LEASEHOLD CONDOMINIUMS

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LEASEHOLD CONDOMINIUMS

I. INTRODUCTION

Prior to the approval of the Uniform Condominium Act by the Uniform Law Commission in 1977, few state condominium enabling statutes included specific provisions on submission of a leasehold interest to the condominium form of ownership.[1] In 1994, Texas adopted the Texas Uniform Condominium Act (the "**Act**")[2] using the Uniform Condominium Act as its base. The Texas Uniform Condominium Act includes definitions, disclosures and a few requirements tailored for the leasehold condominium project. Despite an active condominium practice over the last 25 years, using a lease, as opposed to fee title to land, as the founding real estate interest submitted to a condominium declaration has been relatively rare.[3] If our recent experience is any indication, change is in the air, principally owing to the rise and stability, over the last several years, of vertical and horizontal mixed-use projects. Properly structured vertical and horizontal mixed-use projects have proven finance ability and marketability and have achieved acceptance in the market. There is inherent and recognized power in segregating ownership and uses in a mixed-use project. Among other things, segregation of ownership allows stakeholders with specific use expertise to operate and find capital to construct, improve, or refinance their specific component of the project. However, there are situations where the transfer of fee ownership is constrained, either through local or state regulatory restrictions or private investment goals or requirements. A state university or municipality may be required to own land which would prohibit diversity of fee title ownership in a mixed-use project. A private land owner may need to retain ownership for estate preservation purposes or may be restricted from the conveyance of land held by a trust. These "fee constrained" parties have begun to recognize the benefits of mixed-use. Whether it's a state university contemplating a public private partnership, or a trustee considering ways to increase the value and returns on a family legacy asset, the leasehold condominium structure is an alternative for projects where fee title must be retained and cannot be transferred.

II. THE BASICS

A. What is a Leasehold Condominium?

A leasehold condominium is created when a leasehold interest in land, as opposed to fee title to land, is submitted to a condominium declaration. There are legal, financing, and operational implications to submission of a leasehold interest rather than fee title to a condominium declaration, but the condominium declaration and condominium regime organizational and supporting documents are often virtually identical. The condominium declaration will describe the units created out of the leasehold interest and there should be no difference in how the physical boundaries of each unit are described as compared to the traditional non-leasehold condominium. Provisions related to operation and administration of the condominium association, common interest and common expense allocations, and use restrictions are often the same for the leasehold and non-leasehold condominium. The leasehold condominium declaration will differ with respect to its term, which will most often be co-terminus with the term of the underlying ground lease. Insurance provisions may be different for leasehold condominium projects that are restricted to commercial use. Casualty and condemnation provisions may be different than the non-leasehold condominium declaration dependent on corresponding provisions of the underlying lease.

The real property interest[4] submitted to a leasehold condominium declaration will most frequently be a ground lease and include the entire land area comprising the project. However, the lease need not cover the entire project[5], nor is it required that the lease comprise an area of the surface of land. For example, in the former case, the project area may be composed of a portion of land where fee title is submitted to the condominium declaration, and an adjacent tract where only the

[1] Uniform Condominium Act, § 2-106, Comment 3 (1980). Chapter 81 of the Texas Property Code, a codification of the Federal Housing Administration model condominium act published in 1962 (replaced in 1994 by Chapter 82 of the Texas Property Code) allows recordation of a master lease to create a condominium, but provides no further guidance, information, or requirements for a leasehold condominium regime.

[2] Chapter 82, Title 7 of the Texas Property Code.

[3] Yes, there are, and have been, leasehold condominiums in Texas. Historically, these projects have been clustered within central business districts and most often are relegated to pure commercial use segregations, e.g., separate horizontal office building segregations on land owned by a single land owner, or relatively simplistic vertical dual use projects, e.g., office and retail. There are, of course, exceptions. There are also certain tax benefits related to the leasehold condominium structure, but those issues are beyond the scope of this paper.

[4] *See* Section 82.003(8) of the Texas Property Code which defines a condominium as "a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of those portions." (emphasis added). *See also* Merit Mgmt. Partners I, L.P. v. Noelke, 266 S.W.3d 637, 643, 2008 Tex. App. LEXIS 7513, *15, which provides that a leasehold is an interest in real property.

[5] *See* Section 82.003(16) of the Texas Property Code, which defines a leasehold condominium as "a condominium in which all or a portion of the real property is subject to a lease. [. . .]" (emphasis added).

leasehold estate is submitted to the condominium declaration.[6] In the latter case, the lease may pertain to subsurface components of the land only, e.g., a parking garage.[7]

When land is submitted to a condominium declaration, the declaration creates separate condominium units which, when conveyed, are owned by the grantee, and common elements which are owned in undivided interests by all unit owners. When a lease is submitted to the condominium declaration, the declaration also creates units and common elements. However, when conveyed, the grantee receives an exclusive possessory interest in the leasehold unit and an undivided possessory interest in the common elements. Interestingly, and by virtue of submitting a ground lease to a condominium declaration and creating leasehold condominium units, the exclusive possessory interest in the leasehold condominium unit and undivided interest in the common elements are conveyed by deed from the lessee under the lease to each grantee.[8] In addition, each of the leasehold condominiums created by the declaration and each undivided interest in common elements appurtenant to such unit is separately taxed for ad valorem tax purposes.[9]

If the lessee submits a ground lease to a condominium declaration, on the date of submission the traditional and binary relationship between land owner and lessee is converted to a relationship between the land owner and the leasehold condominium unit owners and the condominium association. As discussed in Section II.B and Section III.F of this article, the lease provisions are enforceable against leasehold unit owners, but there are limits on termination for non-compliance. Also, certain obligations of the lessee, in particular the obligation to pay leasehold rents will often be undertaken and coordinated by the condominium association, as opposed to the owners of the units.

B. Texas Nuts and Bolts

The word "leasehold" used in the context of a leasehold condominium is used only twelve times in the Act, and primarily relates to the Act's requirement that certain basic provisions of the lease be disclosed in the condominium declaration. The lack of specific and detailed guidance means there is often very little difference between the leasehold and non-leasehold condominium declaration and supporting documentation.[10] However, the Act is purposefully flexible[11] and modifications to the declaration may be appropriate as further described in Section III of this article.

Section 82.003(a)(16) of the Act defines a leasehold condominium as "a condominium in which all or a portion of the real property is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size." Section 82.003(a)(24) of the Act includes, in the definition of unit owner, a "lessee of a unit in a leasehold condominium." The principal leasehold condominium provision in the Act is Section 82.056. Section 82.056 of the Act includes specific requirements for the lease, specific disclosures that must be made in the condominium declaration, and limitations on a lessor's enforcement rights under the lease. Section 82.056(a) of the Act requires that if termination of the lease will terminate the condominium or reduce the size of the condominium, the lease must be recorded. There is no support in the Act for recording a memorandum of the lease. Section 82.056(a) of the

[6] A blended regime consisting of leased and non-leased land poses challenges, most notably the fact that termination of the lease will either terminate the regime entirely, or at least as to the area subject to the lease. It is seldom the case that the project will be constructed in a manner that will permit a clean operational divorce of the leased and non-leased portion of the project. In most circumstances, termination of the entire regime (or renewal of the lease to avoid termination) is the only practical solution short of major redevelopment.

[7] Of course, there will likely need to be some portion of the ground under lease or easement to permit access to the subsurface project.

[8] Section 82.054 of the Texas Property Code provides instructions on how to legally describe a condominium unit for conveyance purposes. The Act does not distinguish between leasehold and non-leasehold units for the purpose of a proper legal description, though it is customary to recite in the deed that the unit is a leasehold condominium.

[9] See Section 82.005 of the Act. Section 82.005 does not distinguish between leasehold and non-leasehold condominiums.

[10] Supporting documents include the certificate of formation and bylaws of the condominium association and general rules governing the condominium regime.

[11] Section 82.004 of the of the Texas Property Code provides that the provisions cannot be varied unless expressly permitted. Certain provisions of Chapter 82 are expressly permitted to be modified or supplemented by the condominium declaration, e.g., Section 82.052 [Unit Boundaries], Section 82.055(17) [Contents of Declaration for all Condominiums], Section 82.057 [Allocation of Common Element Interests, Votes, and Common Expense Liabilities], Section 82.058 [Limited Common Elements], Section 82.059 [Plat and Plans], Section 82.060 [Exercise of Development Right], Section 82.061 [Alteration of Units], Section 82.062 [Relocation of Boundaries between Adjoining Units], Section 82.063 [Subdivision of Units], Section 82.065 [Use for Sales Purposes], Section 82.066 [Easement Rights], Section 82.102 [Powers of Unit Owners' Association], Section 82.107 [Upkeep of Condominium]. Certain other provisions may be modified if the condominium project is restricted to commercial use, e.g., Section 82.111 [Insurance], Subchapter D [Protection of Purchasers].

Act further provides that the lessor must sign the condominium declaration.[12]

Section 82.056(a) of the Act requires that the following information regarding the lease be stated in the condominium declaration:

> (1) the recording data for the lease;
> (2) the date on which the lease is scheduled to expire;
> (3) a legally sufficient description of the real property subject to the lease;
> (4) any right of the unit owners to redeem the reversion and the manner in which the unit owners may exercise that right, or a statement that the unit owners do not have that right;
> (5) any right of the unit owners to remove improvements within a reasonable time after the expiration or termination of the lease, or a statement that the unit owners do not have that right; and
> (6) any right of the unit owners to renew the lease and the conditions of renewal, or a statement that the unit owners do not have that right.

In our experience, a right of redemption is rare. Most leases that are appropriate for the purpose of submission to a condominium declaration have long lease terms, usually 99 years. Determination of a valuation methodology for redemption is just too uncertain. It is also unusual to see detailed provisions for the removal of improvements. For legacy leases, that is existing leases negotiated without any expectation that the lease will be submitted to a condominium declaration, these provisions and other complex requirements are more likely and can be quite challenging to harmonize with the Act and stakeholder expectations. As discussed in more detail in Section III of this article, legacy leases have several challenges notwithstanding the requirement that the lessor consent to submission of the leasehold interest to the condominium declaration.

Section 82.056(b) is the lynchpin of viability and marketability for the leasehold condominium. Section 82.056(b) provides as follows:

> After the declaration for a leasehold condominium is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of the unit owner's share of the rent and otherwise complies with all covenants that, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.

A lease is ordinarily a binary relationship between the land owner and its lessee. Section 82.056(b), in effect, converts this binary relationship into a collective relationship between the lessor and multiple parties, specifically all leasehold condominium unit owners and the condominium association.[13] In the binary relationship, if the lessee fails to pay rent the lessor can terminate the lease. If the lease is submitted to a condominium declaration, the lease rent is allocated among each leasehold condominium unit owner, usually based on their undivided interest in the common elements (though this may differ in a commercial project as discussed in Section III.E of this article). In such case, the proportionate share of rent is most often characterized as an assessment under the condominium declaration, collected by the association, and then remitted by the association to the lessor. If a leasehold unit owner fails to pay their proportionate share of the lease rent, and assuming that at least one unit owner pays their proportionate share, the lessor may not terminate the lease, but instead may only terminate the defaulting unit owner's right of possession. In effect, the lessor is now the owner of the defaulting owner's leasehold unit.[14] Often complicating matters, and in particular when a legacy lease is proposed for submission to a condominium declaration, are lease covenants that are not so easily allocated to each unit owner. Examples include covenants related to insurance, shared area maintenance, or any other condition where uniformity of compliance is necessary to achieve the underlying purpose of the condition. The condominium declaration may require that the condominium association obtain the required insurance and maintain shared areas in accordance with the conditions and standards required by the underlying lease. What happens if the association fails to obtain the required insurance or fails to maintain shared areas in conformance with the lease? The plain language of

[12] Section 82.051(a) of the of the Texas Property Code also provides that "A condominium may be created under this chapter only by recording a declaration executed in the same manner as a deed by all persons who have an interest in the real property that will be conveyed to unit owners and by every lessor of a lease the expiration or termination of which will terminate the condominium or reduce its size." (emphasis added).

[13] Comment 4 to § 2-106 of the Uniform Condominium Act characterizes this as "fractionalizing" the obligations among unit owners. § 2-106 of the Uniform Condominium Act is substantially the same as Section 82.056 of the Act.

[14] Section 82.056(c) of the Act provides that "Acquisition of a leasehold interest of a unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired."

Section 82.056(b), supported by comments to the Uniform Condominium Act[15], suggests that only those obligations that can be (or are) severed and fulfilled by a unit owner are enforceable against a unit owner. Section 82.111 of the Act requires the condominium association to obtain and maintain property insurance. Section 82.107 of the Act vests in the condominium association the obligation to maintain the common elements in the condominium. If the condominium declaration requires the association to obtain and maintain the required insurance and requires that the condominium association maintain the shared areas, those obligations are not severed and assigned to unit owners. On the other hand, the requirement that the association obtain and maintain insurance can be modified if the condominiums are restricted to commercial use,[16] and the maintenance common elements or shared components can be assigned to specific unit owners.[17] Modification of the insurance provisions and allocation of common element maintenance to specific unit owners may be desirable in certain mixed-use projects where one or more of the units will be owned by sophisticated commercial operators with access to risk management expertise, favorable master insurance programs, and on-site maintenance staff. However, fractionalizing these obligations by assignment to a unit owner could expose the owner to a default under the lease if the owner failed to comply with the assigned obligation.

III. DRAFTING CONSIDERATIONS

A. Legacy and Non-Legacy Leases

A legacy lease, for the purpose of this article, is a lease already in place that has been negotiated between the parties without any consideration or expectation that the lease would be submitted to a condominium declaration. A legacy lease also includes a lease that has been negotiated but is not yet in effect, was negotiated between the parties without any consideration or expectation that the lease would be submitted to a condominium declaration, and due to political or legal considerations cannot practically be revised, modified or amended. An ideal lease is a lease that has been negotiated and drafted knowing in advance that the lease will be submitted to a condominium declaration to create leasehold condominiums. Attached as Exhibit "A" is an example of an ideal lease, but the lease you draft will not likely be ideal. Whether you are drafting the lease for the land owner or reviewing the lease for the developer who intends to submit the lease to a condominium declaration, your ideal lease will very likely be more detailed, include special provisions, and perhaps a complex rent structure.

This Section III discusses selected drafting considerations when submitting a leasehold interest to a condominium declaration. If you are working with a legacy lease, the hard work involves harmonizing legacy lease provisions with the Act, determining, allocating and assigning lease obligations, attempting to conform a new ownership and operational structure with the binary nature of the lease, and explaining all this to your client, their lender, insurance consultants, surveyors, budget preparers, and the lessor. If you are fortunate enough to be working with a non-legacy lease, the dynamic is different, but there are still challenges you must confront and resolve.

B. Term: Automatic Termination

In Texas, a leasehold condominium is defined as a condominium that will terminate as to the real estate subject to the lease when the lease terminates.[18] In other words, termination of the lease automatically terminates the condominium declaration as to the leasehold estate. There is usually no "automatic" termination for a non-leasehold condominium. Instead, for the non-leasehold condominium, termination occurs when approved by condominium unit owners.[19]

If the entire leasehold estate is made subject to the condominium declaration, except in unusual cases, the term of the condominium declaration should be the same as the term of the lease. If the real estate submitted to the condominium declaration is composed of a leasehold interest and fee simple title, and the project is designed and constructed in a manner that operation of the improvements is impractical or impossible without the leasehold real estate, e.g., where an integrated building with critical shared components is constructed on a parcel composed of a leasehold and a fee interest in the real estate, the term of the condominium declaration should also be the same as the term of the lease.

There is no required minimum term for a ground lease as a condition to creation of a leasehold

[15] Comment 4 to § 2-106 of the Uniform Condominium Act provides that § 2-106(b), which is the same as Section 82.056(b) of the Act, "protects the unit owner by assuring that the unit owner will not share with fellow unit owners any collective obligations toward their common lessor." (emphasis added)

[16] See Section 82.111(m) of the Texas Property Code.

[17] Section 82.107 of the Texas Property Code is a provision that can be modified by the condominium declaration.

[18] Section 82.003(a)(16) of the Texas Property Code.

[19] Section 82.068(a) of the Texas Property Code provides that "a condominium may be terminated only by the agreement of 100 percent of the votes in the association and each holder of a deed of trust or vendor's lien on a unit. The declaration may not allow a termination by less than 80 percent of the votes in the association if any unit is restricted exclusively to residential uses." Termination will also occur where all the units are taken by condemnation. See Section 82.068(a) of the Texas Property Code.

condominium, but the term will usually be between fifty (50) and ninety nine (99) years. For a project that does not include residential for sale product, if financing will be obtained for the project and one or all of the leasehold condominiums will form all or part of the collateral for the loan, the term of the lease should be at least be equivalent to the term of the loan. If the lease includes an extension option, the term of the loan can exceed the initial lease term provided the extension option can be exercised by the lessee.[20] If the project includes for sale residential product and acquisition of leasehold units will be financed through the traditional residential mortgage loan process, a ninety nine (99) year term is customary.[21]

C. Insurance: Synchronizing the Lease with the Act

Section 82.111 of the Act includes minimum insurance requirements for a condominium. Specifically, the condominium association is required to maintain property insurance and commercial general liability insurance, and the policies must conform to certain conditions.[22] The requirements set forth in Section 82.111 may not be modified unless all the units in regime are restricted to non-residential use.[23] As noted, Section 82.111 includes the minimum requirements for insurance. The underlying ground lease may include additional and detailed insurance requirements, including minimum policy limits, lines of insurance, endorsements, etc., but those additional requirements may only apply to a specific use, user, or time period. For example, a ground lease might require that builder's risk be obtained and maintained in conjunction with construction of the project, that certain tenant improvements be insured, and/or that the lessee obtain and maintain worker compensation insurance or business interruption insurance. In essence, the lease presumes unity of obligation in a single lessee. When the lease is submitted to the condominium declaration and leasehold units are created, consideration must be given to how these insurance obligations should be allocated among the condominium association and leasehold unit owners. The assignment of insurance obligations to the association and each leasehold unit owner can be made in the condominium declaration, but the lease should be drafted in anticipation of the fact that these insurance requirements will most likely need to be allocated among multiple parties. See Exhibit "B" to this article for an example of a condominium declaration attachment that allocates insurance requirements to a condominium association. The ideal lease attached as Exhibit "A" only includes a requirement for liability insurance. The lessor under the ideal lease is relying on the statutory requirement that the condominium association will obtain property insurance for the project.

D. Casualty: Decision to Rebuild and Insurance Proceeds

Section 82.111(i) of the Act requires that if insurance proceeds are received by the condominium association as a result of damage to the project, the association must use the proceeds to repair the damage unless eighty percent (80%) of the unit owners elect not to make the repairs.[24] The ideal lease, attached as Exhibit "A", provides that the lessee controls all insurance proceeds and determines whether to restore the premises in the event of a casualty. As a result, when the ideal lease is submitted to the condominium declaration, there is no need to harmonize casualty lease provisions with the casualty provisions in the Act or the condominium declaration. As noted above, the provisions of Section 82.111 cannot be modified by the condominium declaration unless all the units in the condominium declaration are restricted to non-residential use. If the lease includes specific and detailed casualty provisions, the project is not restricted to non-residential use, and Section 82.111 is not modified to conform to the lease requirements, the casualty lease provisions may conflict with corresponding provisions in the Act. For example, if the lease requires that the lessee restore damage to improvements on the property and if those improvements are required to be insured by the condominium association under the Act, in the event

[20] An extension right is often a non-severable right which is exercised by the condominium association with the approval of unit owners, or by the unit owners without joinder of the association.

[21] As a condition to purchasing or securitizing a first lien mortgage, Fannie Mae requires that the lease term be at least 5 years longer than the maturity date of the mortgage. See Fannie Mae Selling Guide, B2-3-03: Special Property Eligibility and Underwriting Considerations: Leasehold Estates (March 31, 2015). The Federal Housing Administration requires that the lease be no less than 99 years with a renewal option, or that the term of the lease be at least 10 years longer than the maturity date of the mortgage. See Condominium Project Approval and Processing Guide, Section 1.8.3 (June 30, 2011).

[22] See Section 82.111(d) of the Texas Property Code for a list of insurance policy requirements.

[23] See Section 82.111(m) of the Texas Property Code. It should be noted that there is no direct guidance in Texas as to whether residential for-rent product, as opposed to residential for-sale product, is a commercial use for purposes of Section 82.111.

[24] Section 82.111(i) of the Texas Property Code provides that if any portion of a condominium is damaged or destroyed and insurance is required to be obtained by the association for such damage or destruction, the damage or destruction must be "promptly repaired or replaced by the association unless […] at least 80 percent of the unit owners vote to not rebuild. […]"

eighty percent (80%) of the unit owners elect not to restore, Section 82.111(i) of the Act requires that the insurance proceeds be distributed to the unit owners and their mortgagees.

E. Base Rent and Percentage Rent: Allocation to Leasehold Units

There are several methods used to determine rent under a ground lease, but two forms of rent are most prevalent: base rent and percentage rent. Base rent is usually a fixed initial sum which escalates over the lease term. Percentage rent is paid in addition to, or in lieu of, base rent and most often associated with retail use. Percentage rent is usually calculated based on the retail tenant's gross or net revenue.

If the ground lease includes base rent only, and if rent is not apportioned differently under the condominium declaration, base rent will be allocated among each leasehold condominium in accordance with the unit's allocated interest under the condominium declaration.[25] In most circumstances, the base rent will be collected by the condominium association along with the association's budgeted maintenance expenses through the levy of assessments against each unit. However, this need not be the case, and is often not the case unless the project includes only residential for-sale units. In a mixed-use project it is often desirable to minimize the functions of the condominium association.[26] Assigning the obligation for rent payments directly to a specific unit owner[27] who then pays their allocated share of rent directly to the lessor is a consistent practice under this approach.[28]

Base rent can be apportioned among units in a manner that differs from the allocated interests and aligned with the specific agreement of the leasehold unit owners. In a project that includes retail and non-retail components, the lease often includes both base rent and percentage rent. In that case, the condominium declaration could apportion a larger share of base rent to the multi-family unit taking into consideration the fact that the rental unit will pay all percentage rent under the lease. See Exhibit "D" to this article for an example of a condominium declaration attachment that allocates base rent and percentage rent in a manner that differs from an allocation equal to the common expense liability assigned to each leasehold condominium unit.

F. Severable and Non-Severable Lease Obligations

In this article we have discussed fractionalizing lease obligations, meaning a process whereby specific requirements under the lease and generally applicable to a unitary lessee are assigned to a specific owner of a leasehold condominium unit. Some obligations are more easily fractionalized than others, e.g., rent; however, an obligation that may not seem easily assignable to a specific owner may actually be severable assuming that the lessor consents to the assignment. As noted in this article, the lessor of the leasehold interest submitted to the condominium declaration must execute the condominium declaration evidencing its consent thereto. Accordingly, the condominium declaration can be used as a means to modify the terms of the lease for the purpose of assigning lease obligations to specific unit owners. Separation and assignment of seemingly unseverable lease obligations to a specific leasehold condominium unit owner, for example the general lease requirement that the premises be maintained in good condition and repair, can be achieved by assigning those obligations as they relate to a specific unit and limiting the ground lessor's recourse to the unit owner who is assigned the obligation. Attached as Exhibit "C" are sample provisions used to allocate general lease obligations to a specific unit owner, establish self-help rights in favor of the non-defaulting owner, limit the lessor's remedies to the unit owner who was assigned the obligation, and providing for indemnification from

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[25] The term "allocated interests" is a general term that includes the percentage of undivided ownership in the common elements assigned to each unit, the percentage of the association liabilities and expenses paid by each unit, and the number of votes allocated to each unit. See Section 82.003(a)(2) of the Texas Property Code. Section 82.057 of the Texas Property Code allows each of these allocated interests to be uniquely determined provided that the formula for determining each allocation is included in the declaration. Often the same formula is used for each allocation, e.g., the size of each unit relative to all units established by the condominium declaration.

[26] Where units in the project will be owned and operated by sophisticated commercial operators, duties ordinarily assigned to the condominium association, e.g., maintenance of shared facilities, are assigned to one of the unit owners with corresponding cost allocations to the non-maintaining owner. This is most prevalent where one of the commercial owners has staff on-site who are available to maintain shared components. In many of these projects the association often exists with little to do other than keep is charter in good standing with the Texas Secretary of State.

[27] If the project includes for sale residential condominium units and commercial units, and if the condominium structure includes a separate and exclusive condominium association for the residential units, the proportionate share of base rent can be allocated to the residential association which would be considered the "owner" for purposes of paying its allocated share of the rent.

[28] As noted in Section II.B of this article, fractionizing an obligation under the lease by assigning the obligation to a specific owner will protect a non-defaulting owner's right of possession in the event another owner fails to comply with the assigned lease obligation. However, in the context of rent, whether or not the payment is fractionlized will have little bearing on this issue Rent would automatically be apportioned (fractionalized) though the allocated interests assigned to each unit in the condominium declaration.

the defaulting owner for failure to comply with the leasehold obligations assigned to such owner. Exhibit "D" include a sample chart identifying leasehold obligations and their assignment to each unit, which forms a part of the condominium declaration and is attached as an exhibit thereto.

IV. CONCLUSION

Though by no means a new phenomenon, leasehold condominiums have become more prevalent as mixed-use projects and public private partnerships have become more popular in Texas. The friction lies between the process of coordinating two legal instruments, the lease and the condominium declaration, and harmonizing accepted conventions in commercial leasing with customary condominium practice and the Texas Uniform Condominium Act. While the Act expressly enables leasehold condominiums, it does very little to resolve the friction of the process. If you are in the enviable position of drafting a lease where you know the leasehold will be submitted to a condominium declaration you are a leg up, but there will be heavy lifting ahead. If you are faced with a legacy lease, the challenges may be difficult to overcome unless the lessor can be convinced that the benefits of a leasehold condominium protect the long-term financial stability of the project.

EXHIBIT “A”

GROUND LEASE AGREEMENT

BETWEEN

_____ (“LESSOR”)

AND

_____ (“LESSEE”)

GROUND LEASE AGREEMENT

STATE OF TEXAS §
§ KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF _____ §

THIS GROUND LEASE AGREEMENT (the "Lease") is made and entered into by and between _____ _____, a _____ limited liability company (the "Lessor"), and _____, a _____ limited liability company (the "Lessee").

WITNESSETH

WHEREAS, Lessor is the owner of that certain parcel of land located in the City of _____, County of _____, State of Texas being more particularly described by metes and bounds on Attachment 1 attached hereto and made a part hereof for all purposes (the "Premises"); and

WHEREAS, concurrently with the execution of this Lease, Lessee shall create and form the Condominium (as defined herein) by the execution (by Lessor, as owner of the fee interest in the Premises and by Lessee, as "Declarant") and recordation of the Condominium Declaration (as defined herein), in the Official Public Records of _____ County, Texas;

WHEREAS, upon the formation of the Condominium, Lessee shall develop a project to be known as "__ _____ Condominiums", to be comprised of approximately [__] single family homes for individual sale to the public, along with an amenities center and common area;

WHEREAS, Lessee is desirous of leasing the Premises, from Lessor, and Lessor is agreeable to same, subject to the terms and conditions hereinafter set forth herein.

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual and respective covenants and undertakings of Lessor and Lessee hereunder, such parties hereby agree as follows:

ARTICLE I

DEFINITIONS; CONDOMINIUM

1.01 **Definitions. As used in this Lease, the following terms shall have the following meanings:**

"Act" shall mean the Texas Uniform Condominium Act, V.C.T.A. §82.001, *et seq*., as amended from time-to-time.

"Compliant Unit Owner" shall have the meaning assigned to it in Section 1.2.3(b).

"Condominium" shall mean the condominium created by the execution and recordation of the Condominium Declaration.

"Condominium Association" shall mean the "Association" created under the Condominium Declaration.

"Condominium Declaration" shall mean the condominium declaration for the Condominium to be executed by Lessor, as the owner of the Premises, and by Lessee, as "Declarant" thereunder, and to be notarized and recorded in the Official Public Records of ___ County, Texas, and which shall be substantially in the form of Attachment 4 attached hereto.

"Ground Lease Obligations" shall have the meaning assigned to it in Section 1.02(b)(i)(H).

"Improvements" shall mean any and all buildings and improvements from time to time located on the Premises, including without limitation the Units, all additions, alterations and improvements thereto or replacements thereof and

all fixtures, machinery, landscaping, hardscaping, sidewalks, signage and equipment installed therein or affixed thereto necessary for the proper operation of such buildings and improvements.

"Lease Year" shall mean a twelve month period, the first of which commences on the Commencement Date and ends on the day preceding the anniversary of the Commencement Date.

"Owner" shall mean the owner of fee simple title in and to a Unit

"Permitted Condo Documents" shall have the meaning ascribed to such term in Section 1.02(a) hereof.

"Person" shall include an individual, corporation, limited liability company, partnership, joint venture, unincorporated association, trust, or any other form of entity.

"Unit" shall mean [insert description of Unit].

"Unit Mortgage" shall mean any recorded deed of trust, mortgage or other financing document held by a Unit Mortgagee constituting a lien upon such Owner's Unit, and any modifications, extensions, renewals and replacements thereof.

"Unit Mortgagee" shall mean the holder of the indebtedness secured by any Unit Mortgage encumbering the Owner's interest in its Unit.

1.02 **Condominium.**

(a) Units. Pursuant to Section 82.056 of the Act, Lessee may impress on the Premises a condominium regime affecting all of the Premises which authorizes the creation of not more than [[__] (__)] units pursuant to the Condominium Declaration and other documents establishing the condominium regime that has been approved in writing by Lessor (the "Permitted Condo Documents").

(b) Permitted Condo Documents. The Permitted Condo Documents will include the following:

(i) The Condominium Declaration shall set forth, at a minimum:

(A) the recording data for the Lease;

(B) the date on which the Lease is scheduled to expire;

(C) a legally sufficient description of the property which is subject to the Lease;

(D) any right of the Owners to redeem the reversion and the manner in which the unit owners may exercise that right, or a statement that the unit owners do not have that right;

(E) the Owners do not have any right to remove improvements after the expiration or termination of the Lease;

(F) any right of the Owners to renew the Lease;

(G) the Lessor has executed the Condominium Declaration solely as provided by Section 82.056 of the Act and shall have no responsibility for the compliance with any provision of the Condominium Declaration and have absolutely no liability or obligation regarding any provision thereof; and

(H) a provision stating:

"Owner Assumption of Ground Lease Obligations. Each Owner, with acceptance of a deed to a Unit, shall be deemed to assume any and all obligations (including the obligations to pay rent as provided in the Ground Lease to the

extent allocated to such Unit in the Condominium Declaration), liabilities, limitations, rights, waivers, benefits or burdens that are vested or that may in the future become vested in or upon the "Lessee" pursuant to the Ground Lease and that are applicable to such Unit and as otherwise provided in this Declaration (the "Ground Lease Obligations"). Each Owner shall also pay all taxes, insurance and homeowner's association dues, (if applicable) assessed or against its Unit. The Ground Lease Obligations shall automatically be obligations, liabilities, limitations, rights, waivers, benefits or burdens of the Owners upon the recordation a deed to a Unit. This Section constitutes any assumption requirements set forth in the Ground Lease without any further action."

(ii) The Permitted Condo Documents are subject and subordinate to the terms and provisions of this Lease.

(iii) Notwithstanding anything to the contrary contained in the Permitted Condo Documents, the Condominium Association shall have no authority to cause the Condominium Association to take any of the following actions, or to consent to the following actions, without the prior consent of Lessor:

(A) intentionally take any action in violation of this Lease;

(B) merge or consolidate the Condominium Association with or into any other Person;

(C) amend or supplement the Permitted Condo Documents, other than to attach or amend the "Plat and Plans" exhibit to the Condominium Declaration to conform to the constructed Improvements;

(D) amend or supplement the Permitted Condo Documents to annex additional Units into the Permitted Condo Documents and amend the "Plat and Plans" exhibit to the Condominium Declaration to reflect such Units; provided, however no more than [__] total Units may be created;

(E) change the purpose of the Condominium Association as set forth in the Permitted Condo Documents;

(F) dissolve the Condominium Association; or

(G) file any voluntary petition under Title 11 of the United States Code, the Bankruptcy Code, or seek the protection of any other Federal or State bankruptcy or insolvency law or debtor relief statute or consenting to the institution or continuation of any involuntary bankruptcy proceeding or the admission in writing of the inability to pay debts generally as they become due, or make a general assignment for the benefit of creditors.

(c) Effect of Condo Documents.

(i) The provisions of this Section 1.02(c) shall apply from and after the date the Condominium Declaration is filed notwithstanding any other provision of this Lease and, in light of the fact that each Unit owner will then hold an undivided interest in the Lessee's leasehold estate, such provisions are intended to clarify the rights and duties of Lessor, each Unit Owner (and their separate Unit Mortgagees), and the Condominium Association.

(ii) It is the express intention, agreement and understanding that if there occurs any Default under this Lease: (i) Lessor may not terminate the leasehold estate under this Lease held by a Unit Owner (or exercise any other remedies against such Unit owner) that is complying with all of the covenants contained in this Lease applicable to such Unit Owner and its Unit (the "Compliant Unit Owner"), (ii) acquisition of the leasehold interest of a Unit Owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interest unless the leasehold interest of all Unit owners subject to that reversion or remainder are acquired; (iii) the leasehold estate appurtenant to such Compliant Unit Owner's Unit shall not be affected by such Default, and (iv) Lessor shall

exercise all rights and remedies available under this Lease only against the Unit Owner that is then in Default (a "Non-Compliant Unit Owner").

(iii) From and after the date the Condominium Declaration is filed, all references in the Lease to Unit Mortgagee shall mean each Unit Mortgagee for the applicable Unit.

ARTICLE II

DEMISE AND DESCRIPTION OF PREMISES

In consideration of the mutual promises herein made, and subject to all of the terms and conditions hereof, Lessor hereby demises and leases to Lessee, and Lessee hereby accepts, takes and hires from Lessor, the Premises free and clear of all liens, restrictions and other encumbrances other than those matters set forth on Attachment 2 attached hereto and made a part hereof for all purposes (the "Permitted Exceptions").

ARTICLE III

TERM

3.01 **Term. The stated term of this Lease shall be for the period commencing at 12:00 a.m., local time, on _____, 2018 (the "Commencement Date") and, unless sooner terminated pursuant to the terms hereof, ending at 11:59 p.m., local time in _____, _____, on the day preceding the ninety-ninth (99th) anniversary of the Commencement Date (the "Expiration Date").**

3.02 **Holding Over. Upon the expiration of the Term of this Lease, without further notice or action by any party, Lessee's leasehold created under this Lease shall terminate, and Lessee's right to possess the Premises shall become null and void and of no further force or effect. Any holding over by Lessee or any subtenants of Lessee after the expiration of the Term of this Lease shall not constitute a renewal of this Lease or give Lessee any rights hereunder or otherwise in or to the Premises, but rather shall constitute a tenancy from month-to-month at a monthly rental equal to (i) one-twelfth of the Base Rent in effect immediately prior to the expiration of the Term times (ii) one hundred fifty percent (150%).**

ARTICLE IV

RENT

4.01 **Base Rent. Base Rent (herein so called) shall be payable monthly during the Term of this Lease as set forth below.**

4.02 **Initial Amounts. Base Rent shall be equal to $_____ per year ($_____ per month) during the First Lease Year, Lease Year 2, Lease Year 3, Lease Year 4 and Lease Year 5 of the Term,**

4.03 **Adjustment Amount. Beginning with Lease Year 6 and continuing on December 31 of every fifth (5th) Lease Year thereafter (the "Adjustment Date") during the Term, the annual Base Rent shall increase by the quotient of (i) an amount equal to the Consumer Price Index – All Urban Consumers (Base Period 1982-1984=100) compiled and published by the Bureau of Labor Statistics and the Department of Labor for the United States of America (the "CPI") as of the Adjustment Date and (ii) an amount equal to the final, adjusted CPI for the month sixty (60) months prior to such Adjustment Date multiplied by the then current Rent, in which case the resulting amount shall be the new annual Base Rent for the next 5 Lease Years; provided, however, that in no event shall the Base Rent for any Lease Year be less than that for the previous Lease Year. All rent adjustments required by this Section 4.03 will be calculated by Lessee and provided to Lessor in writing within sixty (60) days prior to the first (1st) day of a Lease Year in which an Adjustment Date will occur. In the event Lessor objects to any of Lessee's CPA adjustment calculations, within ten (10) days of receipt of Lessee's calculations Lessor will submit to Lessee Lessor's calculation of the CPI adjustment and, if Lessee does not accept Lessor's calculation, Lessor and Lessee will designate a mutually acceptable certified public accountant ("CPA") to perform the calculation and the calculation made by such CPA will be accepted by both parties. Lessor and Lessee hereby designate [_____] as a mutually acceptable CPA for the purposes of this Section 4.03. Each time the Base Rent is adjusted Lessor and Lessee agree to enter into an Amendment to Ground Lease (Adjustment Memorandum) in the form attached hereto as Attachment 3 and made a part hereof for the purposes of memorializing such adjustment.**

4.04 **Determination Method. If the manner in which the CPI, as determined by the Department of Labor, shall be substantially revised, or if the 1982–1984 average shall no longer be used as an index of 100, an adjustment shall be made in such revised index which would have been obtained if the CPI had not been so**

revised or if said average was still in use. If the CPI shall become unavailable to the public because publication is discontinued, or otherwise, Lessor and Lessee shall reasonably agree to substitute therefor a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar published by any other governmental agency or, if no such index shall then be available, a comparable index published by a major bank or other financial institution or by a university or a recognized financial publication.

4.05 **Monthly Installment Payment. All installments of Base Rent shall be paid in lawful money of the United States of America to Lessor at the address set forth herein for notices to Lessor or to such other payee or address as Lessor may from time to time designate in writing to Lessee, in accordance with this Lease. Any installment of Base Rent not paid within ten (10) days of its due date shall bear interest at the rate provided in Section 13.03 below, commencing on the day after such installment was due and continuing until the installment is paid.**

4.06 **Net Lease. This Lease shall be deemed and construed to be a "Net Lease" to Lessor so that the Lessee shall pay, absolutely net, to Lessor throughout the Term and each year thereof, the Base Rent and, as additional rental hereunder, Lessee shall otherwise pay, perform and satisfy all other rental, costs, expenses, obligations, and payments set forth herein or otherwise with respect to the Premises as if Lessee were the owner thereof, free of any charges, assessments, or deductions of any kind and without notice, demand, abatement or offset, and Lessee shall save, defend, indemnify and hold harmless Lessor from and against same. Without limiting the foregoing, Lessee shall be fully responsible for any and all of the following items applicable to the Premises during the Term hereof: (a) standby fees, ad valorem, taxes and assessments, (b) insurance premiums; (c) association dues, assessments and the like; and (d) costs associated with the development, construction, occupancy, maintenance and use of the Premises and all other building improvements, landscaping and related amenities constructed or placed on the Premises.**

ARTICLE V

INSURANCE

5.01 **Liability Insurance. Lessee agrees to obtain, maintain and pay for commercial general liability insurance coverage to protect the Lessee, Lessor and Lessee's mortgagee(s) from any and all claims for injury to person or property that may arise from or be associated with the Premises, in the amount of not less than Two Million and No/Dollars ($2,000,000.00), per occurrence, and Five Million and No/100 Dollars ($5,000,000.00), in the aggregate. Such limits shall, if required by Lessor in writing, be increased.**

5.02 **Nature of Policy. Each policy required under Section 5.01 shall (i) name Lessor as an additional insured and be issued and underwritten by a reputable and solvent insurance company rated A+5 or better by A.M. Best or a comparable rating entity. On the Commencement Date, Lessee shall provide Lessor with a certificate evidencing such insurance and at least fifteen (15) days prior to the expiration of each such policy, Lessee shall provide Lessor with a certificate evidencing that such policy has been renewed or replaced.**

ARTICLE VI

TAXES

6.01 **Real Estate Taxes. Lessee shall pay, cause to be paid and be liable for all real estate and ad valorem taxes and general assessments, parking and surcharges and other governmental charges levied against the Premises for each real estate tax year or portion thereof occurring during the Term ("Real Estate Taxes"). In connection therewith, Lessee may, at its sole discretion, endeavor at any time or times to obtain a lowering of the assessed valuation of the Premises for the purpose of reducing taxes thereon. The payment to be made by Lessee for the Real Estate Taxes for any partial real estate tax year during the Term of this Lease shall be calculated by multiplying the payment which would be required to be made for the full tax year by a fraction having as its numerator the number of days that such real estate tax year which elapsed during the Term of this Lease and having as its denominator the total number of days of such real estate tax year. Lessor shall be responsible for the balance of the Real Estate Taxes for the remainder of any such real estate tax year, and Lessor and Lessee shall (unless Lessor has previously paid its share to Lessee) coordinate the simultaneous payment of same at least thirty (30) days prior to delinquency. If any such taxes are levied against Lessor, Lessee shall pay to Lessor, within thirty (30) days following demand, that part of such taxes for which Lessee is primarily liable hereunder, and if such sums are not paid within such thirty (30) day period, then same shall bear interest until paid at the rate specified in Section 13.03 below.**

6.02 **Alternative Taxes. If, at any time during the Term of this Lease, a tax or excise on rents, or any other tax however described (except any franchise, state, inheritance, capital stock, income or excess profits tax**

imposed upon Lessor) is levied or assessed against Lessor by any lawful taxing authority on account of Lessor's interest in this Lease or the rents or other sums and charges reserved hereunder, as a substitute in whole or in part, or in addition to the Real Estate Taxes, Lessee agrees to pay to Lessor, within thirty (30) days following demand and as additional rental hereunder, the amount of such tax or excise, and if such sums are not paid within such thirty (30) day period, then same shall bear interest until paid at the rate specified in Section 13.03 below. In the event any such tax or excise is levied or assessed directly against Lessee, then Lessee shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require, and shall furnish the Lessor with paid receipts therefor at least ten (10) days prior to delinquency.

ARTICLE VII

USE AND MAINTENANCE OF PREMISES AND COMPLIANCE WITH LAWS

7.01 **Use. The Premises may be used by Lessee for any lawful purpose. Lessor shall not be required to make any repairs or replacements of any kind upon the Premises nor maintain the Premises to any extent, except to the extent that remediation of conditions which are in existence on the Commencement Date is required pursuant to Environmental Laws.**

7.02 **Compliance. Notwithstanding anything to the contrary contained herein, Lessee, at its sole cost and expense, shall promptly execute and fulfill any and all applicable orders, directives and requirements and otherwise comply with any and all applicable codes, rules, regulations, ordinances, statutes and laws, orders, decrees and the like (collectively, the "Applicable Laws") of the municipal, county, state and federal governments, and all agencies, commissions, boards or departments thereof and all other official, public, governmental or quasi-governmental institutions, authorities, subdivisions or instrumentalities having jurisdiction over the Premises which in any way relate to Lessee's use or occupancy of the Premises, including, without limitation, (a) all building codes, zoning ordinances and use restrictions, (b) the American Disabilities Act, (c) those Applicable Laws imposed for the correction, prevention, and abatement of nuisances in, upon or related to the Premises, or (d) the Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendment and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, as amended, the Federal Water Pollution Control Act, as amended, the Clean Air Act, the Toxic Substances Control Act, the Emergency Planning and Community Project to Know Act of 1986, and all other Applicable Laws relating to environmental issues or conditions or industrial health or hygiene (collectively, the "Environmental Laws"). Lessee represents and warrants that it will not hereafter, nor will it allow any of its agents, employees, contractors or any other person acting by, through or under it, to violate any Applicable Laws, and Lessee hereby agrees to save, defend, hold harmless and indemnify Lessor and its partners, and their respective officers, directors, legal representatives, employees, agents, successors and assigns from and against any liability (including reasonable attorneys' fees and costs) directly or indirectly arising therefrom or in any way attributable thereto, including, without limitation, all foreseeable and consequential damages and the costs of any required or necessary repair, cleanup, detoxification or other remedial work to cure or correct such a violation and return the Premises to compliance. The indemnity provisions of this section shall survive the expiration of the Term of this Lease.**

7.03 **Current Condition. Lessor hereby represents and warrants to its current actual knowledge that the Premises is in compliance with all Applicable Laws, Environmental Laws and the Permitted Exceptions.**

7.04 **Existing Conditions. Under no circumstances shall Lessee have any liability for the remediation of any violations of Environmental Laws which were not caused by Lessee during the Term.**

ARTICLE VIII

ALTERATIONS, ADDITIONS, AND FIXTURES

8.01 **No Liens on Fee. Lessee, during periods of construction of any improvements on the Premises, shall post prominent notice of Lessor's non-responsibility, and in no event shall Lessee cause or allow any mechanic's or materialmen's or laborer's liens, of any kind or character whatsoever, nor any notice thereof or affidavit with respect thereto, to be placed upon Lessor's fee interest in the Premises for any construction, repairs, alterations or improvements that may be made by Lessee.**

8.02 **Title to Improvements. Title to all improvements placed by Lessee on the Premises shall remain vested in Lessee until the expiration or earlier termination of the Term, at which time title to such improvements which then exist on the Premises, if any, shall pass to Lessor in their then existing condition and without warranty of any kind. Furniture, trade fixtures, machinery, business equipment and other movable**

personal property located at any time on the Premises shall remain Lessee's property and may be removed at or prior to the expiration of the Term without liability of Lessee to Lessor.

ARTICLE IX

LIABILITY AND INDEMNITY

9.01 **No Liability. Lessor shall not under any circumstance be liable to Lessee or any of its agents, representatives, employees, servants, or invitees, or their respective successors, heirs and assigns for any damage to persons or property due to the condition or design of or any defect in any improvements or any mechanical, electrical, plumbing or other facilities, systems, components, paved areas or landscaping comprising same located, at any time, on the Premises, and Lessee, with respect to itself and its representatives, agents, employees, servants, and invitees, and their respective successors, heirs and assigns hereby expressly assumes all risks and damage to persons and property, either proximate or remote, by reason of the present or future condition of the Premises.**

9.02 **Indemnity by Lessee. Lessee agrees that it will save, defend, indemnify and hold harmless Lessor of, from, and against all suits, claims, and actions of every kind by reason of any negligence, breach, violation, or non-performance of any term or condition on the part of the Lessee hereunder. Additionally, Lessee agrees to save, defend, indemnify and hold Lessor harmless of, from, and against all claims, actions, damages, liabilities, and expenses asserted against the Lessor on account of injuries to persons or damage to property when and to the extent that any such damage or injury may be caused, either proximate or remote, wholly or in part by any act or omission of Lessee or any of its representatives, agents, servants, employees, contractors, patrons, or invitees or of any person entering upon the Premises under or with the express or implied invitation of Lessee, or if any such injury or damage may in another way arise from or out of the occupancy or use of Lessee, its agents, employees and invitees of the Premises. The indemnity provisions of this Section 9.02 shall not, however, exempt Lessor from liability to the extent of Lessor's negligence or willful misconduct.**

ARTICLE X

ASSIGNMENT AND SUBLETTING

Lessee shall not assign this Lease without the consent of Lessor, not to be unreasonably withheld, conditioned or delayed upon review of reasonable documentation describing the requested assignment. Lessor may not require a credit review or impose other qualifying criteria in connection with a request for assignment, transfer, mortgage or sublease of this Lease. The creation of the Condominium Declaration and the conveyance of Units to Owners or the granting of deeds of trusts to Unit Mortgagees shall not require the consent of Lessor. However, no assignment of this Lease, nor any subleasing of the Premises, shall exonerate Lessee from its obligations hereunder. There are no limits to the number of times this Lease may be assigned by Lessee.

ARTICLE XI

EMINENT DOMAIN

11.01 **Taking. If all or any portion of the Premises is permanently taken, and the remaining portion will not (in Lessee's sole discretion) be reasonably adequate for Lessee's residence, Lessee shall have the right to elect to terminate this Lease within ninety (90) days after the taking of permanent possession by public authority by delivering written notice thereof to Lessor. If Lessee does not elect, or is not entitled to elect, to terminate this Lease, as aforesaid, then (a) Lessee shall remain in possession of the remainder of the Premises not so taken, in which event this Lease shall terminate on the portion of the Premises taken from the day possession thereof shall be required by the public authority, (b) there shall be an equitable adjustment of Base Rent on account of the portion of the Premises so taken, and (c) all the terms of this Lease shall continue in effect with respect to the portion of the Premises not taken through the expiration of the Term of this Lease.**

11.02 **Award. If the whole or any part of the Premises shall be taken by any public authority under the power of eminent domain, or deed in lieu thereof, Lessor shall be entitled to seek, receive and retain all compensation, awards and the like paid or payable by the condemning authority with respect thereto; provided, however, that Lessee shall have the right to intervene in any eminent domain or similar proceeding and shall be entitled to that portion of the award allocable to the taking of Lessee's leasehold interest in the Premises (but only after taking into account that the rental hereunder has been equitably abated), Lessee's unamortized costs of the improvements affected by such taking and the market value of**

such improvements, reimbursement for lost revenues and relocation expenses, if applicable, and reimbursement for the costs which will be incurred to restore the remaining Premises to a functional state in accordance with the purposes for which same were built. Thereafter, Lessor and Lessee shall cooperate with each other and Unit Mortgagees, if applicable, to appear and participate in any and all hearings, trials and appeals to protest same and/or maximize the compensation, awards and the like; provided, however, that each party shall be responsible for its own costs and expenses incurred in connection therewith (including, without limitation, attorneys' fees and costs of suit). Lessor and Lessee agree that there shall be no settlement of any condemnation award or proceeding without the prior written consent of the other and any affected Unit Mortgagee(s).

ARTICLE XII

FIRE AND CASUALTY

12.01 **Lessee's Sole Risk. All risk of loss associated with fire or any other casualty affecting any improvements which are located on the Premises at any time during the Term shall be borne by Lessee.**

12.02 **Insurance Proceeds. All insurance proceeds associated with insurance obtained and maintained by Lessee with respect to any improvements which are located on the Premises at any time during the Term shall belong solely to Lessee and any Unit Mortgagee and under the sole control of Lessee and a Unit Mortgagee; however, Lessor shall have a claim against such proceeds to the extent of any then accrued but unpaid Base Rent. Other than as provided above with respect to a claim for accrued but unpaid Base Rent, Lessor shall have no claim, rights or interest in and to such proceeds.**

12.03 **Election to Restore. The determination of whether or not to restore any improvements which are damaged or destroyed by fire or other casualty during the Term shall rest solely with Lessee. Lessee may elect to effect such restoration, to raze any and all improvements on the Premises, to rebuild other improvements or to rebuild no improvements as it, in its sole discretion determines is appropriate.**

12.04 **No Abatement. Lessee shall not be entitled to any abatement of Base Rent, nor shall any of its other obligations under this Lease be affected, as a result of any fire or casualty occurring during the Term.**

ARTICLE XIII

DEFAULT AND REMEDIES

13.01 **Lessee's Default. The failure of Lessee to pay any installment of Base Rent which failure shall continue for thirty (30) days following written notice thereof to Lessee shall constitute a Default (herein so called) by Lessee.**

13.02 **Lessor's Remedies. Upon the occurrence of any Default by Lessee, (it being understood that this provision shall apply to an individual Non-Compliant Unit Owner, not a Compliant Unit Owner as provided in Section 1.02(c)(ii) of this Ground Lease, Lessor may, subject to the provisions hereinafter set forth regarding Unit Mortgagees, exercise any and all remedies available, at law or in equity, including, without limitation, terminating this Lease and re-entering the Premises under process of law. Notwithstanding any such termination or other action by Lessor, the liability of Lessee for the rents and charges provided for herein shall not be relinquished, diminished, or extinguished. It is further agreed that Lessee will pay, in addition to the rental and other sums agreed to be paid hereunder, such additional sums as a court may adjudge reasonable as attorneys' fees in any suit or action to collect the Base Rent then due or to become due to Lessor hereunder. Any personalty or other property belonging to Lessee or to any persons holding by, through, or under Lessee otherwise found upon the Premises, may be removed therefrom and stored in any public warehouse at the cost of and for the account of Lessee. If Lessee should abandon or surrender said Premises or be dispossessed by process of law, any personal property left upon the Premises may be deemed abandoned, at the option of Lessor, and Lessor, its agents or attorneys shall have the right, without further notice or demand, to re-enter and remove all persons and Lessee's property therefrom without being deemed guilty of any manner of trespass.**

13.03 **Interest Rate. If Lessor at any time, by reason of any Default by Lessee, is compelled to pay, or elects to pay, any sum of money, or is compelled to incur any expense, including reasonable attorneys' fees, in instituting or prosecuting any action or proceeding to construe or enforce Lessor's rights hereunder, the sum or sums so paid by Lessor, with interest thereon at the rate equal to the sum of (i) the prime rate then in effect at Wells Fargo Bank, National Association (or its successor institution if such bank does not then exist) plus (ii) two percent (2%), shall be deemed to be additional rental hereunder and shall be due from Lessee to Lessor on demand.**

13.04 **Cumulative Remedies. All rights and remedies of Lessor herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law, and said rights and remedies may be exercised and enforced concurrently and whenever and as often as occasion therefor arises.**

13.05 **No Trespass. Lessor shall not be liable in trespass or for constructive eviction or otherwise for exercising any of the rights or remedies granted to Lessor herein in connection with re-entry and/or repossession of the Premises.**

13.06 **Cost Reimbursement. Lessee shall be obligated to pay to Lessor, upon demand, all reasonable costs, expenses and disbursements (including reasonable attorneys' fees) incurred by Lessor in taking any remedial action with respect to any Default of Lessee.**

ARTICLE XIV

UNIT MORTGAGEE(S)

14.01 **Right to Mortgage Units. It is the intention of the Lessee that purchasers of Units will secure mortgage funding to purchase Units. Notwithstanding anything contained herein to the contrary, each Unit Owner shall have the right, at any time and from time to time, without the Lessor's consent, to mortgage their Unit and to collaterally assign, place any lien, security interest or other encumbrance on any improvements that presently exist on or which in the future may become permanently attached to the Premises. Any such debt or obligation secured by any mortgage, trust deed, collateral assignment, security interests, lien or other encumbrance on a Unit shall not be longer than the term of this Lease. Further, any such debt or obligation secured by any mortgage, trust deed, collateral assignment, security interests, lien or other encumbrance and any amendment or modification of the terms thereof, including without limitation, any extension, renewal or refinancing thereof, is referred to herein as a "Unit Mortgage" and the holder thereof is referred to herein as a "Unit Mortgagee." The execution and delivery of a Unit Mortgage shall not constitute an assumption by a Unit Mortgagee of Lessee's obligations for the performance of any of the covenants or agreements to be performed by Lessee hereunder. The rights of any Unit Mortgagee under this Lease shall inure to the benefit of its successors and assigns and to any purchaser at a foreclosure sale.**

14.02 **Default and Termination.**

(a) Notice. Notwithstanding anything contained herein to the contrary, Lessor shall give each Unit Mortgagee of which Lessor has notice a copy of each notice which it gives to Lessee or a Unit Owner, including all notices of a Default by a Unit Owner (which shall clearly specify the nature of the Default). No Notice given by Lessor to Lessee shall be binding upon or affect a Unit Mortgagee unless a copy of said notice shall be given to such Unit Mortgagee pursuant to this Section 14.02. In the case of an assignment of a mortgage or other security instrument or change in address of such Unit Mortgagee, such assignee or Unit Mortgagee, by written notice to Lessor, may change the address to which such copies of notices are to be sent. Provided Lessor has been given written notice of such assignment of such mortgage, a copy of the executed assignment, and the name and address of the assignee, such assignee shall thereafter be deemed to be a Unit Mortgagee hereunder with respect to its mortgage.

(b) Right to Cure. A Unit Mortgagee shall have the right, but not the obligation, to perform any of a Unit Owner's obligations hereunder and Lessor shall accept such performance by a Unit Mortgagee as performed by the Unit Owner. A Unit Mortgagee may enter the Premises to perform a Unit Owner's obligations hereunder.

(c) Cure Period. If a Default by a Non-Compliant Unit Owner is not remedied within the cure period, if any, set forth in Section 13.01, then the Lessor shall give a Unit Mortgagee a further notice that such Default remains unremedied and the Unit Mortgagee shall have sixty (60) days from the date of receipt of such notice to cure any Default.

(d) Force Majeure. During any occurrence of Force Majeure (as defined below), all cure periods hereunder shall be automatically extended for the period of time that the efforts of a Unit Mortgagee to cure a Default are prevented by Force Majeure. "Force Majeure" means catastrophic or unusual events such as fires, earthquakes, hurricanes or other acts of God, riots, sabotage, conflicts, insurrection, revolution, war, government actions or other causes beyond a Unit Mortgagee's reasonable control, including an inability to get possession of a Unit when possession is necessary to effect a cure.

(e) Disputes. During any bona fide dispute between Lessee or a Unit Mortgagee and Lessor as to whether a Default actually occurred, all cure periods hereunder shall be automatically extended for the period of time necessary to resolve such bona fide dispute.

(f) Foreclosure or Appointment of Receiver. The additional cure periods granted a Unit Mortgagee herein shall be automatically extended during the time period in which a Unit Mortgagee is attempting to acquire possession of a Unit or to have a receiver appointed, or to foreclose its Unit Mortgage or to otherwise acquire a Unit ("Enforcement Proceeding"); provided, however, that any such Unit Mortgagee shall: (i) notify Lessor of its intention to institute an Enforcement Proceeding, (ii) promptly institute and diligently pursue the Enforcement Proceeding, and (iii) pay or cause to be paid to Lessor all then accrued but unpaid Base Rent as well as all Base Rent which becomes due during the Enforcement Period. Foreclosure of any Unit Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Unit Mortgage, or any conveyance of a Unit Owner to any Unit Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Lessor or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Lessor shall recognize the purchaser or other transferee in connection therewith as the Unit Owner hereunder.

Nothing contained herein shall be deemed to require a Unit Mortgagee to continue with any Enforcement Proceeding or, if a Unit Mortgagee or its nominee or a receiver acquires possession of a Unit, to continue such possession. If the Unit Mortgagee, its nominee, or a purchaser in a foreclosure sale, shall acquire title to a Unit and shall cure all Defaults which are susceptible of being cured by the Unit Mortgagee or by said purchaser, as the case may be, then prior Defaults which are not susceptible to being cured by the Unit Mortgagee or by said purchaser shall no longer be deemed a Default hereunder. In the event that any Unit Mortgagee, or its nominee, fails to avail itself of its rights hereunder, or if, having done so elects not to continue to keep this Lease, or any replacement lease, in effect in accordance with its terms, then Lessor shall be permitted to exercise all rights and remedies under this Lease, or any such replacement lease, to terminate same and obtain possession of the Premises and all improvements located on the Premises.

14.03 **Notice. If requested in writing by a Unit Mortgagee (which request shall specify an address to which notices shall be given), any notice, demand, request, approval or other communication which may be or is required to be given hereunder shall be given contemporaneously to the Unit Mortgagee. Any notice to a Unit Mortgagee shall be sent by certified or registered mail, return receipt requested, or overnight delivery service addressed to the Unit Mortgagee at the address specified in such request or such other address designated by the Unit Mortgagee from time to time in accordance with this Section 14.03.**

14.04 **Material Notices. Each Unit Mortgagee shall have the right, to the same extent that each Unit Owner has such right, to intervene in any and all litigation, arbitration, condemnation proceedings or adjustment of insurance claims and shall be made a party to such proceedings. The parties hereby consent to such intervention. In the event that any Unit Mortgagee shall not elect to intervene or become a party to the proceedings, such Unit Mortgagee shall receive notice and a copy of any award or decision made in connection therewith.**

14.05 **Non-Disturbance Agreements. The lien of any mortgage, deed of trust or indenture encumbering any interest of Lessor in the Premises or any part thereof shall either (i) be expressly subject and subordinate to this Lease so that no foreclosure of any mortgage, deed of trust or indenture will affect this Lease or (ii) the holder of any such mortgage, deed of trust or indenture shall expressly agree, in a writing executed in recordable form, that Lessee's rights under this Lease shall not be affected by any foreclosure.**

14.06 **No Lessee Lien on Fee. Under no circumstances shall Lessor be obligated to cause its fee estate in the Premises to secure any indebtedness incurred by Lessee.**

14.07 **Exculpation. No Unit Mortgagee or other entity succeeding owning a Unit through or subsequent to an Enforcement Proceeding shall be liable to Lessor under this Lease unless and until such time as it becomes the owner of the Unit and then only for the obligations which accrue during the period of time it owns the Unit; however, no such Unit Mortgagee or other entity succeeding to own a Unit shall be entitled to continue to enjoy the rights as a Unit Owner unless it performs the obligation of the Lessee hereunder, or under any replacement lease, in accordance with its terms. Under no circumstances, however, shall Leasehold Mortgagee or any such successor be subject to any personal or corporate liability hereunder and Lessor hereby acknowledges and agrees that it shall have no personal or corporate recourse against**

Leasehold Mortgagee or such successor, but Lessor shall look solely to the Leasehold Estate and the rents, issues and profits therefrom to satisfy any obligations of Leasehold Mortgagee or such successor hereunder.

14.08 **Third Party Beneficiary. Lessor and Lessee acknowledge and agree that the provisions of this Article XIII are included herein for the purpose of inducing Leasehold Mortgagees to provide financing to Lessee and may be relied upon and enforced by any Leasehold Mortgagee as a third party beneficiary of such provisions.**

ARTICLE XV

WAIVER OF SUBROGATION

Each party hereto waives any and every claim which arises or may arise in its favor against the other party hereto during the term of this Lease or any renewal or extension thereof for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Premises, to the extent such loss or damage is covered by valid and collectible fire and extended coverage or other insurance policies. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of, or damage to, property of the parties hereto. Inasmuch as the above mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), each party hereto hereby agrees immediately to give to each insurance company which has issued to it policies of fire and extended coverage or other insurance, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverages by reason of said waiver.

ARTICLE XVI

AUTHORITY

16.01 **Lessee's Authority. Lessee represents and warrants that (a) execution, delivery, and performance of this Lease has been duly authorized by all necessary action; that execution and performance hereof does not violate any judgment, order, agreement or regulation binding on Lessee or by which it is bound; (b) no consent from any person or entity is required; and (c) this Lease is fully binding and effective on Lessee.**

16.02 **Lessor's Authority. Lessor represents and warrants that (a) execution, delivery, and performance of this Lease has been duly authorized by all necessary action; that execution and performance hereof does not violate any judgment, order, agreement or regulation binding on Lessor or by which it is bound; (b) no consent from any person or entity is required; and (c) this Lease is fully binding and effective on Lessor.**

ARTICLE XVII

ESTOPPEL CERTIFICATE

Lessor agrees that it will from time to time, upon twenty (20) days' written request by Lessee, execute and deliver to Lessee, or any person designated by Lessee, a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as so modified), the date to which payments have been made, the then applicable amount of the Base Rent, and specifying that the Lessee is not in default under this Lease (or, alternatively, specifying the exceptions thereto), and such additional information that may be reasonably requested by Lessee.

ARTICLE XVIII

LESSOR'S LIABILITY

Except in the event of a wrongful eviction of Lessee by Lessor, Lessor's liability for breach of any covenant hereof shall be expressly limited to the recovery against the Lessor's interest in the Premises. If Lessor sells or transfers all or part of the Premises, and as a part of the transaction assigns its interest as Lessor in and to this Lease then, from and after the effective date of the sale, assignment, or transfer, Lessor shall have no further liability under this Lease to Lessee, except as to matters of liability which have accrued and are unsatisfied as of that date, it being intended that the covenants and obligations of Lessor contained in this Lease shall be binding on Lessor and its successors and assigns only during and in respect of their respective, successive periods of ownership of the fee estate.

ARTICLE XIX

FORCE MAJEURE

Whenever a period of time is herein prescribed for the taking of any action by either party, other than the payment of money, such party shall not be liable or responsible for, and there shall be excluded from the computation of such period, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental law, regulations or restrictions or any act, omission, delay, or neglect of the other party or any of the other party's employees, representatives or agents, or any other cause whatsoever beyond the control of the obligated party, not to exceed sixty (60) days.

ARTICLE XX

RECORDATION

Neither party shall be precluded from recording this Lease; however, in lieu of such recordation either Lessor or Lessee, upon the request of the other, shall join in the execution of a memorandum or so called "short form" of this Lease for the purposes of recordation. Said memorandum or "short form" of this Lease shall describe the parties, the Premises and the Term of this Lease only and shall incorporate the other provisions of this Lease by reference.

ARTICLE XXI

QUIET ENJOYMENT

So long as Lessee shall timely and properly pay the Base Rent, and otherwise pay, perform and satisfy all other rental sums, charges, costs, expenses, obligations, duties and responsibilities required hereunder, Lessee shall during the Term hereof freely, peacefully and quietly enjoy and occupy the Premises for the Term of the Lease, subject only to the Permitted Exceptions and the terms and conditions hereof.

ARTICLE XXII

MISCELLANEOUS

22.01 **Constructive Eviction. No entry upon the Premises by the Lessor, pursuant to the rights contained within this Lease, shall constitute an eviction or disturbance of Lessee's use and enjoyment of the Premises or a breach by Lessor of any of its obligations hereunder, or render Lessor liable for damages for loss of business or otherwise, or entitle Lessee to be relieved from any of its obligations hereunder, or grant Lessee any right of set-off or recoupment or other remedy in connection with any such entry. However, Lessor agrees that no such entry upon the Premises shall unreasonably interfere with the conduct of Lessee's business in the Premises.**

22.02 **No Oral Amendments. No amendment, modification, or alteration of the terms of this Lease shall be binding unless it is in writing, dated contemporaneous with or subsequent to the date of this Lease, and duly executed by the parties to this Lease.**

22.03 **No Waiver. Neither the acceptance of rental or other sums by Lessor nor the failure by Lessor to complain of any action, non-action or default of Lessee shall constitute a waiver of any of Lessor's rights or otherwise diminish, reduce, discharge or release Lessee's liability or obligations hereunder.**

22.04 **Notices. Any notice, demand, request or other communication required, given or made under or in connection with this Lease shall be deemed delivered, upon receipt, if hand delivered, or whether actually received or not, when deposited in a regular receptacle for the mail, sent by certified mail, return receipt requested, postage prepaid, addressed as follows:**

If to Lessor:	With a copy to:
_____	_____
_____	_____
_____	_____
Attn:_____	Attn:_____

If to Lessee:	With a copy to:
_____	_____

_____ _____
_____ _____
_____ _____
Attn: _____ _____

22.05 **Choice of Law. This Lease shall be construed under and in accordance with the laws of the State of Texas and is performable in _____ County, Texas.**

22.06 **Binding Agreement. This Lease shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns, whether voluntarily or by operation of law, except as otherwise expressly provided herein.**

22.07 **Severability. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof, and this Lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.**

22.08 **Condominium Association. Any Unit Owner (including a Unit Mortgagee that becomes a Unit Owner by foreclosure or deed in lieu of foreclosure) shall retain voting rights in any condominium association of which the Unit is a part.**

22.09 **Attorneys' Fees. If any action at law or in equity, including an action for declaratory relief is brought to enforce or interpret the provisions of this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees from the other party, which fees may be set by the court in the trial of such action or may be enforced in a separate action brought for the purpose, and which fees shall be in addition to any other relief which may be awarded.**

22.10 **Counterparts. This Lease and all other copies of this Lease, insofar as they relate to the rights, duties, and remedies of the parties, shall be deemed to be one Lease. This Lease may be executed concurrently in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.**

22.11 **Entire Agreement. This Lease contains the entire agreement between the parties with respect to the subject matter hereof, and Lessor and Lessee hereby acknowledge that they are not relying on any representation or promise of the other, or of any agency or cooperating agent, except as may be expressly set forth in this Lease.**

22.12 **Captions. The captions used herein are for convenience only and do not limit or amplify the provisions hereof.**

22.13 **No Merger. So long as any Unit Mortgage is in existence, the fee title to the Premises and the leasehold estate of Lessee herein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Lessor or a third party, by purchase or otherwise. Lessor and Lessee may not voluntarily agree to terminate this Lease without the consent of all Unit Mortgagees.**

EXHIBIT "B"

TYPE	WHO MUST CARRY	MINIMUM AMOUNT	OTHER REQUIREMENTS
1. Commercial General Liability Insurance; Commercial Automobile and Excess Liability	Master Association	The policy covering the Property shall be written with a minimum combined limit of $25,000,000 (which may be adjusted by Ground Lessor periodically to reflect inflation) **Medical Payments** - $10,000 **Deductible** - No greater than $5,000 for General Liability	1. Ground Lessor and each Owner shall be named insureds, and each Owner's Mortgagee shall be additional insureds. 2. Upon the written request of an Owner, a sublessee of an Owner will be named as an additional insured.
2. All-Risk Property Insurance	Master Association	The policy covering the Property shall be written with limits at the then-current 100% insurance to value and on a guaranteed replacement cost basis (without deduction for depreciation), providing coverage for all Master Units (to comply with the Ground Lease) and Common Elements, including, without limitation, such added replacement costs as may result by reason of any change in Legal Requirements. Loss of Rental Income shall be included at 100% of the annual estimated rental income for all Master Units. ***Deductible-** No greater than: Flood- $100,000 Earthquake-$100,000 WHH- $200,000 All other Perils- $100,000 *Subject to market pricing and availability	1. Ground Lessor and each Owner shall be named insureds, and each Owner's Mortgagee shall be additional insureds. 2. The amount of coverage shall be reviewed at least annually and modified, as necessary, such that the amount is at all times 100% of replacement cost (without deduction for depreciation), including, without limitation, such added replacement costs as may result by reason of any change in Legal Requirements. 3. Upon the written request of an Owner, a sublessee of an Owner will be named as an additional insured. The incremental premium increase, if any, for such supplemental insurance coverage will be specifically assessed to the Owner of the Master Unit that requested that the sublessee be named as an additional insured as an Additional Assessment. 4. The Master Association shall satisfy any and all co-insurance requirements.

3. Directors and Officers Liability	Master Association	$5,000,000 Limit	The Directors and Officers liability shall cover the directors and officers of the Master Association.
4. Executive Risk-Crime Employment Practices Liability	Master Association	$1,000,000 limit $1,000,000 limit	
5. Workers' Compensation	Master Association	$1,000,000 Each Accident $1,000,000 Policy Limits $1,000,000 Each Employee	

Exhibit "C"

Owner Assumption of Ground Lease Obligations for Owner's Master Unit. Each Owner, by acceptance of a deed to a Master Unit, shall be: (i) deemed to assume any and all obligations (including the obligation to pay "Percentage Rent" as provided in the Ground Lease to the extent allocated to such Master Unit as set forth in the Ground Lease Obligation Allocation Chart set forth on Attachment X), liabilities, limitations, rights, waivers, benefits, or burdens that are vested or that may in the future become vested in or upon the "Lessee" pursuant to the Ground Lease and that are applicable to such Master Unit as otherwise provided in this Master Declaration (the "Ground Lease Obligations"); and (ii) released from any and all Ground Lease Obligations that are applicable to the Master Unit(s) that the Owner does not own. The Ground Lease Obligations, as applicable to each Master Unit, shall automatically be obligations, liabilities, limitations, rights, waivers, benefits, or burdens of the respective Owners upon the recordation of this Master Declaration. In furtherance, and not in limitation, of the foregoing, by joining in this Master Declaration, the Ground Lessor acknowledges, confirms and agrees that, as to each Master Unit: (i) the Ground Lease Obligations with respect to such Master Unit shall be the sole responsibility and liability of the Owner(s) thereof; (ii) the Ground Lessor shall pursue enforcement of the Ground Lease Obligations relating to each Master Unit solely against the Owner of such Master Unit; and (iii) in no event shall any Owner(s) have any responsibility or liability whatsoever with respect to any Ground Lease Obligations relating to any Master Unit such Owner does not own.

Self-Help Regarding Ground Lease Default. Upon any Ground Lease Default, the Master Association or a non-defaulting Owner, at a non-defaulting Owner's election, shall have the right, but not the obligation, to remedy or cause the remediation of any such default and the cost and expense thereof (together with interest thereon not to exceed the lesser of eighteen percent (18%) per annum or the maximum rate permitted by Legal Requirements from the date paid by the Master Association or a non-defaulting Owner until the date such sum is repaid by the defaulting Owner), including the reimbursement of all reasonable attorney's fees incurred in connection with remedying such Ground Lease Default, shall be assessed against the Owner or Owners creating the default and shall be secured by a lien upon such Owner's Master Unit. The Master Association or such non-defaulting Owner shall have the right to cause a notice of the lien to be Recorded, and such lien may be enforced in the same method as is provided for the enforcement of Assessment liens in this Master Declaration. Upon receiving any notice regarding a Ground Lease Default, the Master Association shall immediately notify each non-defaulting Owner of such default.

INDEMNIFICATION RELATING TO GROUND LEASE OBLIGATIONS. **EACH OWNER SHALL INDEMNIFY AND HOLD HARMLESS EACH OF THE OTHER OWNERS, DECLARANT, THE MASTER ASSOCIATION, THE MANAGER, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND MEMBERS, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ALL LIABILITIES AND OBLIGATIONS ARISING FROM THE INDEMNIFYING OWNER FAILING TO COMPLY WITH ANY GROUND LEASE OBLIGATION.**

Exhibit "D"

ALLOCATION OF LEASE OBLIGATIONS

Ground Lease Reference	Office Master Unit	Retail Master Unit
Section 3.2 ("Base Rent"). Each Owner shall pay annual Base Rent to the Association in yearly installments, in the following amounts:	60% of Base Rent	40% of Base Rent
Section 3.3 ("Percentage Rent")	None	100% of all Percentage Rent
Article VII ("Maintenance"). Each Owner shall operate, repair and replace such Owner's Master Unit in good condition and repair and comply with all laws in accordance with Article 7 of the Ground Lease.	Must comply with Article VII of the Ground Lease as it pertains to the Office Master Unit	Must comply with Article VII of the Ground Lease as it pertains to the Retail Master Unit
Article VIII ("Hazardous Materials"). The Association shall remain responsible for all General Common Elements.	100% for Unit and Limited Common Elements assigned exclusively to Office Master Unit	100% for Unit and Limited Common Elements assigned exclusively to Retail Master Unit
Section 9.1 ("Taxes"). Each Owner shall timely pay all taxes assessed against such Owner's Master Unit.	Must comply and pay taxes assessed against the Office Master Unit	Must comply and pay taxes assessed against Retail Master Unit
Section 10.7 ("Indemnity"). Each Owner shall be obligated to comply with Section 10.7 of the Ground Lease.	Must comply with Section 10.7 of the Ground Lease as it pertains to the Office Master Unit	Must comply with Section 10.7 of the Ground Lease as it pertains to the Retail Master Unit
Section 12.1 ("Surrender"). Each Owner shall be obligated to surrender such Owner's Master Unit at the end of the Term (as defined in the Ground Lease) in accordance with Section 12.1 of the Ground Lease.	Must surrender the Office Master Unit at the end of the Term (as defined in the Ground Lease)	Must surrender the Retail Master Unit at the end of the Term (as defined in the Ground Lease)
Section 12.2 ("Holding Over"). Each Owner shall be obligated to comply with Section 12.2 of the Ground Lease if such Owner fails to vacate the Owner's Master Unit at the end of the Term (as defined in the Ground Lease).	Must comply with Section 12.2 if Owner of Office Master Unit fails to vacate the Office Master Unit at the end of the Term (as defined in the Ground Lease)	Must comply with Section 12.2 if Owner of Retail Master Unit fails to vacate the Retail Master Unit at the end of the Term (as defined in the Ground Lease)