RR
06/04/15
Item No. 4E

AN ORDINANCE 2015-06-04-0475

APPROVING THE TERMS AND CONDITIONS OF A CONDOMINIUM DECLARATION, A PARKING LEASE, AND A TUNNEL LICENSE AGREEMENT WITH WESTON URBAN LLC FOR THE USE AND ACCESS OF MUNICIPAL PLAZA AND EXISTING FROST PARKING GARAGE.

* * * * *

WHEREAS, in accordance with Chapter 2267 of the Texas Government Code and the City's Public-Private Partnership ("P3") Guidelines, the City Council approved a Comprehensive Development Agreement (the "CDA") among the City, Weston Urban LLC and Frost Bank that would result in: (i) the conveyance of the existing Frost Bank Tower to the City; (ii) the construction of a Class A office tower by Weston Urban on property owned by Frost located at the corner of Flores and Houston Street to be leased by Frost as its corporate headquarters; and (iii) the conveyance by the City of City-owned real property located at 114 W. Commerce St., 300 N. Santa Rosa St., and 403 N. Flores St. to Weston Urban LLC for residential redevelopment (the "*Project*"); and

WHEREAS, to facilitate the City's conveyance of 114 W. Commerce St. ("Municipal Plaza") and provide for the City's continued ownership of the City Council Chambers and certain meeting rooms within the Municipal Plaza, the City and Weston Urban have agreed upon the terms and conditions of a Condominium Declaration, a copy of which is set out in substantially final form in **Exhibit A**; and

WHEREAS, to facilitate the redevelopment of Municipal Plaza from office to residential use the City and Weston Urban have agreed upon the terms and conditions of a Parking Lease Agreement for parking spaces at the parking garage adjacent to the existing Frost Bank Tower, which will be the future site of the City's consolidated administration tower, a copy of which is set out in substantially final form in **Exhibit B**; and

WHEREAS, to facilitate the joint-use of the underground tunnel and adjacent areas connecting the existing Frost Bank Tower and Municipal Plaza, the City and Weston Urban have agreed upon the terms and conditions of a Tunnel License Agreement, a copy of which is set out in substantially final form in **Exhibit C**; **NOW THEREFORE**:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of the above referenced: (1) Condominium Declaration; (2) Parking Lease; and (3) Tunnel License Agreement between the City and Weston Urban LLC associated with the sale and use of the Municipal Plaza Building, are hereby approved.

SECTION 2. The City Manager or her designee is authorized to execute the Condominium Declaration, the Parking Lease; and the Tunnel License Agreement set out respectively in **Exhibits A, B and C**, and all ancillary agreements, documents, and exhibits to carry out the purpose of this Ordinance.

SECTION 3. The City Manager, in concurrence with the Chief Financial Officer and City Attorney, shall have the authority to finalize any and all outstanding terms of the agreements and all ancillary agreements, documents, and exhibits, provided such terms carry out the purpose of this Ordinance.

SECTION 4. This Ordinance shall be effective immediately upon its passage by eight (8) votes or after the 10th day of its passage by less than eight (8) affirmative votes.

RR
06/04/15
Item No. 4E

PASSED AND APPROVED this 4th day of June, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**4E (in consent vote: 4A, 4B, 4C, 4D, 4E, 4F)**
Date:	06/04/2015
Time:	09:39:49 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the final negotiation and execution of a Condominium Declaration, Parking Lease and Tunnel License Agreement with Weston Urban LLC to provide terms and conditions for the use and access of Municipal Plaza and existing Frost Bank parking garage.
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1		x			x	
Alan Warrick	District 2	x					
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5	x					
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				x
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

EXHIBIT A

Upon Recording: Return to:

Golden Steves Cohen & Gordon LLP
300 Convent Street, Suite 2600
San Antonio, TX 78205

CONDOMINIUM DECLARATION

FOR

114 WEST COMMERCE CONDOMINIUM

Made and Established on _____ ___, 20__

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CONDOMINIUM DECLARATION

FOR

114 WEST COMMERCE CONDOMINIUM

This Condominium Declaration for 114 West Commerce Condominium is made and established on _____ _____, 201___, by Declarant;

RECITALS:

A. Declarant is the fee simple owner of the Property.

B. Declarant desires to create a condominium pursuant to the provisions of the Act.

C. Declarant intends hereby to establish a plan for the individual ownership of estates in real property consisting of the Condominium Units and the appurtenant undivided interests in the Common Elements.

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

ARTICLE I
Definitions

Section 1.1 Terms Defined.

As used in this Condominium Declaration, the following terms shall have the meanings set forth below:

"Access Easement": An easement as more particularly described in Subsection 3.5(a) of this Condominium Declaration.

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

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

"Affiliate": Any Person who controls, is controlled by, or is under common control with another Person.

"Affiliate of Declarant": Has the meaning assigned to "Affiliate of a declarant" in Section 82.003(a)(1) of the Act.

"Allocated Interests": The undivided interests of each Owner in the Common Elements and the Common Expenses allocated to each Condominium Unit as reflected on Exhibit "C"

attached to this Condominium Declaration (except as Common Expenses may otherwise be allocated pursuant to the Allocation Document), as may be reallocated in accordance with the Reallocation Percentages, as required from time to time, pursuant to the provisions of this Condominium Declaration.

"Allocated Share": Each Owner's percentage share of the Common Expenses, as shown in Exhibit "C" attached to this Condominium Declaration.

"Allocation Document": The document entitled "114 West Commerce Condominium Maintenance and Capital Expense Allocations" executed by Declarant and any Owners then of record, which is incorporated herein by reference for all purposes.

"Assessments": The Regular Assessments and Special Assessments.

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

"Building": The building identified as the "114 West Commerce Building" on the Map.

"CGL": The broadest available form of commercial general liability insurance (utilizing the then prevailing ISO form or an equivalent form approved by the Board of Directors and reasonably acceptable to Declarant's Mortgagee).

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

"City": The City of San Antonio, Texas.

"City Unit": The Condominium Unit as more particularly described in Subsection 2.2(c) of this Condominium Declaration, as identified on the Map.

"City Unit Owner": Any Person owning fee title to the City Unit, but excluding any Person having an interest in the City Unit solely as a security for an obligation.

"Claim(s)": Any and all demands, actions, causes of action, losses, costs, expenses, reasonable attorneys' fees (whether incurred in mediation, arbitration, pre-trial, trial or appeal), damages or liability, of any kind or nature.

"Common Elements": The General Common Elements and the Limited Common Elements.

"Common Elements Easement": An easement as more particularly described in Subsection 3.5(b) of this Condominium Declaration.

"Common Expenses": Expenses for which the Condominium Association is responsible, including those related to: (a) maintenance, repair, and replacement of the applicable Common Elements (including those budgeted in accordance with the Allocation Document); (b) casualty, public liability and other insurance coverages required or permitted to be maintained by the

Condominium Association under the Governing Documents; (c) Impositions levied and assessed against the Common Elements; (d) utilities relating to the applicable Common Elements; (e) professional services, such as management, accounting and legal services; and (f) such other costs and expenses as may be reasonably related to the proper maintenance, care, operation and management of the Common Elements and the administration of the Condominium Association.

"Condominium": The form of real property established by this Condominium Declaration with respect to the Property located in the County, in which portions of the Property are designated for individual ownership or occupancy and the remainder of the Property is designated for common ownership or occupancy solely by the Owners of such portions, and initially consisting of 3 Condominium Units, being the Upper Unit, the Lower Unit, and the City Unit, and containing up to a maximum of 150 Condominium Units.

"Condominium Association": _____, a Texas nonprofit corporation organized under the Act and the TNCL and created for the purposes and possessing the rights, powers, authority and obligations set forth in the Governing Documents.

"Condominium Budget": A budget prepared by the Condominium Association that includes the anticipated Regular Assessments for the ensuing fiscal year.

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

"Condominium Certificate of Formation": The Master Certificate of Formation for the Condominium Association, filed with the Secretary of State, as may be amended from time to time.

"Condominium Declaration": This Condominium Declaration for 114 West Commerce Condominium, and all amendments thereto, which shall be recorded in the Condominium Records.

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

"Condominium Rules & Regulations": Any rules and regulations of the Condominium Association adopted by the Board of Directors and as amended from time to time, relating to the appearance, use and occupancy of the Property, including the exterior appearance, use and occupancy of the Condominium Units, and certain construction on the Property.

"Condominium Unit": A physical portion of the Condominium that is designated for separate ownership or occupancy (as created by Section 2.1(a) of this Declaration, described by Section 2.2 of this Declaration and the boundaries of which are depicted on the Map), which, to the extent applicable, is contained within the perimeter walls, floor, ceiling, windows and doors of a Condominium Unit depicted on the Map, and includes: (a) all the Systems that exclusively serve such Condominium Unit; and (b) the finish materials, floor covering, wall covering, fixtures and appliances contained in the Condominium Unit but excludes (i) any portion of the Structure; and (ii) any Systems that serve more than one Condominium Unit, all as subject to and further described in Section 82.052 of the Act. All Condominium Units created by this Declaration shall be collectively referred to herein as the "Condominium Units".

"Construction Dispute": Any claim, grievance or other dispute involving Declarant or any Affiliate of Declarant, including any construction company which is an Affiliate of Declarant, and

arising out of or relating to the engineering, design or construction of the Property, including the interpretation or enforcement of any warranty.

"County": Bexar County, Texas.

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

"Declarant": Weston Urban, LLC, whose address for notice is 112 E. Pecan Street, Suite 100, San Antonio, Texas 78205 (Attn: Randy Smith), and any successor or assignee of Declarant evidenced by a written instrument filed for record in the Condominium Records assigning the rights, powers, authority and obligations of Declarant hereunder.

"Declarant's Mortgagee": Any Person that is the holder of any bona fide indebtedness which is the result of an arm's length negotiation, that is secured by a first lien or encumbrance upon any portion of the Condominium owned by Declarant.

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

"Development Rights": A right or combination of rights to: (a) convert Condominium Units into Common Elements or convert the Common Elements into Condominium Units; and (b) convert General Common Elements into Limited Common Elements.

"Dispute": Any claim, grievance or other dispute, other than a Construction Dispute, arising out of or relating to: (a) the interpretation, application or enforcement of the Governing Documents; (b) any conflict or dispute arising between or among two or more Owners or an Owner and Declarant; (c) the proper party to bear a maintenance cost or expense or a capital expenditure or the proper amount of the expense, fee or Assessment to be charged or collected; (d) the rights, obligations and duties of any Owner or Declarant under the Governing Documents; (e) the authority of the Condominium Association or Declarant under any Legal Requirement or under the Governing Documents to: (i) require any Owner to take any action or not to take any action involving such Owner's Condominium Unit; or (ii) alter, subtract from or add to the Common Elements or the Condominium; or (f) the failure of the Condominium Association, in accordance with Legal Requirements and the Governing Documents to: (i) properly conduct elections, (x) give adequate notice of meetings or actions; (ii) properly conduct meetings; or (iii) allow inspection of books or records. The following shall not be considered "Disputes" unless all parties shall otherwise agree to submit the matter to the dispute resolution provisions of Article X of this Condominium Declaration: (1) any suit by the Condominium Association to obtain a temporary restraining order and such ancillary relief as the court may deem necessary to maintain the status quo and preserve the Condominium Association's ability to enforce the provisions of the Governing Documents; (2) any action permitted under Article VII of this Condominium Declaration in connection with the enforcement of any Owner's obligation to pay Assessments under this Condominium Declaration or collection of any past due or unpaid Assessments; (3) any suit between Owners that does not include Declarant or the Condominium Association if such suit asserts a dispute that would constitute a cause of action independent of any of the Governing Documents; (4) any disagreement that primarily involves title to any Condominium Unit or the Common Elements; or (5) any suit in which the applicable statute of limitations would expire within 180 days of the giving of notice as provided in Article X of this Condominium Declaration unless the Persons against whom the Dispute is made agree to toll the statute of limitations for a period of time necessary to comply with Article X of this Condominium Declaration.

"Easements": Collectively, those Easements described in Section 3.5 and Section 3.6 of this Condominium Declaration.

"Environmental Laws": Any federal, state or local law, statute, ordinance or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended: Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C.A. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99-499, 100 Stat. 1613; Resource, Conservation and Recovery Act ("RCRA"), 42 U.S.C.A. § 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C.A. § 2601 et seq.; Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C.A. § 11001 et seq.; Clean Water Act ("CWA"), 33 U.S.C.A. § 1251 et seq.; Clean Air Act ("CAA"), 42 U.S.C.A. § 7401 et seq.; and any corresponding state laws or ordinances including, without limitation, the Texas Water Quality Control Act, Texas Water Code ("TWC") Chapter 26; Texas Solid Waste Disposal Act, Texas Health & Safety Code ("THSC") Chapter 361; Texas Clean Air Act, THSC Chapter 382; and regulations, rules, guidelines or standards promulgated pursuant to such laws, statutes and regulations, as such statutes, regulations, rules, guidelines and standards are amended from time to time.

"Exhaust and Systems Easement": An easement as more particularly described in Subsection 3.5(c) of this Condominium Declaration.

"General Common Elements": All portions of the Condominium that are not Condominium Units or Limited Common Elements, including those more particularly described in Subsection 2.2(d) of this Condominium Declaration.

"Governing Documents": Individually and collectively, the Allocation Document; this Condominium Declaration; the Condominium Certificate of Formation; the Condominium Bylaws; the Condominium Rules & Regulations; and the resolutions of the Board of Directors of the Condominium Association.

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

"Gross Square Footage": The area, as measured and calculated by an architect or surveyor approved by the Condominium Association, (i) within the outside face of the perimeter walls of each floor of the applicable Condominium Units, and (ii) from the outer edge of any balcony or rooftop terrace, but excluding any ground level patios and parking areas.

"Hazard Insurance": This term shall have the meaning set forth in Section 6.6(a) of this Declaration.

"Hazard Insurance Expense": Any premium, payment of any loss falling within the deductible portion of the Hazard Insurance, or any other expense owed pursuant to Hazard Insurance.

"Impositions": All real estate and personal property taxes, assessments, standby fees, excises and levies, and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which at any time prior to or after the execution of this Condominium Declaration, may be assessed, levied

or imposed upon the Condominium or any Condominium Unit therein by any Governmental Authority.

"Improvements": Any and all physical structures, facilities, alterations or changes of any type or nature made to or on any portion of the Land including, any buildings, roadways, driveways, ramps, loading areas, mechanical equipment, window coverings, signs, utilities, fences, antennae, walls, screens, landscaping, streetscapes, grading changes, plazas, walkways, bridges, exterior lighting facilities, drainage structures, curbs, retaining walls, grates and man-made objects of every type, existing or in the future placed on any portion of the Land, including all cable television, cellular phone, internet and other utility or communication installations or equipment.

"Indemnified Party": Has the meaning set forth in Section 11.1 of this Condominium Declaration.

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

"Insurance Trustee": The Condominium Association acting in the capacity of a trustee in accordance with the provisions of Section 6.7 of this Condominium Declaration to negotiate losses under any property insurance policies required to be obtained by the Condominium Association in this Condominium Declaration.

"Land": That certain real property located in the County and more particularly described in Exhibit "A" attached to this Condominium Declaration, together with all and singular the easements, rights and appurtenances pertaining thereto, including any additional real property that becomes part of the Property, including without limitation the rights of the Condominium under the Tunnel License Agreement and the Parking Lease Agreement.

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

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

"Lower Unit": The Condominium Unit as more particularly described in Subsection 2.2(b) of this Condominium Declaration, as identified on the Map.

"Lower Unit Owner": Any Person owning fee title to the Lower Unit, but excluding any Person having an interest in the Lower Unit solely as a security for an obligation.

"Maintenance Standard": Good repair in light of the overall development quality of the Condominium, including the operation, upkeep, repair and restoration, ordinary wear and tear

excepted, to the extent necessary to maintain the Condominium or Condominium Unit, as applicable, in a condition reasonably suitable for its intended purpose.

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

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

"Members": The Owners of the City Unit, the Lower Unit and the Upper Unit.

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

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

"Parking Lease Agreement": That certain Parking Lease Agreement between the Condominium Association and the City of San Antonio dated as of even date herewith.

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

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

"Plans": The plans and specifications for the development and construction of Improvements with respect to a particular Condominium Unit, prepared by or on behalf of an Owner and approved by all applicable Governmental Authorities.

"Priority Lien Indebtedness": Any bona fide indebtedness, which is the result of an arm's-length negotiation, that is secured by a first or a combination of a first and second lien or encumbrance upon the Property and/or a Condominium Unit.

"Property": The Land and the Improvements.

"Real Property Records": The records and books, including the Condominium Records, of the office of the county clerk in Bexar County.

"Reallocation Percentage": The percentage of the undivided interest of each Owner in the Common Elements as set forth on a Supplemental Condominium Declaration (if applicable), determined by dividing (a) the Gross Square Footage of a Condominium Unit; by (b) the combined

total Gross Square Footage of all Condominium Units, which measurement of the Gross Square Footage within each Condominium Unit shall be done in the same manner as the measurement used to establish the initial Allocated Interests set forth on Exhibit "C" attached to this Condominium Declaration.

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

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

"Roof Easement": An easement as more particularly described in Subsection 3.5(d) of this Condominium Declaration.

"Roof Easement Area": The roof of the Building, and designated as the Roof Easement Area on the Map.

"Signage": Any signage, lettering, decorations, banners, advertising or marketing media, awnings, canopies, window covering, or any other form of expression on the exterior surface of the Improvements, on monuments, or in the interior of the Improvements if the same is visible from the exterior of the Improvements.

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

"Skin Easement": An easement as more particularly described in Subsection 3.5(h) of this Condominium Declaration.

"Special Declarant Rights." Rights reserved for the benefit of Declarant to: (a) complete the Improvements identified on the Map; (b) exercise any Development Right; (c) maintain the sales and management and leasing offices and models described in Subsection 3.4(c) of this Condominium Declaration and use signs advertising the Condominium Units or the Condominium; and (d) use any Easement for the purpose of making improvements within the Condominium, on the Property.

"Special Assessments": Special Assessments established and assessed pursuant to Article VII of this Condominium Declaration.

"State": The State of Texas.

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

"Supplemental Condominium Declaration": An instrument executed by Declarant and recorded in the Condominium Records for the purpose of (a) modifying the Allocated Interests or Allocated Share; (b) adding to the Condominium; (c) withdrawing any portion of the Condominium from the effect of this Condominium Declaration; or (d) any other action as provided in the Governing Documents.

"Support Easement": An easement as more particularly described in Subsection 3.5(e) of this Condominium Declaration.

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

"Systems Easement": An easement as more particularly described in Subsection 3.5(f) of this Condominium Declaration.

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

"Tenant": Any Person having the right to occupy a Condominium Unit or a portion of a Condominium Unit pursuant to a lease or other occupancy agreement granted by an Owner, or pursuant to a sublease, to the extent allowed by the Governing Documents.

"TNCL": The Texas Nonprofit Corporation Law, as amended from time to time.

"Tunnel License Agreement": That certain Tunnel License Agreement between the Condominium Association and the City of San Antonio dated as of even date herewith.

"Upper Unit": The Condominium Unit as more particularly described in Subsection 2.2(a) of this Condominium Declaration, as identified on the Map.

"Upper Unit Owner": Any Person owning fee title to the Upper Unit, but excluding any Person having an interest in the Upper Unit solely as a security for an obligation.

"Utility Easement": An easement as more particularly described in Subsection 3.5(g) of this Condominium Declaration.

"Working Capital Contribution": An amount equal to the Regular Assessment multiplied by 2 to be contributed to the Condominium Association by each Owner, not including Declarant, as provided in Section 7.9 of this Condominium Declaration.

ARTICLE II
General Provisions

Section 2.1 Creation of Condominium Units; Map.

(a) The Condominium Units. The Property is hereby divided into fee simple estates composed of 3 separately designated Condominium Units, being the City Unit, the Upper Unit and the Lower Unit, and each such Condominium Unit's undivided interest in and to the Common Elements. Each Condominium Unit, together with such Condominium Unit's undivided interests in the Common Elements is for all purposes a separate parcel of and estate in real property. The separate parcels of and estates in real property designated hereby shall be created on the date of

filing of this Condominium Declaration in the Condominium Records, and shall continue until this Condominium Declaration is revoked or terminated in the manner provided in this Condominium Declaration. This Condominium Declaration is not a time share declaration and Declarant expressly declares that it is not submitting the Property to a time share regime.

(b) The Map. The Map sets forth the following: (i) a general description and diagrammatic plan of the Condominium; (ii) all major Improvements, including each Condominium Unit, showing its location and floor(s); and (iii) such other information as is desirable or required pursuant to the Act, including a certification as to compliance with the Act. The measurements set forth on the Map as to each Condominium Unit are approximate values taken from the plans and specifications for the Property and may not be precisely accurate as to any Condominium Unit due to variances in construction and interior floor plans. Upon completion of the construction of the Improvements, Declarant (without the joinder of any other Owner) may file an amendment to this Condominium Declaration, amending the Map to reflect the actual measurements for each Condominium Unit, any other necessary changes, and amendments to Exhibit "C" attached to this Condominium Declaration to reflect the Reallocation Percentage based upon completion of construction.

Section 2.2 Description of Condominium Units and Common Elements.

Subject to the reservations and Easements created by Declarant in this Condominium Declaration, the Condominium Units shall consist of the following and any logical extension thereby as determined in Declarant's reasonable judgment:

(a) Upper Unit: As depicted on the Map, the Upper Unit shall be located on floors 2-12 of the Building.

(b) Lower Unit: The Lower Unit shall be located on a portion of floor 1 of the Building in the location depicted on the Map.

(c) City Unit: The City Unit shall be located on a portion of floor 1 of the Building in the location depicted on the Map.

(d) General Common Elements. As depicted on the Map, the General Common Elements shall include all the Common Elements that are not Limited Common Elements, including, but not limited to the following, so long as not part of a Condominium Unit: the rights in and under the Tunnel License Agreement; common storage areas, the foundations, bearing walls and columns the compartments or installation of central services such as power, light, electricity, pumps, floors and ceilings, the Skin, structural and supporting parts of the Improvements, and all structures, fixtures, facilities, equipment and appliances which are designed and intended for the common and mutual use or benefit of the Condominium Units and the space occupied by same, and in general all other portions of the Property except the individual Condominium Units and the particular elements thereof which are owned by an Owner and the Limited Common Elements.

(e) Limited Common Elements. The Limited Common Elements include all rights of the Condominium under the Parking Lease, which are designated as a Limited Common Element for the benefit of the Upper Unit and the Lower Unit.

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

provided, however, if a discrepancy exists between this Section 2.2 and the Map, the Map shall control.

Section 2.3 Sub-Unit Condominiums.

An Owner must first obtain the written consent of the Declarant and all Owners prior to creating a sub-unit condominium within the boundaries of its Condominium Unit. Notwithstanding the foregoing, (i) any Owner of the Upper Unit (including without limitation the Declarant) shall have the right to create a sub-unit condominium within the boundaries of the Upper Unit without obtaining the written consent of any other Owner and (ii) with respect to Declarant only, Declarant shall have the right to create a sub-unit condominium within the boundaries of any Condominium Unit owned by Declarant without obtaining the written consent of any other Owner.

Section 2.4 Allocation of Interests in Common Elements; Allocated Shares.

The initial Allocated Interests have been determined by dividing the Gross Square Footage of each Condominium Unit by the Gross Square Footage of all Condominium Units and are indicated opposite the respective Condominium Unit in Exhibit "C" attached to this Condominium Declaration. The Common Elements shall remain undivided.

Section 2.5 Inseparability of Condominium Units; No Partition.

Except as set forth in Section 2.3, Section 3.2 or Section 3.5 of this Condominium Declaration, each Condominium Unit shall be inseparable, and shall be acquired, owned, conveyed, transferred, leased and encumbered only as an entirety. Except as set forth in Section 2.3 above, in no event shall a Condominium Unit be subject to physical partition, and no Owner shall bring or be entitled to maintain an action for the partition or division of a Condominium Unit or the Common Elements; provided, however, that the foregoing restriction shall not affect the right of any Owner to construct walls or otherwise make alterations to the interior of the Condominium Units (unless otherwise prohibited by the terms, provisions and conditions of the Governing Documents). Any purported conveyance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements without the Condominium Unit to which such Common Elements are allocated is void *ab initio*.

Section 2.6 Permissible Relationships; Description.

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

(b) Description of Condominium Units. Any contract or other instrument relating to the acquisition, ownership, conveyance, transfer, lease or encumbrance of a Condominium Unit shall legally describe such Condominium Unit as follows: " [Insert Condominium Unit name] of 114 West Commerce Condominium, located in Bexar County, Texas," with further reference to the recording data for this Condominium Declaration (including the Map and any amendments to this Condominium Declaration in the Condominium Records). Every such description shall be good and sufficient for all purposes to acquire, own, convey, transfer, lease, encumber or otherwise deal with such Condominium Unit, and any such description shall be construed to include all incidents of ownership relating to a Condominium Unit.

Section 2.7 Mortgage of Condominium Unit.

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

ARTICLE III
Uses, Reservations and Restrictions

Section 3.1 Permitted Uses.

The Condominium Units shall be used for the following purposes:

(a) Upper Unit. Except as otherwise provided in the Governing Documents, the Upper Unit may be used for any use permitted under the applicable zoning designation for the Condominium.

(b) Lower Unit. Except as otherwise provided in the Governing Documents, the Lower Unit may be used for any use permitted under the applicable zoning designation for the Condominium.

(c) City Unit. In the event that the City Unit is owned by any Person other than Declarant, then the City Unit shall be used solely for office purposes (including, but not limited to use as a City Council chamber and for public meetings). Notwithstanding the foregoing, if the City Unit is owned by Declarant (now or hereafter), then the City Unit may be used for office, retail or residential purposes.

Section 3.2 Leases.

The Upper Unit and/or Lower Unit may be leased, subject to those leasing restrictions set forth by the Condominium Association, as described in the Condominium Rules and Regulations.

Section 3.3 Compliance with the Governing Documents.

(a) Each Owner, by accepting a deed conveying title to a Condominium Unit, and any Tenant by execution of a lease or by occupancy of a Condominium Unit shall automatically be deemed to have agreed to comply with the provisions of the Governing Documents and all the Legal Requirements. A failure or refusal of an Owner or a Tenant to so comply with provisions of Governing Documents and all Legal Requirements, after written notice, shall constitute a Dispute (to the extent so included within the definition of "Dispute" set forth in Section 1.1 of this Condominium Declaration) that shall be resolved in accordance with Article X of this Condominium Declaration. In addition, an Owner's voting rights in the Condominium Association may by written notice be suspended by the Condominium Association during any period of such noncompliance with all of the Governing Documents and Legal Requirements.

(b) Upon the filing of this Condominium Declaration and acceptance of a deed to a Condominium Unit, any and all obligations (including the obligations to pay Assessments), liabilities, limitations, covenants, conditions, restrictions, requirements, duties, waivers, or burdens that encumber, are imposed upon or that in the future may encumber or become imposed upon the Land or the Declarant in relation to the Condominium Unit, under and pursuant to the Governing Documents, are hereby assumed in their entirety by such Owners and the Declarant (with respect to any Condominium Unit owned by the Declarant) and the successors and assigns of the Owners and the Declarant, except as otherwise provided herein. The covenant and agreement of the Owners set forth in this Section 3.3 shall be a covenant that runs with the Land.

Section 3.4 Rights of Declarant.

In accordance with, and only if permitted by, the Act, Declarant reserves the following rights:

(a) the Development Rights and the Special Declarant Rights, at all times while Declarant or any Affiliate of Declarant owns any Condominium Unit ; provided, however Declarant will not assign the Development Rights or the Special Declarant Rights without obtaining prior written consent to such assignment by Declarant's Mortgagee;

(b) the right (but not the obligation), by a Supplemental Condominium Declaration, to supplement or modify any Condominium Unit by adding additional facilities or deleting facilities, to designate additional portions of the Condominium as part of any Condominium Unit, or to combine Condominium Units; provided, however, Declarant may not add or delete facilities from any Condominium Unit or combine Condominium Units, unless Declarant or an Affiliate of Declarant is the Owner of such Condominium Unit or Condominium Units. No such addition or deletion to any such Condominium Unit or combination of Condominium Units shall affect the interest in the Common Elements, the share of Common Expenses or the voting rights appurtenant to the Condominium Units. Declarant may separate any Condominium Units it has combined, at its sole expense, into separate and distinct Condominium Units as originally set forth in the survey and the Map. Nothing in this Condominium Declaration, however, shall obligate Declarant to add to the Condominium or otherwise take any of the actions to which Declarant is entitled pursuant to this Subsection 3.4(a);

(c) the right to maintain a model unit and a sales, leasing and/or management, or security office within any Condominium Unit or on the Common Elements in connection with the sale, leasing and/or management of any portion of the Condominium, including any Condominium Unit, in such location as determined by Declarant. Declarant shall have the right to relocate such model unit and/or office from time to time. Declarant shall have the right to authorize placement, upon the Common Elements, of signs designating any such model unit and/or sales, leasing and/or management office and advertising the leasing of any Condominium Unit. Such signs may be placed in such locations and shall be of such size and character as Declarant may determine;

(d) the right, without the vote or consent of the Condominium Association or any other Owner, to: (i) make alterations, additions or improvements in, to and upon any Condominium Unit owned by Declarant or its Affiliates, whether structural or non-structural; and (ii) change the floor plan and layout of any Condominium Unit owned by Declarant or its Affiliates. However, in no event shall any such alteration, improvement or change interfere with any structural support of any Condominium Unit or the Common Elements or the provision of utility service to any Condominium Unit or the Common Elements. All work done in accordance

with the provisions of this Subsection 3.4(d) shall be done in compliance with the Governing Documents and all applicable Legal Requirements; and

(e) for as long as Declarant or its Designees remain liable under any warranty, whether statutory, express or implied, for any act or omission of Declarant or its Designees in the development, construction, sale and marketing of any portion of the Condominium, the right for itself and its Designees, in Declarant's sole discretion and from time to time, to enter the Common Elements and the Condominium Units for the purpose of making necessary inspections, tests, repairs, improvements or replacements required for Declarant or its Designees to fulfill any of its warranty obligations, provided that no such entry into a Condominium Unit shall unreasonably interfere with the use by an Owner of its Condominium Unit. Failure of the Condominium Association or any Owner to provide such access may result in the appropriate warranty being nullified and of no further force or effect. Nothing in this Subsection 3.4(e) shall be deemed or construed as Declarant making or offering any warranty, all of which are disclaimed.

The rights of Declarant under this Section 3.4 may be exercised as to different portions of the Property at different times. Declarant provides no assurance whether any right or rights under this Section 3.4 will be exercised, the portions of the Property as to which such rights may be exercised or as to the order of exercise of any of such rights. The exercise of any right or rights as to any portion of the Property does not obligate Declarant to exercise such right or rights in any other portion of the Property.

In addition, the Owner of the City Unit hereby covenants and agrees to cooperate with Declarant, and to not in any manner hinder or prohibit Declarant, in connection with Declarant's development of the Property in accordance with the rights granted to Declarant under this Condominium Declaration (including but not limited to Declarant's rights to pursue state and/or historic tax credits in connection with the renovation of the Improvements located on the Land).

Section 3.5 Easements.

Each Owner accepts a deed conveying title to a Condominium Unit subject to the Easements granted and reserved, as applicable, in this Section 3.5, which Easements (and all related rights and obligations related to such Easements arising on or after the date of any transfer) shall run with the Condominium.

(a) Access Easement. Declarant hereby grants and reserves a perpetual, assignable and non-exclusive easement over, on and across each Condominium Unit as may reasonably be necessary for its own benefit and for the benefit of each Condominium Unit and the Condominium Association, as applicable, for: (i) the maintenance, repair or replacement of any of the Common Elements thereon or accessible therefrom; (ii) the use of a Condominium Unit by its Owner, provided no other reasonable means of access exist; (iii) the exercise by Declarant of the Special Declarant Rights or the performance of any obligations of Declarant under the Governing Documents; (iv) the making of emergency repairs therein necessary to prevent damage to the Common Elements or to any Condominium Unit; (v) the evacuation of all or any part of the Property in the event of an emergency; and (vi) such other reasonable purposes as are deemed by the Condominium Association to be necessary for the performance of the obligations of the Condominium Association as described in this Declaration and in the Condominium Bylaws.

The Condominium Association, the Manager, and each Owner may enter a Condominium Unit to the extent reasonably necessary in case of an emergency originating in or threatening the Condominium Unit or any other Condominium Unit whether or not the Owner

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

(b) Common Elements Easement. Declarant hereby grants and reserves a perpetual, assignable and non-exclusive easement over, on and across the Common Elements for its own benefit and for the benefit of each Condominium Unit (which is an intended beneficiary of such Common Element) and the Condominium Association for ingress and egress from each Condominium Unit and for the use of the Common Elements for their intended purpose. The Common Elements Easement shall be maintained by the Condominium Association in accordance with Section 5.1 of this Condominium Declaration.

(c) Exhaust and Systems Easement. Declarant hereby grants a perpetual, assignable and exclusive easement over, on, across and through the Upper Unit for the benefit of the City Unit and the Lower Unit for use of an exhaust and Systems shaft, which extends from the City Unit and Lower Unit through the Upper Unit and emerges on the roof, as identified on the Map, and for the construction, repair and replacement thereof, as reasonably necessary. The areas of the Upper Unit subject to the Exhaust and Systems Easement shall be maintained by the Condominium Association in accordance with Section 5.1 of this Condominium Declaration.

(d) Roof Easement. Declarant hereby grants and reserves (as applicable) a perpetual, assignable and non-exclusive (except as otherwise provided in this Subsection 3.5(d)) easement over, on and across the Roof Easement Area: (i) for the benefit of each Condominium Unit for the placement, use and maintenance of air conditioning condenser units; (ii) for the benefit of each Condominium Unit for the placement, use and maintenance of satellite and telecommunications equipment serving the Condominium Units; and (iii) for its own benefit for any purpose, including but not limited to the right to use the roof of the Improvements for Signage, solar, electric, satellite, telecommunications, transmitting and similar equipment and signage, for the placement, use and maintenance of such equipment and signage thereon, and for the construction, operation, maintenance and/or leasing of Improvements thereon for retail, restaurant, common area or any other uses selected by Declarant in its sole discretion. Declarant reserves the right to all Rents associated with any such use described in Subsection 3.5(d)(iii) of this Condominium Declaration. Declarant shall have the unrestricted right to move or remove equipment and/or improvements, as necessary in connection with its rights granted in this Condominium Declaration with respect to the Roof Easement. Declarant shall not be required to insure equipment or improvements installed pursuant to the Roof Easement and is not liable to the Condominium Association, any Owner, or any other Person for any loss or damage from any cause to the equipment or improvements in the Roof Easement Area. The portion of the Roof Easement Area used by Declarant shall be maintained by Declarant, the portions of the Roof

Easement Area used by an Owner shall be maintained by such Owner and the remaining portions of the Roof Easement Area shall be maintained by the Condominium Association in accordance with Section 5.1 of this Condominium Declaration.

(e) Support Easement. Declarant hereby grants and reserves a perpetual, assignable and non-exclusive easement over, on and across the Structure for its own benefit and the benefit of each Condominium Unit for support of all portions of the Improvements. The Structure shall be maintained by the Condominium Association in accordance with Section 5.1 of this Condominium Declaration.

(f) Systems Easement. Declarant hereby grants and reserves a perpetual, assignable and non-exclusive easement over, on and across the Systems for its own benefit and for the benefit of each Owner and the Condominium Association for the use of and the connection to any portion of the Systems intended for such Owner's or the Condominium Association's use, except for any portion of the Systems that are intended to exclusively service a Condominium Unit. The Systems which serve more than one Condominium Unit shall be maintained by the Condominium Association in accordance with Section 5.1 of this Condominium Declaration.

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

(h) Skin Easement. Declarant hereby reserves a perpetual, assignable and exclusive easement over, on and across the Improvements for its own benefit for use of the Skin, for the purposes described in this Subsection 3.5(h). The area of the Improvements used for the purposes described in this Subsection 3.5(h) shall be maintained by Declarant or its assignee in accordance with the Maintenance Standard and Section 5.1 of this Condominium Declaration. All other areas of the Skin shall be maintained in accordance with this Condominium Declaration. Declarant or its assignee shall have the right to all Rents associated with any such use. Declarant or its assignee may use the Skin for electric, satellite, telecommunications, transmitting and similar equipment and signage, and for the placement, use and maintenance of such equipment and signage, and similar purposes. Declarant or its assignee shall have the unrestricted right to move or remove equipment and/or improvements, as necessary in connection with the rights granted with respect to the Skin Easement, provided the same causes no unreasonable interference with the use or operation of a Condominium Unit. Declarant or its assignee shall not be required to insure equipment or improvements installed pursuant to the Skin Easement.

(i) Miscellaneous. None of the Easements granted or reserved in this Section 3.5 shall be used in a manner that materially and adversely affects the structural integrity of the Improvements. Except as specifically provided in this Section 3.5, notwithstanding the assignability of the Easements, no Easement may be assigned to any Person that is not the Owner or Tenant or the Association; provided, however, that this prohibition shall not prohibit Declarant from granting leases, licenses or sub-easements to the Skin Easement or Roof Easement. Use and

availability of any facilities or areas covered by the Easements are subject to the Condominium Rules & Regulations.

Section 3.6 Encroachments.

If, as a result of the original construction, reconstruction, repair, shifting, settlement or other circumstance, any portion of the Common Elements encroaches upon a Condominium Unit, a perpetual easement over, on and across such Condominium Unit for such encroachment and for the maintenance of the same is hereby granted and conveyed to the Condominium Association by each Owner at the time each Condominium Unit is conveyed to the Owner. If as a result of the original construction, reconstruction, repair, shifting, settlement or other circumstance any portion of a Condominium Unit encroaches upon the Common Elements, or upon any adjoining Condominium Unit, an irrevocable and perpetual easement for such encroachment and for the maintenance of the same over, on and across such Condominium Unit, or such portion of the Common Elements, as applicable, is hereby granted to the Owner of such Condominium Unit. Such encroachments and easements shall not be considered or determined to be encumbrances either upon a Condominium Unit or upon the Common Elements.

Section 3.7 Purchase Option.

(a) In the event that the City Unit does not use the City Unit for purposes of official public meetings under the Open Meetings Act of the San Antonio City Council (the "City Council Chambers Use") for a continuous period of one hundred eighty (180) days (excluding Excused Periods, as defined below), then Declarant shall have the right (but not the obligation) to purchase the City Unit pursuant to the terms, provisions and conditions provided in this Section 3.7 (the "Purchase Option"). For purposes hereof, "Excused Periods" shall mean (i) any period during which the City is actively and diligently pursuing renovations or repairs of the City Unit (including pursuing planning and permitting), (ii) any period during which the City is actively and diligently pursuing restoration of the City Unit following a casualty in the City Unit (including pursuing planning, permitting or the recovery of insurance proceeds), or (iii) any period that Declarant or another Owner is undertaking construction activities within the Building that cause City to elect to temporarily suspend the City Council Chambers Use due to the reasonable determination of the City that such activities are a material distraction or disruption from the use and enjoyment of the City Unit or a safety or health hazard.

(b) In order to exercise the Purchase Option, Declarant must give the City Unit Owner written notice of its exercise of the Purchase Option (the "Purchase Notice") within three hundred (300) days after the last City Council Chambers Use (plus the duration of any applicable Excused Periods). At the election of the City, the City may provide written notice to Declarant at any time following one hundred eighty (180) days after the last City Council Chambers Use (plus the duration of any applicable Excused Periods) informing Declarant that the Purchase Option has been triggered, whereupon Declarant shall have only thirty (30) days from the date it receives such notice to deliver the Purchase Notice.

(c) If Declarant exercises the Purchase Option, then the purchase price for the City Unit shall be the then current Fair Market Value thereof (the "Purchase Price"). At the Purchase Closing, the City Unit Owner shall convey the City Unit to Declarant by deed without warranty subject only to the title exceptions of record as of the date thereof and clear of all liens (except that the exception for liens securing ad valorem taxes shall be limited to the year in which the closing of the purchase takes place, with the ad valorem taxes for such year to be prorated at the Purchase Closing based upon the most current available taxes). At the Purchase Closing,

Declarant shall pay to the City Unit Owner the Purchase Price in cash. Declarant's purchase rights arising under this Section 3.7 may be assigned to any third party.

"Fair Market Value" as used herein means as determined by and independent, qualified and licensed appraiser agreed upon between the parties. If the parties cannot agree on a single appraiser within fifteen (15) days after delivery of written notice requesting the same, then the Declarant and the City Unit Owner shall each have the right to appoint one appraiser, and the two appraisers so appointed shall then agree upon a third appraiser to be appointed. The appraiser(s) selected as aforesaid shall each have at least ten (10) years' experience as appraisers of real property interests similar to the Property.

Each appraiser shall, within 30 days after appointment, then certify in writing his or her decision as to the fair market value of the City Unit, which certification shall separately address the material factors affecting the appraisal, and a copy of said certification shall be sent to the Declarant and the City Unit Owner in care of their respective addresses. In the event three appraisers have been appointed, the determinations of all appraisers shall then be compared. The appraisal that deviates the furthest in value from the other two appraisals shall be disregarded and the remaining two appraisals shall be averaged to determine the Fair Market Value. The average of the two appraisals shall be conclusive upon the Declarant and the City Unit Owner. The fees payable for such appraiser(s) shall be borne fifty percent (50%) by the Declarant and the City Unit Owner, it being understood that each appraiser shall be a disinterested party.

(d) If Declarant exercises its Purchase Option, the closing on such purchase (the "Purchase Closing") shall take place at a title company selected by Declarant on a date mutually agreed upon by Declarant and the City Unit Owner that is no less than sixty (60) days after the date upon which the Fair Market Value is determined; provided, however, that if Declarant is not satisfied with the determination of Fair Market Value as set forth above, it may elect to terminate is Purchase Option and shall have no obligation to acquire the City Unit.

Section 3.8 Right of First Refusal.

(a) For a period of fifty (50) years following the date of this Condominium Declaration (the "ROFR Term"), but only for so long as the City is the Owner of the City Unit and not thereafter, if the City receives a bona fide offer ("Offer") from an unrelated third party to purchase all or a portion of the City Unit (or any part thereof, or the equity interest in the owner thereof) and the Offer is acceptable to the City, then the City shall give written notice of such Offer to Declarant with a copy of the Offer ("ROFR Notice"). Declarant shall have the right of first refusal ("ROFR") to purchase such property at the same price and on the same terms, conditions and provisions as set out in the Offer by giving notice to the City of such election ("Election Notice") within thirty (30) days following Declarant's receipt of the ROFR Notice from the City.

(b) Promptly following Declarant's delivery of the Election Notice, if so given, Declarant shall deliver, and the City and Declarant shall execute a purchase contract containing the terms and provisions of the sale as set forth in the Offer or as may otherwise be customary for the sale of similar property in Bexar County, Texas to the extent not covered by the Offer. At the closing of said transaction, Declarant shall pay the City, in cash, an amount equal to the purchase price of the City Unit (or the applicable part thereof) as set forth in the Offer, and the City shall execute and deliver to the Declarant all of the documents necessary to convey good and marketable title to the City Unit (or the applicable part thereof) by deed without warranty in form reasonably acceptable to Declarant and the City subject only to the permitted title exceptions of

record as of that date, free and clear of all liens (except that the exception for liens securing ad valorem taxes shall be limited to the year in which the closing of the purchase takes place, with the ad valorem taxes for such year to be prorated at the Purchase Closing based upon the most current available taxes).

(c) If Declarant fails to deliver the Election Notice to the City within the 60-day period specified above, Declarant's ROFR will terminate as to that Offer, but shall continue as to any future offers to purchase the City Unit during the ROFR Term (regardless of whether or not any prior Offer was accepted or rejected by the City). In addition, the ROFR will continue to be applicable to any portion of the City Unit not covered by the Offer. Notwithstanding the foregoing, nothing in this Section 3.8 shall be construed as granting the City the right to divide and/or otherwise separate the City Unit in violation of any of the other sections of this Condominium Declaration, and the division and/or separation of the City Unit shall be governed by the applicable sections of this Condominium Declaration (including but not limited to Section 2.3 and Section 2.5). ***[RESERVED TO FINALIZE]***

ARTICLE IV
Matters Regarding the Condominium Association

Section 4.1 General.

The Condominium Association has been incorporated as a nonprofit corporation under the TNCL. In addition to the powers conferred on the Condominium Association under the TNCL, the Condominium Association may take all actions authorized by the Governing Documents. Any and all actions taken by the Condominium Association pursuant to the Governing Documents are binding on all Owners. This Condominium Declaration is not intended to place any limitations or restrictions on the power of the Condominium Association or the Board of Directors except as set forth in this Condominium Declaration or the Governing Documents.

Section 4.2 Allocation of Votes in the Condominium Association.

Each Owner will automatically be a Member of the Condominium Association. Unless a different allocation of votes is required by the Act or elsewhere in this Condominium Declaration, each Member shall be entitled to exercise the number of votes equal to such member's Allocated Interest with respect to any matter on which members of the Condominium Association shall be entitled to vote.

Section 4.3 Suspended Voting Rights.

All voting rights of an Owner may be suspended during any period that such Owner is delinquent in the payment of any Assessment duly established pursuant to this Condominium Declaration, or is otherwise in default under the terms of the Governing Documents.

Section 4.4 Right of Action by Owners and the Condominium Association; Release.

The Owners, acting collectively or individually, shall have the right to maintain actions against the Condominium Association for its willful failure to comply with the provisions of the Act, this Condominium Declaration or the Condominium Bylaws, or its willful failure to perform its duties and responsibilities hereunder. The Condominium Association shall not have the power to institute, defend, intervene in, settle or compromise litigation or administrative proceedings in the name of any Owner. Subject to the Condominium Association's obligations under this Condominium Declaration, except as otherwise provided by the Governing Documents, each Owner hereby releases, acquits and forever

discharges the Condominium Association, and its officers, directors, agents, and employees, and agrees to hold such Persons harmless of and from any and all claims, damages, liabilities, costs and/or expenses (including reasonable attorneys' fees) relating to the construction of, repair or restoration of, or the sale to the Owners of the Condominium Units or the Common Elements (except for their gross negligence or intentional misconduct), whether statutory or under the common law, known or unknown, now accrued, or that arise in the future.

ARTICLE V
Maintenance, Alterations, Taxes and Utilities

Section 5.1 Maintenance.

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

(b) Maintenance of Common Elements and Limited Common Elements. Except as otherwise provided in the Condominium Rules & Regulations or the Allocation Document, all the Common Elements shall be maintained by the Condominium Association in accordance with the Maintenance Standard, the cost and expense of which shall constitute a Common Expense and shall be payable as may be set forth in this Condominium Declaration or in the Allocation Document in amounts for which an allocation is provided. The Condominium Association shall establish and maintain an adequate reserve fund for such purposes, to be funded by Regular Assessments and Working Capital Contributions rather than by a Special Assessment; provided, however, that the Condominium Association may require Special Assessments for such purposes, in accordance with Subsection 7.1(c) of this Condominium Declaration. Nothing in this Condominium Declaration shall be deemed or construed as relieving any Owner from liability or responsibility for damage to the Common Elements caused by the negligence or misconduct of an Owner or an Owner's occupants or invitees. Any General Common Elements located in the Building shall be maintained as set forth in the Allocation Document.

(c) Maintenance of Easements. All maintenance, repairs and replacements of, in or to any Easement area, ordinary or extraordinary, foreseen or unforeseen, including maintenance, repair and replacement of all Systems which are part of such Easement area, shall be performed by the Owner of such Condominium Unit, or Limited Common Element appurtenant thereto, in which the Easement area is located and in accordance with the Maintenance Standard, unless otherwise provided in the Allocation Document. If the Easement area is located in a General Common Element, then all maintenance, repairs and replacements of, in or to any Easement area, ordinary or extraordinary, foreseen or unforeseen, including maintenance, repair and replacement of all Systems which are part of such Easement area, shall be performed by the Condominium Association and be a Common Expense.

(d) Allocation Document. Declarant and the Owners may determine that certain maintenance functions and capital expenditures shall be the responsibility of the designated Owners and that the expenses associated therewith and certain Common Expenses shall be allocated in a manner other than by the Allocated Share. Declarant and such Owners shall allocate such expenses and designate the responsible Owner in an Allocation Document. A copy of the Allocation Document shall be maintained in the records of the Condominium Association and shall be binding upon all the Owners, Tenants, Mortgagees and any other party at any time

having any interest in the Condominium. The Owner identified on the Allocation Document as responsible for the particular maintenance function shall have the responsibility for performing such maintenance function in accordance with the Maintenance Standard and the other applicable Owners shall be responsible for their applicable cost percentage reflected on the Allocation Document. The Allocation Document may be amended or modified only upon the affirmative vote or consent of all affected Owners as to the responsibility to perform such work, and all Owners sharing the applicable cost, as to the cost sharing provisions set forth therein. Any Owner may request that the allocations specified in the Allocation Document be reviewed annually and the Owners shall in good faith determine whether adjustment to the allocations are appropriate. Regularly scheduled maintenance expenses may not, in the aggregate for work performed by any Owner, be incurred in excess of the aggregated budgeted amounts for such expenses without the consent of all of the Owners sharing the cost thereof, but the obligation of the Owners to pay for emergency or reasonably unforeseeable repairs shall not be affected by the budget.

Section 5.2 Failure of Owner to Maintain Condominium Unit or Easements.

If the Condominium Association or any Owner fails or neglects to maintain, repair or clean its Condominium Unit or the area covered by the Easements as required by Section 5.1 and Section 3.5, respectively, of this Condominium Declaration, or any Limited Common Element appurtenant thereto, required to be maintained by such Owner pursuant to the Condominium Rules & Regulations and such failure or neglect continues for five days after such Owner's receipt of written notice of such neglect or failure from the Condominium Association (or an Owner, if the obligation is required to be performed by the Condominium Association), then the Condominium Association (or an Owner, if the obligation is required to be performed by the Condominium Association) acting on its own behalf may, but shall not be obligated to, enter the Condominium Unit, upon the area covered by the Easement or the Limited Common Element, as applicable, and take appropriate steps to perform, or cause to be performed, the maintenance, repair, cleaning and replacement in the manner as required by this Condominium Declaration. The defaulting Owner or the Condominium Association, as the case may be, shall, upon demand, reimburse the Condominium Association or the Owner making such repairs or maintenance, as applicable, for all costs and expenses incurred in the exercise of its rights in this Condominium Declaration, plus a reasonable administrative fee not to exceed 15% of such costs.

Section 5.3 Disputes.

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

Section 5.4 Additions, Alterations or Improvements by Owner.

Subject to the provisions in this Condominium Declaration, no Owner shall: (a) make any addition, alteration or improvement in or to any Condominium Unit, to the extent visible from any other Condominium Unit, the Common Elements or the exterior of a Building, whether structural or non-structural; (b) make any addition, alteration or improvement to any Common Element; or (c) make any material changes to the boundary configuration or size of any Condominium Unit, create apertures in or otherwise remove or alter any partition wall separating any Condominium Unit from any adjoining Condominium Unit or relocate the boundaries of any Condominium Unit and any adjoining Condominium Unit without the approval of the Condominium Association, which approval may be withheld in the sole and absolute judgment of the Condominium Association; provided, however, that that the City while the Owner of the City Unit may make interior non-structural alterations to the City Unit without the approval of the Condominium Association. However, in no event shall any such alteration, improvement, or change

interfere with the structural support of any Condominium Unit, the Common Elements or any System serving another Condominium Unit. All work done in accordance with this Section 5.4 shall be done in compliance with the plans approved by the Condominium Association, all Legal Requirements and the Governing Documents. Notwithstanding the foregoing provisions, Declarant shall have the right to construct, operate and maintain a pool on the Property without the approval of the Condominium Association.

Section 5.5 Mechanic's Liens.

No labor or services performed or materials furnished and incorporated in a Condominium Unit or any Common Element shall be the basis for the filing of a lien against any Condominium Unit of any Owner not expressly consenting to or requesting the same, or against the Common Elements. All contracts for labor, services and/or materials with respect to any of the Condominium Units shall be in compliance with the provisions of this Condominium Declaration.

Section 5.6 Taxes.

(a) Payment of Impositions. Each Owner shall be responsible for and shall pay when due all Impositions that relate to such Condominium Unit, except to the extent such Impositions are being actively and diligently contested in good faith by appropriate legal proceedings, and if requested by the Condominium Association, have been bonded or reserved in an amount and manner satisfactory to the Condominium Association. Any Impositions with respect to the Property not separately assessed to the Owners shall be a Common Expense and shall be payable by the Condominium Association (and reimbursable as provided herein) when due.

(b) Notice to Taxing Authorities. Declarant shall give written notice to the appropriate taxing authorities of the creation of the Condominium established pursuant to this Condominium Declaration. Each Owner shall promptly request and diligently pursue from the applicable taxing authority separate tax parcel status and a separate tax identification number for its Condominium Unit. EACH OWNER HEREBY BY ACCEPTANCE OF A DEED TO ITS CONDOMINIUM UNIT SHALL BE DEEMED TO HAVE AGREED, FOR SUCH OWNER, TO HOLD THE DECLARANT, CONDOMINIUM ASSOCIATION, AND ALL OTHER OWNERS HARMLESS FROM ANY LIABILITY RESULTING FROM AN IMPROPER ALLOCATION OF TAX BURDEN BY THE LOCAL TAXING AUTHORITY.

(c) Condominium Units Not Separately Assessed. If any Impositions with respect to the Property are not separately assessed to the Owners, each Owner shall pay its respective allocated portion of such Impositions (which allocations shall be determined in the manner set forth in this Condominium Declaration) when requested by the Condominium Association to permit the Condominium Association to make full payment of such Impositions prior to the date on which such Impositions would become delinquent; provided that the Condominium Association shall not require any Owner to make any payment to the Condominium Association for Impositions to the extent such amounts have already been deposited by such Owner in accordance with any escrow arrangement.

(d) Failure to Pay Impositions. The Condominium Association or any Mortgagee may pay the portion of Impositions that any Owner has failed to pay when due, and the Condominium Association or such Mortgagee shall have a lien against such Condominium Unit to secure repayment thereof, that may be enforced by any means available at law or in equity, including non-judicial foreclosure sale of such Condominium Unit in accordance with Texas Property Code Section 51.002 (as now written or hereafter amended); provided, however, no such lien for

delinquent Impositions shall be valid until a notice of such lien is duly recorded in the Real Property Records of the County, notwithstanding any applicable statute, law (including case law), equitable doctrine, ordinance or regulation that permits any such lien to attach absent such recordation in the Real Property Records. Each Owner by its acquisition of such Condominium Unit grants a power of sale in connection with such lien in favor of the Condominium Association or any Mortgagee that makes payment of the Impositions on behalf of a defaulting Owner. Any lien pursuant to this Subsection 5.6(d) shall have the same priority as a lien by the Condominium Association for Assessments; provided that any such lien for delinquent Impositions shall be subordinate to the lien of any Priority Lien Indebtedness encumbering such Condominium provided that such Priority Lien Indebtedness was recorded prior to the date such lien for Impositions was duly recorded, notwithstanding any Legal Requirement or equitable doctrine, that permits any such lien to attach absent such recordation in the Real Property Records.

(e) This Section 5.6 shall terminate and be of no further force or effect whatsoever, upon the later to occur of the date upon which (i) each of the Upper Unit, the Lower Unit and the City Unit shall be separately assessed and billed as a separate parcel by the assessor; and (ii) all the Impositions due and owing prior to all Condominium Units being separately assessed and billed as a separate parcel by the assessor have been paid in full to the appropriate authority; provided, however, that the provisions of Subsection 5.6(b) of this Condominium Declaration shall survive the termination of this Section 5.6 and remain in effect for the duration of this Condominium's existence.

Section 5.7 Utilities.

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

ARTICLE VI
Insurance

Section 6.1 Requirements.

All insurance coverage required to be obtained pursuant to this Article VI or purchased at the election of an Owner or the Condominium Association shall:

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

(b) comply with the insurance requirements set forth in this Condominium Declaration;

(c) not be brought into contribution with insurance purchased by the other Owners or the Condominium Association, as applicable; and

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

Section 6.2 Insurance by the Condominium Association.

Commencing upon the first conveyance of any Condominium Unit to an Owner other than Declarant, the Condominium Association shall obtain and maintain (a) insurance coverage required pursuant to the Act and such other insurance coverage as set forth in the Condominium Bylaws; and (b) at the expense of the Owner incurring such Priority Lien Indebtedness, such other insurance (or additional coverage) as such Owner's Mortgagee shall require. The Condominium Association shall carry such other or additional insurance in such amounts and against such risks as the Condominium Association shall reasonably deem necessary with respect to the Common Elements or operation of the Condominium Association. In addition, each insurance policy maintained by the Condominium Association shall provide that: (i) each Owner is named as an insured under such policies with respect to liability arising out of the Owner's ownership of an undivided interest in the Common Elements or membership in the Condominium Association; (ii) no action or omission by any Owner, unless validly exercised on behalf of the Condominium Association, will void the policy or be a condition to recovery under the policy; and (iii) such policy is primary insurance if at the time of a loss under the policy any Owner has other insurance covering the same property covered by the policy. Unless indicated otherwise, the premiums for all insurance coverages maintained by the Condominium Association pursuant to this Section 6.2 shall constitute a Common Expense, and shall be payable by the Condominium Association and reimbursable as provided herein.

Section 6.3 Insurance on Upper Units.

The Owners of the Upper Unit shall provide and maintain, at their sole cost and expense, CGL, property insurance, and other insurance, in such limits and upon such terms as described in the Condominium Bylaws, and, subject to the other terms of this Article VI, such other or additional insurance in such amounts and against such risks as the Owners of the Upper Unit shall reasonably deem necessary with respect to the improvements, facilities and contents within the Upper Unit.

Section 6.4 Insurance on Lower Units.

The Owners of the Lower Unit shall provide and maintain, at their sole cost and expense, CGL, property insurance, worker's compensation insurance and other insurance, in such limits and upon such terms as described in the Condominium Bylaws, and, subject to the other terms of this Article VI, such other or additional insurance in such amounts and against such risks as the Owners of the Lower Unit shall reasonably deem necessary with respect to the improvements, facilities and contents within the Lower Unit.

Section 6.5 Insurance on City Unit.

The City Unit Owner shall provide and maintain, at its sole cost and expense, CGL, property insurance, worker's compensation insurance and other insurance, in such limits and upon such terms as described in the Condominium Bylaws on a non-discriminatory basis, and, subject to the other terms of this Article VI, such other or additional insurance in such amounts and against such risks as the City Unit Owner shall reasonably deem necessary with respect to the improvements, facilities and contents within the City Unit. Notwithstanding the balance of this Section the City while the Owner of the City Unit may provide self insurance for general liability insurance.

Section 6.6 Insurance for the Exterior Surface and Structure of the Building.

(a) The Condominium Association will procure and maintain insurance covering the Building exterior surface and Structure for all risks of physical damage, with extended coverage, vandalism, terrorism (to the extent available at a commercially reasonable cost), malicious mischief, earthquake, demolition and replacement cost, sprinkler leakage, agreed amount (if the policy includes co-insurance), endorsements attached (the "Hazard Insurance"), in amounts not less than the full then current insurable replacement cost of the Building exterior surface and Structure, except for matters normally excluded from coverage. Any Hazard Insurance Expense for the Building exterior surface and Structure shall be assessed against the Owners of the Condominium Units as a Special Assessment as set forth in the Allocation Document.

(b) In procuring the Hazard Insurance, the Condominium Association shall procure a separate insurance policy for the Common Elements.

Section 6.7 Condominium Association as Insurance Trustee for the Owners.

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

Section 6.8 Other.

(a) Neither the Condominium Association, Declarant nor any Owner shall be liable for failure to obtain any insurance coverage required by this Condominium Declaration or for any loss or damage resulting from such failure, if such failure is because such insurance coverage is not reasonably available.

(b) Neither the Condominium Association nor any Owner shall obtain any policy of insurance where: (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Owner or Mortgagee or become a lien against the Condominium; (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Condominium Association, Owners or Mortgagees from collecting the Insurance Proceeds.

(c) No Owner or its Designees shall have the right to recover under the insurance purchased by the Condominium Association and the other Owners pursuant to this Article VI due to accidents occurring within such Owner's Condominium Unit, or casualty, theft or loss to the contents of such Owner's Condominium Unit.

(d) To the extent available on commercially reasonable terms, each Owner shall cause its insurance carrier to endorse such Owner's policies waiving the insurance carrier's rights of

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

ARTICLE VII
Assessments

Section 7.1 Regular and Special Assessments by the Condominium Association.

The Condominium Association shall possess the right, power, authority and obligation to establish and assess a Regular Assessment for payment of the Common Expenses, and Special Assessments as provided for in this Condominium Declaration as follows:

(a) **Regular Assessments.** The Condominium Association shall establish a Regular Assessment sufficient in the judgment of the Condominium Association to pay all Common Expenses when due and to maintain an adequate reserve fund for such purposes. Such Regular Assessments so established shall be payable by the Owners pursuant to their Allocated Share on the first day of each calendar month or quarter, as established by the Condominium Association, and shall be applied to the payment of Common Expenses for which the Condominium Association is responsible, including maintenance, repair and care of the Common Elements.

(b) **Budget for Common Expenses.** Prior to the commencement of each fiscal year of the Condominium Association, the Condominium Association shall prepare in good faith and deliver to each of the Owners a Condominium Budget. Such Condominium Budget shall be in sufficient detail so as to inform each Owner of the nature and extent of the Common Expenses anticipated to be incurred in the upcoming fiscal year, and shall be accompanied by a statement setting forth each Owner's regular share thereof and the date as of which such Regular Assessment commences to be payable. No further communication shall be necessary to establish the amount of each Owner's obligation regarding the Regular Assessment payable hereunder, and the failure of the Condominium Association to timely deliver such Condominium Budget shall not excuse or relieve an Owner from the payment of the Regular Assessments contemplated hereby, in which case, each Owner shall continue to pay to the Condominium Association an amount equal to such Owner's Regular Assessment as established pursuant to the most recent Condominium Budget previously delivered to the Owners. Any Condominium Budget prepared and delivered to the Owners as contemplated in this Article VII may be amended as and to the extent reasonably necessary, and the amount of an Owner's Regular Assessment changed to correspond therewith.

(c) **Special Assessments by Association.** In addition to the Regular Assessments contemplated by Subsection 7.1(a) of this Condominium Declaration, the Condominium Association shall establish Special Assessments from time to time as may be necessary or appropriate in the judgment of the Condominium Association to pay Common Expenses that are not reflected in the Condominium Budget relating to the proper maintenance, care, alteration, improvement, replacement, operation and management of the Condominium and the administration of the Condominium Association, and such Special Assessments shall be assessed proportionately to each Condominium Unit's Allocated Share.

Section 7.2 Obligation to Pay Assessments.

(a) Each Owner shall be personally obligated to pay the Owner's Allocated Share of all Assessments duly established pursuant to this Condominium Declaration to the Condominium Association. Unpaid Assessments due as of the date of the conveyance or transfer of a Condominium Unit shall not constitute a personal obligation of the new Owner (other than the new Owner's pro rata share of any reallocation thereof); however, the former Owner shall continue to be personally liable for such unpaid Assessment and the unpaid amount will continue to be secured by the lien referenced in Section 7.3 of this Condominium Declaration. No Owner shall be entitled to exemption from liability for the Owner's obligation to pay such Assessments by waiver of the use and enjoyment of the Common Elements or the facilities by an abandonment of the Condominium Unit or by any other action or otherwise.

(b) Any Assessment that was levied by the Condominium Association and not paid within five days of the date due shall bear interest at the Past Due Rate, and shall be recoverable by the Condominium Association, together with interest as aforesaid and all costs and expenses of collection, including reasonable attorneys' fees, by suit in a court of competent jurisdiction sitting in the County. It shall be the responsibility of the Condominium Association to collect any such delinquent Assessment, the existence of which shall be made known by written notice delivered to the defaulting Owner and, where requested, the Owner's Mortgagee.

Section 7.3 Lien to Secure Payment of Assessments.

Declarant hereby reserves and assigns to the Condominium Association a lien, pursuant to the provisions of the Act, against each Condominium Unit, the Rents, if any, payable to any Owner and the Insurance Proceeds to which an Owner may be entitled to secure the payment of all Assessments, which lien shall be and constitute a lien and encumbrance, in favor of the Condominium Association, upon such Condominium Unit, the Rents, and any Insurance Proceeds. The liens established in this Condominium Declaration shall be prior and superior to all other liens and encumbrances subsequently created upon such Condominium Unit, Rents and Insurance Proceeds, regardless of how created, evidenced or perfected, other than the lien securing the payment of Priority Lien Indebtedness (provided such lien was recorded prior to the date on which the Assessment became delinquent), other than the liens for Impositions. The liens and encumbrances created in this Condominium Declaration may be enforced by any means available at law or in equity, including a non-judicial foreclosure sale of the Condominium Unit of a defaulting Owner; such sale to be conducted in the manner set forth in Texas Property Code Section 51.002 (as now written or as hereafter amended). Each Owner, by acquisition of a Condominium Unit grants to the Condominium Association a power of sale in connection with the Condominium Association's liens. By written resolution, the Condominium Association may appoint, from time to time, an officer, agent, trustee or attorney of the Condominium Association to exercise the power of sale on behalf of the Condominium Association. The Condominium Association may bid for and purchase the Condominium Unit at any such foreclosure sale, and the purchase price (including any Priority Lien Indebtedness) in excess of outstanding Assessments shall be a Common Expense. Payment of proceeds resulting from such foreclosure sale to be applied toward outstanding Assessments owing to the Condominium Association, including all costs, expenses and attorneys' fees relating to the foreclosure. The foreclosure of a lien encumbering a Condominium Unit in order to satisfy the Priority Lien Indebtedness will extinguish the subordinate lien for any Assessments which became payable prior to the date of such foreclosure sale, provided that in no event shall a defaulting Owner be relieved from personal liability incurred for past Assessments.

Section 7.4 **Commencement of Obligation to Pay Assessments.**

Each Owner, other than Declarant, shall be obligated to commence payment of all Assessments on the date a Condominium Unit is conveyed to the Owner. If the date a Condominium Unit is conveyed to an Owner is other than the first day of a month, then such Owner shall be obligated to pay only a pro rata share of the Assessment against such Condominium Unit based on the number of days during such month that the Owner will hold title to the Condominium Unit. Prior to the commencement of the obligation to pay the initial Regular Assessment, Declarant shall pay all the Common Expenses of the Condominium (excluding portions thereof allocable to reserves and less Assessments payable by the other Owners); provided, however, nothing contained in this Condominium Declaration shall prevent Declarant from collecting from the purchaser of a Condominium Unit at closing any expenses, such as Impositions or insurance premiums, to the extent that Declarant prepaid such expenses on behalf of the Condominium Unit being purchased.

Section 7.5 **Notice of Default.**

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

Section 7.6 **Alternative Actions.**

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

Section 7.7 **Statement of Expenses and Access to Records.**

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

Section 7.8 **Subordination of Lien for Assessments.**

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

Section 7.9 **Working Capital Contributions.**

(a) Each Owner, other than Declarant, shall, at the time such Owner purchases a Condominium Unit from Declarant, contribute an amount to the Condominium Association equal to the Working Capital Contribution. Such amount shall be a contribution of working

capital to the Condominium Association and shall not be considered as an advance payment of any Assessments.

(b) Any purchaser of a Condominium Unit from an Owner other than Declarant shall contribute an amount to the Condominium Association equal to the Working Capital Contribution at the time of purchase. Such amount shall be a contribution of working capital to the Condominium Association and shall not be considered as an advance payment of any Assessments.

ARTICLE VIII
Loss and Obsolescence

Section 8.1 Loss or Damage.

The following provisions shall govern if the Common Elements or any part thereof, are damaged or destroyed by fire or other casualty: (a) prompt written notice of any substantial damage or destruction shall be given (i) by the affected Owner or Owners to the Condominium Association; and (ii) by the Condominium Association to all of the Mortgagees; (b) the Condominium Association shall promptly proceed with the full restoration and repair of such damage or destruction unless (i) the Condominium is terminated; (ii) repair or replacement would be illegal under any Legal Requirement; or (iii) the Owners holding at least 80% of the votes in the Condominium Association, including each Owner of a Condominium Unit to which a Limited Common Element that will not be rebuilt or repaired is assigned, vote not to rebuild; (c) the amount by which such restoration and repair costs exceed collectible Insurance Proceeds shall be and constitute a Special Assessment payable by the Owners within 60 days of the date notice of such Special Assessment is delivered by the Condominium Association; and (d) any excess Insurance Proceeds remaining after such restoration and repair, or any insurance or sales proceeds available absent such restoration and repair, shall be received and held in trust by the Insurance Trustee in separate accounts for each Owner, as their interests may appear (with any proceeds attributable to Limited Common Elements allocated among the Owners of the Condominium Units to which such Limited Common Elements were assigned in this Condominium Declaration and any other proceeds allocated in accordance with the Allocated Shares of the Owners), and distributed as follows: (1) first, to the payment of any Impositions in favor of any assessing entity having authority with respect to the Common Elements or such Condominium Unit; (2) second, to the payment of the balance of the Priority Lien Indebtedness of such Owner; (3) third, to the payment of any delinquent Assessment with respect to such Condominium Unit; and (4) the balance, if any, to each Owner entitled thereto.

Section 8.2 Damaged Condominium Units.

The following provisions shall govern in relation to a Damaged Condominium Unit: (a) prompt written notice of any substantial damage or destruction shall be given by the Owner of the Damaged Condominium Unit to the Condominium Association and the Mortgagee of the Damaged Condominium Unit; (b) the Owner of the Damaged Condominium Unit shall promptly proceed with the full restoration and repair of such damage or destruction unless: (i) the Condominium is terminated; (ii) repair or replacement would be illegal under any Legal Requirement or (iii) the Owners holding at least 80% of the votes in the Condominium Association, including the Owner of the Damaged Condominium Unit, vote not to rebuild; and (c) except as otherwise provided in Section 8.6 of this Condominium Declaration, the Owner of each Damaged Condominium Unit shall pay all costs of such restoration, repair and replacement or rebuilding in excess of the net proceeds of the collectible Insurance Proceeds.

Section 8.3 Obsolescence of Common Elements.

If the Owners holding not less than 100% of the Allocated Interests shall vote, at a meeting of the Condominium Association duly called for purposes of considering same, that the Common Elements, or any part thereof, (or any Systems which serve only, or are a part of, individual Condominium Units), are obsolete, the Condominium Association shall promptly proceed with the necessary replacements and improvements thereto pursuant to a budget established for such purpose, and the cost thereof shall be and constitute a Special Assessment payable by all the Owners within 30 days of the date notice of such Special Assessment is delivered to them by the Condominium Association.

Section 8.4 Obsolescence of the Property.

If the Owners holding not less than 100% of the votes in the Condominium Association, at a meeting of the Condominium Association duly called for purposes of considering same, determine that the Property is obsolete, the Condominium Association, after first obtaining the written consent of 51% of the Mortgagees, shall promptly proceed with the sale thereof in its entirety. Any proceeds from such sale shall be received, held and applied for and on account of the Owners as provided in the Act.

Section 8.5 The Condominium Association as Attorney-in-Fact.

Each Owner, by acceptance of a deed to a Condominium Unit, hereby irrevocably makes, constitutes and appoints the Condominium Association, and each and every one of its successors in interest hereunder, as the Owner's true and lawful attorney-in-fact, for and in the Owner's name, place and stead, upon the damage or destruction of the Property, or any part thereof, or upon any determination by the Owners made pursuant to this Article VIII, to take any and all actions, and to execute and deliver any and all instruments, as the Condominium Association may, in its sole and absolute discretion, deem necessary or advisable to effect the intents and purposes of this Article VIII, hereby giving and granting unto the Condominium Association full power and authority to do and perform all and every act whatsoever requisite or necessary to be done in and about the premises as fully, to all intents and purposes, as an Owner might or could do, hereby ratifying and confirming whatsoever the Condominium Association may do by virtue of the provisions of this Declaration. The Condominium Association is hereby authorized, in the name and on behalf of all the Owners, to do and perform all actions necessary or appropriate to effect the intent and purposes of this Article VIII as aforesaid, including the power and authority to make and settle claims under any insurance policies maintained by the Condominium Association, contract for and with respect to restoration and repair work, contract for and with respect to replacements and improvements to the Common Elements (to the extent authorized as contemplated by Section 8.3 of this Condominium Declaration), to contract for and with respect to a sale of the Property (to the extent contemplated by Section 8.4 of this Condominium Declaration) and to execute and deliver all instruments necessary or incidental to any such actions.

Section 8.6 Matters Relating to Restoration, Repairs and Replacements.

Any restoration and repair work undertaken by the Condominium Association or an Owner pursuant to this Article VIII shall be performed in a good and workmanlike manner in order to restore the Improvements to a condition similar to that existing prior to such damage or destruction; provided, however, that in no event shall the Condominium Association be responsible for restoring, repairing or replacing any improvements to a Condominium Unit made by an Owner, or the contents located in such Condominium Unit. All such restoration and repair work, whether done by the Condominium Association or an Owner, shall be effected in a manner so as to observe all vertical and horizontal Condominium Unit boundaries existing prior to such damage or destruction. If an Owner or the Owners decide to rebuild or repair any Condominium Unit in excess of its full replacement cost, such Owner or Owners shall be

responsible for any such costs exceeding the full replacement value of such Condominium Unit; provided, however, that if the Owners holding not less than 67% of the Allocated Shares shall vote to incur such expenses, such additional expenses, to the extent they exceed the replacement value of such Condominium Unit, shall constitute a Special Assessment.

ARTICLE IX
Condemnation

Section 9.1 General Provisions.

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

Section 9.2 Taking of All or Substantially All of One Condominium Unit.

If a Condominium Unit (or a substantial part thereof such that the remnant may not practically or lawfully be used for any purpose permitted by this Condominium Declaration) is subject to a Taking, the Owner and any Mortgagee of such Owner shall be entitled to the award for such Taking, including the award for the value of such Owner's interest in the Common Elements, whether or not such Common Element interest is taken, and, after payment thereof, such Owner and any Mortgagee of such Owner shall be divested of all interest in the Property. In such event, the condemned Condominium Unit's entire Allocated Interest and Allocated Share shall be automatically reallocated to the remaining Condominium Units in proportion to the respective Allocated Interests or Allocated Share, respectively, of those Condominium Units before the Taking, unless the decree relating to the Taking provides otherwise. A remnant of a Condominium Unit remaining after part of a Condominium Unit is the subject of a Taking described in this Section 9.2 shall be a Common Element. If any repair or rebuilding of the remaining portions of the Property is required as a result of such Taking, the remaining Owners shall determine by the affirmative vote or written consent of the remaining Owners holding not less than 80% of the votes in the Condominium Association either to rebuild or repair the Property or to take such other action as such remaining Owners may deem appropriate. If no repair or rebuilding shall be required, or if none be undertaken, the remaining portion of the Property shall be resurveyed, if necessary, and this Condominium Declaration shall be amended to reflect such Taking. This Condominium Declaration shall in all circumstances be amended to reflect the re-allocated Allocated Interests and Allocated Share following the Taking.

Section 9.3 Partial Taking of a Condominium Unit.

If only a portion of a Condominium Unit is subject to a Taking, such that the remaining portion of such Condominium Unit can practically and lawfully be used for any purpose permitted by this Condominium Declaration, the Owner shall be entitled to the award for such Taking, including the award

for the value of such Owner's interest in the Common Elements, whether or not such Common Element interest is acquired, and the Allocated Interest and Allocated Share of the Condominium Unit subject to such Taking shall be reduced and the Allocated Interests and Allocated Share, respectively, of the other Condominium Units shall be increased in accordance with the Reallocation Percentage. The Owner of such Condominium Unit, at its sole cost and expense, shall promptly repair, restore and rebuild the remaining portions of such Condominium Unit as nearly as possible to the condition which existed prior to such Taking.

Section 9.4 Taking of Common Elements.

If an action is brought to effect a Taking of all or any portion of the Common Elements together with or apart from any Condominium Unit, the Board of Directors, in addition to the general powers set out in this Declaration, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of such condemnation proceeding unless the action involves a material portion of the Common Elements in which case the agreement of all the Owners shall be required. With respect to any such Taking of the Common Elements only, all damages and awards shall be determined for such Taking as a whole and not for any Owner's interest therein. After the damages or awards for a Taking of the Common Elements are determined, such damages or awards shall be held by the Condominium Association, acting as trustee for each Owner, and their Mortgagees, as their interests shall appear, and any amounts not used for repair or restoration of the remaining Common Elements shall be divided among the Owners in proportion to each Owner's Allocated Share before the Taking, except that such portion of any such award attributable to the condemnation of a Limited Common Element shall be divided among the Owners of the Condominium Units served by such Limited Common Elements, as such Owners' interests existed in the Limited Common Elements condemned. The Owners shall determine by the affirmative vote or written consent of the Owners holding not less than 80% of the votes in the Condominium Association either to rebuild or repair the remaining Common Elements or to take such other action as the Owners may deem appropriate. If it is determined that such Common Elements should be replaced or restored by obtaining other land or building additional structures, this Condominium Declaration and the Map attached hereto shall be duly amended by instrument executed by the Board of Directors on behalf of the Owners and recorded in the Condominium Records.

Section 9.5 Taking of Several Condominium Units.

If an eminent domain proceeding results in the Taking of all or part of multiple Condominium Units, then the damage and awards for such Taking shall be determined and paid for each Condominium Unit as described in Section 9.2 and Section 9.3 of this Condominium Declaration, and the following shall apply: (a) the Condominium Association shall determine which of the Condominium Units damaged by such Taking may be practically and lawfully used for any purpose permitted by this Condominium Declaration, taking into account the nature of the Property and the reduced size of each Condominium Unit so damaged; (b) if the remaining Owners shall determine by the affirmative vote or written consent of the remaining Owners holding not less than 80% of the votes in the Condominium Association, with the written consent of 51% of the Mortgagees, that it is not reasonably practicable to operate the undamaged Condominium Units and the damaged Condominium Units which can be practically and lawfully used for any purpose permitted by this Condominium Declaration as a mixed-use condominium project in the manner provided in this Condominium Declaration, then the Property shall be deemed to be regrouped and merged into a single estate owned jointly in undivided interests by all the remaining Owners, as tenants-in-common, in the percentage of the Allocated Interest of each Owner (after reallocation in accordance with the procedures described in Section 9.2 and Section 9.3 of this Condominium Declaration); and (c) if the Condominium is not so terminated, then the damages and awards made with respect to each Condominium Unit which can be practically and lawfully used for any purpose permitted by

this Condominium Declaration shall be applied to repair and reconstruct such Condominium Unit as provided in Section 9.3 of this Condominium Declaration. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed pro rata against the Owners of those Condominium Units which are being repaired or reconstructed. With respect to those Condominium Units which may not be practically or lawfully used for any purpose permitted by this Condominium Declaration, after payment of the award, such Owner and any Mortgagee of such Owner shall be divested of all interest in the Property and the condemned Condominium Unit's entire Allocated Interest and Allocated Share shall be automatically reallocated to the remaining Condominium Units in proportion to the respective Allocated Interests and Allocated Share of those Condominium Units before the Taking, unless the decree relating to the Taking provides otherwise. A remnant of a Condominium Unit remaining after part of a Condominium Unit is the subject of a Taking, if the remnant of such Condominium Unit cannot be practically or lawfully used for any purposed permitted by this Condominium Declaration, shall be a Common Element. If any repair or rebuilding of the remaining portions of the Property (other than Condominium Units which can be practically and lawfully used for any purposed permitted by this Condominium Declaration) is required as a result of such Taking, the remaining Owners shall determine by the affirmative vote or written consent of the remaining Owners holding not less than 80% of the votes in the Condominium Association either to rebuild or repair the Property or to take such other action as such remaining Owners may deem appropriate. If no repair or rebuilding shall be required, or if none be undertaken, the remaining portion of the Property shall be resurveyed, if necessary, and this Condominium Declaration shall be amended to reflect such Taking. This Condominium Declaration shall in all circumstances be amended to reflect the re-allocated Allocated Interests and Allocated Share following the Taking.

Section 9.6 Complete Taking of Property.

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

Section 9.7 Payment of Awards and Damages.

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

ARTICLE X
Resolution of Disputes and Construction Disputes

Section 10.1 Disputes.

(a) Mediation. All Disputes, except those relating to equitable remedies, which are not resolved within 15 days after same have arisen (unless such greater time is provided elsewhere in the Governing Documents) shall be submitted for, or determined by, non-binding mediation as a condition precedent to the arbitration required by this Article X. Mediation of any Dispute shall be initiated by any Owner making a written demand therefor to the other Owner or Owners involved in such Dispute and to the Condominium Association or Declarant, as applicable. With respect to such mediation, the parties shall, within ten days after delivery of such written notice to the Condominium Association, agree upon a mediator who is: (i) a reputable person actively engaged in the commercial real estate industry for a continuous period

of not less than ten years; and (ii) is not an Affiliate of or has had material business dealings with any Owner or any member of the Condominium Association. If the parties are unable to agree upon a mediator, a mediator having the qualifications set forth above shall be appointed by the American Arbitration Association office in San Antonio, Texas. Such mediation shall occur within 30 days after the mediator has been agreed upon or appointed and shall occur at a mutually acceptable location in San Antonio, Texas. The costs of such mediation services shall be shared equally (but each party shall bear the cost of their own travel and attorneys' fees); provided, however, that if the Dispute is not resolved pursuant to such mediation, the provisions of Section 10.3(a) of this Condominium Declaration shall govern the payment of attorneys' fees and costs and expenses of mediation and arbitration under this Article X.

(b) Final Offer Arbitration. If the parties reach an impasse at mediation, as determined by the mediator in the mediator's sole and absolute discretion, and are unable to resolve any Dispute, any party to the Dispute may initiate binding arbitration (as the exclusive remedy with respect to a Dispute under this Condominium Declaration) by making a written demand therefor to the other parties involved in such Dispute no later than 30 days after the mediator declares that the parties have reached an impasse at mediation. The parties agree to select a single impartial arbitrator from a list taken from the American Arbitration Association of commercial arbitrators within 15 days of submitting the Dispute to arbitration, and if they cannot agree on an arbitrator, each party shall select an individual and those two so selected shall then select the single impartial arbitrator who shall thereafter serve as arbitrator with respect to the Dispute. The issues in dispute shall be submitted as "baseball" or final-offer arbitration, whereby each party shall submit what it deems to be its most reasonable position to the arbitrator and the arbitrator shall select one of those two positions. The arbitrator shall have no discretion to select or award a position other than to select one of those submitted by the parties. To the extent rules governing arbitration are deemed necessary by the arbitrator (or by agreement of the parties), the current Rules for Commercial Mediation and Arbitration promulgated by the American Arbitration Association shall apply. The decision of the arbitrator shall be rendered no later than ten days from the initiation of the arbitration procedure. The parties may resort to any court of competent jurisdiction for enforcement of, or any other action relating to, the arbitrator's award. The party or parties whose position is not selected or awarded shall be responsible for all attorneys' fees, costs and expenses (incurred in connection with the mediation and arbitration of a Dispute under Article X of this Condominium Declaration) of the party whose position is selected or awarded.

Section 10.2 Construction Disputes.

(a) Mediation. Any Construction Dispute not resolved within 15 days after same has arisen shall be submitted for, or determined by, non-binding mediation as a condition precedent to arbitration. Mediation of any Construction Dispute shall be initiated by any party making a written demand therefor to all other parties involved in such Construction Dispute. Any mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the time the Construction Dispute arises. With respect to such mediation, the parties shall, within 15 days after demand is filed, agree upon a mediator who is: (i) a reputable person actively engaged in the construction industry or a lawyer experienced in the practice of construction law for a continuous period of not less than ten years; and (ii) not an Affiliate of, or has had material business dealings with any Owner, any member of the Condominium Association, or any other party, including Declarant or an Affiliate of Declarant, involved in the mediation. If the parties are unable to agree upon a mediator, a mediator having the qualifications set forth above shall be appointed by the American Arbitration Association office in San Antonio, Texas. Such mediation shall occur within 30 days after the mediator has been agreed upon or appointed and shall occur at a mutually acceptable location in San Antonio,

Texas. The costs of such mediation services shall be shared equally (but each party shall bear the cost of their own travel and attorneys' fees); provided, however, that if the Construction Dispute is not resolved pursuant to such mediation, the provisions of Section 10.3(a) of this Condominium Declaration shall govern the payment of attorneys' fees and costs and expenses of mediation and arbitration under this Article X.

(b) Arbitration. If the parties reach an impasse at mediation, as determined by the mediator in the mediator's sole and absolute discretion, and are unable to resolve any Construction Dispute within 30 days of such mediation session, any party to the Construction Dispute may initiate binding arbitration (as the exclusive remedy with respect to a Construction Dispute under this Condominium Declaration) by making a written demand therefor to the other parties involved in such Construction Dispute no later than 45 days after the mediator declares that the parties have reached an impasse at mediation or the mediation otherwise fails. The parties agree that the arbitration shall be governed by the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. The parties agree to select a single impartial arbitrator within 15 days of submitting the Construction Dispute to arbitration. If the parties cannot agree upon an arbitrator, a demand for arbitration shall be filed in writing with the American Arbitration Association at the office in the County where the Property is located with copies to all parties.

Arbitration shall be conducted with a single arbitrator unless the claim, demand, or amount in controversy exceeds $750,000, in which case a panel of three arbitrators shall be used. If the amount in controversy exceeds $750,000 and the parties cannot mutually agree upon three panel members, the parties shall be required to obtain a list of proposed neutral parties through the American Arbitration Association office in the locality where the Property is located. The parties shall then proceed with the selection of panel members in accordance with the American Arbitration Association Construction Industry Arbitration Rules. Any arbitrator(s) utilized, whether appointed or agreed, must be (i) reputable person(s) actively engaged in the construction industry or as a lawyer experienced in the practice of construction law for a continuous period of not less than ten years; and (ii) not be an Affiliate of, or have had material business dealings with any Owner, any member of the Condominium Association, or any other party, including Declarant or an Affiliate of Declarant, involved in the arbitration. The arbitrator shall establish reasonable procedures and requirements for the production of relevant documents and require the exchange of information concerning witnesses to be called. The parties shall be entitled to discover all documents and information reasonably necessary for a full understanding of any legitimate issue raised in the arbitration and the parties may use all methods of discovery available under the Texas Rules of Civil Procedure and shall be governed thereby. There shall be a prehearing meeting between the parties at which the arbitrator shall make and set schedules for discovery and hearings consistent with their powers as set forth herein. The Texas Rules of Evidence shall be applied by the arbitrator but liberally construed to allow for the admission of admissible evidence that is helpful in resolving the controversy. Rulings on the admission of evidence made by the arbitrator at the hearing shall be final and not subject to any appeal. At the time of the award, the arbitrator shall prepare and provide to the parties a reasoned, detailed, award with an explanation of the facts and legal principles supporting the award.

Section 10.3 General.

(a) Procedure and Award. In no event shall a Dispute or a Construction Dispute be initiated after the date when institution of legal or equitable proceedings based on such Dispute or Construction Dispute would be barred by the applicable statute of limitations. With respect to any Construction Dispute, all demands and all answering statements thereto which include any

monetary claim, counterclaim or cross-claim must state the monetary amount being sought. If the monetary amount is unliquidated or has not been fully determined, the demand or answering statement seeking such recovery shall state, in good faith, the minimum amount of such monetary claim, exclusive of interest and attorneys' fees. In any arbitration of a Dispute, the party or parties whose position is not selected or awarded shall be responsible for all attorneys' fees, costs and expenses (incurred in connection with the mediation and arbitration of a Dispute under this Article X) of the party whose position is selected or awarded for the arbitration of the Dispute under this Article X. In any arbitration of a Construction Dispute, the arbitrator(s) shall determine the prevailing party and award to such prevailing party, in addition to any other relief to which such party is entitled to recover, its reasonable attorneys' fees, expert witness fees, costs, and other reasonable expenses incurred in connection with the mediation and/or arbitration of such Construction Dispute under this Article X. The parties may resort to any court of competent jurisdiction for enforcement of, or any other action relating to, the arbitrator's award.

(b) Consolidation. A Construction Dispute may be consolidated with similar proceedings and resolved pursuant to the dispute resolution procedures contained in this Article X to include participation of the contractors, design professionals or any other person or entity if such proceedings involve common issues of law or fact. It is expressly understood and agreed that Declarant shall have the right, but not the obligation, to join in any such dispute resolution proceedings any other party whose work or services on or in connection with the Property may be at issue or whose claims(s) involve the design or construction of the Property.

(c) Sole Remedy. With respect to any Dispute or Construction Dispute it is agreed that the dispute resolution provisions of this Article X shall be the sole remedy of the parties involved in such Dispute or Construction Dispute. Notwithstanding any other provisions of this Condominium Declaration, the foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties shall be specifically enforceable under prevailing arbitration law in any court having jurisdiction thereof. The foregoing agreement to arbitrate shall not constitute an agreement or consent to arbitration of any dispute, claim, controversy or matter that does not constitute a Dispute or Construction Dispute, as applicable. The foregoing agreement to arbitrate any Dispute or Construction Dispute shall not constitute an agreement or consent to arbitration with any Person not named or described in this Condominium Declaration; provided that any arbitration proceeding initiated under the terms of Section 10.2 of this Condominium Declaration may, at the request of any party, be joined or consolidated with other arbitration proceedings involving additional parties if the Dispute or Construction Dispute, as applicable, and the subject of such other proceedings arise out of common or interrelated factual occurrences. Except to the extent permitted by applicable law, any award of the arbitrator shall be final, binding and non-appealable upon the parties involved in the Dispute or Construction Dispute and such Mortgagees and judgment thereon may be entered by any court having jurisdiction.

ARTICLE XI
Indemnification and Limited Liability

Section 11.1 INDEMNIFICATION.

(a) **GENERAL. EACH OWNER AND ITS TENANTS, INDIVIDUALLY AND COLLECTIVELY (EACH AN "INDEMNIFYING PARTY"), HEREBY INDEMNIFY, DEFEND AND HOLD HARMLESS DECLARANT, THE CONDOMINIUM ASSOCIATION, THE BOARD OF DIRECTORS, AND THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (EACH AN**

"INDEMNIFIED PARTY"), INDIVIDUALLY AND COLLECTIVELY, OR FROM ANY AND ALL CLAIMS BY ANY PERSON ARISING OR RESULTING FROM, SUSTAINED OR INCURRED BY, ANY INDEMNIFIED PARTY, OR WHICH CAN OR MAY ARISE, RESULT, BE SUSTAINED OR INCURRED IN CONNECTION WITH (i) THE GOOD FAITH EXERCISE OR FAILURE TO EXERCISE OR THE USE OF ANY INDEMNIFIED PARTY'S RIGHTS OR OBLIGATIONS CONTAINED IN THE GOVERNING DOCUMENTS; (ii) THE BREACH BY THE RELEVANT INDEMNIFYING PARTY OF ANY PROVISION OF THIS CONDOMINIUM DECLARATION; (iii) ANY HAZARDOUS SUBSTANCE, ON, IN, UNDER, OR IN THE AIR ABOVE, ALL OR ANY PART OF THE LAND; (iv) THE NEGLIGENCE, FRAUD, WILLFUL MISCONDUCT OR CRIMINAL MISCONDUCT OF THE RELEVANT INDEMNIFYING PARTY; AND (v) ANY IMPROPER ALLEGATION OF TAX BURDEN BY A TAXING AUTHORITY.

(b) **ALTERATIONS AND IMPROVEMENTS. EACH INDEMNIFYING PARTY MAKING, CAUSING OR PERMITTING TO BE MADE ANY ADDITION, ALTERATION OR IMPROVEMENT TO ITS CONDOMINIUM UNIT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS EACH INDEMNIFIED PARTY AND ALL OTHER OWNERS FROM ANY AND ALL CLAIMS WHATSOEVER IN CONNECTION WITH SUCH ADDITION, ALTERATION OR IMPROVEMENT TO ANY OWNER'S CONDOMINIUM UNIT.**

(c) **PLAN REVIEW. ANY OWNER SUBMITTING PLANS UNDER THE PROVISIONS OF THIS CONDOMINIUM DECLARATION, BY DELIVERY OF SUCH SUBMITTED PLANS TO THE DECLARANT, AND ANY OWNER, BY ACQUIRING TITLE TO A CONDOMINIUM UNIT, AGREES NOT TO SEEK DAMAGES FROM ANY INDEMNIFIED PARTY, ARISING OUT OF ANY INDEMNIFIED PARTY'S REVIEW OF SUCH SUBMITTED PLANS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NO INDEMNIFIED PARTY SHALL BE RESPONSIBLE FOR THE REVIEW, NOR SHALL ANY INDEMNIFIED PARTY'S REVIEW OR APPROVAL OF ANY PLANS BE DEEMED APPROVAL OF ANY PLANS FROM THE STANDPOINT OF THE STRUCTURAL SAFETY, SOUNDNESS, WORKMANSHIP, MATERIALS, USEFULNESS, CONFORMITY WITH BUILDING OR OTHER CODES OR INDUSTRY STANDARDS OR COMPLIANCE WITH THE GOVERNING DOCUMENTS OR ANY LEGAL REQUIREMENTS. FURTHER, EACH OWNER AGREES TO INDEMNIFY, DEFEND, AND HOLD EACH INDEMNIFIED PARTY HARMLESS FROM, AND DEFEND EACH INDEMNIFIED PARTY AGAINST ANY AND ALL CLAIMS WHATSOEVER IN CONNECTION WITH THE REVIEW OF ANY PLANS OF AN OWNER SUBMITTED HEREUNDER. APPROVAL OF ANY PLANS, USES OR VARIANCES BY THE DECLARANT OR THE BOARD OF DIRECTORS DOES NOT CONSTITUTE A WARRANTY OR REPRESENTATION THAT SUCH PLANS OR USE COMPLY WITH THE LEGAL REQUIREMENTS OR PRUDENT CONSTRUCTION PRACTICES. IT IS THE SOLE RESPONSIBILITY OF EACH OWNER TO DETERMINE AND ENSURE THAT ALL PLANS AND USES FOR ITS PROPOSED IMPROVEMENTS COMPLY WITH THE LEGAL REQUIREMENTS AND PRUDENT CONSTRUCTION PRACTICES.**

(d) **MECHANIC'S LIENS; INDEMNIFICATION. EACH OWNER SHALL INDEMNIFY AND HOLD HARMLESS EACH OF THE OTHER OWNERS, AND THE CONDOMINIUM ASSOCIATION FROM AND AGAINST ALL CLAIMS ARISING**

FROM THE ASSERTION OR FILING OF ANY MECHANIC'S LIEN TO THE EXTENT ARISING THROUGH OR FROM THE ACTIONS OF SUCH OWNER.

Section 11.2 Limitation of Liability.

Neither Declarant, the Condominium Association, the Board of Directors, nor any of their respective officers, directors, employees or agents shall be, individually or in combination, liable for Claims of: (a) any Owner or any other Person submitting Plans, proposed uses or variances for approval, by reason of mistake in judgment, negligence, gross negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any Plans, proposed use or variance submitted for approval; (b) any Owner in connection with any design, engineering or construction defect associated with any improvement constructed on the Land; (c) any Owner in connection with the breach or violation of any provision of the Governing Documents by an Owner; (d) any Owner in connection with: (i) injury or damage to any Person or property caused by such Owner or any other Person, or resulting from any utility, rain, snow or ice which may leak or flow from or over any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment which the Condominium Association is responsible to maintain hereunder, so long as such failure was not intentional or in bad faith; (ii) loss by damage, theft, or otherwise of any property that may be stored in or upon any of the Common Elements; or (iii) damage or injury caused in whole or in part by the failure of the Condominium Association, or any officer, director, employee or agent of the Condominium Association to discharge its or their responsibilities under Section 5.1 so long as such failure was not intentional or in bad faith (collectively, "Common Element Damage"); or (e) any Owner or any other Person for breach of representation or warranty, express or implied, in connection with any portion of the Land or Improvements, its physical condition, the Legal Requirements, fitness for intended use, or in connection with the development, sale, operation, maintenance, taxes or regulation thereof, unless and except specifically set forth in writing and executed by the Person against whom the Claim is asserted.

Section 11.3 RELEASE.

THE OWNERS, BY ACCEPTANCE OF A DEED TO THEIR RESPECTIVE CONDOMINIUM UNITS, RELEASE AND FOREVER DISCHARGE THE DECLARANT, THE CONDOMINIUM ASSOCIATION, THE BOARD OF DIRECTORS, AND THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, FROM ALL CLAIMS IN CONNECTION WITH (a) ANY DESIGN, ENGINEERING OR CONSTRUCTION DEFECT ASSOCIATED WITH ANY IMPROVEMENT CONSTRUCTED ON THE LAND; (b) THE BREACH OF ANY PROVISION OF THE GOVERNING DOCUMENTS BY AN OWNER (to the extent such released party is not the Owner in question); (c) THE BREACH OF ANY REPRESENTATION OR WARRANTY; (d) COMMON ELEMENT DAMAGE; AND (e) ANY DISCREPANCY IN ACTUAL UNIT MEASUREMENTS FROM THOSE SET FORTH ON THE MAP OR IN ANY AGREEMENT FOR THE PURCHASE OF A CONDOMINIUM UNIT TO WHICH DECLARANT OR ANY OWNER IS OR WAS A PARTY.

Section 11.4 Liability of Owners for Damage.

Each Owner shall be liable to the Condominium Association for any damage to the Common Elements and for any expense or liability incurred by the Condominium Association that may be sustained by reason of negligence or willful misconduct of such Owner or its Tenants, and for any violation by such Owner or its Tenants, of the Governing Documents. The Condominium Association shall have the power to levy and collect a Special Assessment against an Owner to cover the costs and expenses incurred by the Condominium Association on account of any such damage or any such violation of the Governing Documents, including interest and reasonable attorneys' fees, or for any increase in insurance premiums directly attributable to any such damage or violation.

Section 11.5 The Board of Directors, any Manager and the Condominium Association each waive any claim they might have against an Owner and such Owner's Tenants (and their respective Designees), for (i) any damage to or theft (except to the extent such Owner is the offending party), destruction, loss or loss of use of any property or (ii) any damage due to personal or bodily injury, to the extent the same is insured against under any insurance policy of the types described in the Governing Documents that covers the Property, such Owner's, Tenant's, or the Condominium Association's fixtures, personal property, improvements, or business, or is required to be insured against under the terms of the Governing Documents, **REGARDLESS OF WHETHER THE NEGLIGENCE OF THE OTHER OWNER, ITS TENANTS, OR THEIR RESPECTIVE DESIGNEES, ANY MEMBER OF THE BOARD OF DIRECTORS, ANY MANAGER OR THE CONDOMINIUM ASSOCIATION (AS APPLICABLE) CAUSED SUCH (1) DAMAGE TO OR THEFT (except to the extent such Owner is the offending Owner), DESTRUCTION, LOSS OR LOSS OF USE OF, ANY PROPERTY OR INCONVENIENCE; OR (2) DAMAGE TO THE PERSON OR PERSONS DESCRIBED IN THIS SUBSECTION 11.5.**

Section 11.6 No officer, director, employee or agent of the Condominium Association shall be liable to any Owner or any Tenant, for any claims, actions, demands, costs, expenses (including attorneys' fees), damages or liability, of any kind or nature, if acting in good faith and in the pursuit of their duties, except as otherwise expressly set forth in the Governing Documents and such officers, directors, employees and agents shall be indemnified in accordance with the provisions of the Governing Documents.

ARTICLE XII
Mortgagee Protection Provisions

Section 12.1 Notice Provisions.

All Mortgagees shall be entitled to receive the following notices in writing from the Condominium Association, which notice shall be sent by the Condominium Association promptly following the occurrence of the applicable event:

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

(b) notice of default by the Owner (the beneficial interest of such Owner's Condominium Unit is held by that Mortgagee) in the performance of such Owner's obligations, delinquency in the payment of Assessments owed by such Owner or Impositions which remains uncured for a period of 60 days after notice thereof;

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

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

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

(f) 30 days' notice prior to the effective date of (i) any proposed material amendment to this Condominium Declaration or the Map; (ii) any termination of an agreement for

professional management of the Property following any decision of the Owners to assume self-management of the Property; and (iii) any proposed termination of the Condominium.

Section 12.2 Cure Rights.

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

Section 12.3 No Invalidity of Mortgage Lien.

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

Section 12.4 Mortgagee Requirements.

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

Section 12.5 Unpaid Assessments.

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

Section 12.6 Books and Records.

All Mortgagees, upon written request, shall have the right to (a) examine the books and records of the Condominium Association, including current copies of this Condominium Declaration, the Condominium Bylaws and the Condominium Rules & Regulations and financial statements, during normal

business hours; (b) require the Condominium Association to submit an annual audited financial statement for the preceding fiscal year within 120 days of the end of the Condominium Association's fiscal year, if one is available, or have one prepared at the expense of the requesting entity if such statement is not otherwise prepared by the Condominium Association; (c) receive written notice of all meetings of the Owners; and (d) designate in writing a representative to attend all such meetings.

Section 12.7 Priority of Rights.

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

Section 12.8 Required Percentage.

Any required percentage of Mortgagees in this Condominium Declaration shall mean and refer to such percentage of the face amount of the indebtedness held by such Mortgagees and not the number of such Mortgagees.

ARTICLE XIII
Miscellaneous

Section 13.1 Revocation or Termination of Condominium Declaration.

Except as provided in Section 9.6 of this Condominium Declaration, this Condominium Declaration may be revoked or the Condominium established hereby may be terminated only by an instrument in writing, duly approved, executed and acknowledged by those Owners holding not less than 100% of the votes in the Condominium Association, with the written consent of 51% of the Mortgagees. Any such instrument of revocation or termination shall be duly filed of record in the County. If the Property is to be sold upon termination, the agreement effecting such termination shall also set forth the terms of such sale and comply with the provisions of the Act.

Section 13.2 Amendment to Condominium Declaration.

This Condominium Declaration may be amended at a meeting of the Owners at which the amendment is approved by those Owners holding not less than 67% of the votes in the Condominium Association, with the written consent of not less than 51% of the Mortgagees. Such amendment shall be evidenced by a written instrument executed and acknowledged by an officer of the Condominium Association on behalf of the consenting Owners and by the consenting Mortgagees and filed of record in the County. Any such amendment so effected shall be binding upon all of the Owners; provided, however, that except as permitted or required by the Act, no such amendment shall: (a) cause the alteration or destruction of all or part of any Condominium Unit unless such amendment has been consented to by the Owner and the Mortgagee of the Condominium Unit which is to be altered or destroyed; (b) increase the number of Condominium Units; (c) change the boundaries of a Condominium Unit; or (d) change the use restrictions on a Condominium Unit unless, with respect to the matters described in Subsections 13.2(a), (c) and (d) of this Condominium Declaration, such amendment has been consented to by 100% of the Allocated Interests. No such amendment shall become effective unless approved by Declarant if Declarant still owns one or more Condominium Units and the amendment would, in Declarant's reasonable determination: (i) increase or otherwise modify Declarant's obligations; or (ii) materially inhibit or delay Declarant's ability to complete the Improvements or to convey any portion of the Property owned by Declarant. Declarant, if Declarant owns a Condominium Unit which has never been occupied, or the Condominium Association,

may, without a vote of the Owners or the Mortgagees or approval of the Condominium Association, amend this Condominium Declaration or the Condominium Bylaws in any manner necessary to meet the requirements of the Federal National Mortgage Association, the Federal National Home Loan Mortgage Corporation, the Federal Housing Administration or the Veterans Administration.

Section 13.3 Partial Invalidity.

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

Section 13.4 Conflicts.

If any of the provisions of the Governing Documents shall be in conflict with the provisions of the Act or the TNCL, the provisions of such statutes shall control. If a conflict exists between the provisions of the Governing Documents, such documents shall control in the following order:

(a) this Condominium Declaration;
(b) the Condominium Certificate of Formation;
(c) the Condominium Bylaws;
(d) the Condominium Rules & Regulations; and
(e) the Resolutions of the Board of Directors of the Condominium Association.

Each Owner acknowledges that it has been given the opportunity to review the documents listed in this Subsections 13.4(a)-(e) and has had the opportunity to confer with counsel in connection with the purchase of a Condominium Unit as applicable. The provisions of the Governing Documents embody the entire final documentation to which the Condominium Units and the Owners will be subject in relation to the Condominium and supersede any and all agreements, representations, and understandings, whether written or oral, between Declarant and the Owners.

Section 13.5 Captions and Exhibits.

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

Section 13.6 Usury.

It is expressly stipulated and agreed to be the intent of Declarant that at all times the terms of this Condominium Declaration, the Condominium Bylaws and the Condominium Rules & Regulations shall comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable under any provision of this Condominium Declaration, the Condominium Bylaws, or the Condominium Rules & Regulations. If the applicable law is ever judicially interpreted so as to render usurious any amount contracted for, charged, taken, reserved or received pursuant to this Condominium Declaration, the Condominium Bylaws, the Condominium Rules & Regulations or any other communication or writing by or between Declarant, the Condominium Association and the Owners related to the matters set forth in this Condominium Declaration, the Condominium Bylaws, or the Condominium Rules & Regulations, then it is the express intent of Declarant that all amounts charged in excess of the maximum rate allowed by Texas law shall be automatically canceled, *ab initio*, and all amounts in excess of the maximum rate allowed by Texas law theretofore collected shall be refunded, and the provisions of this Condominium Declaration, the

Condominium Bylaws, or the Condominium Rules & Regulations shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law. The Owners hereby agree that as a condition precedent to any claim seeking usury penalties against Declarant, the Condominium Association, any Person will provide written notice to Declarant, the Condominium Association, advising Declarant, the Condominium Association in reasonable detail of the nature and amount of the violation, and Declarant, the Condominium Association shall have 60 days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to a Person or crediting such excess interest against the obligation then owing by such Person to Declarant, the Condominium Association.

Section 13.7 Use of Number and Gender.

Whenever used in this Condominium Declaration, and unless the context shall otherwise provide, the singular number shall include the plural, the plural number shall include the singular and the use of any gender shall include all genders.

Section 13.8 Governing Law.

THIS CONDOMINIUM DECLARATION AND THE CONDOMINIUM BYLAWS, CONDOMINIUM CERTIFICATE OF FORMATION, AND CONDOMINIUM RULES & REGULATIONS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY ACTION BROUGHT IN CONNECTION WITH THE CONDOMINIUM SHALL BE IN BEXAR COUNTY, TEXAS.

Section 13.9 Notice.

All notices or other communications required or permitted to be given pursuant to this Condominium Declaration shall be in writing and shall be considered as properly given (a) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; (b) by delivering same in person to the intended addressee; (c) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee; or (d) by telefacsimile to the addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. For purposes of notice, the addresses of Declarant and the Condominium Association shall be as set forth in this Section 13.9, the address of each Owner shall be the address of the Condominium Unit and the address of each Mortgagee shall be the address provided to the Condominium Association; provided, however, that any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of 30 days' notice to the Condominium Association in the manner set forth in this Section 13.9:

Declarant: _____
_____
_____
_____

Condominium Association: _____
_____
_____

Section 13.10 Estoppel Certificates.

Each Owner, from time to time but no more often than twice each calendar year, shall have the right to require the Condominium Association (as to all items listed in this Section 13.10) and the other Owners (as to Subsections 13.10(c), (d), (e) and (f)) to deliver to the requesting Owner a written statement addressed to the requesting Owner and its Mortgagee or purchaser of its Condominium Unit, as applicable, without payment of any fee or cost certifying: (a) this Condominium Declaration is unmodified and in full force and effect (or if modified that this Condominium Declaration as so modified is in full force and effect); (b) the Condominium Declaration attached to the certificate is a true and correct copy of this Condominium Declaration and all amendments hereto; (c) the date through which all Assessments have been paid by the Owner requested to provide the certificate and by the Owner requesting such certificate; (d) to the knowledge of the certifying party, neither the certifying party nor the requesting party is in default of any of its obligations under this Condominium Declaration (or if the certifying party knows the certifying party or requesting party to be in default, specifying the defaults and the remaining cure period, if any); (e) the certifying party holds no existing liens against the requesting party's Condominium Unit; and (f) such other matters as are reasonably requested by the requesting Owner.

ARTICLE XIV
Special Provisions – City

Section 14.1 Modifications of Allocated Interests of Allocated Share.

While City is the Owner of the City Unit, no modification or amendment of the City Unit's Allocated Interests or Allocated Share shall be effective against the City Unit unless (a) to the extent the Allocated Interests and Allocated Share being modified relate to a Limited Common Element only, all other Condominium Units entitled to benefit from the relevant Limited Common Elements are proportionately and similarly affected, and (b) to the extent the Allocated Interests and Allocated Share being modified relate to General Common Elements, all other Condominium Units are proportionately and similarly affected, unless the City approves the modification or amendment in writing.

Section 14.2 Amendment of the Declaration.

While City is the Owner of the City Unit, no modification or amendment to the Declaration or any Supplemental Declaration, or exercise of any Special Declarant Right, shall be effective against the City Unit that (a) is discriminatory against the City Unit, (b) affects the City Unit's voting rights, except to the extent the other Condominium Units are proportionately and similarly affected, or (c) affects the allocations of assessments hereunder, except to the extent the other Condominium Units are proportionately and similarly affected, except to the extent the City approves the same in writing.

Section 14.3 Exercise of Declarant Right.

While City is the Owner of the City Unit, neither the Declarant nor or the Condominium Association shall exercise its Development Rights to (a) convert Common Elements into Condominium Units, (b) convert General Common Elements into Limited Common Elements, or (c) materially or adversely impact the enjoyment and utilization by the City of the City Unit or access thereto, without the prior written approval of the City. The City will not unreasonable condition, withhold or delay its written approval to items (a) or (b) in this paragraph if the exercise of the Development Rights in question will not result in any increase in Allocated Interests or Allocated Share to the City Unit.

Section 14.4 Designation of Common Elements; Allocation of Assessments.

While City is the Owner of the City Unit, without the City's prior written consent no interior area of the Building within the Upper Unit or Lower Unit shall be designated as General Common Element unless such areas are Structure or Systems benefiting the City Unit; provided, however, that the same may be designated as Limited Common Elements with the City not being allocated any Assessments related thereto without the City's consent. By way of example only, the Owner of the City Unit shall not be assessed for maintenance or repairs or construction of lobbies, hallways, fixtures, or other common features on the upper floors of the Building outside of the City Unit, as the Owner of the City Unit will not utilize those areas, but the City Unit will be assessed for Structure and Systems maintenance and repair for the Building.

Section 14.5 Security Protocols.

While the City is the Owner of the City Unit, the Declarant, Condominium Association and all Owners and their agents shall, in the exercise of any easement rights granted under Section 3.5 or repair and access rights under Section 5.3 hereof, as to the City Unit, comply with any and all reasonable City security protocols adopted by the City from time to time related to access to that Condominium Unit; *provided, however,* in the event the easement or access rights are being exercised in the event of an emergency, such parties and their agents shall use commercially reasonable efforts to comply with the City's security protocols. ***[RESERVED TO FINALIZE]***

Section 14.6 Suspension of Voting Rights.

Notwithstanding Section 4.3 hereof, for so long as the City is an Owner of the City Unit, the City's voting rights shall not be suspended under Section 4.3 until after the City has been provided written notice of the relevant default and failed to cure the same within thirty (30) days after receipt of such notice

Section 14.7 Impositions not Separately Assessed.

If any Impositions with respect to the Property are not separately assessed to the Owners, as contemplated by Section 5.6(c), notwithstanding the balance of Section 5.6(c), while the City is the Owner of the City Unit and not subject to ad valorem taxes or other various Impositions, the City Unit shall not be allocated or be required to pay any portion of such Impositions.

Section 14.8 Repair or Rebuilding Condo Unit in Excess of Replacement Cost.

While the City is the Owner of the City Unit, the City will not be assessed any Special Assessment for the rebuilding or repair any Condominium Unit in excess of its full replacement cost, as contemplated in Section 8.6 of this Declaration, unless the City approves such an Special Assessment in writing.

Section 14.9 Termination of the Condominium Regime.

While the City is the Owner of the City Unit, the condominium regime created by this Declaration shall not be terminated without the written consent of the City.

Section 14.10 HVAC Control.

Within six (6) months following the date this Declaration is recorded in the Real Property Records of Bexar County and so long as the City is the Owner of the City Unit and the City Unit does not have a segregated heating, ventilation and air conditioning system controlled by the City Unit ("HVAC"), the City and Declarant shall each have the option of election to install or cause the installation of a separate HVAC

system allowing the Owner or occupant of the City Unit to control the HVAC system servicing the City Unit. Declarant may exercise its option using the rights and obligations delegated to Declarant under this Declaration; provided, however, that such work shall be at Declarant's sole cost and expense. In order for the City to exercise its option to cause the installation of a separate HVAC system, the City shall provide Declarant with written notice along with a deposit of the sum of Ten Thousand and No/100 Dollars ($10,000.00) for purposes of causing Declarant to prepare a budget and mechanical and electrical engineering plan, as necessary, for the requested work. Upon receipt of such notice and deposit, the Declarant shall diligently and in good faith prepare a budget and mechanical and electrical engineering plan, as necessary, for the requested work and present the same to the City within thirty (30) days. If the costs of preparing such budget and plans exceeds Ten Thousand and No/100 Dollars ($10,000.00), then the City shall promptly reimburse the Declarant for any reasonable costs actually paid to third parties in obtaining the budget and plans in excess of Ten Thousand and No/100 Dollars ($10,000.00) upon receipt by the City of reasonable evidence of such paid expenses. If the costs of preparing such budget and plans is less than Ten Thousand and No/100 Dollars ($10,000.00), then Declarant shall promptly reimburse the difference between Ten Thousand and No/100 Dollars ($10,000.00) and the actual cost of preparing such budget and plans within thirty (30) days following the date upon which Declarant delivers such budget and plat to the City.

Upon receipt and review of the budgets and plans, the City may elect to proceed with the work or elect to cancel its request to cause the installation of a separate HVAC system. If the City elects to proceed with the work, then the City shall deliver to Declarant a sum equal to one hundred ten percent (110%) of the estimated cost of such work to be used for completion of the work. At the City's election, the City may cause such sum to be held in escrow by a third-party mutually agreeable to the City and Declarant and pursuant to an escrow agreement mutually agreeable to the City and Declarant. Upon receipt or deposit of such sum, Declarant shall commence and diligently pursue the completion of such work in a commercially reasonable manner and at a commercially reasonable pace. Such work shall be performed by a qualified and independent contractor at market rates, and shall be performed in a good and workmanlike manner and warrantied based on industry standard and practice for similar work. The City Unit shall continue to benefit from HVAC service during all times during the work except for non-business hours and weekends and except to the extent such continued HVAC service is not feasible during certain phases of the work. The City shall be responsible for all reasonable costs actually incurred in connection with the work, including those in excess of one hundred ten percent (110%) of the estimated cost of such work and shall also be entitled to the return of any funds remaining from the sum delivered to Declarant or deposited into escrow.

It is contemplated that the Declarant shall engage in significant reconstruction of portions of the Upper Unit and Lower Unit. The Declarant shall notify City during the development of the plans and budgeting of such work so that the City may request the HVAC work be performed in conjunction with the Declarants construction projects. To the extent the City requests the HVAC work be performed in conjunction with Declarant's work, the budget and plans will reflect a fair and reasonable and good faith allocation of expenses between Declarant and the City related to the portion of the work benefitting and being performed for the relevant party, and the City will be responsible only for a fair allocation of the costs which relate to its requested HVAC work.

Any disagreement regarding allocation of costs related to the City HVAC work under this Section shall be a Dispute hereunder, and after 15-days of good faith negotiation between the parties may be submitted to Final Offer Arbitration under Section 10.1(b) of this Agreement for determination of a fair allocation of costs. ***[RESERVED TO BE FINALIZED]***

Section 14.11 Indemnification Obligation under Section 11.1. Section 11.1 hereof shall not apply to the City.

Section 14.12 Board Seat. While the City is the Owner of the City Unit, the Governance Documents shall provide that the City shall be entitled to appoint one (1) designee to a board seat on the Board of Directors of the Condominium Association. The Governance Documents shall provide that such right shall expire and terminate on the earlier of (a) the date the City is no longer the Owner of the City Unit, or (b) the City Unit is reduced to a size being less than fifty percent (50%) of the square footage it includes as of the effective date hereof. ***[RESERVED TO BE FINALIZED]***

Section 14.13 Amendment of Article 14.

While the City is the Owner of the City Unit, this Article 14 may not be amended or modified without the written consent of the City.

[The remainder of this page is intentionally left blank.]

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

DECLARANT:

_____

By:_____
Name:_____
Title:_____

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me on the _____ day of _____, 20__, by _____, the _____ of _____, on behalf of said _____.

[S E A L]

_____
Notary Public - State of Texas

My Commission Expires:

_____

_____
Printed Name of Notary

List of Exhibits:

Exhibit "A" - Legal Description of the Land
Exhibit "B" - Map
Exhibit "C" - Allocation of Ownership Interests

EXHIBIT "A"

Property Description

EXHIBIT "B"

Map

That certain Condominium Map of 114 West Commerce Condominium, located in Bexar County, Texas, recorded on _____, 201_____, in Volume _____, Page _____ of the Real Property Records of Bexar County, Texas.

EXHIBIT "C"
Allocated Interests

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

CONDOMINIUM UNIT	SQUARE FEET	ALLOCATED INTEREST (%)
Upper Unit	____	____
Lower Unit	____	____
City Unit	____	____
TOTAL:	____	100%

Allocated Share

Each Unit's Allocated Share is as set forth below:

CONDOMINIUM UNIT	SQUARE FEET	ALLOCATED SHARE (%)
Upper Unit	____	____
Lower Unit	____	____
City Unit	____	____
TOTAL:	____	100%

EXHIBIT B

PARKING LEASE AGREEMENT

THIS PARKING LEASE AGREEMENT ("***Lease***") is entered into as of _____, 201__ ("***Effective Date***") by and between the City of San Antonio ("***Landlord***") and Weston Urban, LLC and its successors and assigns ("***Tenant***").

RECITALS:

A. Landlord is the owner of that certain office tower and associated parking garage on the real property commonly known as 100 West Houston Street, San Antonio, Texas 78205 and legally described on **Exhibit "A"** attached hereto (the "***Landlord Tower Property***").

B. On the Effective Date hereof, Landlord has conveyed to Tenant certain real property and associated improvements commonly known as 114 West Commerce Street, San Antonio, Texas 78205 and legally described on **Exhibit "B"** attached hereto (the "***Municipal Plaza Property***").

C. The parking garage currently located on the Landlord Tower Property is referred to herein as the "***Parking Garage.***"

D. Landlord desires to lease various parking spaces in the Parking Garage to Tenant, and Tenant desires to lease such parking spaces in the Parking Garage from Landlord.

E. On the Effective Date hereof and following the execution of this Lease, Tenant will be submitting all the real property interests comprising the Municipal Plaza Property and all right appurtenant thereto, including its rights under this Lease to the establishment of a condominium regime (the "***Condominium***") under that certain Condominium Declaration for 114 West Commerce Condominium (the "***Condominium Declaration***") dated as of the Effective Date hereof and recorded as Document No. ____, Volume __, Page ___, of the Bexar County Official Public Records and upon creation of the Condominium the rights and obligations of Tenant under this Lease shall be assigned to the condominium association being formed in connection with the Condominium (the "***Association***") and comprised of the unit owners of the Condominium, whereupon such Association shall be deemed the Tenant for all purposes hereunder.

NOW THERFORE, in consideration of the mutual promises, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
DESIGNATION AND LEASE OF SPACES; PERMITTED USES; RESERVATIONS

1.1 **Designation of Spaces**. During the period between the Effective Date until the fifth (5th) anniversary of the Effective Date (the "***Option Period***"), Tenant shall have the right to designate up to eighty-five (85) parking spaces in the Designation Area (as defined below) to constitute the "***Spaces***" hereunder. Tenant may make such designations by delivering written notices to Landlord during the Option Period (each such notice, a "***Designation Notice***") specifying a number of parking spaces being designated and the location of such parking spaces within the Designation Area. Tenant shall make available and deliver such parking spaces to

Tenant within ninety (90) days following receipt of each Designation Notice whereupon such parking spaces shall be added to the "***Spaces***" hereunder. The date upon which each Space is delivered to Tenant is referenced herein as the "***Space Delivery Date***" with respect to each such Space. For purposes hereof, the "***Designation Area***" is defined as that area of the Parking Garage illustrated on **Exhibit "C"** attached hereto with the parking spaces located therein each being designated by a space number that shall be referenced in each Designation Notice. ***[NOTE: RESERVED FOR FINAL DETERMINATION]***

1.2 **Lease of Spaces**. Landlord, in consideration of the rents, covenants, agreements and conditions herein set forth, hereby leases to Tenant, and Tenant hereby rents and leases from Landlord, the Spaces (as defined above) together with, for the benefit of the Permitted Parties (as defined below), a non-exclusive easement and right-of-way for pedestrian and vehicle ingress and egress to and from the Spaces, for the purpose of accessing the Spaces, over and across the driveways, parking ramps, walkways, elevators, and stairways from time to time constructed on and being a part of the Parking Garage that are reasonably necessary to permit vehicular and pedestrian access to and from the Spaces, subject to the terms and conditions of this Lease (the foregoing, driveways, parking ramps, walkways, elevators, and stairways being a part of the Parking Garage and including the mechanical, electrical and plumbing facilities associated therewith, are referred to herein as the "***Parking Facilities***").

1.3 **Acceptance of Spaces. TENANT HAS EXAMINED THE SPACES AND PARKING GARAGE PRIOR TO ITS EXECUTION OF THIS LEASE, AND IT IS AND SHALL TAKE POSSESSION OF THE SPACES AND ITS RIGHTS IN THE PARKING GARAGE AND PARKING FACILITIES IN THEIR CURRENT AS-IS CONDITION, WITH ALL FAULTS.**

1.4 **Permitted Use**. For purposes hereof, "***Permitted Use***" shall mean the use of the Spaces by Permitted Parties for parking automobile vehicles, motorcycles or bicycles and use of the Parking Facilities by Permitted Parties for purposes of traveling between the Spaces and that certain underground tunnel running underneath West Commerce Street between the Parking Garage and the Municipal Plaza Property that is subject to that certain Tunnel License Agreement by and between Landlord and Tenant and dated as of even date herewith. Landlord shall be entitled to implement various reasonable security protocols related to the use of the Parking Facilities and tunnel, such as requiring key card or key pad entry and access, so as to ensure its use only for the Permitted Use. For purposes hereof, "***Permitted Parties***" shall mean the Owners (as defined below), the Occupants (as defined below), and their respective employees, tenants, licensees, invitees, guests, visitors, successors and assigns. For purposes hereof, "***Owners***" shall mean, individually, collectively, or any appropriate combination of the fee title owners of the Municipal Plaza Property, including the owners of any condominium or sub-condominium unit located on the Municipal Plaza Property. For purposes hereof, "***Occupants***" shall mean all persons who acquire rights by lease, deed or other instrument or written arrangement to possess, own, use or occupy any condominium or sub-condominium unit located within on Municipal Plaza Property or any portion thereof, whether as an Owner or otherwise. Subject to the terms and provisions hereof, Tenant shall use the Spaces and cause the Owners and Occupants to use the Spaces for the Permitted Use and for no other purpose or purposes without the prior written consent of Landlord. Tenant shall not use or occupy, knowingly permit the Spaces to be used or occupied in a manner which would make it impossible to obtain the insurance Landlord desires to carry with respect to the Parking

Garage or Landlord Tower Property. Tenant shall comply with all laws and ordinances and the orders, rules, regulations and requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and officers thereof relating to the use of the Spaces.

1.5 **Permitted Party Information**. If the Spaces are allotted by Tenant to specific Permitted Parties, then Tenant shall provide upon written request from Landlord a list of the then-current allotment of the Spaces and the associated Permitted Party, and the make, model and license plate of the vehicles such Permitted Parties have identified to be used in the Spaces.

1.6 **Reservations.** So long as such usage does not unreasonably interfere with or interrupt the Permitted Use of the Spaces, Landlord reserves the right to continue to use and enjoy the Parking Garage for all purposes, including without limitation, ingress and egress, and the diligent pursuit of maintaining, installing, repairing, altering and operating wastewater lines, water lines, waterworks, sewer works, distribution systems, drainage systems, pipes, wires, power lines, telephone service, gas lines, siphons, valves, gates, pipelines, security systems, alarm systems and all machinery, equipment and rights appurtenant thereto and which may be necessary or desirable for the operation of the Parking Garage, provided Landlord shall use commercially reasonable efforts to cause all work in connection therewith to be completed in a good and workmanlike manner, as quickly as reasonably possible, and in a manner so as to minimize interference with the use of the Spaces. Landlord's reserved right to maintain, install, repair or alter the Parking Garage or Parking Facilities shall not be deemed to unreasonably interfere with or interrupt the use of the Spaces by Tenant so long as Landlord is engaging in such work in good faith and using commercially reasonable efforts to cause all such work to be completed as quickly as reasonably possible, and in a manner so as to minimize interference with the use of the Spaces.

1.7 **Nonexclusive Rights.** So long as such usage does not unreasonably interfere with or interrupt the use of the Spaces for the Permitted Use, Landlord reserves the right to use and enjoy and convey the right to use the Parking Garage or parking spaces therein (other than the Spaces leased hereunder) to any person, customer, employee, tenant, licensee or invitee, including use as short term and temporary hourly or overnight parking.

1.8 **Rules and Security Protocols.** Tenant agrees to comply with and shall cause all Permitted Parties to observe all reasonable and non-discriminatory rules, regulations and security protocols established by Landlord for the Parking Garage from time to time.

ARTICLE 2
TERM OF LEASE

2.1 **Term**. The period of time commencing on the Effective Date and ending on the seventy-fifth (75th) anniversary of the Effective Date. ***[NOTE: RESERVED FOR FINAL DETERMINATION]***

2.2 **Termination or Reduction**. Tenant shall have the right to terminate this Lease upon not less than one year's advance notice delivered to Landlord. Tenant shall also have the right from time to time to reduce the number of Spaces upon one (1) year's advance notice delivered to Landlord specifying the number and location of parking spaces to be excluded or

included in the Spaces whereupon such parking spaces shall be excluded or included in the definition of Spaces hereunder.

ARTICLE 3
RENT

3.1 **Lease Year Defined.** "***Lease Year***" shall mean each consecutive period of twelve (12) full calendar months following the Effective Date. If the Effective Date is a date other than the first day of a calendar month, then the first Lease Year shall include that fractional portion of the calendar month in which the Effective Date occurs and the first full twelve (12) months thereafter, and the last Lease Year may be less than twelve (12) full calendar months and shall end on the expiration or earlier termination of this Lease.

3.2 **Rental.** Tenant covenants to pay to Landlord for the use and occupancy of the Spaces, the annual rental amount set forth below ("**Rent**"), payable in monthly installments in advance on the first day of each and every month during the Term in the amounts set forth below:

Lease Years	Annual Base Rent	Monthly Installment
1-5	$1,080.00 per Space*	$90.00 per Space
6-99	Fair Market Rental as determined below	Fair Market Rental as determined below

[*Non-reserved spaces to be $90 per month per space, while rental for reserved spaces will by $120 per month, subject to final determination.]

The Rent payable for each space shall commence as of the Space Delivery Date. If the Space Delivery Date or the termination or expiration date of this Lease is other than the first day of a month, Tenant shall be required to pay a pro rata portion of the monthly installment of Rent for any partial month.

3.3 **Fair Market Value.** The Rent for the sixth (6th) Lease Year (on a monthly basis) shall be an amount (the "***Fair Market Value***") equal to the lesser of (a) the average price charged by Landlord for the use of other parking spaces in the Parking Garage on a monthly basis during the preceding Lease Year, and (b) the average price charged by the City of San Antonio in all structured parking garages owned by the City in the central business district of San Antonio for the use of parking spaces on a monthly basis during the preceding Lease Year. The Fair Market Value shall remain fixed for Lease Years six (6) through ten (10) whereupon it shall be reset for the eleventh (11th) Lease Year using the same formula for Fair Market Value described above and once every five (5) years thereafter. ***[NOTE: CALCULATION OF FAIR MARKET VALUE RESERVED FOR FINAL DETERMINATION].***

3.4 **Late Charge; Default Interest.** If any installment of Rent is not paid when due, Tenant shall also pay to Landlord on demand, as additional Rent, (a) a late charge equal to 5% of the amount of such overdue payment for the purpose of defraying Landlord's administrative expenses, *plus* (b) interest on such overdue payment computed at the rate of 15% per annum,

which interest will accrue beginning on the date the payment was due. If Landlord receives from Tenant any checks for which there is non-sufficient funds, Tenant shall pay to Landlord the sum of $50.00 for each dishonored check. If Tenant fails in either any 2 consecutive months or any 2 months during the same calendar year to make payments of Rent within ten (10) days after the date due, Landlord may require that Tenant pay all future Rent payments on or before the due date by cash, cashier's check, or money order.

ARTICLE 4
GROSS LEASE; CONDITION OF SPACES AND PARKING GARAGE

4.1 **Real Estate Taxes; Assessments; Utilities; Gross Lease.** This Lease is a fully grossed up lease. Landlord shall be responsible for payment of and shall timely pay all real estate taxes, assessments and utilities associated with the Spaces and Parking Garage.

4.2 **Condition and Maintenance of Spaces and Parking Garage.** Landlord shall operate, manage, equip, light, repair and maintain the Parking Garage and Parking Facilities and all equipment and fixtures serving the same, for their intended purposes and in good and usable repair. Tenant shall be responsible for taking such actions as Tenant determines to be necessary to ensure Tenant's exclusive rights to use the Spaces, provided, however, that Tenant shall coordinate with Landlord upon Landlord's request to arrange services for the towing and impoundment of vehicles improperly parking in the Spaces. Landlord shall have no obligation to regulate improper parking in the Designated Area or to stripe, paint, clean, power wash or provide signage in the Designated Area.

4.3 **Alterations.** Tenant shall not make any alterations to the Parking Garage, the Parking Facilities or Spaces except with Landlord's prior written consent; provided, however, that Tenant shall have the right to paint the pavement in the Spaces and erect signage on the walls adjacent to the Spaces identifying such Spaces as being reserved for the Permitted Parties' exclusive use. Upon any termination or expiration of this Lease Tenant shall remove all signage and paint (except standard parking space paint) from the Spaces and repair any damage to the Spaces and Parking Garage cause by such removal.

ARTICLE 5
INSURANCE AND INDEMNITY

5.1 **Tenant Insurance**. During the Term, Tenant shall obtain and maintain at its expense commercial general liability insurance written on "occurrence" form for bodily injury, property damage, personal and advertising injury, including contractual liability, arising from the occupancy or use of the Spaces, in an amount not less than $1,000,000.00 per occurrence, and $2,000,000.00 annual aggregate. This insurance shall be primary and non-contributory and include coverage for independent contractors and products-completed operations liability.

5.2 **Landlord Insurance.** Landlord will at all times during the Term of this Lease maintain (a) standard fire and extended coverage insurance covering the Parking Garage in an amount not less than the full replacement value of the Parking Garage, and (b) commercial general liability insurance with respect to all common areas of the Parking Garage in an amount not less

than a combined single limit of $2,000,000; provided, however, that the so long as the City is the Landlord is may elect to self-insure such liability.

5.3 **Insurance Requirements**. All policies of insurance to be procured by Landlord (except to the extent self-insured) or Tenant shall be issued by insurance companies rated not less than A-/VIII in the most current available "**Best's Key Rating Guide**", qualified to do business in the state of Texas, and must be issued on forms and include endorsements that are acceptable to the other party. All insurance provided by Landlord or Tenant as required hereunder must be maintained in favor of Tenant and Landlord, as their respective interests may appear. Copies of certificates of insurance must be delivered to the other party within 10 days of the first Space Delivery Date and thereafter within 5 days prior to the expiration of the term of each policy. All policies of insurance delivered to Landlord must contain a provision that the company writing the policy will give Landlord notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amounts of insurance.

5.4 **Waiver of Subrogation**. To the extent each party can obtain such an endorsement on the relevant policy, each of Landlord and Tenant hereby waives all claims that arise or may arise in its favor against the other party, or anyone claiming through or under them, by way of subrogation or otherwise, during the Term of this Lease or any extension or renewal thereof, for any injury to or death of any person or persons or the theft, destruction, loss of, or damage to, any of its property (a "***Loss***") caused by casualty, theft, fire, third parties, or any other matter, to the extent the same is insured against by it under any insurance policy that covers the Parking Garage, the Spaces, or is required to be insured against by it under the terms hereof (whether or not the loss or damage is caused by the fault or negligence of the other party or anyone for whom the other party is responsible). These waivers are in addition to, and not in limitation of, any other waiver or release in this Lease with respect to any Loss. Since these mutual waivers preclude the assignment of any claim by way of subrogation (or otherwise) to any insurance company (or any other person), each party shall immediately give each insurance company issuing to it policies of fire and extended coverage insurance written notice of the terms of these mutual waivers, and have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of these waivers.

5.5 **Indemnity**. TENANT AND LANDLORD (AS APPLICABLE, THE "***INDEMNITOR***") COVENANT AND AGREE TO FULLY INDEMNIFY AND HOLD HARMLESS, EACH OTHER AND THE EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, AND REPRESENTATIVES OF THE OTHER (AS APPLICABLE, THE "***INDEMNITEE***"), INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE INDEMNITEE DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO INDEMNITOR'S ACTS OR OMISSIONS IN, ON OR ABOUT THE SPACES AND THE PARKING GARAGE OR IN CONNECTION WITH INDEMNITOR'S USE OF THE SPACES AND THE PARKING GARAGE, OR FROM ANY CONDITION OF THE SPACES AND THE PARKING GARAGE CAUSED BY INDEMNITOR, INCLUDING ANY ACTS OR OMISSIONS OF INDEMNITOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE,

EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF INDEMNITOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS LEASE. THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL NOT APPLY TO ANY LIABILITY TO THE EXTENT RESULTING FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF INDEMNITEE, ITS OFFICERS, EMPLOYEES OR AGENTS OR REPRESENTATIVES.

5.6 **City Specific Provisions**. Notwithstanding any other provision contained herein, the provisions set forth above in Section 5.5 shall not apply to the City of San Antonio as an Indemnitor for so long as the City of San Antonio is the Landlord hereunder. In the event that the City of San Antonio is the Landlord hereunder and leases the entirety of the Parking Garage or enters into an agreement authorizing a third party to manage or operate the Parking Garage, and any such agreement includes indemnification rights benefiting the City of San Antonio as the owner of the Parking Garage, the City of San Antonio will not object to Tenant making claims against such leasing party or manager operating the Parking Garage under the terms of such indemnification provisions should it so choose.

ARTICLE 6
CASUALTY AND OBSOLESCES

6.1 **Obligation to Restore**. ***[RESERVED TO FINALIZE].***

6.2 **Obsolesce**. ***[RESERVED TO FINALIZE]***.

ARTICLE 7
DEFAULTS AND REMEDIES

7.1 **Tenant's Default**. Tenant shall be in default (a) if Tenant fails to timely pay Rent within ten (10) business days after written notice received from Landlord, or (b) if Tenant fails to perform any other obligation hereunder and such failure continues for (i) more than thirty (30) days following written notice from Landlord to Tenant regarding such failure, or (ii) such longer period of time as may be reasonable under the circumstances not to exceed ninety (90) days, if such failure cannot be cured within thirty (30) days because of the nature of the default and during such thirty (30) day period curative action has commenced and is thereafter pursued diligently by Tenant. Landlord's remedies for Tenant's default are to (a) terminate this Lease by written notice and sue for Rent due as of the date of termination, and (b) exercise any other remedy available at law.

7.2 **Landlord's Default.** Defaults by Landlord are failing to perform any obligation hereunder and such failure continues for (a) more than thirty (30) days following written notice from Tenant to Landlord regarding such failure, or (b) such longer period of time as may be reasonable under the circumstances not to exceed ninety (90) days, if such failure cannot be cured within thirty (30) days because of the nature of the default and during such thirty (30) day period curative action has commenced and is thereafter pursued diligently by Landlord. Tenant's remedies for Landlord's default are to (a) terminate this Lease by written notice, and (b) exercise

any other remedy available at law or in equity.

ARTICLE 8
ADDITIONAL PROVISIONS

8.1 **Notices**. Any notice provided for or permitted to be given hereunder must be in writing and may be given by (i) depositing same in the United States Mail, postage prepaid, registered or certified, with return receipt requested, or by overnight nationally-recognized courier service provided a receipt is required, addressed as set forth in this Section; or (ii) delivering the same to the party to be notified. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee, as evidenced by the executed postal receipt or other receipt for delivery. For purposes of notice the addresses of the parties hereto shall, until changed, be as follows:

The City:	City of San Antonio Attention: Sheryl Sculley, City Manager 100 Military Plaza, 1st Floor San Antonio, Texas 78205
With copies to:	City Clerk Attention: Leticia M. Vacek 100 Military Plaza, 2nd Floor San Antonio, Texas 78205
	City Attorney Attention: Martha G. Sepeda 100 Military Plaza, 3rd Floor San Antonio, Texas 78205
Tenant:	Weston Urban, LLC Attn: Randy Smith 112 East Pecan Street, Suite 100 San Antonio, Texas 78205
With a copy to:	Stephen L. Golden Golden, Steves, Cohen & Gordon LLP 300 Convent, Suite 2650 San Antonio, Texas 78205

The parties hereto shall have the right from time to time to change their respective addresses for purposes of notice hereunder to any other location within the United States by giving a notice to such effect in accordance with the provisions of this Section.

8.2 **Modification and Non Waiver**. No variations, modifications or changes herein or hereof shall be binding upon any party hereto unless set forth in writing executed by both parties hereto. No waiver by either party of any breach or default of any term, condition or provision hereof, including without limitation the acceptance by Landlord of any Rent at any time or in any

manner other than as herein provided, shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character or description under any circumstance. No waiver of any breach or default of any term, condition or provision hereof shall be implied from any action of any party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving party.

8.3 **Governing Law**. This Lease shall be construed in accordance with the laws of the State of Texas. Each party waives the right to a jury in any action, proceeding or counterclaim brought by either of them against the other on any matters whatsoever arising under this Lease.

8.4 **Number and Gender; Caption; References**. Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate. Article and section headings in this Lease are for convenience of reference and shall not affect the construction or interpretation of this Lease. Whenever the terms "hereof," "hereby," "herein" or words of similar import are used in this Lease they shall be construed as referring to this Lease in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "Article" or "Section" shall be construed as referring to the indicated article or section of this Lease. Whenever placed before one or more items, the words "include," "includes," and "including" shall mean considered as part of a larger group, and not limited to the item(s) recited.

8.5 **Exhibits**. All exhibits and addenda attached hereto are incorporated herein for all purposes.

8.6 **Severability**. If any provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Lease, or the application of such provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

8.7 **Attorney Fees**. If suit should be arising from a dispute under the terms of this Lease, the prevailing party shall be entitled to all reasonable costs and legal fees incurred in connection with such action.

8.8 **Surrender of Spaces; Holding Over**. If Tenant, without the consent of Landlord, shall hold over after the Term, or any extension thereof, Tenant shall become a tenant on a month-to-month basis or a tenant at sufferance at a minimum rental equal to 200% of the amount of Rent payable hereunder for the last full calendar month of the Term, and all the terms, covenants and conditions of this Lease shall be applicable, except that Tenant shall not be entitled to any renewal options.

8.9 **Force Majeure**. As used herein "***Force Majeure***" shall mean the occurrence of any event (other than failure to obtain financing for, failure to refinance or cessation of disbursements under existing financing for, the purchase, construction, demolition, repair or ownership of the Landlord Tower Property) that prevents or delays the performance by Landlord or Tenant of any obligation imposed upon it hereunder (other than payment of Rent) and the

prevention or cessation of which event is beyond the reasonable control of the obligor. If Landlord or Tenant shall be delayed, hindered or prevented from performance of any of its obligations (other than to pay Rent) by reason of Force Majeure (and Tenant or Landlord as applicable shall not otherwise be in default hereunder) the time for performance of such obligation shall be extended for the period of such delay, provided that the following requirements are complied with by Tenant or Landlord as applicable: (i) Tenant or Landlord shall give prompt written notice of such occurrence to the other; and (ii) Tenant or Landlord as applicable shall diligently attempt to remove, resolve or otherwise eliminate such event, keep the other advised with respect thereto, and commence performance of its obligations hereunder immediately upon such removal, resolution or elimination. Anything contained in or inferable from this Lease to the contrary notwithstanding, the Term shall not be extended by an event of Force Majeure.

8.10 **Entire Agreement**. This Lease constitutes the entire agreement of the parties hereto with respect to its subject matter, and all prior agreements with respect thereto are merged herein. Any agreements entered into between Landlord and Tenant of even date herewith are not, however, merged herein.

8.11 **Successors and Assigns**. This Lease shall constitute a real property interest, and, subject to the provisions hereof pertaining to Tenant's rights to assign, sublet or encumber, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever a reference is made herein to either party, such reference shall include the party's successors and assigns.

8.12 **No Third Parties Benefitted**. The terms and provisions of this Lease are for the sole benefit of Landlord and Tenant, and no third party is intended to benefit herefrom.

8.13 **Survival**. Any terms and provisions of this Lease pertaining to rights, duties or liabilities extending beyond the expiration or termination of this Lease shall survive the end of the Term.

8.14 **No Accord and Satisfaction**. The acceptance or endorsement by Landlord of any payment or check from Tenant shall not be deemed an accord and satisfaction and shall not prejudice Landlord's right to recover the balance of any amounts due under the terms of this Lease, unless otherwise expressly agreed by Landlord in writing.

8.15 **Time of Essence**. Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

8.16 **Business Days**. If a date for performance by either party falls on a Saturday, Sunday or on a legal holiday, such date for performance shall instead be the next following business day.

8.17 **Remedies Cumulative**. All rights and remedies of Landlord herein created or otherwise existing at law or in equity are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as Landlord shall deem desirable.

8.18 **Limitation on Waiver**. One or more waivers of any covenant, term or condition of this Lease by either party may not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

8.19 **Office of Foreign Assets Control Certification**. Tenant certifies that it is not acting, directly or indirectly, for or on the behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specifically Designated National and Blocked Person" or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control.

8.20 **Covenant of Quiet Enjoyment.** Subject to the rights of Landlord hereunder, Landlord covenants and agrees that Tenant, on paying the Rent and observing and keeping the covenants, conditions and terms of this Lease on Tenant's part to be kept or performed, shall lawfully and quietly hold, occupy and enjoy the Spaces during the Term of this Lease, without hindrance or molestation of Landlord or any person claiming under Landlord.

8.21 **Commission**. Each party hereto represents and warrants unto the other that there are no claims for brokerage, commissions or finder's fees in connection with the negotiations or execution of this Lease, and each of said parties agrees to indemnify and save the other harmless against all liabilities arising from any such claim (including, without limitation, cost of attorneys' fees in connection therewith).

8.22 **Estoppel Certificate**. Within ten (10) days after written request by Tenant, Landlord shall execute and deliver to Tenant an estoppel certificate certifying as to such facts and agreeing to such other matters as Tenant may reasonably request, if true.

8.23 **Memorandum of Lease**. On or before the Effective Date, Landlord and Tenant shall execute a Memorandum of this Lease in a form attached hereto as **Exhibit "D"** (the "***Lease Memorandum***") and such Lease Memorandum shall be recorded in the Real Property Records of Bexar County on the Effective Date hereof.

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EXECUTED as of the Effective Date.

LANDLORD:

CITY OF SAN ANTONIO, TEXAS

By _____

Name: Sheryl L. Sculley

Title: City Manager

ATTEST:

_____

City Clerk

TENANT:

WESTON URBAN, LLC,

a Texas limited liability company

By: WESTON URBAN GP, LLC,

a Texas limited liability company

Its Manager

By: _____

Name: Randal C. Smith

Title: Manager

Exhibit A

Description of the Landlord Tower Property

[to be attached]

Exhibit B

Description of the Condo Property

[to be attached]

EXHIBIT C

TUNNEL PEDESTRIAN LICENSE AGREEMENT

THIS TUNNEL PEDESTRIAN LICENSE AGREEMENT ("***License Agreement***") is entered into as of _____, 201__ ("***Effective Date***") by and between the City of San Antonio (the "***City***") and Weston Urban, LLC ("***Licensee***").

RECITALS:

A. The City is the owner of that certain office tower and associated parking garage on the real property commonly known as 100 West Houston Street, San Antonio, Texas 78205 and legally described on **Exhibit "A"** attached hereto (the "***City Tower Property***").

B. On the Effective Date hereof, the City has conveyed to Licensee certain real property and associated improvements commonly known as 114 West Commerce Street, San Antonio, Texas 78205 and legally described on **Exhibit "B"** attached hereto (the "***Municipal Plaza Property***").

C. On the Effective Date hereof, the City and Licensee have also entered in that certain Parking Lease Agreement (the "***Parking Lease***") pursuant to which the City is leasing to Licensee certain parking spaces in the parking garage located on the City Tower Property (the "***Parking Garage***") on to the terms, conditions and provisions set forth in the Parking Lease Agreement.

D. There is a certain underground tunnel (the "***Tunnel***") running underneath West Commerce Street that connects the elevator bank in the basement of the Parking Garage to the basement of the building located on the Municipal Plaza Property (the "***Plaza Building Basement***").

E. The City desires to grant to Licensee a license to use the Tunnel upon the terms, conditions and provisions set forth herein, and the Licensee desire to accept such license upon the terms, conditions and provisions set forth herein.

F. On the Effective Date hereof and following the execution of this License Agreement, Weston Urban will be submitting all the real property interests comprising the Municipal Plaza Property and all right appurtenant thereto, including its rights under this License Agreement and under the Parking Lease, to the establishment of a condominium regime (the "***Condominium***") under that certain Condominium Declaration for 114 West Commerce Condominium (the "***Condominium Declaration***") dated as of the Effective Date hereof and recorded as Document No. ____, Volume __, Page ___, of the Bexar County Official Public Records and upon creation of the Condominium the rights and obligations of Licensee under this License Agreement shall be assigned to the condominium association being formed in connection with the Condominium (the "***Association***") and comprised of the unit owners of the Condominium, whereupon such Association shall be deemed the Licensee for all purposes hereunder.

NOW THERFORE, in consideration of the mutual promises, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

TUNNEL LICENSE

1.1 **Grant of License.** Subject to the reservations and exceptions hereinafter specified, during the term of this License Agreement only, the City hereby grants to Licensee, the Owners (as defined below), the Occupants (as defined below), and their respective employees, tenants, licensee, invitees, guests, visitors, successors and assigns (collectively, the "***Permitted Parties***"), a non-exclusive pedestrian license and right of entry and access to the Tunnel (the "***License***"), over and across that portion of the Tunnel connecting the elevator bank of the Parking Garage to the Plaza Building Basement, but not elsewhere, for the Permitted Use (as defined below). For purposes hereof, "***Owner***" herein shall mean, individually, collectively, or any appropriate combination of the fee title owners of the Municipal Plaza Property, including the owners of any condominium or sub-condominium unit located on the Municipal Plaza Property. For purposes hereof, "***Occupant***" shall mean any person who acquires rights by lease, deed or other instrument or written arrangement to possess, own, use or occupy any condominium or sub-condominium unit located within on Municipal Plaza Property or any portion thereof, whether as an Owner or otherwise.

1.2 **Permitted Use.** For purposes hereof, the "***Permitted Use***" shall mean only (a) twenty-four (24) hour pedestrian access through the Tunnel by Permitted Parties for purposes of traveling to and from the Parking Garage for purposes of utilizing the parking spaces designated under the Parking Lease, and (b) using the Tunnel and such adjacent portions of the public right-of-way and the City Tower Property as are reasonably necessary to perform such repair, renovation, alteration, and reconstruction work as Licensee may perform hereunder. City shall be entitled to implement various reasonable security protocols related to the use of the Tunnel, such as requiring key card or key pad entry and access, so as to ensure its use only for the Permitted Purposes.

1.3 **Reservations.** So long as such usage does not interfere with or interrupt the Permitted Use, the City reserves the right to continue to use and enjoy the Tunnel for all purposes, including without limitation, ingress and egress, and the diligent pursuit of maintaining, installing, repairing, altering and operating wastewater lines, water lines, waterworks, sewer works, distribution systems, drainage systems, pipes, wires, power lines, telephone service, gas lines, siphons, valves, gates, pipelines, security systems, alarm systems and all machinery, equipment and rights appurtenant thereto and which may be necessary or desirable for the operation of the Tunnel, provided the City shall use commercially reasonable efforts cause all work in connection therewith to be completed in a good and workmanlike manner, as quickly as reasonably possible, and in a manner so as to minimize interference with the use of the Tunnel.

1.4 **Rules and Security Protocols.** Licensee agrees to comply with and shall cause all Permitted Parties to observe all reasonable and non-discriminatory rules, regulations and security protocols established by the City for the Tunnel from time to time.

ARTICLE 2
TERM OF LICENSE

2.1 **Term**. The Term of the License shall be coterminous with the term of the Parking Lease unless this License Agreement is earlier terminated pursuant to the terms, conditions and provisions hereof.

2.2 **Termination By Licensee**. At any time during the Term hereof, Licensee may elect to terminate this License upon sixty (60) days' notice to City.

ARTICLE 3
MAINTENANCE OF TUNNEL AND ALTERATIONS

3.1 **Condition and Maintenance of Tunnel.** Licensee shall operate, manage, equip, light, repair and maintain the Tunnel and all equipment and fixtures serving the same, for their intended purposes and in good and usable repair; provided, Licensee shall cause all such work to be completed as quickly as reasonably possible, and in a manner so as to minimize interference with the Tunnel and the same shall be performed in a good and workmanlike manner.

3.2 **Alterations.** Licensee shall not make any alterations to the Tunnel except with City's prior written consent.

ARTICLE 4
INSURANCE AND INDEMNITY

4.1 **Licensee Insurance**. During the Term, Licensee shall obtain and maintain at its expense commercial general liability insurance written on "occurrence" form for bodily injury, property damage, personal and advertising injury, including contractual liability, arising from the occupancy or use of Tunnel, in an amount not less than $1,000,000.00 per occurrence, and $2,000,000.00 annual aggregate. This insurance shall be primary and non-contributory and include coverage for independent contractors and products-completed operations liability.

4.2 **City Insurance.** The City will at all times during the Term of this Lease maintain commercial general liability insurance, which may be self insured, with respect to the Tunnel in an amount not less than a combined single limit of $2,000,000.

4.3 **Insurance Requirements**. All policies of insurance (to the extent not self insured) to be procured by Licensee or City shall be issued by insurance companies rated not less than A-/VIII in the most current available "**Best's Key Rating Guide**", qualified to do business in the state of Texas, and must be issued on forms and include endorsements that are acceptable to the other party. All insurance provided by City or Licensee as required hereunder must be maintained in favor of Licensee and City, as their respective interests may appear. Copies of certificates of insurance must be delivered to the other Party within 10 days of the Commencement Date and thereafter within 5 days prior to the expiration of the term of each policy. All policies of insurance delivered to City must contain a provision that the company writing the policy will give City notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amounts of insurance.

4.4 **Waiver of Subrogation**. To the extent each party can obtain such an endorsement on the relevant policy, each of City and Licensee hereby waives all claims that arise or may arise in its favor against the other party, or anyone claiming through or under them, by way of subrogation or otherwise, during the Term of this License Agreement or any extension or renewal thereof, for any injury to or death of any person or persons or the theft, destruction, loss of, or damage to, any of its property (a "***Loss***") caused by casualty, theft, fire, third parties, or any other matter, to the extent the same is insured against by it under any insurance policy that covers the Tunnel, or is required to be insured against by it under the terms hereof (whether or not the loss or damage is caused by the fault or negligence of the other party or anyone for whom the other party is responsible). These waivers are in addition to, and not in limitation of, any other waiver or release in this License Agreement with respect to any Loss. Since these mutual waivers preclude the assignment of any claim by way of subrogation (or otherwise) to any insurance company (or any other person), each party shall immediately give each insurance company issuing to it policies of fire and extended coverage insurance written notice of the terms of these mutual waivers, and have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of these waivers.

4.5 **Licensee Indemnity**. EXCEPT TO THE EXTENT ARISING FROM AND CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR ANY OF ITS SERVANTS, EMPLOYEES, CONTRACTORS, AGENTS, LICENSEES OR INVITEES (COLLECTIVELY, INCLUDING CITY, THE "***CITY PARTIES***"), LICENSEE SHALL INDEMNIFY AND HOLD CITY AND ITS EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, AND REPRESENTATIVES HARMLESS FROM AND DEFEND CITY AND ITS EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, AND REPRESENTATIVES AGAINST ANY AND ALL LIABILITIES, CLAIMS, DAMAGES (INCLUDING CONSEQUENTIAL DAMAGES), LOSSES, PENALTIES, LITIGATION, DEMANDS, CAUSES OF ACTION (WHETHER IN TORT OR CONTRACT, IN LAW OR AT EQUITY OR OTHERWISE), SUITS, PROCEEDINGS, JUDGMENTS, DISBURSEMENTS, CHARGES, ASSESSMENTS, AND EXPENSES (INCLUDING ATTORNEYS' AND EXPERTS' FEES AND EXPENSES INCURRED IN INVESTIGATING, DEFENDING, OR PROSECUTING ANY LITIGATION, CLAIM, OR PROCEEDING) ("***CLAIMS***") FOR ANY INJURY OR DAMAGE TO ANY PERSON OR PROPERTY WHATSOEVER OCCURRING IN THE TUNNEL AND RELATED TO OR INVOLVING LICENSEE, AN OWNER, AN OCCUPANT OR ANY AGENTS, EMPLOYEES, LICENSEES, SERVANTS, LICENSEES OR INVITEES, CONTRACTORS OR GUESTS THEREOF (THE "***LICENSEE PARTIES***").

ARTICLE 5
CASUALTY

5.1 **Casualty**. If the Tunnel is damaged by a casualty, Licensee shall have the right, exercisable by written notice to the City given within ninety (90) days after the date of such damage or destruction, to elect to either (a) terminate this License effective upon delivery of written notice of the same to the City, or (b) as promptly as possible, restore, repair or rebuild the Tunnel to substantially the same condition as existed before the damage or destruction, including any improvements or alterations required to be made by any governmental body, county or city agency, due to any changes in code or building regulations. Licensee shall be entitled to all of the available insurance proceeds called for under this License Agreement and resulting from the

casualty event in question. Licensee's failure to timely make an election of either items (a) or (b) in this Section shall be deemed an election of item (a).

ARTICLE 6
DEFAULTS AND REMEDIES

6.1 **Licensee's Default**. Licensee shall be in default (a) if Licensee fails to timely pay Rent within ten (10) business days after written notice received from City, or (b) if Licensee fails to perform any other obligation hereunder and such failure continues for (i) more than thirty (30) days following written notice from City to Licensee regarding such failure, or (ii) such longer period of time as may be reasonable under the circumstances not to exceed ninety (90) days, if such failure cannot be cured within thirty (30) days because of the nature of the default and during such thirty (30) day period curative action has commenced and is thereafter pursued diligently by Licensee. City's remedies for Licensee's default are to (a) terminate this License Agreement by written notice and sue for Rent due as of the date of termination, and (b) exercise any other remedy available at law.

6.2 **City's Default.** Defaults by the City are failing to perform any obligation hereunder and such failure continues for (a) more than thirty (30) days following written notice from Licensee to the City regarding such failure, or (b) such longer period of time as may be reasonable under the circumstances not to exceed ninety (90) days, if such failure cannot be cured within thirty (30) days because of the nature of the default and during such thirty (30) day period curative action has commenced and is thereafter pursued diligently by the City. Licensee's remedies for City's default are to (a) terminate this License Agreement by written notice, and (b) exercise any other remedy available at law or in equity.

ARTICLE 7
ADDITIONAL PROVISIONS

7.1 **Notices**. Any notice provided for or permitted to be given hereunder must be in writing and may be given by (i) depositing same in the United States Mail, postage prepaid, registered or certified, with return receipt requested, or by overnight nationally-recognized courier service provided a receipt is required, addressed as set forth in this Section; or (ii) delivering the same to the party to be notified. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee, as evidenced by the executed postal receipt or other receipt for delivery. For purposes of notice the addresses of the parties hereto shall, until changed, be as follows:

The City:	City of San Antonio Attention: Sheryl Sculley, City Manager 100 Military Plaza, 1st Floor San Antonio, Texas 78205
With copies to:	City Clerk

Attention: Leticia M. Vacek
100 Military Plaza, 2nd Floor
San Antonio, Texas 78205

City Attorney
Attention: Martha G. Sepeda
100 Military Plaza, 3rd Floor
San Antonio, Texas 78205

Licensee: Weston Urban, LLC
Attn: Randy Smith
112 East Pecan Street, Suite 100
San Antonio, Texas 78205

With a copy to: Stephen L. Golden
Golden, Steves, Cohen & Gordon LLP
300 Convent, Suite 2650
San Antonio, Texas 78205

The parties hereto shall have the right from time to time to change their respective addresses for purposes of notice hereunder to any other location within the United States by giving a notice to such effect in accordance with the provisions of this Section.

7.2 **Modification and Non Waiver**. No variations, modifications or changes herein or hereof shall be binding upon any party hereto unless set forth in writing executed by both parties hereto. No waiver by either party of any breach or default of any term, condition or provision hereof, including without limitation the acceptance by City of any Rent at any time or in any manner other than as herein provided, shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character or description under any circumstance. No waiver of any breach or default of any term, condition or provision hereof shall be implied from any action of any party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving party.

7.3 **Governing Law**. This License Agreement shall be construed in accordance with the laws of the State of Texas. Each party waives the right to a jury in any action, proceeding or counterclaim brought by either of them against the other on any matters whatsoever arising under this License Agreement.

7.4 **Number and Gender; Caption; References**. Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate. Article and section headings in this License Agreement are for convenience of reference and shall not affect the construction or interpretation of this License Agreement. Whenever the terms "hereof," "hereby," "herein" or words of similar import are used in this License Agreement they shall be construed as referring to this License Agreement in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "Article" or "Section" shall be construed as referring to the

indicated article or section of this License Agreement. Whenever placed before one or more items, the words "include," "includes," and "including" shall mean considered as part of a larger group, and not limited to the item(s) recited.

7.5 **Exhibits**. All exhibits and addenda attached hereto are incorporated herein for all purposes.

7.6 **Severability**. If any provision of this License Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this License Agreement, or the application of such provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

7.7 **Attorney Fees**. If suit should be arising from a dispute under the terms of this License Agreement, the prevailing party shall be entitled to all reasonable costs and legal fees incurred in connection with such action.

7.8 **Force Majeure**. As used herein "**Force Majeure**" shall mean the occurrence of any event (other than failure to obtain financing for, failure to refinance or cessation of disbursements under existing financing for, the purchase, construction, demolition, repair or ownership of the Tunnel) which prevents or delays the performance by City or Licensee of any obligation imposed upon it hereunder (other than payment of Rent) and the prevention or cessation of which event is beyond the reasonable control of the obligor. If City or Licensee shall be delayed, hindered or prevented from performance of any of its obligations (other than to pay Rent) by reason of Force Majeure (and Licensee or City as applicable shall not otherwise be in default hereunder) the time for performance of such obligation shall be extended for the period of such delay, provided that the following requirements are complied with by Licensee or City as applicable: (i) Licensee or City shall give prompt written notice of such occurrence to the other; and (ii) Licensee or City as applicable shall diligently attempt to remove, resolve or otherwise eliminate such event, keep the otheradvised with respect thereto, and commence performance of its obligations hereunder immediately upon such removal, resolution or elimination. Anything contained in or inferable from this License Agreement to the contrary notwithstanding, the Term shall not be extended by an event of Force Majeure

7.9 **Entire Agreement**. This License Agreement constitutes the entire agreement of the parties hereto with respect to its subject matter, and all prior agreements with respect thereto are merged herein. Any agreements entered into between City and Licensee of even date herewith are not, however, merged herein.

7.10 **Successors and Assigns**. This License shall constitute a real property interest, and, subject to the provisions hereof pertaining to Licensee's rights to assign, sublet or encumber, this License Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever a reference is made herein to either party, such reference shall include the party's successors and assigns.

7.11 **No Third Parties Benefitted**. The terms and provisions of this License Agreement are for the sole benefit of City and Licensee, and no third party is intended to benefit herefrom.

7.12 **Survival**. Any terms and provisions of this License Agreement pertaining to rights, duties or liabilities extending beyond the expiration or termination of this License Agreement shall survive the end of the Term.

7.13 **No Accord and Satisfaction**. The acceptance or endorsement by City of any payment or check from Licensee shall not be deemed an accord and satisfaction and shall not prejudice City's right to recover the balance of any amounts due under the terms of this License Agreement, unless otherwise expressly agreed by City in writing.

7.14 **Time of Essence**. Time is of the essence of this License Agreement and each and all of its provisions in which performance is a factor.

7.15 **Business Days**. If a date for performance by either party falls on a Saturday, Sunday or on a legal holiday, such date for performance shall instead be the next following business day.

7.16 **Remedies Cumulative**. All rights and remedies of City herein created or otherwise existing at law or in equity are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as City shall deem desirable.

7.17 **Limitation on Waiver**. One or more waivers of any covenant, term or condition of this License Agreement by either party may not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

7.18 **Office of Foreign Assets Control Certification**. Licensee certifies that it is not acting, directly or indirectly, for or on the behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "**Specifically Designated National and Blocked Person**" or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control.

7.19 **Commission**. Each party hereto represents and warrants unto the other that there are no claims for brokerage, commissions or finder's fees in connection with the negotiations or execution of this License Agreement, and each of said parties agrees to indemnify and save the other harmless against all liabilities arising from any such claim (including, without limitation, cost of attorneys' fees in connection therewith).

7.20 **Estoppel Certificate**. Within ten (10) days after written request by Licensee, City shall execute and deliver to Licensee an estoppel certificate certifying as to such facts and agreeing to such other matters as Licensee may reasonably request, if true.

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EXECUTED as of the Effective Date.

CITY:

CITY OF SAN ANTONIO, TEXAS

By _____

Name: Sheryl L. Sculley

Title: City Manager

ATTEST:

_____

City Clerk

LICENSEE:

WESTON URBAN, LLC,

a Texas limited liability company

By: WESTON URBAN GP, LLC,

a Texas limited liability company

Its Manager

By: _____

Name: Randal C. Smith

Title: Manager

Exhibit A

Description of the City Tower Property

[to be attached]

Exhibit B

Description of the Condo Property

[to be attached]