance with procedures set forth in this Master Deed, the By-laws or Rules, shall be administered and enforced exclusively by Developer until the earliest of (i) four (4) months after seventy-five percent (75%) of the Units have been conveyed to Unit Owners; (3) years after the first Unit is conveyed; or (4) the date on which Developer assigns its rights to the Association.



Section 2.8 Enforcement by Association. Following the Association receiving the rights of Developer as set forth in Section 2.7, the Association may impose sanctions for violations of this Master Deed, the By-laws, or Rules in accordance with procedures set forth in the By-laws, including the assessment of reasonable monetary fines and the suspension of the right to vote. In addition, the Association may exercise self-help to cure violations, but judicial proceedings shall be instituted before any items of construction can be altered or demolished in any way. The Association may suspend any services it provides to the Unit of any Unit Owner who is more than sixty (60) days delinquent in paying any assessment or other charge due the Association. The Association may seek relief in any court for violations or to abate nuisances.

Section 2.9 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, Household Pets and such other matters as the Association reasonably determines (the "Rule"), provided that no Rule may be adopted that is inconsistent with this Master Deed. No Rule may be adopted that would interfere with or inhibit the operation of a Business in a Commercial Unit and the Limited Common Elements applicable to a Commercial Unit. Specifically, and without limiting the generality of the foregoing sentence, no Rules may be adopted, and the Association may take no action that would prevent or inhibit in any way the owner of a Commercial Unit or its tenant or licensee from operating one or more or all of the Commercial Units and the Limited Common Elements of those Unit as a restaurant or as any other Business in such manner as the owner, tenant or licensee thereof shall desire. The Rules shall have the same force and effect as if set forth herein and they shall not discriminate among Unit Owners; provided, however that the Association may adopt Rules that provide privileges to owners of Units located on the Sixth/Penthouse floor of the Condominium Building that are not available to owners of Units that are not located on the Sixth/Penthouse floor of the Condominium Building. By way of example, the Association may adopt a Rule that allows outdoor grilling and cooking in Units located on the Sixth/Penthouse floor of the Condominium Building but not in other Units. Any Rule shall become effective fifteen (15) days after adoption or amendment and shall be mailed to all Unit Owners within ten (10) days after adoption or amendment (but no failure to so mail a rule shall prevent the rule from becoming effective). 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.

Section 2.10 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 River Pier Landing and may delegate such of its powers and duties to the management company as it deems to be appropriate except as limited herein. However, 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.

Section 2.11 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.

Section 2.12 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.

Section 2.13 Insurance Coverage. For purposes of this Section 2.13 only, the term "Property" shall mean and include the real estate described on EXHIBIT A, the Limited Common Elements and all property of any kind or description, including the Common Elements, which the Association possesses, maintains or controls. The Association shall obtain and pay the premiums for policies of insurance protecting at all times the Property and the Association, Developer, Unit Owners and their respective agents, representatives, employees, contractors, invitees, guests, licensees and tenants from the following risks and in the amounts so indicated:

(i) Casualty insurance covering the Property for (A) loss or damage by fire; (B) loss or damage from such other risks or hazards now or hereafter embraced by an "Extended Coverage Endorsement," including, but not limited to, windstorm, hail, explosion, vandalism, riot and civil commotion, damage from vehicles, smoke damage, water damage and debris removal; (C) loss for flood if the Property is in a designated flood or flood insurance area; and (D) loss or damage from such other risks or hazards with respect to Improvements and the use and occupancy to the Property that the Association determines to insure against. At all times, such insurance coverage shall be in an amount equal to one hundred percent (100%) of the then "Full Replacement Cost" of the Improvements. "Full Replacement Cost" shall be interpreted to mean the cost of replacing the Property, without deduction for depreciation or wear and tear, including costs attributable to upgrades required by changes in laws and regulations governing zoning, public access and accommodation, workplace conditions, public health or safety or similar matter, and it shall include, to the extent reasonably obtainable, a reasonable sum for architectural, engineering, legal, administrative and supervisory fees connected with the restoration or replacement of the Property in the event of damage thereto or destruction thereof. Notwithstanding the foregoing, neither Developer nor

the Association is obligated to maintain any insurance, whatsoever, for any Unit (residential or commercial) or any improvements thereto.

(ii) Comprehensive general liability insurance against any loss, liability or damage on, about or relating to the Property, or any portion thereof, with a minimum single limit of not less than Two Million Dollars (\$2,000,000.00) for personal injury, bodily injury, death, or for damage or injury to or destruction of property (including the loss of use thereof) for any one accident or occurrence. Any such insurance obtained and maintained by the Association shall name as additional insureds Developer, the Board and its officers, employees of the Association and Unit Owners.

(iii) Worker's compensation insurance covering all persons employed in connection with any repair, maintenance, construction, reconstruction or alteration to the Property conducted or directed by the Association, and all employees and agents of other Persons with respect to whom death or bodily injury claims could be asserted against the Association, as required by applicable law.

(iv) After the Development Period, fidelity coverage naming the Association as an obligee to protect against dishonest acts by members of the Board, the Board's members and committee members, the Association's officers and employees, and all others who are responsible for handling Association funds in an amount at least equal to twelve (12) months of Regular Assessments on all Units, including contributions to reserves.

(v) Such other insurance and in such amounts against other insurable hazards which at the time are commonly insured against for similar types of Property of which the Association has an insurable interest.

(vi) Premiums for all insurance policies maintained by the Association shall be Common Expenses and shall be included in the Regular Assessment.

(vii) The insurance policies may contain a reasonable deductible which, in the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-laws, that the loss is the result of the negligence or willful conduct of one or more Unit Owners or occupants, then the Board may specifically assess the full amount of such deductible against the Unit of such Unit Owner or occupant, pursuant to Section 6.5 hereof

(viii) All insurance coverage obtained by the Association shall have an inflation guard endorsement, if reasonably available. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Hamilton County, Tennessee area.

- (ix) All insurance coverage obtained by the Association shall:
  - (a) be written with a company authorized to do business in Tennessee which holds a Best's rating of A or better;
  - (b) vest in the Board exclusive authority to adjust losses;
  - (c) not be brought into contribution with insurance purchased by Unit Owners, occupants, or their Mortgagees; and
- (x) The Board shall use reasonable efforts to secure insurance policies containing endorsements that:
  - (a) waive subrogation as to any claims against Developer, the Board and its officers, and the Unit Owners and their tenants, servants, agents, and guests;
  - (b) waive the insurer's rights to repair and reconstruct instead of paying cash;
  - (c) preclude cancellation, invalidation, suspension, or nonrenewal by the insurer on account of any one of more Unit Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;
  - (d) exclude individual Unit Owners' policies from consideration under any "other insurance" clause; and
- (xi) require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification or nonrenewal.

Section 2.14 Restaurant Lease. The Association shall take no action and shall not otherwise prevent Hennen, its successors and permitted assigns under the Restaurant Lease, from their use and enjoyment (in accordance with the terms of the Restaurant Lease) of the demised premises under the Restaurant Lease, including the Limited Common Elements, the use of which is dedicated to such premises in the Governing Documents.

### ARTICLE 3

#### MEMBERSHIP AND VOTING RIGHTS

Section 3.1 Membership. Every Person who is a record Unit Owner of a fee interest in any Unit shall be a Member. Any Person having an interest in a Unit merely as security for the performance of an obligation shall not be a Member. Membership in the Association and

the right to vote shall be appurtenant to, and may not be separated from, the fee interest ownership of any Unit that is subject to assessment by the Association. Ownership of a Unit shall be the sole qualification for membership in the Association.

Section 3.2 Voting Rights.

(a) Members shall be entitled to a vote equal to the percentage interest allocated to the Unit owned by the Member. EXHIBIT D is a list of all Units by their identifying numbers and the percentage interest appurtenant to each Unit. The percentage interest appurtenant to each such Unit is derived from a fraction, the numerator of which is the number of square feet within the Unit and the denominator of which is the total number of square feet for all Units in River Pier Landing (the "**Percentage Interest**"). Such Percentage Interest represents the Unit Owner's ownership percentage of the undivided common interest in the Common Elements, the percentage vote that such Unit Owner shall have as a Member in the Association, and the Unit Owner's percentage share of Assessments to be levied under Article 6 hereof.

(b) When more than one person holds an interest in a Unit, each such person shall be a Member and the vote for such Unit shall be exercised as they determine among themselves, but in no event shall they have a higher percentage of voting rights than the Percentage Interest assigned to their Unit.

(c) A Unit Owner's right to vote shall vest immediately upon and not before the date Regular Assessments are levied against such Unit Owner's Unit.

(d) Any provision in this Master Deed, the Charter or By-laws that requires a vote of the Members before action may be taken by the Association shall be authorized by the affirmative vote of Members whose aggregate Percentage Interests, as set forth in EXHIBIT D, is more than fifty percent (50%).

(e) As long as Developer owns one or more Units, it shall have the right to vote and shall have voting power equal to the aggregate share of Percentage Interests assigned to the Units owned by Developer.

Section 3.3 Transfer of Membership. The membership interest of a Unit Owner or any individual interest in the Common Elements held by a Unit Owner shall not be transferred, pledged, conveyed, encumbered, alienated, or made subject to judicial sale except upon the sale of the Unit to which that membership interest or interest in the Common Elements is allocated and then only to the purchaser of that Unit. Any attempt to make a prohibited transfer will be void and will not be reflected upon the books or records of the Association. In the event any Unit Owner shall fail or refuse to transfer the membership registered in his name to the purchaser of his Unit, the Association shall have the right to record the transfer upon the books and records of the Association.

**ARTICLE 4**

**RIGHTS, DUTIES AND OBLIGATIONS OF UNIT OWNERS**

Section 4.1 Unit Owner's Rights and Duties Generally. All Unit Owners are subject to all the rights and duties assigned to Unit Owners under the terms of this Master Deed. Each Unit estate Owner shall be subject to all the rights and duties assigned to the Owner under the terms of this Master Deed. Each Unit Owner.

Section 4.2 Common Area.

(a) Every Unit Owner shall have a right and nonexclusive Easement of use, access, and enjoyment in and to the Common Area, and an unrestricted right of ingress and egress across the Common Elements to his particular Unit, and such rights shall be appurtenant to and shall pass with the title to every Unit, subject to:

(i) This Master Deed, the By-laws and any other applicable restrictions;

(ii) Any restrictions or limitations contained in any deed conveying property to the Association;

(iii) The right of the Board to adopt rules regulating the use and enjoyment of the Common Elements;

(iv) The right of the Board to suspend the voting rights of a Unit Owner (A) for any period during which any Assessment or charge against such Unit Owner's Unit remains delinquent in excess of thirty (30) days, and (B) for a period not to exceed sixty (60) days for a single violation of the Rules; and for such period of time as the Board may determine in the case of any subsequent or continuing violation of the Master Deed, any applicable Supplemental Master Deed, the By-laws, or Rules of the Association after notice and a hearing pursuant to the By-laws;

(v) The Easements, reservations and restrictions granted or provided for in this Master Deed or which may later be granted by Developer or the Board; or

(vi) Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Common Elements imposed by any governmental authority, whether by agreement with the Association, Developer or otherwise.

(b) Any Unit Owner may extend the right of use and enjoyment of the Common Elements to the members of his or her family, permitted lessees, and social invitees, subject to reasonable Board regulation. A Unit Owner who has the right to and does lease his Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

Section 4.3 Taxes. Each Unit Owner shall pay without abatement, deduction, or offset, all real and personal property taxes, general and special assessments, including local

improvement assessments, and other charges of every description levied on or assessed against his Unit, or personal property located on or in the Unit.

Section 4.4 Decorating and Maintenance. Each Unit Owner, at his own expense, shall furnish and be responsible for all decorating within his own Unit and within the Limited Common Elements serving his Unit, as may be required from time to time, including, but not limited to, painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, shutters, curtains, lighting and other furnishings and decorating. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings of his Unit and all balconies, patios, decks, and terraces appurtenant thereto, and such Unit Owner shall maintain, at his own expense, said interior surfaces and all balconies, patios, decks, and terraces appurtenant to his Unit in good condition at his sole expense as may be required from time to time. Notwithstanding anything to the contrary in this Master Deed, each Unit Owner shall maintain, at his own expense, the waterproof integrity of all balconies, patios, decks, and terraces appurtenant to his Unit even though such areas are Limited Common Elements. Said maintenance and use of interior surfaces and all balconies, patios, decks, and terraces appurtenant to his Unit shall be subject to the Rules of the Association, but each such Unit Owner shall have the right to decorate such interior surfaces and all balconies, patios, decks, and terraces appurtenant to his Unit from time to time as he may see fit and at his sole expense. Decorating of the Common Elements (other than interior surfaces within the Units as above provided and other than Limited Common Elements) and any redecorating of Units, to the extent such redecorating of Units is made necessary by damage to Units caused by maintenance, repair or replacement of the Common Elements by the Association, shall be furnished by the Association as part of the Common Expenses. The Association may adopt Rules from time to time regulating the decoration of windows or of a perimeter wall of a Unit or Limited Common Elements appurtenant to a Unit, and the Association may adopt Rules from time to time regulating the decoration and use of all balconies, patios, decks, and terraces appurtenant to a Unit. Notwithstanding anything to the contrary in this Section 4.4, windows of a perimeter wall of a Unit or Limited Common Elements appurtenant to a Unit and all balconies, patios, decks, and terraces appurtenant to a Unit shall not be used in any manner or decorated (such as with draperies, shutters, curtains, window shades or other coverings or accessories) in any manner that detracts from the appearance of River Pier Landing, and the determination of the Association on such matters shall be final.

Section 4.5 Unit Owners Insurance.

(a) Every Unit Owner shall maintain comprehensive general public liability insurance coverage which policy must insure the Unit Owner and Association against any and all losses, claims, demands or actions arising from the Unit Owner's use, enjoyment and occupancy of the Unit, the Common Areas or adjacent property, or any portion thereof, with a minimum single limit of not less than Three Hundred Thousand and no/100 Dollars (\$300,000.00) for personal injury, bodily injury, death or for damage or injury to or destruction of property, (including the loss of use thereof) for any one accident or occurrence.

(b) The Association, on behalf of the Unit Owners and their Mortgagees, shall obtain builders risk insurance coverage for Units until the improvements are completed or until March 16, 2006, whichever first occurs. Upon termination of such coverage on a Unit, the Owner of that Unit shall maintain casualty insurance covering his Unit for (A) loss or damage by fire; (B) loss or damage from such other risks or hazards now or hereafter embraced by an "Extended Coverage Endorsement," including, but not limited to, windstorm, hail, explosion, vandalism, riot and civil commotion, damage from vehicles, smoke damage, water damage and debris removal; (C) loss for flood if the Unit is in a designated flood or flood insurance area; and (D) loss or damage from such other risks or hazards with respect to the Unit that the Association determines to insure against. At all times, such insurance coverage shall be in an amount equal to one hundred percent (100%) of the then "Full Replacement Cost" of the Unit. "Full Replacement Cost" shall be interpreted to mean the cost of replacing the Unit, without deduction for depreciation or wear and tear, including costs attributable to upgrades required by changes in laws and regulations governing zoning, public access and accommodation, workplace conditions, public health or safety or similar matter, and it shall include, to the extent reasonably obtainable, a reasonable sum for architectural, engineering, legal, administrative and supervisory fees connected with the restoration or replacement of the Unit in the event of damage thereto or destruction thereof.

(c) Every Unit Owner shall obtain and maintain insurance coverage upon his furniture, furnishings, household goods, appliances, fixtures, the Limited Common Elements appurtenant to his Unit, and all other personal property of the Unit Owner used, maintained, kept or stored in his Unit or on the Property against loss or damage by fire, windstorm or other casualties or causes for such amount as the Unit Owner may desire but in no event less than One Hundred Thousand and no/ 100 Dollars (\$100,000.00), in accordance with standard fire and extended coverage insurance policies in effect for multi-family dwelling homeowners.

(d) Each insurance policy required to be maintained by the Unit Owner hereunder shall contain the provision that they may not be cancelled or have a material change in coverage without first giving the Association not less than thirty (30) days' prior written notice. Each Unit Owner shall furnish the association with a certificate of insurance for each policy within thirty (30) days of the Unit Owner's occupancy of his Unit.

(e) The minimum limits set forth in this section, or the types of coverages that each Unit Owner shall be required to maintain, may be changed from time to time at the discretion of the Board.

Section 4.6 Sound and Impact Isolation Materials. Prior to occupying a Residential Unit, the owner of that Unit, at his own expense, shall install, and the Owner of each Residential Unit shall continuously maintain at all times during his ownership of such Unit, sound and impact isolation materials on the floor, ceiling and demising walls of the Unit that result in the Unit having a Sound Transmission Coefficient performance of not less than seventy (70) and an Impact Isolation Coefficient of not less than seventy (70). Prior to occupying a Commercial Unit, the owner of that Unit, at his own expense, shall install, and the Owner of each Commercial Unit shall continuously maintain at all times during his ownership of such Unit, sound and impact isolation materials on the floor, ceiling and demising walls of



the Unit that result in the Unit having a Sound Transmission Coefficient performance of not less than sixty-five (65) and an Impact Isolation Coefficient of not less than sixty-five (65). Prior to installing any sound or impact isolation materials in his Unit, each Unit Owner shall provide to Developer, so long as Developer owns a Unit, for the Developer's approval, and thereafter to the Association for the Association's approval, plans and specifications for the sound and impact isolation materials that the Unit Owner proposes to install in his Unit. Neither Developer nor the Association, as applicable, shall unreasonably withhold its approval of such plans and specifications.

Section 4.7 Unit Owner's Compliance with Governing Documents. By acceptance of a deed to a Unit, or any other means of acquisition of an ownership interest, whether or not it shall be so expressed in any such deed or other instrument, the Unit Owner thereof covenants and agrees thereby, on behalf of himself and his heirs, successors, and assigns, to observe and comply with all terms of the Master Deed, By-laws, and all Rules duly promulgated by the Association. Each Unit Owner and occupant of a Unit shall comply strictly with the provisions of this Master Deed, the Bylaws and all Rules as the same may be lawfully amended from time to time, and all decisions adopted pursuant to this Master Deed and the By-laws. Failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Association acting through the Board on behalf of the Unit Owners, or by any aggrieved Unit Owner on his own.

Section 4.8 Association's Compliance with Governing Documents. The Association shall comply strictly with the provisions of this Master Deed, the Bylaws and all Rules as the same may be lawfully amended from time to time, and all decisions adopted pursuant to this Master Deed and the By-laws. Failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by any aggrieved Unit Owner on his own.

## ARTICLE 5

### ADDITIONAL RIGHTS DUTIES AND OBLIGATIONS OF UNIT OWNERS

Section 5.1 Creation of Obligation to Pay Assessment. Developer, for each Unit to be constructed and owned within the Property, hereby covenants, and each Unit Owner of any Unit by acceptance of a deed thereto, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (a) Regular Assessments, (b) Special Assessments, and (c) Specific Assessments directly attributable to a Unit Owner. Such Assessments are to be fixed, established, and collected from time to time as provided in this Master Deed. Notwithstanding the foregoing, the Commercial Units shall not be subject to (a) Regular Assessments; (b) Special Assessments; or (c) Specific Assessments that are solely for the benefit of the Residential Units, and the Residential Units shall not be subject to (a) Regular Assessments; (b) Special Assessments; or (c) Specific Assessments that are solely for the benefit of the Commercial Units.

Section 5.2 Commercial Activities Prohibited by Residential Unit Owners. 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.

Section 5.3 Use of Commercial Units. An occupant of a Commercial Unit is expressly authorized to use the Commercial Unit to engage in lawful Business. The type of businesses that may be conducted within the Commercial Unit shall however be compatible with the following, as determined by Developer in its absolute discretion as long as Developer owns at least one (1) Unit, and thereafter by the Association in its absolute discretion: financial institutions, executive or professional offices, real estate brokerage or sales agencies, leasing companies, travel agencies, upscale restaurants and/or casual dining establishments, and 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 Association for a waiver of such restriction, which waiver shall not be unreasonably withheld if such proposed Business is compatible with the residential nature of the Property and would not significantly diminish the use and enjoyment of the Property by the residents.

Section 5.4 No Partition. The Common Elements shall remain undivided and shall not be the object of an action for partition or division of the co-ownership thereof so long as the Common Elements are used for a horizontal property regime, and in any event, all Mortgagees must be paid in full prior to bringing an action for partition, or the consent of the Mortgagee must be first obtained.

Section 5.5 Leasing Restrictions. Each lease or rental agreement for a Unit shall be in writing and shall by its terms provide that it is subject in all respects to the provisions of the Governing Documents. All leases of Units shall be subject to the requirements of the Governing Documents and the Association, whether or not the leases so state. Any failure by a lessee to comply with the terms of the Governing Documents shall be a default under the lease, whether or not it is so expressed therein, and the Association may take action to prescribe penalties for violations of the Governing Documents under the provisions of Section 2.8 hereof.

Section 5.6 Antennae. Without the prior written approval of Developer as long as Developer owns at least one (1) Unit, and thereafter without the prior written approval of the Association, no towers, antennae, aerials, satellite dishes or other facilities for the reception or transmission of radio or television broadcasts, or other means of communication shall be erected and maintained or permitted to be erected and maintained on or projecting from a Unit, including any balconies or porches, the Common Area, the roof of the Condominium Building or by use of underground conduits.

Section 5.7 Nuisances. No noxious or offensive activity shall be carried on upon in any Unit or Common Area, nor shall anything be done or kept thereon which may be or become an annoyance or nuisance to the Unit Owners or the occupants of the Units.

Section 5.8 Signs. No sign or other advertising device of any nature whatsoever shall be placed or maintained on or at any Residential Unit. Commercial Units shall be

allowed signage: (i) with the prior written approval of Developer as long as Developer owns at least one (1) Unit, (ii) the signage complies with applicable governmental requirements and (iii) the signage is compatible with all other signage on the Property. Notwithstanding the foregoing, Developer or its designees may erect and maintain upon the Property such signs and other advertising devices as it may deem necessary to sell and market the Units to be constructed on the Property.

Section 5.9 No Obstruction of Easements. No structure, planting, or other material shall be placed or permitted to remain upon Property which may damage or interfere with any Easement or the installation or maintenance of utilities, or which may unreasonably change, obstruct, or retard direction or flow of any drainage channels.

Section 5.10 Variances. The Association may allow reasonable variances and relief from these restrictions in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided, however, that such is done in conformity with the intent and purposes hereof and provided also that in every instance such variance or adjustment will not be materially detrimental or diminish the use and enjoyment of other Unit Owners.

Section 5.11 Rights and Obligations of Mortgagees. The holder of a Mortgage shall not, by reason of the security interest only, be liable for the payment of any assessment or charge, nor for the observance or performance of any covenant or restriction, excepting only those enforceable by equitable relief and not requiring the payment of money. At such time as a Mortgagee shall become an owner of a Unit previously encumbered by a Mortgage, the Mortgagee may exercise any or all of the rights and privileges of the Unit Owner of the previously encumbered Unit, including the right to vote in the Association, and the Mortgagee shall be subject to all of the terms, conditions and restrictions contained in this Master Deed, including the obligation to pay for all Assessments and charges in the same manner as any Unit Owner.

The Association shall give the holder, insurer, or guarantor of any Mortgage timely written notice of

- any condemnation or casualty loss that affects either a material portion of the Property or the Unit securing its mortgage;
- any 60-day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which it holds the Mortgage;
- a lapse, cancellation, or material modifications of any insurance policy maintained by the Association; and
- any proposed action that requires the consent of a specified percentage of eligible Mortgage holders.

In order to receive such notice, the Mortgage holder, insurer, or guarantor shall send a written request for this information to the Association, stating both its name and address and the Unit number or address of the Unit on which it holds (or insures or guarantees) the Mortgage.

Section 5.12 Pets. Unit Owners shall be allowed to keep Household Pets subject to such reasonable Rules as the Association may adopt; provided, however, that no Rule may be adopted that would prohibit an Owner from keeping less than two dogs.

Section 5.13 No Pressure Assisted Toilets. Pressure assisted toilets may not be used above the first floor of the Condominium Building.

Section 5.14 Galvanized Pipes. All pipes used for the transportation of liquids (other than pipes installed by the Developer) shall be cast iron.

Section 5.15 Open-Flame Grilling. Propane and natural gas are the only fuels that may be used for open flame grilling in Residential Units and in the Limited Common Elements appurtenant to Residential Units. Charcoal, wood and other types of fuels may not be used in such locations for open-flame grilling.

Section 5.16 Gas Appliances. Gas stoves are permitted in the Condominium Building. Gas water heaters and gas clothes dryers are prohibited from the Condominium Building.

Section 5.17 Floor Penetrations. To assist the Developer in fixing the location of utility Easements that Developer will declare pursuant to this Master Deed for the purpose of allowing Unit Owners to have pipes, conduits or other devices installed through or in other Units or through or in the Common Elements for the purpose of receiving utility services in their Units, on or before May 23, 2005, each Unit Owner (other than those owning Units on the sixth floor of the Condominium Building) shall provide the Developer with plans showing the location of all pipes, conduits or other devices that the Owner desires to have installed through other Units or through the Common Elements. Upon the Developer's approval of such plans, and the Developer's identification of appropriate Easements for the devices described in such plans, each Unit Owner (other than those owning Units on the sixth floor of the Condominium Building) shall have until June 10, 2005 by which to have the pipes, conduits or other devices described in such plans installed. In the event any Unit Owner fails timely to submit such plans to Developer, or fails timely to have the pipes, conduits or other devices described in plans approved by the Developer installed at the locations described in such plans, Developer may install such pipes, conduits or other devices at the expense of the Unit Owner for whom they were installed, and the Unit Owner shall promptly reimburse the Developer for such expenses incurred. The deadlines for Unit Owners owning Units on the sixth floor of the Condominium Building to provide the Developer with the plans described in this Section 5.17 and to have the pipes, conduits or other devices described in such plans installed following Developer's approval thereof and the Developer's identification of Easements for such devices shall be such dates as Developer shall designate by notice to the Unit Owners of those Units.

## ARTICLE 6

## ASSESSMENTS

Section 6.1 Authority to Levy Assessments. Assessments shall be levied by the Association to meet the expenses and other costs and financial needs of the Association. All funds collected by the Association through assessments shall be used exclusively to promote the recreation, health, safety and welfare of the Unit Owners within the Property, for the maintenance and improvement of the Common Elements, to defray the Association's costs of administration, and for the other purposes set forth in this Master Deed and in the Charter and By-laws of the Association, as the same may from time to time be supplemented and amended.

Section 6.2 Apportionment. An assessment is defined for purposes of this Master Deed as that sum which must be levied against the Units in order to raise the total amount necessary to pay the actual or estimated Common Expenses or other costs for which the assessment is being made. Regular Assessments shall be levied against all Units within the Property, and the portion of the aggregate Common Expenses to be paid by each Unit Owner shall be determined by the Percentage Interest assigned to the Unit in EXHIBIT D attached hereto, which shall be amended to increase or decrease the percentage proportionately if any Unit is enlarged or reduced.

Section 6.3 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 reserve for contingencies and for the replacement of Improvements to Common Elements and those Limited Common Elements that the Association is obligated to maintain, 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 Units as provided in Section 6.2 above. 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 as provided in Section 6.4 below to make up for such deficiency. The Developer may not use Regular Assessments to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits while it is in control of the Association. However, when unsold Units are sold, the Developer may reimburse itself for funds it paid the Association for an unsold Unit's share of the Regular Assessments by using funds collected at closing when the Unit is sold.

Section 6.4 Special Assessments. In addition to the Regular Assessments authorized above, the Board may establish, levy and collect Special Assessments against the Units as follows:

(a) for the purpose of the defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement for the Common Area, including the necessary fixtures and personal property related thereto, subject to the limitations of the powers of the Board set forth in Section 2.6;

(b) 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

(c) 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.

Section 6.5 Specific Assessments.

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 provided in this Section.

(a) The Board shall have the power to levy Specific Assessments to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to a 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.

(b) The Board shall have the power to levy Specific Assessments to cover costs incurred in bringing a 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).

(c) Commercial Units shall be subject to such Specific Assessments as the Board shall reasonably determine is necessary to keep all areas related to the Commercial Units clean and presentable. Such assessment shall be based on actual costs incurred by the Board.

(d) Residential Units and Commercial Units shall be subject to Specific Assessments for costs that relate primarily to the operation or use of one type of Unit but not to the operation or use of the other type of Unit. By way of example, the Residential Units, but not the Commercial Units, shall be subject to Specific Assessments for all costs related to the maintenance and repair of the elevators in the Condominium Building.

Section 6.6 Notice and Time for Payment of Assessments. The Board shall fix the date by which any Regular, Special or Specific Assessment or any installment thereof shall be paid to the Association. The Board may require that any such Assessments be paid in monthly, quarterly, or semiannual installments, or in such other manner as the Board may deem appropriate in its sole and absolute discretion. Written notice shall be given to each member, at such member's last known address as indicated by the Association's records, of the amount of any Regular, Special or Specific Assessment and when it is due; provided, however, that the failure of any Unit Owner to be sent or to receive such notice shall not, in any manner, excuse or postpone such Unit Owner's obligation to pay any such assessment when due.

Section 6.7 Commencement of Assessments. Liability of a Unit Owner for Assessments shall commence on the first day of the calendar month following the date upon which any instrument of transfer to such Unit Owner becomes operative (such as the date of a deed, the date of death in the case of a transfer by will or intestate succession, etc.) and, if earlier, the first day of the calendar month following the first occupancy of a Unit to a Unit Owner. The Association may in the Rules provide for an administratively convenient date for commencement of Assessments that is not more than thirty (30) days after the effective date established above, but in no event shall such date be more than sixty (60) days after the date of the first conveyance of a Unit to a Unit Owner. The due dates of any Special Assessment payment shall be fixed by the Association at the time it authorizes such Special Assessment.

Section 6.8 Interest and Late Charges. If any Assessment, whether Regular, Special or Specific, is not paid within thirty (30) days after it is due, such Assessment shall bear interest at the rate of eighteen percent (18%) per annum, or at such lower or higher rate as the Board may designate from time to time, and in no event higher than the maximum rate allowed by applicable law, compounded annually, from the date it became due; and the Unit Owner owing such Assessment may be required to pay a late charge at such uniform rate as the Board may designate from time to time.

Section 6.9 Assessment Lien. The amount of any delinquent Assessments, whether Regular, Special or Specific and any interest thereon and any late charge attributable thereto, plus the cost of collecting the same, including reasonable attorneys' fees, shall constitute a lien upon the Unit upon which such assessment was levied. To evidence such lien, the Board may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Unit Owner, and a description of the Unit subject to the Assessment, and record the same in the Register's Office of Hamilton County, Tennessee. Such Assessment lien shall attach from the due date of the assessment(s) it secures and may be enforced by foreclosure on the Unit of the defaulting Unit Owner by the Association in the same manner as is provided by the laws of the State of Tennessee for the foreclosure of mortgages on real property. In the event of any such foreclosure, the Unit Owner shall be liable for all amounts secured by the Assessment lien, plus the costs and expenses of such proceedings, the costs and expenses for filing the notice of the lien, and all reasonable attorneys' fees in connection therewith. By acquiring ownership of any Unit subject to Assessment as provided for herein, the Unit Owner shall thereby be deemed to have waived and released any and all rights and claims said Unit Owner may have in and to said Unit as a homestead exemption or other exemption, said waiver and release to be applicable only in an action to foreclose the Assessment lien.

Section 6.10 Personal Obligation. In addition to the Unit becoming subject to an Assessment lien, the amount of any Assessment and the interest thereon and all other charges incident thereto shall also be a personal and individual debt of the Unit Owner of the Unit against which the Assessment was made. No Unit Owner may become exempt from liability for an Assessment by abandonment or waiver of the use and enjoyment of the Association property or by abandonment of his Unit. A suit to recover a money judgment for unpaid Assessments and all interest and other incidental charges, together with all court costs and

reasonable attorneys' fees incurred in connection with such suit, shall be maintainable by the Association without foreclosing or waiving the Assessment lien provided herein. A purchaser or other Person acquiring ownership of any Unit subject to Assessment shall be jointly and severally liable with the prior Unit Owner for all unpaid Assessments, interest and incidental charges due with respect to the Unit prior to the time of conveyance, without prejudice to the right of such purchaser or other Person to recover from the prior Unit Owner the amount paid for such Assessments, interest and incidental charges.

Section 6.11 Association's Right of Acceleration Upon Default. In addition to the other remedies provided for the Association upon default of a Unit Owner in the payment of any Regular, Special or Specific Assessment or any installment thereof, the Association shall have the immediate right to accelerate the total amount of such Regular, Special or Specific Assessment as remains outstanding at the time of such default. This right of acceleration in the event of default shall apply whether the Association pursues the obligation personally against the Unit Owner or through foreclosure of the Unit Owner's Unit, as provided herein.

Section 6.12 Suspension for Non-Payment of Assessment. If a Unit Owner shall be in arrears in the payment of any Assessment due or shall otherwise be in default of the performance of any terms of the Governing Documents of the Association for a period of thirty (30) days, said Unit Owner's voting rights shall, without the necessity of any further action by the Association, be suspended (except as against foreclosing secured parties) and shall remain suspended until all payments, including interest thereon, are brought current and any other default is remedied. No Unit Owner is relieved of liability for Assessments by non-use of the Common Elements or by abandonment of a Unit.

Section 6.13 Subordination of Assessment Liens to First Mortgages. The lien for Assessments provided for in this Master Deed shall be subordinate only to the lien of any First Mortgage held by a First Mortgagee who is a licensed commercial lender and where the Mortgage of such First Mortgagee was recorded before the assessments became delinquent. The Association will, upon demand, execute a written subordination document to confirm the particular superior security interest. A lien for Assessments will not be affected by the sale or transfer of any Unit or any interest therein, unless a foreclosure of a First Mortgage is involved, in which case the foreclosure will extinguish the lien for any Assessments that were payable before the foreclosure sale, but the foreclosure will not relieve any subsequent Unit Owner from paying further Assessments.

Section 6.14 Working Capital Fund. The Association shall have a working capital fund to meet unforeseen expenditures or to purchase any additional equipment or services for the Property. The working capital fund shall be established by the Developer's collection of at least two (2) months worth of estimated common charges for each Unit from the purchaser of each Unit at the time the sale of the Unit is closed. Amounts paid into this fund shall not be considered as advance payments of Regular Assessments. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred from the Developer to the Unit Owners. The Developer may not use the working capital funds to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits while it is in control of the Association. However, when unsold



Units are sold, the Developer may reimburse itself for funds it paid to the Association for an unsold Unit's share of the working capital fund by using funds collected at closing when the Units are sold.

## ARTICLE 7

### EASEMENT AND RIGHTS RESERVED BY DEVELOPER

Section 7.1 Additional Covenants and Easements. Developer may unilaterally subject any portion of the Property submitted by this Master Deed and any additional land that may later be submitted by Supplemental Master Deed to additional covenants and Easements, including covenants obligating the Association to maintain and insure such Property on behalf of the Unit Owners and obligating such Unit Owners to pay the costs incurred by the Association, so long as such additional covenants and Easements do not materially and adversely interfere with a Unit Owner's use and enjoyment of his Unit. Such additional covenants and Easements shall be set forth in a Supplemental Master Deed filed either concurrent with or after the submission of the subject property.

Section 7.2 Easements to Serve Additional Property. Developer hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and mortgagees, an Easement over the Common Area for the purposes of enjoyment, use, access, and development of any additional land, whether or not such property is made subject to this Master Deed or any subsequent Supplemental Master Deed. Developer agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of other activities connected with development of any additional land.

### Section 7.3 Easements for Utilities, Etc.

(a) There are hereby reserved unto Developer so long as the Developer owns a Unit and thereafter unto the Association, and the successors and assigns of each, access and maintenance Easements upon, across, through, over, and under all of the Property and each of the Units to the extent reasonably necessary for the purpose of installing, replacing, repairing, and maintaining devices that provide utility services, including all sewer, water, power and telephone, pipes, lines, mains, conduits, poles, transformers, heating or air conditioning systems, ventilation systems, cable television systems, master television antenna systems, satellite television systems, security and similar systems, computer systems, roads, walkways, irrigation systems, drainage systems, lights, light fixtures, appliances, signage, and any and all other appurtenances, equipment or machinery necessary or incidental to the proper functioning of the same which serve the Property, any Unit thereon, or any adjacent property of Developer, and the Improvements thereto, including the right of ingress and egress. No utility service proposed to be installed by a Unit Owner shall be installed unless the Unit Owner shall first have obtained the written approval for such utility service from the Developer, so long as the Developer owns a Unit, and thereafter from the Association and the successors and assigns of each. Any such utility service shall be designed to minimize interference with Common Elements and with other Units. Should any governmental agency or utility company finishing one of the foregoing services hereafter request a specific Easement by a separate recordable

instrument in connection with the furnishing of any such service, the Developer, so long as the Developer owns a Unit and thereafter the Association and the successors and assigns of each, shall have the right to grant such Easement without payment of any consideration and without the prior consent of any Unit Owners. Any damage to a Unit resulting from the use of such Easement by a Unit Owner, or by its agents or contractors, shall promptly be repaired by, and at the expense of, the Unit Owner so using the Easement. The use of this Easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry into any Unit shall be made only after reasonable notice to the Unit Owner or occupant.

(b) In addition to the above provisions, upon the recording of this Master Deed, Developer specifically grants to the local water supplier, electric company, telephone company, cable television company, and natural gas supplier Easements across the Property for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this Easement shall not extend to permitting entry to any Unit, nor shall any utilities be installed or relocated on the Property, except as approved by Developer.

(c) Developer, the Unit Owners and their respective successors and assigns shall have a blanket, perpetual and non-exclusive Easement in common in, upon, over, under, across and through the Property for surface water run-off and drainage caused by natural forces and elements, grading, and/or the Improvements located on the Property.

(d) Every Unit Owner shall also have a perpetual non-exclusive Easement to use and maintain all pipes, wires, ducts, cables, conduits and public utility lines which serve the Unit Owner and are located within the boundaries of another Unit.

Section 7.4 Association Grant of Easements. The right and authority of the Association to grant Easements that have been hereafter assigned to it by Developer shall not be exercised unless approved by the affirmative vote of the Members whose aggregate amount of Percentage Interest, as set forth in EXHIBIT D, is more than sixty-six and two-thirds (66-2/3%) percent, except that the granting of Easements by the Association for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not require such prior approval.

Section 7.5 Developer's Use of Common Areas During Development Period. During the Development Period, Developer may utilize portions of the Common Area to maintain such facilities and conduct such activities as, in the sole opinion of Developer, may be reasonably required, convenient, or incidental to the construction or sale of such Units, including but not limited to signs, model units, and sales offices. Developer's right to use the Common Area for the purposes stated in this Section shall not unreasonably interfere with use of such Common Areas by Unit Owners.

Section 7.6 Party Walls.

(a) Each wall which is built as a part of the original construction of Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this

Article, the general rules of law regarding party walls and liability for property damage due to negligence or acts or omissions shall apply thereto. There shall be no changes in, impairments of or permanent structural attachments made to any party wall unless expressly made in conformity with this Article and consented to by all Persons having an interest in the party wall. There shall be an Easement for reasonable repairs over the areas immediately adjacent to each side of all party walls for the benefit of all Persons having an interest therein; provided, however, that such Easement shall allow entry only at reasonable times and shall in no event be deemed to permit entry into the interior portions of any Unit except to the extent necessary to effect the required repairs. Any damage resulting from use of the Easement shall be repaired at the expense of the Unit Owner permitting or causing the same to occur.

(b) The cost of reasonable repair and maintenance of a party wall shall be shared by the Unit Owners who make use of the wall in proportion to such use without prejudice, however, to the right of any such Unit Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(c) If a party wall is destroyed or damaged by fire or other casualty, any Unit Owner who has used the wall may restore it, and if the other Unit Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Unit Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) The right of any Unit Owner to contribution from any other Unit Owner under this Article shall be appurtenant to the land and shall pass to such Unit Owner's successors in title.

(e) With respect to a perimeter wall of a Unit that is shared with the owner of adjacent property, Developer and/or Association, and not the Unit Owner, shall be jointly responsible along with the owner of the adjacent property for repair and maintenance of such party wall in accordance with the general rules of law applicable to party walls.

(f) Any Unit Owner having a party wall with an adjacent property owner accepts title to such Unit subject to the party wall rights and obligations set forth in this Section 7.6 and accepts the right of Developer and/or Association to perform repairs, maintenance and reconstruction to the party wall. Provided, however, in the event of damage or destruction to the party wall caused by the Unit Owner, another occupant of the Unit, or by any agent or contractor of the Unit Owner, then the Unit Owner shall, at his expense, pay for and perform such repairs, maintenance and reconstruction to restore the party wall to its previous condition.

(g) The Easements and rights created by this Section 7.6 are and shall be perpetual and construed as a covenant running with the land and each and every successor in title of such a Unit shall hereafter be deemed to have accepted title with the understanding that he shall also be bound by the provisions hereof.

Section 7.7 Designation and Redesignation of Limited Common Elements. With respect to each of the Condominium Buildings now or hereafter constructed on the Property, as it now exists or as it may hereafter be expanded, Developer reserves the right to designate and redesignate Limited Common Elements as appurtenant to any or all Units within a Condominium Building until such time as a deed from Developer to the first purchaser of the Unit is recorded, and for such purposes, Developer reserves the right to convert Common Elements into Limited Common Elements and to redesignate Limited Common Elements as Common Elements, provided that Developer shall first amend any plat previously recorded, or the Master Deed, to effect such designations and redesignations, if necessary. In no event shall this Section confer upon Developer the right to alter Limited Common Elements assigned to previously deeded Units.

Section 7.8 Easements for Maintenance. Perpetual non-exclusive Easements for ingress and egress over, under, across, in and upon the Property (but not so as to interfere with Improvements on the Property located in accordance with an approved parcel site plan) are hereby declared created and reserved by Developer for the benefit and use of itself for so long as the Developer owns a Unit and thereafter for the benefit and use of the Association, their respective successors and assigns, agents and employees, to provide reasonable access to Common Areas and to enter upon the Property, including any Unit, for the purposes of performing emergency repairs or to do other work necessary for the maintenance of the Property. The exercise of this Easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry into any Unit shall be made only after reasonable notice to the Unit Owner or occupant.

Section 7.9 Easements of Encroachment. There shall be reciprocal appurtenant Easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the Improvement constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an Easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, a Unit Owner, occupant, or the Association.

Section 7.10 Effect of Easements. All Easements provided for in this Article shall run with the land and bind all Unit Owners, their successors, assigns and successors in title, and the rights, reservations and privileges for the use and benefit of Developer shall continue until they expire by their terms.

Section 7.11 Developer's Right to Control Association. Notwithstanding any provisions set forth in this Master Deed to the contrary, Developer shall have the sole and absolute right to appoint, replace and remove all members of the Board until the earlier of (i) four (4) months after seventy-five percent (75%) of the Units have been conveyed to Unit Owners; or (3) years after the first Unit is conveyed. Thereafter, the Developer's right to participate in the election of members of the Board shall be identical to that of any other Unit Owner.

Section 7.12 Duration of Reserved Rights. Unless otherwise stated in this Article, the rights reserved by Developer herein shall continue until Developer no longer retains ownership of any portion of the Property.

## ARTICLE 8

### **RIGHTS TO MODIFY, RECONFIGURE OR EXPAND THE RIVER PIER LANDING BUILDING DEVELOPMENT**

Section 8.1 Right to Modify or Reconfigure Unsold Units. Developer hereby reserves the right, exercisable at its sole option, to modify or reconfigure any unsold Units. Upon any modification or reconfiguration of the unsold Units, Developer shall accordingly readjust the Percentage Interest for the modified or reconfigured Units. The total undivided Percentage Interest assigned to all Units in River Pier Landing will, upon such modification or reconfiguration, continue to equal one hundred percent (100%). The readjusted Percentage Interest of a modified or reconfigured Unit shall be derived from a fraction, the numerator of which is the number of square feet within the Unit and the denominator of which is the total number of square feet for all Units in River Pier Landing. Upon any modification or reconfiguration, Developer shall record an amended plat or a supplemental or amended Master Deed, whereby the revised schedule of undivided Percentage Interests set forth therein shall automatically become effective for all purposes and shall fully supersede the schedule set forth on EXHIBIT D and any similar schedule which was contained in any prior Master Deed, supplemental or amended Master Deed, prior plat or supplemental plat.

Section 8.2 Right to Expand. Developer hereby reserves the right, exercisable at its sole option, to expand from time to time to include additional Units, additional Limited Common Elements, and/or additional Common Elements to River Pier Landing, provided that Developer's right of expansion shall be limited to expansion encompassed in supplements or amendments to this Master Deed. Notwithstanding any provision of the Act or this Master Deed that might be construed to the contrary, Developer shall not be required to expand the development, nor shall the exercise of any such right to expand obligate Developer to further expand the development. Further, the exercise of any such right to expand shall not be predicated upon Developer first obtaining the consent or vote of any Unit Owner.

Section 8.3 Restrictions on Right of Expansion. If Developer expands this horizontal property regime, the architectural design and quality of construction for the buildings and Improvements shall be compatible with the existing Condominium Buildings. At the time any additional land is submitted to construct additional Units within any portion of the Property, an amendment to this Master Deed will be executed and will set forth the following:

- (a) A legal description by metes and bounds of such additional land submitted;
- (b) A statement of the maximum number of Units that may be created within such additional land; and
- (c) A description of all significant non-Unit improvements that may be made on such additional land.

Section 8.4 Recordation of Supplemental Documents: Extension of Definitions.

(a) Expansion of the development horizontal property regime shall be accomplished by the filing for record in the Office of the Register of Deeds of Hamilton County, Tennessee, from time to time an amendment or a supplement to this Master Deed containing a legal description of the site or sites for new Units and Limited Common Elements and Common Elements as was required and set forth in this Master Deed and plat with respect to the Units and Common Elements herewith submitted to the horizontal property regime. Expansion may be accomplished in phases by successive supplements or by any one supplemental expansion, and the development shall be deemed expanded, as the case may be, from time to time, effective immediately upon any such recordation. Notwithstanding the foregoing, Developer shall have the right to record a final supplemental plat or Master Deed upon completion of all construction on all additional land for the purpose of consolidating previous plats and adequately describing Common Elements and Limited Common Elements that are designated and redesignated. Developer also has the right, without joinder by any other party, to amend and supplement this Master Deed and the plat as may be reasonably necessary or desirable to facilitate the practical administrative or functional integration of any phase of the development.

(b) In the event of the expansion of the horizontal property regime, the definitions used in this Master Deed automatically shall be extended to encompass and refer to the development as so expanded. All conveyances of Units after expansion of the horizontal property regime shall be deemed effective to transfer rights in the development as so expanded.

(c) All or such portion of any additional land, and the Units and Common Elements hereafter added on any additional land, shall be subject to the terms, conditions and restrictions and shall be entitled to the rights, benefits and privileges of this Master Deed and of any and all supplements thereto, and the development, as expanded from time to time, shall at all times constitute one and only one horizontal property regime under this Master Deed and the Act.

(d) Each deed of a Unit shall be deemed to irrevocably reserve for Developer the right to adjust, without the consent or joinder of any other party, the undivided Percentage Interest in the Common Elements previously assigned to each Unit and to appoint and reappoint to each such Unit and to all other Units, from time to time, the adjusted undivided Percentage Interest in the Common Elements to be set forth in supplemental or amended Master Deeds and plats, but solely for the purpose of conversion and/or expansion of the horizontal property regime. To this end, a power coupled with an interest which may not be revoked by death or otherwise is hereby granted to Developer, its successors and assigns, as attorney in fact, to adjust Percentage Interests in the Common Elements assigned to each Unit solely for the purpose of conversion and/or expansion of the horizontal property regime and to appoint Percentage Interests to new Units added in accordance with the provisions of this Master Deed, and each deed of a Unit in the horizontal property regime shall be deemed a grant of such power to said attorney in fact. The undivided Percentage Interest in the Common Elements to be assigned or reassigned to each Unit shall be computed upon each such

expansion, so that the total undivided Percentage Interest in the Common Elements assigned to all Units in River Pier Landing will, upon such expansion of the horizontal property regime, continue to equal one hundred percent (100%). The readjusted Percentage Interest of each Unit Owner shall be derived from a fraction, the numerator of which is the number of square feet within the Unit and the denominator of which is the total number of square feet for all Units (pre-expansion and post-expansion) in the horizontal property regime. Upon the recordation of each supplemental or amended Master Deed or plat incident to any expansion of the horizontal property regime, the revised schedule of undivided Percentage Interests set forth therein shall automatically become effective for all purposes and shall fully supersede the schedule set forth on EXHIBIT D and any similar schedule which was contained in any prior Master Deed, supplemental or amended Master Deed, prior plat or supplemental or amended plat.

## ARTICLE 9

### DAMAGE AND DESTRUCTION

#### Section 9.1 Event of Damage or Destruction.

(a) Each Unit Owner hereby appoints the Association as his attorney-in-fact to represent the Unit Owner in any related proceedings, negotiations, settlements, or agreements in the event of damage or destruction to any portion of the Property. Immediately after damage or destruction to all or any part of the Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this Section, means repairing or restoring the Property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction of the Common Elements shall be repaired or reconstructed unless the Members representing more than fifty percent (50%) of the Percentage Interests vote within sixty (60) days after the loss not to repair or reconstruct. No Mortgagee shall have the right to participate in the determination of whether damage or destruction to the Common Elements shall be repaired or reconstructed.

(c) In the event of damage or destruction to the Condominium Building comprises the whole or more than two thirds (2/3) of the Condominium Building, the legal status of the Property may be terminated if authorized, within sixty (60) days of the event causing such damage or destruction, (i) by the affirmative vote of the Members whose aggregate Percentage Interest is at least sixty-seven percent (67%), and (ii) by the affirmative vote of Eligible Mortgagees representing at least fifty-one percent (51%) of the votes of Unit estates that are subject to Mortgages held by Eligible Mortgagees.

(d) If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty-

(60) day period, then such period will be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days.

Section 9.2 Disbursements of Insurance Proceeds. Any insurance proceeds remaining after paying the costs of any repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account for the benefit of the Unit Owners and their Mortgagees. No amount of any insurance proceeds may be distributed to a Unit Owner without the prior written consent of the Unit Owner's Mortgagee.

Section 9.3 Repair and Reconstruction. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board shall levy Special Assessments against those Unit Owners responsible for the premiums for the applicable insurance coverage under Article 6.

## ARTICLE 10

### CONDEMNATION

Section 10.1 Condemnation. If after the Development Period any part of the Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Association acting on the written consent of Members whose aggregate Percentage Interest is more than fifty (50%) percent) by any authority having the power of condemnation or eminent domain, each Unit Owner shall be entitled to written notice thereof. Each Unit Owner hereby appoints the Association as his attorney-in-fact to represent the Unit Owner in any related proceedings, negotiations, settlements, or agreements in the event of condemnation of any portion of the Property. Any condemnation of any portion of the Property shall not result in the termination of the legal status of the Property unless such termination is authorized (i) by the affirmative vote of the Members whose aggregate Percentage Interest is at least sixty-seven percent (67%), and (ii) by the affirmative vote of Eligible Mortgagees representing at least fifty-one percent (51%) of the votes of Unit estates that are subject to Mortgages held by Eligible Mortgagees within sixty (60) days after the determination of condemnation (or a conveyance in lieu of condemnation, as determined by this Section) to terminate the legal status of the Property.

Section 10.2 Condemnation Award. The award made for such taking shall be payable to the Association as trustee for all Unit Owners to be disbursed as follows:

(a) If the taking involves a portion of the Common Elements on which Improvements have been constructed, the Association shall restore or replace such Improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking, the Members representing at least fifty percent (50%) of the total ownership of the Common Elements decide to place the award in a capital improvements account. Any such construction shall be in accordance with plans approved by the Board. The provisions of Sections 9.2 and 9.3 regarding funds for the repair of damage or destruction shall apply.



(b) If the taking does not involve any Common Elements or Improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine. No proceeds of a condemnation award may be distributed to a Unit Owner without the written consent of the Unit Owner's Mortgagee.

## ARTICLE 11

### SALE OR LEASE OF A UNIT

Section 11.1 Leases. A copy of any lease of a Unit or interest therein, as and when executed, shall be furnished to the Board. The lessee under every such lease shall be bound by and subject to all of the obligations under the Master Deed, By-laws, and Rules of the Unit Owner making such lease, and the lease, if any, shall expressly so provide. The Unit Owner making such lease shall not be relieved thereby from any of said obligations. Upon the expiration or termination of such lease, or in the event of any attempted assigning or subleasing thereunder, the provisions of this Section 11.2 shall again apply to said Unit or interest therein.

Section 11.2 Assessments. Except as otherwise provided in the Master Deed or in the By-laws, in the event of any transfer of a Unit or any interest therein, the transferee shall be jointly and severally liable with the transferor for all unpaid assessments of the transferor accrued and payable prior to the date of transfer.

Section 11.3 Available Remedies. If any sale or lease of a Unit is made or attempted without complying with the provisions of this Article, such sale or lease shall be subject to each and all of the rights and options of and remedies and actions available to the Association hereunder and otherwise.

Section 11.4 Other. Except as otherwise restricted in this Master Deed, a Unit is freely alienable as provided by applicable law. However, any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of an individual interest in the Common Elements shall be void unless the Unit to which that interest is allocated also is transferred.

## ARTICLE 12

### AMENDMENTS

Section 12.1 General. No provision of this Master Deed, the Charter or By-laws that requires the affirmative vote of a more than fifty percent (50%) of the total voting power of the Members or Eligible Mortgagees to take action shall be amended unless the vote to amend such provision receives at least the same higher percentage or more of the total voting power of the Members or Eligible Mortgagees.

Section 12.2 Amendments of a Material Nature. An amendment to this Master Deed, the Charter or the By-laws of a material nature (a "**Material Amendment**") may be made only

by an instrument executed by the Association for and on behalf of the Members after such Material Amendment has been authorized (i) by the affirmative vote of the Members whose aggregate Percentage Interests is at least sixty-seven percent (67%), and (ii) by the affirmative vote of Eligible Mortgagees representing at least fifty-one percent (51%) of the votes of Unit estates that are subject to Mortgages held by Eligible Mortgagees. An amendment is a Material Amendment only if it would result in:

- a change in voting rights;
- an increase in Assessments that raises the previously assessed amount by more than twenty-five (25%) percent;
- a change affecting Assessment liens;
- a change to the priority of Assessment liens;
- a reduction in reserves for maintenance, repair and replacement of Common Elements;
- a change responsibility for maintenance and repairs;
- the reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use;
- a redefinition of any Unit boundaries;
- a conversion of Units into Common Elements or vice versa;
- an expansion or contraction of the Property;
- a change in hazard or fidelity insurance requirements;
- the imposition of any restrictions on the leasing of Units;
- the imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- the restoration or repair of the Property after damage or partial condemnation in a manner other than that specified in this Master Deed; or
- a change to any provisions that expressly benefit Mortgagees, insurers or guarantors.

Section 12.3 Amendments Not of a Material Nature. A change to any provision of this Master Deed, the Charter or By-laws that would not be a Material Amendment may be made by the affirmative vote of Members whose aggregate Percentage Interests is more than fifty percent (50%). No provision of this Master Deed, the Charter or By-laws that requires the affirmative vote of a higher percentage than fifty percent (50%) of the total voting power of the Members to take action shall be amended unless the vote to amend any such provision receives at least the same higher percentage or more of the total voting power of the Members.

Section 12.4 Amendments Requiring Consent of Developer or Others. Notwithstanding anything to the contrary in this Master Deed or the By-laws, the following provisions of the Master Deed or By-laws may not be amended without the written consent of the persons specified:

(a) Section 2.14 of this Master Deed, which is entitled "Restaurant Lease," may not be amended without the prior written consent of River Pier Landing Retail, LLC and Hennen, and their respective successors and permitted assigns under the Restaurant Lease.

(b) So long as the Developer owns a Unit, Section 3.1 of the By-laws, which addresses the appointment or election and term of members of the Board, may not be amended without the prior written consent of the Developer.

Section 12.5 Implied Approval of Eligible Mortgagees. If the approval of any Eligible Mortgagee is requested for any amendment to this Master Deed, they By-laws or the Charter, the implied approval of such Eligible Mortgagee may be conclusively assumed if the Eligible Mortgagee fails to submit a response to a written proposal for such an amendment within thirty (30) days after the Eligible Mortgagee receives notice of the proposal, provided the notice was delivered to the Eligible Mortgagee by certified or registered mail, with a "return receipt" requested.

Section 12.6 Transfer. Developer is entitled at any time to assign, transfer and convey its rights and obligations under this Master Deed or the By-laws to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Master Deed or the By-laws. No such transfer shall be effective unless it is in a written instrument signed by Developer and recorded in the Register of Deed's Office of Hamilton County, Tennessee. Nothing in this Master Deed shall be construed to require Developer or any successor to develop any additional land in any manner whatsoever.

### ARTICLE 13

#### **TERMINATION OF HORIZONTAL PROPERTY REGIME FOR REASONS OTHER THAN SUBSTANTIAL DESTRUCTION OR CONDEMNATION OF THE PROPERTY**

The horizontal property regime created by this Master Deed may be terminated for reasons other than substantial destruction or condemnation of the Property at any time and in such manner and upon such terms as are authorized (i) by the affirmative vote of all of the Members, and (ii) by the affirmative vote of Eligible Mortgagees representing at least sixty-seven percent (67%) of the votes of Unit estates that are subject to Mortgages held by Eligible Mortgagees. Proceeds from the termination or liquidation of said regime for reasons other than substantial destruction or condemnation of the Property shall be distributed to the Members pro rata in accordance with their Percentage Interests.

### ARTICLE 14

#### **GENERAL PROVISIONS**

Section 14.1 Revocation of Master Deed. Except as otherwise expressly provided elsewhere herein, this Master Deed shall not be revoked unless the Members by a unanimous affirmative vote of the Percentage Interests approve such revocation by instrument(s) duly executed and acknowledged by the Association on behalf of the Members and recorded in the Register's Office of Hamilton County, Tennessee.

Section 14.2 Covenant of Further Assurances.

(a) Any party who is subject to the terms of this Master Deed, whether such party is a Unit Owner, a lessee or sublessee of a Unit Owner, a member or officer of the Board or otherwise, shall, at the expense of any such other party requesting the same, execute, acknowledge and deliver to such other party such instruments, in addition to those specifically provided for herein, and take such other action, as such other party may reasonably request to effectuate the provisions of this Master Deed or of any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction.

(b) If any Unit Owner or any other party which is subject to the terms of this Master Deed fails to execute, acknowledge, or deliver any instrument, or fails or refuses, within ten (10) days after request therefor, to take any action which such Unit Owner or party is required to execute, acknowledge and deliver or to take pursuant to this Master Deed, then the Board is hereby authorized as attorney-in-fact for such Unit Owner or other party, to execute, acknowledge and deliver such instrument, or to take such action, in the name of such Unit Owner or other party and such document or action shall be binding on such Unit Owner or other party.

Section 14.3 Delay in Performance - Force Majeure. If the performance of any act or obligation under this Master Deed is prevented or delayed by an act of God, fire, earthquake, flood, explosion, action of the elements, war, terrorism, invasion, insurrection, mob violence, sabotage, malicious mischief, inability to procure or general shortage of labor, equipment or facilities, materials or supplies in the open market, failure of transportation, strike, lock-out, action of a labor union, condemnation, threatened condemnation, requisitions, laws, orders of government or civil or military or naval authorities or any other cause whether similar or dissimilar to the foregoing not within the reasonable control of the Person required to perform such act or obligation for so long as such Person is so prevented or delayed by reason thereof, provided the Person claiming the benefit of force majeure shall within fifteen (15) days of the occurrence of any of the aforesaid causes give to the Person, and/or others as the case may be, written notice thereof, together with a statement setting forth all the facts evidencing force majeure. At the conclusion of the duration of each such force majeure, written notice shall be given by such Person of the termination of the same. This force majeure provision shall apply to the obligations of Developer, the Association, and each Unit Owner hereunder except those obligations that require the payment of money.

Section 14.4 Notices. All notices, demands, or other communications ("Notices") permitted or required to be given by this Master Deed shall be in writing and, if mailed postage prepaid by certified or registered mail, return receipt requested (if a Notice to Developer, the Association, or to fewer than all Unit Owners), or if mailed first-class postage prepaid (if a Notice to all Unit Owners), shall be deemed given three (3) days after the date of mailing thereof, or on the date of actual receipt, if sooner. Otherwise, Notices shall be deemed given on the date of actual receipt. Notices shall be addressed to the last known address of the addressee. Notice to any Unit Owner may be given at any Unit owned by such Unit Owner, provided, however, that a Unit Owner may from time to time by Notice to the Association designate such other place or places or individuals for the receipt of future Notices. If there is more than one Unit Owner of a Unit, Notice to any one such Unit Owner shall be sufficient. If

the address of Developer or the Association shall be changed, Notice shall be given to all Unit Owners.

Section 14.5 Attorneys' Fees; No Waiver. Should Developer, Association, or a Unit Owner employ counsel in order to enforce any of the foregoing covenants, conditions, reservations, restrictions or obligations, all costs incurred in such enforcement, including reasonable attorneys' fees, shall be paid by the Unit Owner of such Unit found to be in violation by a court of competent jurisdiction. This cost may be assessed against the Unit of the defaulting Unit Owner pursuant to Section 6.5 above. No delay or omission on the part of any such party in exercising any right, power or remedy herein provided for in the event of any breach of the covenants, conditions, restrictions and obligations herein contained shall be construed as a waiver thereof or acquiescence therein. No right of action shall accrue, nor shall any action be brought or maintained by any Unit Owner against Developer or the Association for or on account of its failure to bring an action on account of any breach of the Master Deed, nor for imposing covenants, conditions and restrictions which may be found or determined to be unenforceable at law.

Section 14.6 Severability. If any of the covenants, conditions or terms of this Master Deed shall be found void or unenforceable for whatever reason by any court of law or of equity, then every other covenant, condition or term herein set forth shall remain valid and binding provided that in such event Developer and all of the then Unit Owners shall to the fullest extent possible modify such covenant, condition or term to the extent required to carry out the general intention of this Master Deed and to impart validity to such covenant, condition or term.

Section 14.7 No Abandonment of Obligation. No Unit Owner, through his non-use of any Common Elements, or by abandonment of his Unit, may avoid or diminish the burdens or obligations imposed by this Master Deed.

Section 14.8 Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this Master Deed shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of Scott L. Probasco, Jr., who is now a living resident of Hamilton County, Tennessee.

Section 14.9 Binding Effect. All provisions, conditions, restrictions, options, benefits and burdens contained in this Master Deed and the By-laws attached hereto shall run with and bind the Property and shall inure to the benefit of, and shall be enforceable by Developer, the Association, or any Unit Owner, their respective legal representatives, heirs, successors, and assigns. The rights and/or obligations of Developer as set forth herein shall inure to the benefit of and be binding upon any successor, designee or assignee of Developer or, with consent of Developer, any transferee of the then unsold Units to the extent the transferee holds the unsold Units for resale. Subject to the foregoing, Developer shall have the right at any time, in its sole

discretion, to assign or otherwise transfer its interest herein whether by merger, consolidation, lease, sublease, assignment, transfer pursuant to Section 2.7, or otherwise.

Section 14.10 Governing Law. This Master Deed shall be governed and shall be construed in respects under the laws of the State of Tennessee.

Section 14.11 Interpretation. The captions of the various articles, sections and paragraphs of this Master Deed are for convenience of use and reference only and do not define, limit, augment, or describe the scope, content or intent of this Master Deed or any parts of this Master Deed. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes a legal entity when the context so requires. The single number includes the plural whenever the context so requires.

IN WITNESS WHEREOF, the undersigned, being the sole owner of the Property, hereby executes this Master Deed effective April 29, 2005.

RIVER PIER LANDING, LLC

By: [Signature]  
Jon M. Kinsey, Chief Manager

STATE OF TENNESSEE)  
COUNTY OF HAMILTON)

Personally appeared before me, Angie Hiatt, a Notary Public in and for said State and County duly commissioned and qualified, JON M. KINSEY, with whom I am personally acquainted, and who acknowledged that he/she executed the within instrument for the purposes therein contained, and who further acknowledged that he/she is the Chief Manager of RIVER PIER LANDING, LLC (the "Maker") and is authorized by the Maker to execute this instrument on behalf of the Maker.

WITNESS my hand, at office, this 29 day of April, 2005.

Angie Hiatt  
Notary Public

My commission expires: \_\_\_\_\_ My Commission Expires February 4, 2009



EXHIBIT A TO MASTER DEED

BEING IN THE CITY OF CHATTANOOGA HAMILTON COUNTY, TENNESSEE:

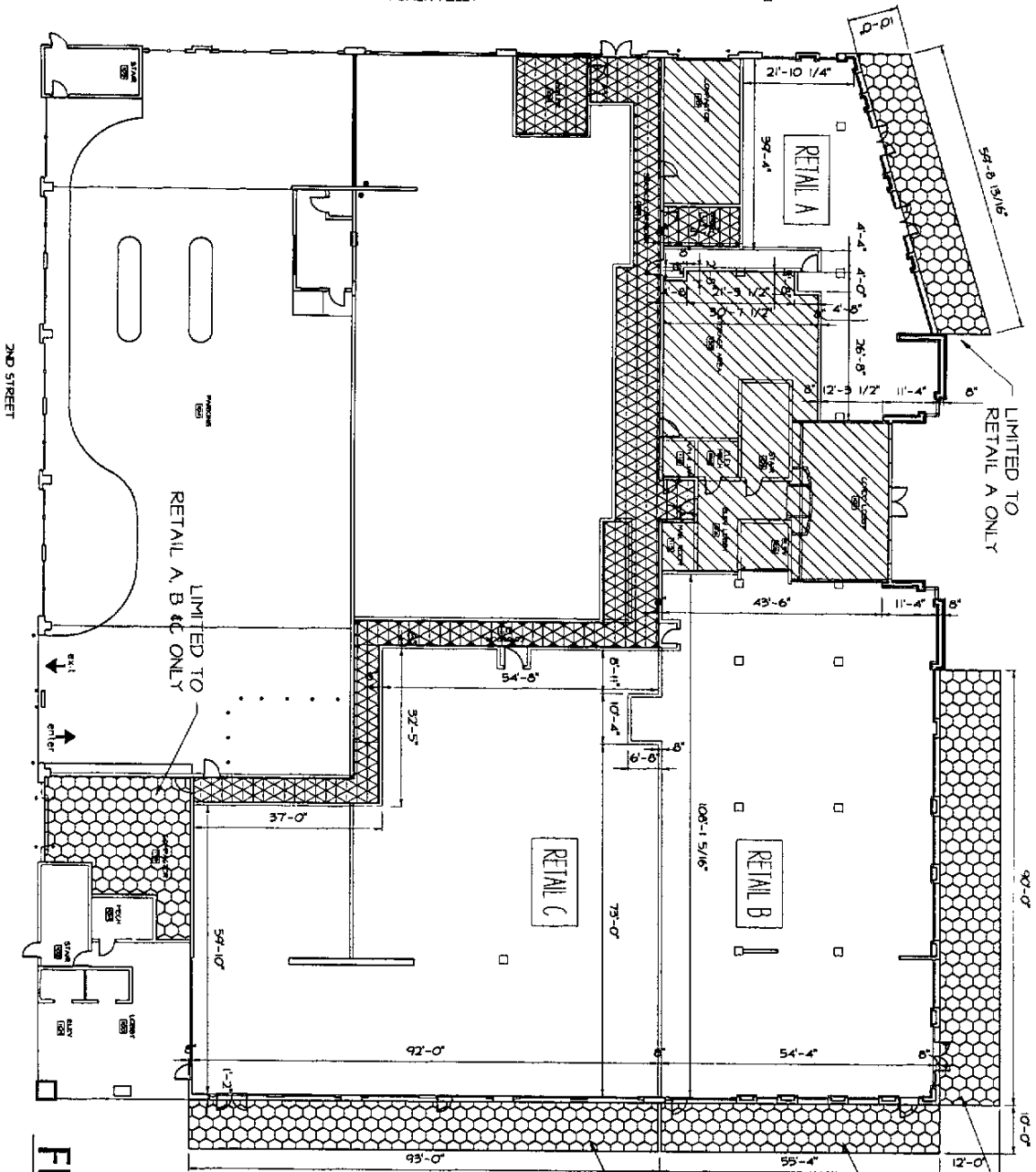
PARCEL 3 AS DESIGNATED ON THE PLAT OF PARCELS 1-8, RIVER PIER LANDING,  
RECORDED IN PLAT BOOK 78, PAGE 198 IN THE REGISTER'S OFFICE OF HAMILTON  
COUNTY, TENNESSEE




REFERENCE is made for prior title to Deed of record in Book 7078, Page 89, in the Register's  
Office of Hamilton County, Tennessee, and to Instrument Correcting Deed of record in Book  
7229, Page 554, in the Register's Office of Hamilton County, Tennessee.

EXHIBIT B TO MASTER DEEDUnit Description

<u>Unit Number</u>	<u>Plan</u>
Retail A	sheet 1, Exhibit B
Retail B	sheet 1, Exhibit B
Retail C	sheet 1, Exhibit B
201	sheet 2, Exhibit B
202	sheet 2, Exhibit B
203	sheet 2, Exhibit B
204	sheet 2, Exhibit B
301	sheet 3, Exhibit B
302	sheet 3, Exhibit B
303	sheet 3, Exhibit B
304	sheet 3, Exhibit B
401	sheet 4, Exhibit B
402	sheet 4, Exhibit B
403	sheet 4, Exhibit B
404	sheet 4, Exhibit B
501	sheet 5, Exhibit B
502	sheet 5, Exhibit B
503	sheet 5, Exhibit B
504	sheet 5, Exhibit B
601	sheet 6, Exhibit B
602	sheet 6, Exhibit B








- LEGEND OF COMMON ELEMENTS**
-  COMMON ELEMENT TO ALL RESIDENTIAL AND RETAIL UNITS
  -  LIMITED COMMON ELEMENT TO SPECIFIC RETAIL UNITS AS NOTED
  -  COMMON ELEMENT TO ALL RESIDENTIAL UNITS FLOORS 2-6

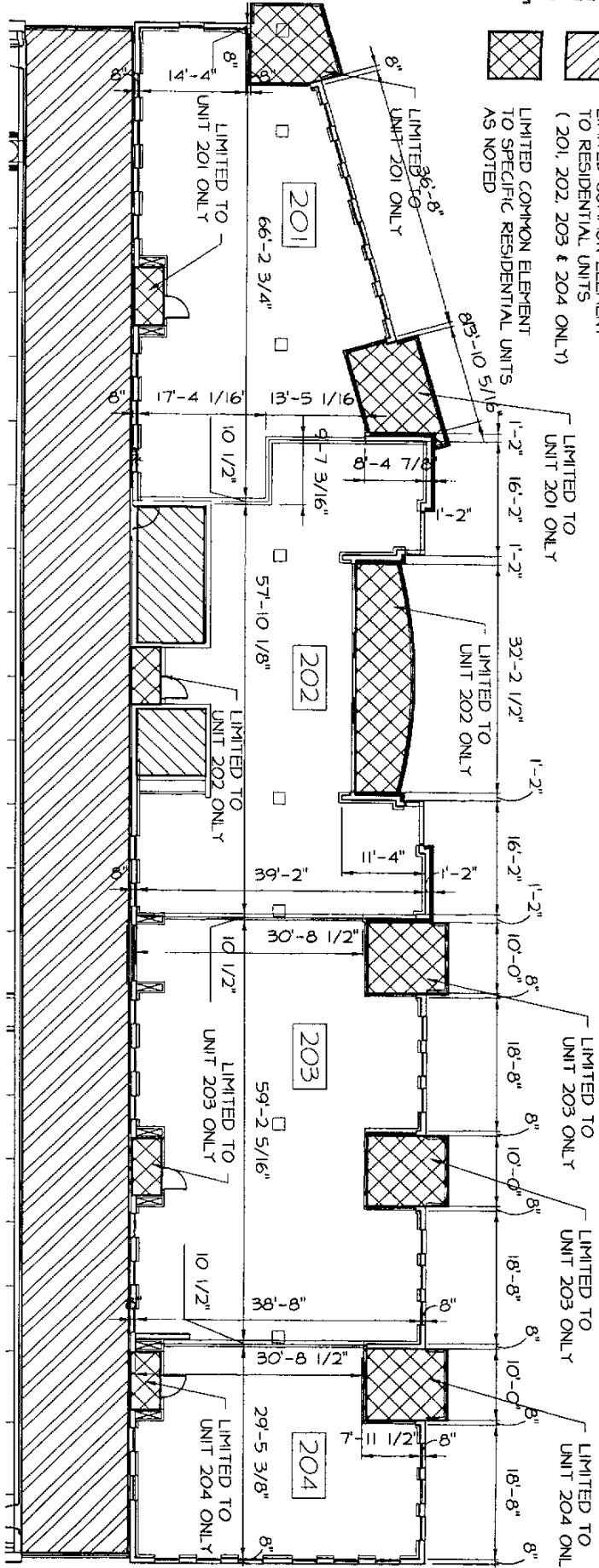
**FIRST FLOOR**

SCALE: 1" = 25'-0"

*Sheet 1, Exhibit B*

LEGEND OF COMMON ELEMENTS

-  COMMON ELEMENT TO ALL RESIDENTIAL UNITS FLOORS 2-6
-  LIMITED COMMON ELEMENT TO RESIDENTIAL UNITS (201, 202, 203 & 204 ONLY)
-  LIMITED COMMON ELEMENT TO SPECIFIC RESIDENTIAL UNITS AS NOTED






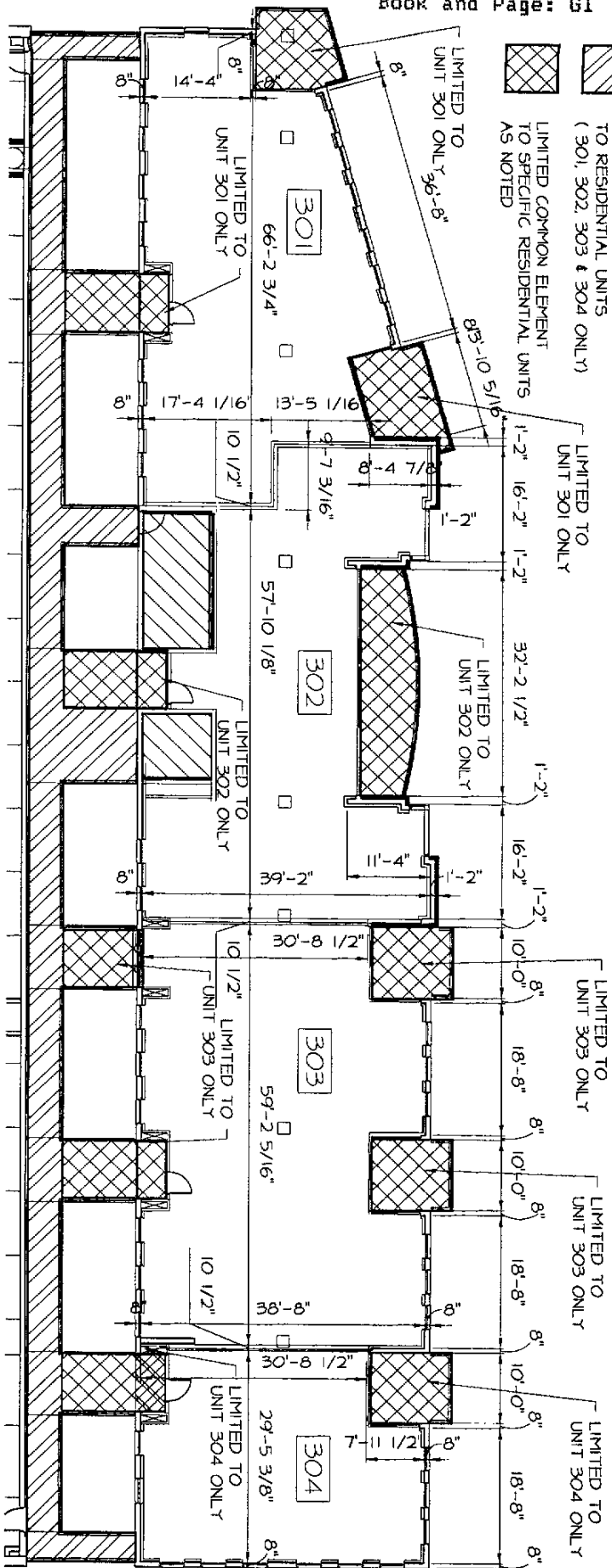
SECOND FLOOR (UNITS 201, 202, 203, & 204)

SCALE: 1/16" = 1'-0"

Sheet 2, Exhibit B

LEGEND OF COMMON ELEMENTS

-  COMMON ELEMENT TO ALL RESIDENTIAL UNITS FLOORS 2-6
-  LIMITED COMMON ELEMENT TO RESIDENTIAL UNITS (301, 302, 303 & 304 ONLY)
-  LIMITED COMMON ELEMENT TO SPECIFIC RESIDENTIAL UNITS AS NOTED






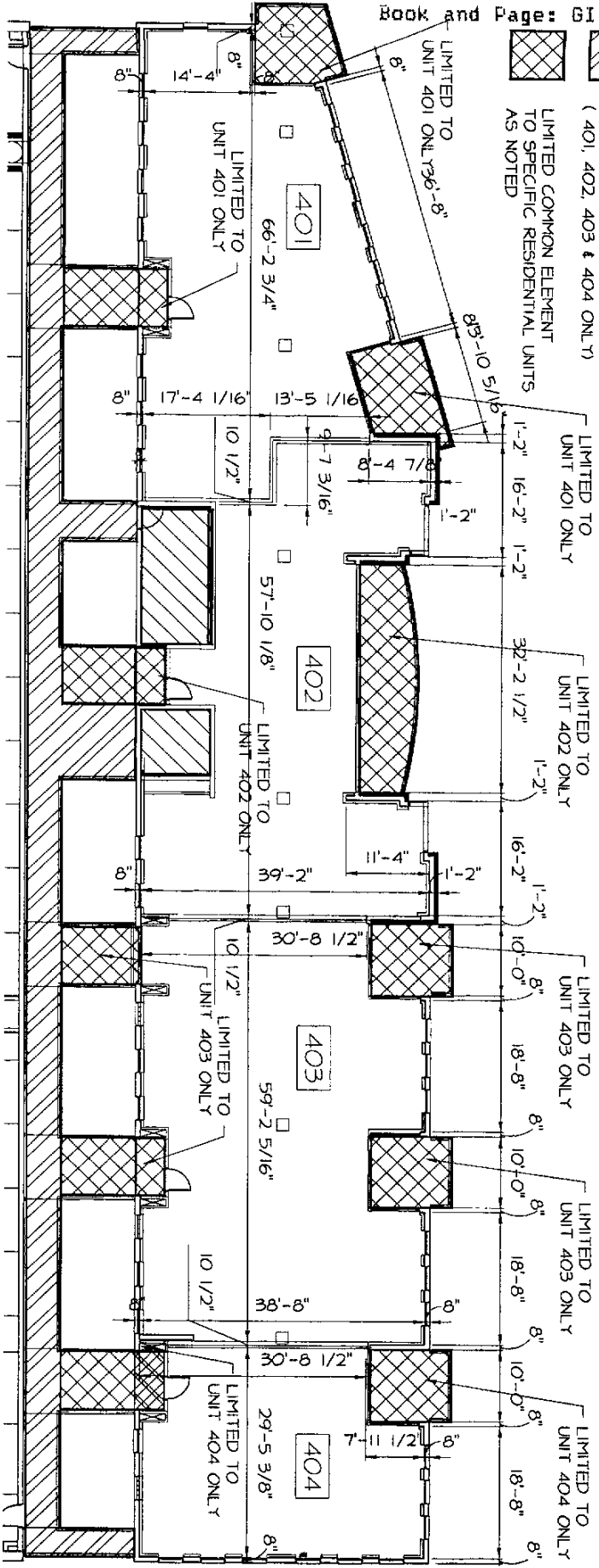
THIRD FLOOR (UNITS 301, 302, 303, & 304)

SCALE: 1/16"=1'-0"

Sheet 3, Exhibit B

LEGEND OF COMMON ELEMENTS

- Book and Page: GI 7514 205
-  COMMON ELEMENT TO ALL RESIDENTIAL UNITS FLOORS 2-6
  -  LIMITED COMMON ELEMENT TO RESIDENTIAL UNITS (401, 402, 403 & 404 ONLY)
  -  LIMITED COMMON ELEMENT TO SPECIFIC RESIDENTIAL UNITS AS NOTED






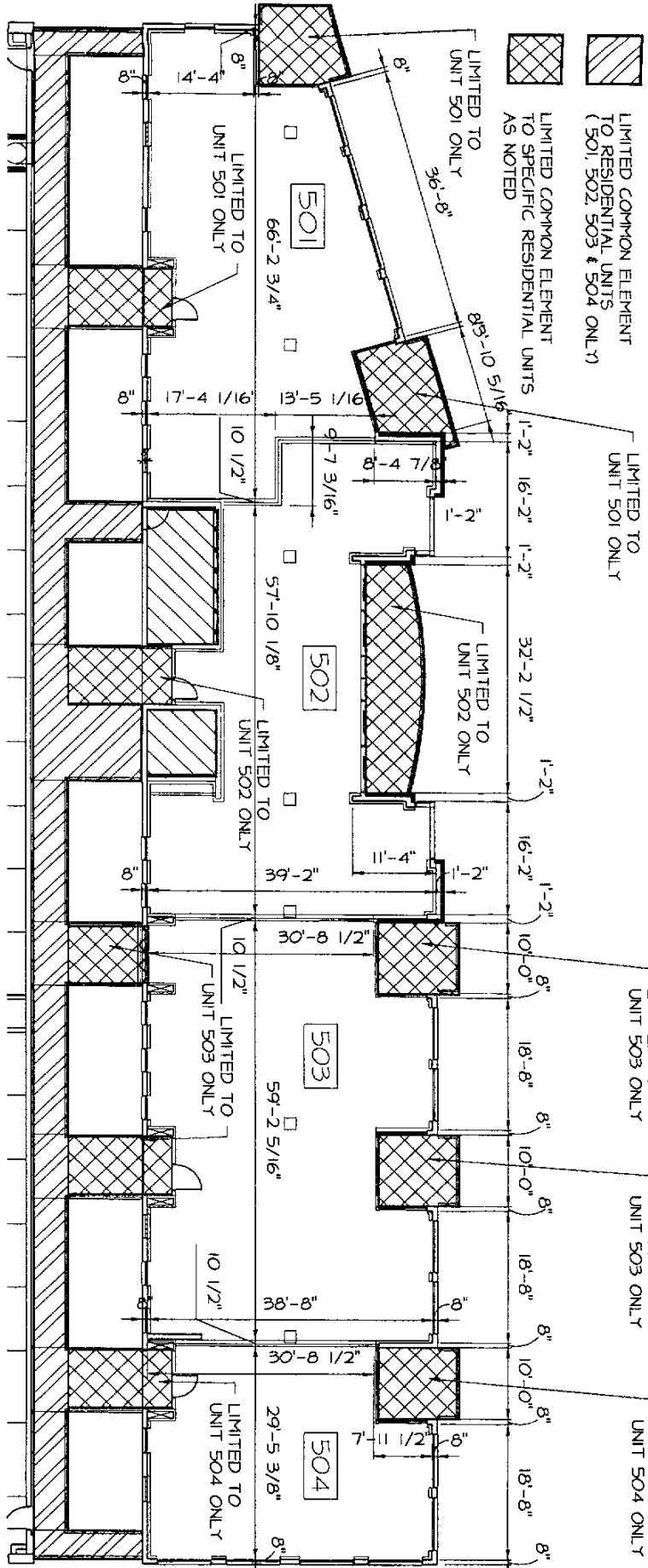
FOURTH FLOOR (UNITS 401, 402, 403, & 404)

SCALE: 1/16" = 1'-0"

Sheet 4, Exhibit B

**LEGEND OF COMMON ELEMENTS**

-  COMMON ELEMENT TO ALL RESIDENTIAL UNITS FLOORS 2-6
-  LIMITED COMMON ELEMENT TO RESIDENTIAL UNITS (501, 502, 503 & 504 ONLY)
-  LIMITED COMMON ELEMENT TO SPECIFIC RESIDENTIAL UNITS AS NOTED






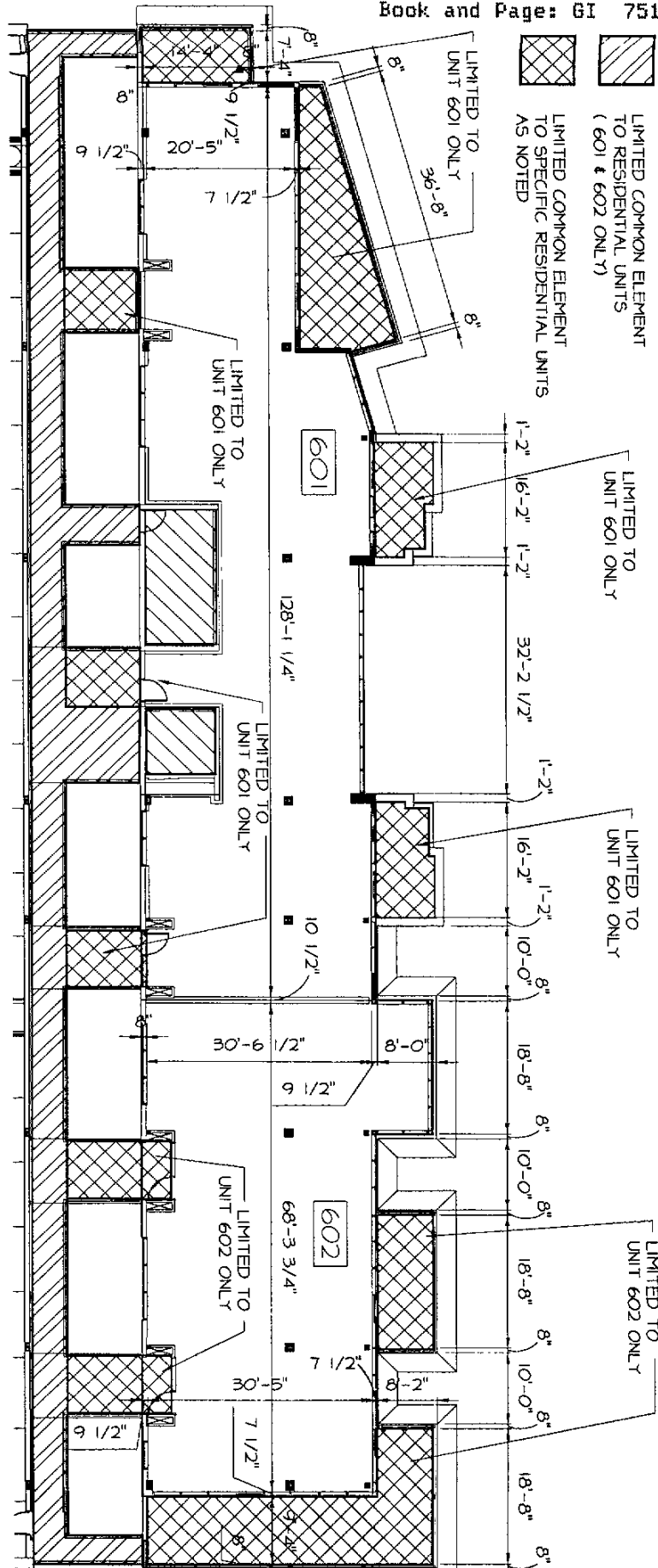
**FIFTH FLOOR (UNITS 501, 502, 503, & 504)**

SCALE: 1/16"=1'-0"

*Sheet 5, Exhibit B*

LEGEND OF COMMON ELEMENTS

-  COMMON ELEMENT TO ALL RESIDENTIAL UNITS FLOORS 2-6
-  LIMITED COMMON ELEMENT TO RESIDENTIAL UNITS (601 & 602 ONLY)
-  LIMITED COMMON ELEMENT TO SPECIFIC RESIDENTIAL UNITS AS NOTED



SIXTH FLOOR (PENTHOUSE 601 & 602)

SCALE: 1/16" = 1'-0"

Sheet 6, Exhibit B

EXHIBIT C TO MASTER DEED

Association Charter and Bylaws

**CHARTER**  
**OF**  
**RIVER PIER LANDING CONDOMINIUM OWNERS ASSOCIATION, INC.**

The undersigned incorporator, for purposes of forming a corporation pursuant to the Tennessee Nonprofit Corporation Act, as amended from time to time, (the "Act") sets forth the following as the Charter of such corporation:

1. Name. The name of the corporation is River Pier Landing Condominium Owners Association, Inc.
2. Not for Profit Mutual Benefit Corporation. The corporation is a mutual benefit corporation and is not for profit.
3. Registered Office; Registered Agent. The initial registered office of the Corporation is located at Suite 100, 100 East Tenth Street, Chattanooga, Tennessee 37402, and the name of the initial registered agent at that address is Benjamin R. Probasco.
4. Incorporator. The incorporator of the corporation is Philip B. Whitaker, Jr., 1100 SunTrust Bank Building, Chattanooga, Tennessee 37402.
5. Principal Office. The initial principal office of the corporation is located at Suite 100, 100 East Tenth Street, Chattanooga, Tennessee 37402.
6. Members. The corporation shall have members. The members shall be such persons who are authorized to be members of the corporation under the Master Deed creating River Pier Landing Condominium, a condominium development located in Chattanooga, Tennessee, and filed or to be filed of record in the Register's Office of Hamilton County, Tennessee (the "**Master Deed**").



7. Purpose. The corporation is organized and is to be operated to carry on any and all of the exempt functions of a homeowner association organized as a not for profit corporation under the Act, including, without limitation, to provide for the acquisition, construction, management, maintenance and care of the property of a condominium project, substantially all units of which are to be homes for individuals, and to exercise all powers permitted under the Act and under the Master Deed, as amended from time to time.

8. Indemnification and Advancement of Expenses. To the fullest extent permitted by the Act, as in effect on the date hereof and as hereafter amended from time to time, a director of the corporation shall not be liable to the corporation or its members for monetary damages for breach of a fiduciary duty as a director. If the Act is amended or any successor statute is amended after adoption of this provision to authorize action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Act, as so amended from time to time, or such successor statute. Any repeal or modification of this paragraph shall not adversely affect any right or protection of a director of the corporation existing at the time of such repeal or modification or with respect to events occurring prior to such time.

9. No Private Inurement. No part of the net earnings of the corporation shall inure to the benefit or, or be distributable to, its directors, officers, or other private persons. However, the corporation shall be authorized and empowered to pay reasonable compensation for services rendered to it or on its behalf, pay reimbursements for expenses incurred on its behalf, and make payments and distributions in furtherance of the corporation's purposes.

10. Dissolution. In the event of liquidation, dissolution or winding up of the corporation, whether voluntary, involuntary or by operation of law, the residual assets of the

corporation shall be distributed to the members in accordance with their respective interests in the corporation.

The undersigned, being the incorporator, for the purpose of forming a corporation pursuant to the Act, does make this certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Philip B. Whitaker, Jr.  
Incorporator

**By-laws**

**Of**

**River Pier Landing Condominium Owners Association, Inc.**

**ARTICLE I**

**The Association**

**Section 1.1 Name and Description.** River Pier Landing Condominium Owners Association (the "**Association**") has been or will be organized as a Tennessee non-profit corporation as set forth in the Master Deed and Declaration of Covenants, Conditions and Restrictions (the "**Master Deed**") to be recorded in the Register's Office, Hamilton County, Tennessee for River Pier Landing Condominium regime. The Association shall be responsible for the management, maintenance, operation and administration of River Pier Landing Condominium regime and the Common and Limited Common Elements associated with the condominium regime in accordance with the Tennessee Horizontal Property Act, Sections 66-27-101, et seq. (the "**Act**"), the Master Deed, these By-laws, the Charter, and the rules and regulations of the Association as adopted from time to time (the "**Rules**"). Members and all persons using, entering upon or acquiring any interest in a Unit, the Common and Limited Common Elements shall be subject to the provisions of these documents.

**Section 1.2 Definitions.** The definitions contained in the Master Deed, including without limitation, those in Article I entitled "Definitions" of the Master Deed, are incorporated herein by this reference.

**ARTICLE II**

**Members**

**Section 2.1 Membership.** Upon becoming a Unit Owner within River Pier Landing Condominium regime, a person or entity shall automatically become a Member of the Association and shall be subject to the provisions of these By-laws, the Charter, Master Deed and the Rules. Such membership shall terminate without any action by the Association whenever such person or entity ceases to own a Unit; but such termination shall not relieve or release any such former Unit Owner from any liability or obligation incurred from the application of the provisions of these By-laws, the Charter, the Master Deed and the Rules during the period of such ownership and membership in the Association, nor shall such termination impair any rights or remedies which the Board of Directors of the Association may have against such former Unit Owner. The Board of Directors may, if it so elects, issue a membership card to the Members which membership card shall be surrendered whenever ownership of the Unit designated thereon has terminated. Developer will be deemed to be the Unit Owner of each Unit contemplated to be constructed within the condominium regime until the Unit is conveyed or is transferred to a third party purchaser. Accordingly, Developer will be a Member of the Association until Developer no longer owns a Unit. The term "Unit Owner" will

be used interchangeably with the term "Member" when, the context may require or be more appropriate.

Section 2.2 First Meeting and Annual Meetings of Members. The first meeting of the Members of the Association shall be held within sixty (60) days after Developer's conveyance by deed to Unit Owners to which eighty percent (80%) of the total Percentage Interests are allocated as shown on a schedule of the Unit Owners' Percentage Interests (the "**Schedule of Unit Owners' Percentage Interests**") maintained by the Association and updated from time to time as Units are conveyed. Each subsequent regular annual meeting of the Members shall be held on the first Wednesday of March of each year, or such other date as may be selected by the Board of Directors. Regular meetings of the Members shall be held not less frequently than once each calendar year. Until the first meeting of Members, all business and affairs of the Association shall be managed by a Board of Directors, the members of which are appointed by Developer.

Section 2.3 Place of Meetings. Meetings of the Members shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors.

Section 2.4 Notice of Meetings. At least ten (10) but not more than twenty (20) days prior to a meeting, the Secretary shall mail or personally deliver to each Member of record a notice of each annual or special meeting of the Members at the address of the Unit or at such other address as such Member shall have designated in writing to the Association. The notice shall state the purpose of the meeting as well as the time and place where the meeting is to be held. The mailing of a notice of a meeting in the manner provided in this Section shall be considered service of notice.

Section 2.5 Special Meetings. Special meetings of the Members may be called by the President, a majority of the Directors, or by Members having at least fifty percent (50%) of the Percentage Interests. All references hereafter to "total voting power" shall mean Members of the Association who collectively own one hundred percent (100%) of the Percentage Interests. Notice of any special meeting shall state the time, place, and purpose of the meeting. No business shall be transacted at a special meeting except as stated in the notice.

Section 2.6 Quorum and Adjournment. The presence in person or by proxy of Members entitled to exercise not less than a majority of the total voting power of the membership shall constitute a quorum for the transaction of business. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment. If a quorum is present, the meeting may be adjourned from time to time by the vote of a majority of the total voting power present in person or by proxy and entitled to vote thereat. No meeting may be adjourned for more than forty-five (45) days. If after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given as in the case of an original meeting. At any adjourned meeting, the Association may transact any business which might have been transacted at the original meeting. If the required quorum is not present or represented at the meeting, the Members entitled to vote thereat may adjourn the meeting (but may not transact any other business) without notice, to a time not less than five (5) days nor more than thirty (30) days from the time the preceding meeting was called. If a time and place

for the adjourned meeting is not fixed by those in attendance at the original meeting, or if for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings.

Section 2.7 Voting. (a) Except as otherwise provided by these By-laws, each Member shall be entitled to the number of votes equal to the total of the Percentage Interests allocated to the Unit or Units owned by a Member as set forth in Schedule of Unit Owners' Percentage Interests. The vote of each Member may only be cast by such Member or by a proxy given by such Member to his duly authorized representative. If title to a Unit shall be in the name of two or more persons as Unit Owners (the "**Joint Unit Owners**"), any one of such Joint Unit Owners may vote as the Unit Owner at any meeting of the Association, and such vote shall be binding on such other Joint Unit Owners who are not present at such meeting. If two or more of such Joint Unit Owners are present at any meeting of the Association, their unanimous consent shall be required to cast their vote as a Member.

(b) When a quorum is present at any meeting of the Association, the vote by Members having more than fifty percent (50%) of the Percentage Interests of those Members qualified to vote who are present, in person or by proxy, at such meeting shall decide any question brought before such meeting, unless the question is one upon which a different vote is required by an express provision of the Act, the Master Deed, or these By-laws, in which case such express provision shall govern.

Section 2.8 Proxies. Votes may be cast in person or by proxy. Proxies shall be in writing and the signature of the person or persons executing the proxy must be witnessed or acknowledged. Proxies must be filed with the Secretary before the appointed time of each meeting. No proxy shall be valid for a period longer than eleven (11) months after the date of its execution, unless otherwise provided in the proxy.

Section 2.9 Waiver of Notice. Whenever the Members are authorized to take any action after notice to any person or persons, or after the lapse of a prescribed period of time, such action may be taken without such notice and without the lapse of such period of time if at any time before or after such action is completed each person entitled to such notice or entitled to participate in the action to be taken, or his attorney-in-fact or proxy holder, submits a signed waiver of notice of such requirement. A Member's attendance at a meeting shall also constitute a waiver of notice, except where a Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

Section 2.10 Action by Consent. Whenever Members are required or permitted to take any action by vote, such action may be taken without a meeting if all Members entitled to vote on the action consent to taking such action without a meeting. If such consent is obtained, the affirmative vote of the number of Members necessary to authorize or take such action at a meeting shall be the act of the Members. Actions taken without a meeting must be evidenced by one or more written consents setting forth the action so taken, signed by all of the persons entitled to vote and indicating each signing Member's vote or objection on the action.

Section 2.11 Transfer. The membership held by any Unit Owner shall not be transferred, pledged or alienated in any way except upon the Unit Owner's sale of his Unit and then only to

the purchaser of the Unit. Any attempt to make a prohibited transfer will be void and will not be reflected upon the books or records of the Association. In the event any Unit Owner shall fail or refuse to transfer the membership registered in his name to the purchaser of his Unit, the Association shall have the right to record the transfer upon the books and records of the Association.

Section 2.12 Obligations of Members. The Association, all present or future Members, tenants or future tenants, or any other persons using the Common Elements and the facilities of River Pier Landing Condominium regime are subject to and shall comply with the Act, the Master Deed, these By-laws, the Charter, and the Rules of the Association, and the acceptance of a deed of conveyance, or the execution of a lease, or the act of occupancy of any Unit in the condominium regime shall constitute an acceptance of and agreement to comply with the provisions of all such documents. As more fully provided in the Master Deed, each Member shall pay regular, special and specific assessments levied by the Association to meet the financial requirements of the Association. A Member shall not be a Member in good standing and the Board of Directors may suspend such Member's voting rights and any other rights and privileges possessed by Members during any period or periods which such Member has not paid when due any assessment or any other charges made or levied against the Unit or has failed to comply with or perform other obligations provided for under these By-laws, the Master Deed or the Rules.

### ARTICLE III

#### Board of Directors

Section 3.1 Appointment or Election and Term of Office. In accordance with the provisions of the Master Deed, Developer shall have the sole and absolute right to appoint, replace and remove all members of the Board until the earlier of (i) four (4) months after seventy-five percent (75%) of the Units have been conveyed to Unit Owners; or (3) years after the first Unit is conveyed. . So long as Developer shall have the right to appoint Directors, all business affairs of the Association shall be governed by a Board of Directors composed of at least one (1) Director. The initial member of the Board of Directors shall be Jon M. Kinsey, who shall act in such capacity and shall manage the affairs of the Association until his successor or successors are appointed or elected and are qualified. Upon expiration of the Developer's right to appoint all Directors to the Board of Directors, the number of Directors to serve shall increase to three (3), one of whom shall be designated exclusively by the Developer until the Developer no longer owns a Unit. The Directors (other than the director whom the Developer shall have the right to designate) shall be elected by a majority vote of the Members of the Association at their first meeting and shall serve until the first scheduled annual meeting of the Members. Directors shall be elected at the annual meeting of Members each year and shall hold office until the next annual meeting of Members, or until their successors have been elected and shall have qualified.

Section 3.2 Nominations. Nomination for election to the Board shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting or special meeting as the case may be. The Nominating Committee shall consist of a Chairman, who shall be a Member of the Board, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board prior to each annual meeting to serve until the close

of such annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine. Except for Directors appointed by Developer, every Director must at all times be a Member of the Association.

Section 3.3 Vacancies. After members of the Board of Directors are elected by the membership, a vacancy in any Director position elected by the Members shall be filled by the majority vote of the remaining Directors, even though they may constitute less than a quorum of the Board of Directors. A Director elected or appointed to fill a vacancy shall serve for the unexpired term of his predecessor in office and shall hold such office until his successor is duly appointed or elected and shall qualify.

Section 3.4 Removal of Directors. Any Director elected by the Members may be removed at any regular meeting or a special meeting of the Members called for that purpose, with or without cause, by a vote of the Members having more than fifty percent (50%) of the total voting power of those Members qualified to vote who are present, in person or by proxy, at such meeting. A successor may then and there be elected to fill the vacancy thus created.

Section 3.5 Resignations. Any Director may resign effective upon giving written notice to the President, the Secretary or the Board, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation of a Director is effective at a future time, a successor may be elected by the Board to take office when the resignation becomes effective. A Director shall be deemed to have automatically resigned at such time as the Director's membership in the Association has terminated.

Section 3.6 Committees. The Board of Directors may appoint committees from time to time as it may deem necessary or appropriate in carrying out the purposes and functions of the Association. Such Committees shall perform the duties provided for in the Board's resolutions in which the Committees are created.

Section 3.7 Compensation. No Director shall receive compensation for any service he or she may render to or on behalf of the Association as a Director, provided, however, that nothing contained herein shall be construed to preclude any Director of the Association from serving the Association as agent, counsel or in any capacity other than as Director, and receiving compensation therefor, and it shall not be construed to preclude Directors from being reimbursed for their actual expenses incurred in the performance of their duties.

Section 3.8 Fidelity Bonds. The Board of Directors may obtain fidelity bonds for all Directors, Officers, employees of the Association or any other person handling or responsible for Association funds. The premiums for such bonds shall constitute a common expense of the Association.

Section 3.9 Managing Agent. The Board of Directors may employ for the Association a professional manager or managing agent (the "**Managing Agent**"), for such compensation as may be established by the Board, to exercise such powers and perform such duties and services as the Board shall authorize, including but not limited to, the powers and duties listed in Section

3.11 hereof. The employment of a Managing Agent shall not relieve the Board of Directors from its responsibilities as provided herein or as provided in the Master Deed

Section 3.10 Personal Liability of Directors. The personal liability of each Director of the Association for monetary damages for breach of fiduciary duty as a Director shall be eliminated to the full extent permitted by Section 48-52-102(b)(3) of the *Tennessee Code Annotated*.

Section 3.11 Powers and Duties. All corporate powers of the Association shall be exercised by or under the authority of the Board of Directors, which is charged with the responsibility of conducting, managing and controlling all business and affairs of the Association. Without limiting the generality of the powers and duties delegated to the Board by the Charter, Master Deed, and as otherwise provided in these By-laws, the Board shall have the following additional powers and duties:

- (a) Elect and appoint Officers of the Association and to delegate such authority to them as the Board shall deem necessary and appropriate to serve the purposes of the Association.
- (b) Hire, employ, appoint and discharge all employees, agents and contractors to perform services for the Association consistent with its purposes as provided for in the Charter, Master Deed or these By-laws, and to fix the compensation and fees for the performance of their services.
- (c) Adopt and publish Rules which may, among other matters, govern the use of the Common Elements and any property, facilities and improvements of the Association, as well as the personal conduct of the Members and their tenants, guests, invitees and licensees, which Rules may establish sanctions and fines for infractions thereof.
- (d) Establish the principal office of the Association within the Property or such other place which is as close thereto as possible for the transaction of the Association's business.
- (e) Borrow money and incur indebtedness for the purposes of the Association, and to cause to be executed and delivered, in the Association's name, promissory notes, bonds, deeds of trust, mortgages, pledges, or other evidence of debt and securities therefor, provided, however, the Board shall not borrow any money or create any indebtedness which will individually or in the aggregate with all other loans then outstanding exceed Ten Thousand and No/100 (\$10,000.00) Dollars, unless it has received the prior consent of the Members having more than fifty percent (50%) of the total voting power of those Members qualified to vote.
- (f) Cause to be kept a complete record of all of its acts and business affairs.
- (g) Supervise all Officers, employees, agents and contractors of the Association, and see that their duties are properly performed.
- (h) Issue to any Unit Owner upon demand a certificate in writing signed by an Officer or authorized agent of the Association setting forth whether said assessments, or any portion



thereof, levied against the Unit have been paid. Such certificate shall be conclusive evidence of payment of any Assessments stated to have been paid.

(i) Review, on at least a quarterly basis, the latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts.

(j) Review, on at least a quarterly basis, an income and expense statement for the Association's operating and reserve accounts.

(k) Review, on at least a quarterly basis, the current years actual operating and reserve revenues and expenses compared to the current year's budget

(l) Perform all other duties as may later be required by the Members, or by the Master Deed, these By-laws or the laws of the State of Tennessee, as the same may be amended from time to time.

Section 3.12 Association Rules; Enforcement. (a) The following provisions shall govern the creation and adoption of the Association's Rules. All Rules proposed by the Board shall be consistent with and in furtherance of existing law, the Master Deed, the Charter and these By-laws and may include the establishment of a system of fines and penalties. The proposed rules and regulations receiving the vote or written assent of a majority of the members of the Board shall take effect as the Association Rules.

(b) The specific fines and penalties for the first breach or violation of the Association's Rules may include, without limitation, suspensions, for a period not to exceed sixty (60) days, of (i) the use or enjoyment of any facilities within the Common Elements of the Property; (ii) any services the Association may be providing to the Unit or Unit Owner, and/or (iii) the right to vote and/or a monetary fine not to exceed Five Hundred and No/100 (\$500.00) Dollars, or both. Subsequent breaches or violations of the Association's Rules by a Member or a Member's violation or breach of the Master Deed or these By-laws may include suspensions of one or more of the above stated membership rights for a period not to exceed one hundred fifty (150) days, a monetary fine not to exceed One Thousand and No/100 (\$1,000.00) Dollars, or both.

(c) Any Rules adopted pursuant to this Section shall provide that no fine or penalty shall be levied for a breach or violation of the Association's Rules without the following procedural safeguards:

(i) A written statement of the alleged violations shall be provided to any Member against whom such charges are made and such written statement shall provide a date on which the charges shall be heard;

(ii) No proceedings under this Section shall be brought against any Member unless such Member has received a written statement of charges at least ten (10) days prior to the hearing;

- (iii) The Board shall appoint a panel of three (3) capable persons (one of whom shall be designated as chairman) who may or may not be Members and who shall hear the charges and evaluate the evidence of the alleged violation;
- (iv) At the hearing the Member charged shall have the right to present oral and written evidence and to cross-examine adverse witnesses;
- (v) Within seven (7) days after the hearing the panel shall deliver to the Member charged a written decision which specifies the fines or sanctions levied, if any, and the reasons therefor; and
- (vi) A monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the By-laws, the Master Deed or the Association Rules or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Elements or of property of the Association for which the Member was allegedly responsible or in bringing the Member's Unit into compliance with the By-laws, the Master Deed or the Rules may, by the action of the Board, be an assessment which may become a lien against the Member's Unit subject to the provisions of Article VI, Section 6.9 of the Master Deed.

(d) In the event that a Member shall correct an alleged violation prior to the hearing date, the Board may, in its discretion, discontinue the proceedings.

Section 3.13 Suspension of Membership. Notwithstanding the provisions of Section 3.12 hereabove, the voting rights, the use or enjoyment of the Common Elements or of the facilities therein by a Member or his family, guests or tenants, and any services the Association may be providing to any Member may be suspended by action of the Board for any period during which any assessment, or any portion thereof, levied against his Unit remains unpaid and delinquent. In the event of such suspension, the Member's rights and privileges shall be automatically restored upon his payment in full of such delinquent assessments, including interest and late charges.

Section 3.14 Abatement and Enjoining of Violations. In addition to any other rights set forth in these By-laws, the Association, through the Board, and any Member shall have the right to prosecute any proceedings at law or in equity against any person or persons for the breach or violation of any of the provisions of these By-laws or of the Master Deed and to obtain relief by way of injunction, money damages, or both. In the event that any provision of these By-laws shall be held invalid by judgment or court order, it shall not be deemed to affect any of the other provisions herein, which shall continue and remain in full force and effect. In the event that any provision hereof shall be declared void by a court of competent jurisdiction by reason of the period of time for which the same shall be effective, then the term of such provisions shall be reduced by the maximum period of time allowed by the laws of the State of Tennessee.

#### ARTICLE IV

**Meetings of the Board of Directors**

**Section 4.1 Organization Meeting.** Immediately following each annual meeting of Members, the Board shall hold a regular meeting for the purpose of organization, election of Officers, and the transaction of other business.

**Section 4.2 Other Regular Meeting.** Other regular meetings of the Board shall be held at least once every month at such time as may be fixed from time to time by resolution of the Board; provided, however, such meetings may be held less frequently than monthly (but not less frequently than every six months) if the Board determines by resolution that the business to be transacted by the Board does not justify monthly meetings. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day ensuing that is not a legal holiday.

**Section 4.3 Place of Meeting.** Regular and special meetings of the Board shall be held at any place within the Property which has been designated from time to time by resolution of the Board or by written consent of all members of the Board; provided, however, such meetings may be held outside the Property, but as close to the Property as reasonably possible, if the Board determines by resolution, or by such written consent, that a larger meeting room is required than exists within the Property.

**Section 4.4 Notice of Meetings.** Notice of each meeting of Directors, whether regular or special, shall be given to each Director. If such notice is given either by personally delivering written notice to a Director or by personally telephoning such Director, it shall be so given at least five (5) days prior to the meeting. If such notice is given by depositing a written notice in the United States mail, postage prepaid, directed to such Director at his residence or place of business, it shall be given at least seven (7) days prior to the meeting. Notice of all meetings shall state the place, date and hour thereof, but need not, unless otherwise required by statute, state the purpose or purposes thereof.

**Section 4.5 Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the President or any two Directors.

**Section 4.6 Telephone Meetings Permitted.** Members of the Board may participate in a meeting of the Board by means of a conference telephone or similar communications equipment which enables all persons participating in the meeting to hear each other at the same time, and participation by such means shall constitute presence in person at such meeting.

**Section 4.7 Adjournment.** A majority of the Directors present, whether or not constituting a quorum, may adjourn any meeting to another time. If the meeting is adjourned for more than five (5) days, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

**Section 4.8 Waiver of Notice.** Any Director may, at any time, waive notice of any meeting of the Board of Directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall constitute a waiver of

notice by him of the time and place thereof unless he protests lack of notice prior to or at the commencement of the meeting. If a sufficient number of Directors are present at any meeting that constitutes a quorum of the Board and who have not protested lack of notice, any business may be transacted at such meeting. Business may be transacted and approved by the Board in the form of a written consent in lieu of a regular or special meeting provided all of the members of the Board shall have executed such written consent. All such waivers, consents or approvals shall be or made a part of the minutes of the meeting and filed with the corporate records.

Section 4.9 Quorum. A majority of the authorized number of Directors shall constitute a quorum for the transaction of business.

Section 4.10 Action Without Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as a unanimous vote of such Directors. If the Board resolves to take any action by unanimous written consent, an explanation of the action taken shall be posted in a prominent place or places within the Common Elements no later than three (3) days after the unanimous written consent or consents of all the members of the Board have been obtained.

Section 4.11 Voting. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or by these By-laws.

Section 4.12 Presumption of Assent. A Director who is present at a meeting of the Board, or any committee thereof, shall be presumed to have concurred in any action taken at the meeting, unless his dissent to such action shall be entered in the minutes of the meeting or unless he shall submit his written dissent to the person acting as the Secretary of the meeting before the adjournment of the meeting or shall deliver such dissent personally or by certified mail to the Secretary of the Association promptly after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action. A Director who is absent from a meeting of the Board, or from a meeting of any committee thereof, at which such action is taken shall not be presumed to have concurred in the action taken.

## ARTICLE V

### Officers

Section 5.1 Designation of Officers. The Officers of the Association shall be a President, a Secretary and a Treasurer. The President, Secretary and Treasurer shall be members of the Board. The Board of Directors may elect or appoint such other Officers, who need not be members of the Board, including one or more Vice Presidents, Assistant Secretaries and Assistant Treasurers, as it shall deem desirable, such Officers to have the authority and perform the duties prescribed, from time to time, by the Board of Directors. Any two or more offices may be held by the same person, except the offices of President and Secretary. Notwithstanding the above

provisions, so long as Developer shall have the right to appoint Directors, the only offices to be filled shall be President and Secretary.

Section 5.2 Election and Term of Office. The Officers of the Association shall be elected at the first meeting of the Board of Directors following the first meeting of the Members, and thereafter be elected at the regular meeting of the Board of Directors following each annual meeting of the Members. If the election of Officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be arranged. Each Officer shall hold office until his successor shall have been duly elected and shall have qualified.

Section 5.3 President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members of the Association and of the Board of Directors. The President shall have all of the general powers and duties which are usually vested in the office of the president of a nonprofit corporation, including but not limited to the power to sign and execute, on behalf of the Association, all deeds, agreements, contracts, notes, checks and all other written documents which may require the signature of the Association.

Section 5.4 Vice President. A Vice President shall have all of the powers and authority and shall perform all of the functions and duties of the President in the absence of the President or his or her inability for any reason to exercise such powers or perform such duties.

Section 5.5 Secretary. The Secretary shall keep the minutes of meetings of the Board of Directors and minutes of meetings of the Members of the Association. The Secretary shall have charge of such books and papers as the Board of Directors may direct, and shall in general perform all the duties incident to the office of Secretary. The Secretary shall compile and keep up-to-date at the principal office of the Association a complete list of Members and their current mailing addresses.

Section 5.6 Treasurer. The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate financial records and books of account of the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors. The Treasurer may also serve as Secretary in the event the Secretary is absent.

Section 5.7 Removal. Any Officer elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Association would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the Officer so removed.

Section 5.8 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 5.9 Compensation. No Officer shall receive any compensation for acting as such; provided, however, Officers may be reimbursed for any reasonable expenses incurred on behalf of the Association at the direction of the Board.

## ARTICLE VI

### Assessments

Section 6.1 Levv of Assessments. The assessments levied and collected by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the Members and residents of the Units and in particular for the improvement and maintenance of the Common Elements and the facilities located therein and for providing services to enhance the use and enjoyment of the Common Elements.

Section 6.2 Regular Assessments. The Board of Directors shall prepare an annual budget in advance for each fiscal year of the Association to establish a regular assessment to be levied for the forthcoming year to cover the projected common expenses that will be required for the proper operation, management and maintenance of River Pier Landing Condominium regime, including a reasonable allowance for contingencies and reserves.

Section 6.3 Special Assessments. Special Assessments may be made from time to time to pay for capital improvements, to cover unbudgeted expenses or expenses in excess of the budget, all as provided for more specifically in Section 6.4 of the Master Deed.

Section 6.4 Specific Assessments. The Board shall have the power to levy specific assessments against a particular Unit to cover overhead and administrative costs of providing benefits or services to the Unit, the expense of bringing the Unit into compliance with the provisions of the Master Deed, these By-laws or the Rules, or the costs incurred by the Association as a consequence of the conduct of the Member or occupants of the Unit, their licensees, invitees, or guests. The Board shall give the Member prior written notice and an opportunity for a hearing before levying a specific assessment against the Member's Unit.

Section 6.5 Allocation and Payment of Assessments. All regular and special assessments levied against the Members to cover Association expenses shall be apportioned among and paid by the Members in accordance with the Percentage Interest allocated to each Unit in the Master Deed. Assessments levied against a Unit of a Member shall be due and payable at such time as provided for in the notices sent by the Association to the Members.

Section 6.6 No Exemption for Assessments. No Member may exempt himself from liability for his contribution toward the expenses of the Association by waiver of the use or enjoyment of any of the Common Elements or by the abandonment or sale of his Unit.

## ARTICLE VII

### Indemnification

Section 7.1 Indemnification of Directors and Officers. The Association shall indemnify every Director and Officer, and his or her heirs, executors and administrators, against all loss, costs, and expenses, including counsel fees reasonably incurred by him or her in connection with any action,

suit or proceeding to which he or she may be made a party by reason of his or her being or having been a Director or Officer of the Association, to the fullest extent permitted by and consistent with the provisions of the Tennessee Nonprofit Corporation Act. The indemnification provision of this Section shall also apply to any person appointed by Developer to serve on the Board or as an Officer during any time that Developer has the right to appoint all members of the Board of Directors. All liability, loss, damage, costs and expenses incurred or suffered by the Association by reason or arising out of or in connection with the foregoing indemnification provisions shall be treated and handled by the Association as a common expense of the Members of the Association, which shall be assessed to and paid by the Members as provided in the Master Deed. Nothing contained in this Section 7.1 shall, however, be deemed to obligate the Association to indemnify any Member or Owner of a Unit who is or has been a Director or Officer of the Association with respect to any assessments or other obligations assumed or liabilities incurred by him or her or as a Member or Owner of a Unit under the provisions of the Master Deed.

Section 7.2 Nonexclusively of Rights. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article shall not be exclusive of any other right which any person may have or hereafter acquire under any statute or by a provision of the Charter, Master Deed, these By-laws, or by a vote of the Members or disinterested Directors, or otherwise.

Section 7.3 Insurance Contracts and Funding. The Association may maintain insurance as a common expense of the Association to protect itself, Developer, and any Director, Officer, employee or agent of the Association against any expense, liability or loss, whether or not the Association would have the power to indemnify such persons against such expense, liability or loss under the Tennessee Nonprofit Corporation Act.

Section 7.4 Indemnification of Employees and Agents of the Association. The Association may, by action of its Board of Directors from time to time, provide indemnification and pay expenses of employees and agents of the Association with the same scope and effect as the provisions of this Article with respect to the indemnification and advancement of expenses of Directors and Officers of the Association or pursuant to rights granted pursuant to, or provided by, the Tennessee Nonprofit Corporation Act, or otherwise.

## ARTICLE VIII

### General Provisions

Section 8.1 Amendment. These By-laws may be amended in the manner specified in Article 12 of the Master Deed.

Section 8.2 Mortgagee Rights. The Board of Directors, whenever so requested in writing by a mortgagee of a Unit that provides its name, address, and the Unit number or address on which it holds, insures, or guarantees the mortgage, shall promptly report any then unpaid dues or assessments; any condemnation or casualty loss that affects either a material portion of the Property or the Unit securing its mortgage; any 60-day delinquency in the payment of assessments or charges owed by the Unit Owner; a lapse, cancellation, or material modifications

of any insurance policy maintained by the Association; any proposed action requiring the consent of a specified percentage of eligible mortgage holders; or any other default by the Unit Owner of the mortgaged Unit. The Board of Directors, when giving notice to a Unit Owner of a default in paying dues or assessments or other default, shall send a copy of such notice to each mortgagee of a Unit whose name and address has been furnished to the Board. Additionally, upon request of any mortgagee and at such mortgagee's expense, the Board shall provide an audited financial statement for the Association's preceding fiscal year.

Section 8.3 Books and Records. The Board of Directors shall keep reasonably detailed records of the actions of the Board, minutes of the meetings of the Board of Directors, minutes of the meetings of the Members, and financial records and books of account of the Association, including a separate account for each Unit which, among other things, shall contain the Percentage Interest allocated to the Unit, the amount of assessments levied against the Unit, the date when due, the amounts paid thereon, and the balance remaining unpaid. A written report summarizing all receipts and expenditures of the Association shall be rendered by the Board of Directors to all Members at least annually.

Section 8.4 Inspection Rights. The Master Deed, the Charter, these By-laws, the Rules and the books, records, financial statements and papers of the Association shall be available for inspection by any Member or his designated representative, or any holder, insurer, or guarantor of any First Mortgage secured by one or more Units in the Property, at all times during reasonable business hours at the principal office of the Association, where copies may be purchased at a reasonable cost.

Section 8.5 Nonprofit Corporation. As set forth in the Charter, this Association is a nonprofit corporation formed pursuant to the Tennessee Nonprofit Corporations Act. No Member, member of the Board of Directors or any other person from whom the Association may receive any property or funds shall receive or be lawfully entitled to receive any pecuniary profit from the operations of the Association; and in no event shall any part of the funds or assets of the Association be paid as a salary or compensation to or be distributed to, or inure to the benefit of, any member of the Board of Directors. The foregoing, however, shall in no way prevent or restrict the following:

(a) Reasonable compensation may be paid to any Member or Director while acting on behalf of the Association for services rendered in effecting one or more of the purposes of the Association; and

(b) Any Member or Director may, from time to time, be reimbursed for his actual and reasonable expenses incurred in connection with the administration of the affairs of the Association.

Section 8.6 Conflict Between Documents. In the event of a conflict in any of the provisions of the Act, Charter, Master Deed, these By-laws, or the Rules of the Association, then said documents shall govern or control in the following order of preference (1) the Act, (2) Master Deed, (3) Charter, (4) these By-laws and (5) the Rules of the Association.



Section 8.7 Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the thirty-first (31st) day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

**EXHIBIT D TO MASTER DEED**

<b>Unit No.</b>	<b>Square Footage Allocated</b>	<b>Percentage Interest</b>
201	2,095	3.90%
202	1,952	3.64%
203	2,453	4.57%
204	1,253	2.33%
301	2,095	3.90%
302	1,962	3.66%
303	2,453	4.57%
304	1,253	2.33%
401	2,095	3.90%
402	1,952	3.64%
403	2,453	4.57%
404	1,253	2.33%
501	2,095	3.90%
502	1,952	3.64%
503	2,453	4.57%
504	1,253	2.33%
601	4,123	7.68%
602	3,004	5.60%
Retail C	7,600	14.16%
Retail B	5,870	10.94%
Retail A	2,055	3.83%
	<b>53,674</b>	<b>100.00%</b>