

EASTGATE BUSINESS PARK  
DECLARATION OF HORIZONTAL PROPERTY REGIME AND MASTER DEED

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
1. Legal Description of Land and Definitions .....	2
2. Description of Buildings; Additional Buildings; Units and Commons Area; Reallocations of Percentages of Ownership; Amendments to Declaration and Master Deed.....	2
Paragraph 1 Incremental development; description of buildings.....	2
Paragraph 2 Right to amend and shift and reallocate.....	3
Paragraph 3 Reserved right to determine future units.....	3
Paragraph 4 Developer's right to determine locations of future units & bldgs, future dev. and areas that will have free rights of ingress and egress .....	3
Paragraph 5 Each unit owner consents and agrees to amendments recorded.....	4
(a) Portion of additional common areas shall be governed by Master Deed .....	4
(b) Percentage of ownership shall automatically be shifted with each amendment....	4
(c) Each deed, mortgage affecting a unit shall be deemed subject to changing	
(d) percentage of ownership.....	4
(d) Percentage of ownership shall include common elements annexed hereto.....	4
(e) Each owner shall have perpetual easement.....	5
(f) An amended declaration shall not alter lien for expenses assessed .....	5
(g) Any changes to percentage of ownership in the common element shall be deemed to be made by agreement of all unit owners.....	5
(h) Declarant reserves the right to amend the Declaration and Master Deed .....	5
3. Identification of Ownership of Units; Responsibilities of Unit Owners.....	5
(a) Identification of each unit .....	5
(b) Location, dimensions and limited common area to each unit .....	6
(c) Unit cannot be subdivided or partitioned except as provided .....	6
(d) Each unit owner shall obtain fee simple ownership in unit.....	6
(e) Each unit owner shall be responsible for all taxes on unit.....	7
(f) Responsibility of each unit owner regarding: .....	7
(i) portions to be maintained, repaired and replaced by owner .....	7

(ii) maintain, repair or replace appliances and fixtures ..... 7

(iii) report to Council any defect or repairs ..... 8

(iv) maintain/fix unit that may cause injury..... 8

(v) repair unit within reasonable hours..... 8

(g) Unit owner being responsible for entire expense of repairs and if not done by the unit owner the board of directors may undertake such maintenance and place a lien for the cost thereof ..... 8

(h) No alteration or improvement by unit owner..... 9

4. Description of Common Elements ..... 9

5. Definition and Description of Limited Common Elements ..... 10

6. Percentage Interests in Common Elements ..... 11

(a) Interest set forth in exhibit B ..... 11

(b) Unit owner’s right of use of common elements ..... 11

(c) Definition of the term “Unit” ..... 11

7. Common Expenses and Collection of Assessments ..... 12

(a) Common expenses incurred by Council ..... 12

(b) Collection of assessments against unit owners by Council..... 12

(i) each unit owner is liable for their proportionate share of the common expense ..... 12

(ii) assessments and interest on same ..... 13

(iii) unpaid common expenses will result in lien ..... 13

(iv) common expenses not being due after sale of unit..... 14

(v) unit owner shall not be responsible for former owner’s common expenses..... 14

(vi) foreclosure of a lien ..... 15

Last paragraph under section (b)  
Declarant is not responsible for assessments before transferring control to Council; but responsible for costs over and above assessments ..... 15

8. Administration of the Condominium Project ..... 15

Paragraph 1 Administration of project, etc. shall be in accordance of MD, etc ..... 15

Paragraph 2 Council is responsible for maintenance and operation of common elements ..... 16

Paragraph 3 Council’s responsibility for injury or damage..... 16

9. Use and Occupancy of Units and Common Areas ..... 16

Paragraph 1 All buildings are restricted for non-residential use ..... 16

(a) No “for sale” or “for rent” signs ..... 16

(b) No obstruction of and no storing in common elements ..... 17

(c) Nothing shall be done or kept in unit that will increase insurance..... 17

(d) Nothing shall be hung or displayed on outside or inside of windows..... 17

(e) No animals ..... 18

(f) No hazardous, odorous, noxious, etc. activity ..... 18

(g) Nothing shall be done to impair the structural integrity of bldg. .... 18

(h) No personal property in common elements ..... 18

(i) Common element shall not be altered..... 18

(j) No boat, trailer, etc..... 18

(k) Other rules/regulations may be made declarant/Board ..... 18

10. Violation of Declaration ..... 19

    Paragraph 1 Right of Board to enjoin, abate or remedy breach ..... 19

    Paragraph 2 Violation of covenants of Master Deed by unit owner and Council’s remedy ... 19

    Paragraph 3 Council may issue a fine of \$100 per day per violation..... 20

11. Damage or Destruction..... 20

    Paragraph 1 Council’s responsibility to carry insurance protection for condo project ..... 20

    Paragraph 2 Condo’s insurance not sufficient to cover cost then will be paid by co-owners . 21

    Paragraph 3 Fire or damage reconstruction and repairs are mandatory ..... 21

12. Easements and Encroachments..... 21

    (a) Utility easements..... 21

    (b) Further easements being granted for benefit of Condo project ..... 22

    (c) Council’s right of access to each unit ..... 23

    (d) Right of Declarant to use common elements for ingress and egress..... 23

    (e) Declarant’s rights for purpose of completing development ..... 24

    (f) Easements shall exist due to settling/shifting of bldg, repair, construction  
         after partial or total destruction ..... 24

    (g) Right of Board to grant additional easements ..... 24

13. Sale, Leasing or Other Alienation ..... 25

    (a) 10 day notice period before sale/lease of condominium ..... 25

    (b) Unit owners default of payment for mortgage ..... 25

    (c) Written consent of a majority before Council can purchase or lease any unit .... 25

    (d) If Council does not exercise options in this section ..... 26

    (e) A certificate by a majority of the Board regarding provisions in this section..... 26

    (f) Terms regarding transfer by gift, succession or operation of law, etc. .... 26

    (g) Title to unit being held by trust, etc. .... 27

    (h) Terms not being applicable to tile acquired by foreclosure ..... 27

    (i) Acquisitions of units or interests..... 27

    (j) Units or interested acquired shall be held of record in name of Council ..... 27

14. Bylaws; Initial Authority Vested Exclusively in Declarant or its Assigns ..... 28

    Paragraph 1 Adoption of Bylaws ..... 28

    Paragraph 2 Rules and Regulations..... 28

    Paragraph 3 Rights of Council until all units are sold or 7 yrs after date of MD ..... 28

15. Grantees..... 29

16. Assignment..... 29

17. Incorporation ..... 30

18. Failure to Enforce ..... 30

19. Notices..... 30

20. Amendments..... 30

    (a) Declarant may amend Master Deed before turnover ..... 30

    (b) Amendments after turnover with 66.66% vote ..... 31

    (c) Amendments shall conform to Horizontal Property Law ..... 31

21. Severability..... 31

22. Captions..... 32

23. Construction ..... 32

24. Mortgagee of Declarant..... 32

Signature page ..... 32

EXHIBIT A ..... 34

EXHIBIT B..... 35

**DECLARATION OF HORIZONTAL PROPERTY  
REGIME AND MASTER DEED FOR  
EASTGATE BUSINESS PARK**

THIS DECLARATION AND MASTER DEED is made and entered into this 19 day of March, 2008, by **Pinnacle Properties of Louisville, LLC**, a Kentucky limited liability company, hereinafter referred to as "Declarant" having an address of PO Box 43957, Louisville, KY 40243.

**WITNESSETH:**

WHEREAS, Declarant is the owner in fee simple of a certain tract of land located at 325 North English Station Road, Louisville, Kentucky, and being in the City of Middletown, depicted and described on the attachment(s) hereto;

WHEREAS, Declarant desires to develop said land into a non-residential Condominium Project with the overall plan of same consisting of 90,000 square feet of non-residential condominium units, initially consisting of one unit in one building and eventually including an as yet undetermined number of units in up to 6 buildings; and

WHEREAS, Declarant desires to, and does hereby, file and simultaneously of record herewith its plans for the Condominium Project and the units contained therein together with any and all other structures and improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in any way pertaining thereto, in accordance with the provisions of the Kentucky Horizontal Property Law, found at KRS 381.805 through .910, as amended; and,

WHEREAS, Declarant desires to establish certain rights and easements in, over, and upon said real estate for the benefit of itself and all future owners of any part of said real estate and any unit or units thereof or therein contained and to provide for the harmonious, beneficial and proper use and conduct of the property; and,

WHEREAS, Declarant desires and intends that the unit owners, mortgagees, occupants and other persons hereafter acquiring any interest in the property shall at all times enjoy the benefits of and shall hold their interests subject to the rights, easements and privileges and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of condominium ownership of the property and are established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the property;

NOW, THEREFORE, Declarant declares as follows:

**1. Legal Description of Land and Definitions**

The real estate, which is hereby submitted and subjected to the regime established by the provisions of the Kentucky Horizontal Property Law, as amended, is legally described on Exhibit A attached hereto which is filed herewith and made a part hereof.

Said real estate and all improvements and easements thereon and appurtenances thereto shall be known as "Eastgate Business Park".

Except to the extent hereinafter modified or changed, the following words and terms, whenever used herein, shall have the same meaning as provided for such words and terms in the Horizontal Property Law, as amended: "unit", "condominium", "master deed", "general common elements", "common expenses", "persons", "property", and "limited common elements".

**2. Description of Buildings; Additional Buildings; Units and Commons Area; Reallocations of Percentages of Ownership; Amendments to Declaration and Master Deed.**

The Master Deed and Declaration cover one building as situated on said real estate as fully described on the site plan and set of floor plans of the building filed simultaneously with the recording hereof pursuant to KRS 381.835 and, by reference thereto, made a part of this Declaration and Master Deed. Those plans are of record in Apartment Ownership Book 123, Pages 96 through 97 in the office of the County Clerk of Jefferson County, Kentucky.

EASTGATE BUSINESS PARK shall be developed incrementally so that it may eventually consist of up to 90,000 square feet of non-residential condominium space in up to six (6) buildings of which the one (1) building shown on the set of floor plans filed simultaneously with the recording hereof is to be constructed first and followed by other buildings which will be created, added and subjected to this condominium regime by addendums to this Declaration and Master Deed upon the filing of plans together with the common elements appurtenant thereto. Declarant specifically reserves the right, from time to time, until all of the buildings and all of the square footage are completed, to amend this Declaration and Master Deed to the extent of adding additional buildings, units and common area, and, once added by addendum described below, shall have the same rights and privileges as provided herein.

In furtherance of the foregoing, an irrevocable power of attorney coupled with an interest is hereby granted and reserved unto Declarant, its successors and assigns, to amend this Declaration and Master Deed and to shift and reallocate from time to time the percentage of ownership in the common elements appurtenant to each unit to the percentages set forth in each addendum pursuant to this section of this Declaration and Master Deed. Each execution of a deed of conveyance, mortgage or other instrument with respect to a unit and the acceptance thereof shall be deemed a grant, acknowledgment and conclusive evidence of the parties thereto to the consent of such reservation of power to the Declarant, its successors or assigns, as attorney in fact and shall be deemed to reserve to Declarant and its successors and assigns the power to shift and reallocate from time to time the percentages of ownership in the common elements appurtenant to each unit as set forth in each such recorded addendum.

Further, Declarant specifically reserves unto itself and its successors and assigns the right to determine the location of all future units and buildings on areas shown on the plat filed herewith as reserved for future development for additional buildings, which areas shall have free rights of ingress



and egress on and over the vehicular use, parking and access areas earlier platted and constructed.

Individual unit owners shall not be included within the meaning of "successors and assigns" as used in the foregoing paragraphs of this section of this Declaration and Master Deed.

Each owner of a unit, by acceptance of a deed thereto, further acknowledges, consents, and agrees to each such amendment that is recorded as follows:

(a) The portion of the additional common area described in each such amended declaration and master deed shall be governed in all respects by the provisions of this Declaration and Master Deed.

(b) The percentage of ownership in the common elements appurtenant to each unit shall automatically be shifted and reallocated to the extent set forth in each such recorded amended declaration and master deed, and, upon the recording of each such amended declaration and master deed, the amount by which such percentage of ownership in the common elements appurtenant to the unit is reduced, as set forth in each such recorded amended declaration and master deed, shall thereby be and be deemed to be released and divested from such unit and reconveyed and reallocated among the unit owners as set forth in each such recorded amended declaration and master deed.

(c) Each deed, mortgage or other instrument affecting a unit shall be deemed given subject to the conditional limitation that the percentage of ownership in common elements appurtenant to each unit shall, upon the recording of each amended declaration and master deed, be divested to the reduced percentage set forth in such amended declaration and master deed and vested among the other owners, mortgagees and others owning an interest in any other unit in accordance with the terms and percentages of each such recorded amended declaration and master deed.

(d) The percentage of ownership in the common elements appurtenant to each unit shall include and be deemed to include any additional common elements annexed hereto by a recorded amended declaration and master deed, and each deed, mortgage or other instrument

affecting a unit shall be deemed to include such additional common elements, and the ownership of any such unit and lien of any such mortgage shall automatically include and attach to such additional common elements as such amended declarations and master deeds are recorded.

(e) Each owner shall have a perpetual easement, appurtenant to his unit, for the use of any additional common elements annexed thereto by and described in any recorded amended declaration and master deed for the purposes therein set forth, except as to any portion the use of which is limited by exclusive easement granted to the owner of specific units as may be provided in any such amended declaration and master deed.

(f) The recording of each such amended declaration and master deed shall not alter the amount of the lien for expenses assessed to a unit prior to such recording.

(g) Each owner, by acceptance of a deed to a unit, agrees for himself and all those claiming thereunder, including mortgagees, that this Declaration and Master Deed and each amended declaration and master deed is and shall be deemed to be in accordance with the Horizontal Property Law, and any changes in the respective percentages of ownership in the common elements as set forth in each such amended declaration and master deed shall be deemed to be made by agreement of all unit owners.

(h) Declarant reserves the right to amend this Declaration and Master Deed in such manner, and each owner agrees to execute and deliver such documents, if necessary, or desirable to cause the provisions of this section of this Declaration and Master Deed to comply with the Horizontal Property Law as such law may be amended from time to time.

### **3. Identification and Ownership of Units; Responsibilities of Unit Owners.**

(a) For purposes of identification, each unit has been assigned a number as indicated on Exhibit B attached hereto and made a part hereof. No unit bears the same identification number as any other unit.

(b) The location, dimensions and limited common area to which each unit has access are set forth in and on the aforementioned floor plans. The legal description of each unit shall consist of its number as indicated on Exhibit B followed by the words Condominium Unit in "Eastgate Business Park". Each unit shall consist of the space enclosed and bounded by:

(i) the insides of the structural beams and outside walls and the inside of demising walls, if any, between units in one building, and

(ii) the floors and trusses of each unit

all as are shown on the set of floor plans filed of record simultaneously herewith or with any amendment hereto and shall include the exclusive right to use the limited common elements immediately adjacent to said unit.

(c) After construction, no unit may, by deed, plat, court decree or otherwise, be subdivided or partitioned or in any other manner separated into tracts or parcels smaller than the whole unit as shown on the floor plans, except in the manner provided for in the Horizontal Property Law and upon the prior written approval of the holder(s) of any mortgage(s) on such unit and approval by the Declarant or by majority vote of the Council of Co-owners hereinafter described, as appropriate at the time.

(d) Each unit owner shall obtain fee simple ownership of the unit acquired, the appurtenant undivided interest in the general common elements of the Condominium Project, and, if applicable, any limited common elements appurtenant to the unit. Each unit owner shall be a member of the Council. The form of ownership of a unit may be individual, corporate, partnership, joint with right of survivorship, tenancy in common, tenancy by the entirety, or (subject to the other provisions of the condominium documents) any other estate in real property recognized by law and which may be conveyed and encumbered.

(e) The owner of each unit shall be responsible for any and all ad valorem or real estate taxes and special assessments that may be assessed against the unit and its percentage of ownership in the common elements by any governmental authority with jurisdiction over the unit. Nothing contained in this Declaration and Master Deed shall be construed as giving to any unit owner any right of contribution or adjustment against any other unit owner on account of any deviation by any governmental authority from the percentages of ownership set forth in any valuation or assessment against the unit owned by such unit owner.

(f) It shall be the responsibility of each unit owner with respect to the unit owned by such unit owner:

(i) Except the portions to be maintained, repaired, and replaced by the Council, to maintain, repair, and replace, at the expense of such unit owner, all portions of the unit, including all insulation, decorating and redecorating, painting, tiling, carpeting, papering, plastering, or varnishing which may be necessary to maintain the good appearance and condition of the unit. Where the limited common elements, hereinafter defined, appurtenant to a particular unit include a stairway, a porch or balcony or patio, the unit owner(s), who has or have the right to exclusive use of said stairway or porch or balcony or patio, shall be responsible for the maintenance, preservation, and care of the said stairway or porch or balcony or patio, the entrance doors thereto, and the replacement of any light bulbs, wiring, electrical outlets, or any other fixtures thereon. Such maintenance, repair, and replacement shall be done without disturbing the rights of other unit owners, and such maintenance, repair, and replacement shall not change the appearance of any portion of the exterior of a building or unit without prior approval of the Board of Directors of the Council.

(ii) To maintain, repair, and replace at the expense of such unit owner the appliances and fixtures located in the unit, or located in the limited common elements appurtenant to the unit, or located in the general common elements but benefiting the unit to the exclusion of any

other unit, including, but not limited to, any plumbing fixtures, water heaters, furnaces, air bowers or conditioning equipment, interior lighting fixtures, appliances, sinks, doors, windows, drop ceilings, telephones, or any electric, gas, or water pipes or lines or wires or conduits or ducts serving any such appliances and fixtures.

(iii) To report promptly to the Council any defect or need for repairs for which the Council is responsible.

(iv) To maintain, repair, or replace at the expense of such unit owner all portions of the unit which may cause injury or damage to the other units or to the common elements, hereinafter defined.

(v) To perform the responsibilities of such unit owner in such a manner and at such reasonable hours so as not to unreasonably disturb other unit owners in the building.

(g) A unit owner shall be liable for the entire expense of any maintenance, repair, or replacement of any part of the Condominium Project, whether part of a unit or part of the general common elements or limited common elements, if such maintenance, repair, or replacement is rendered necessary by any negligent act or omission of the unit owner, or any employee, family member, guest, agent, or lessee of such unit owner. If any unit owner fails to undertake any such maintenance, repair, or replacement within 10 days after the Board of Directors of the Council notifies such unit owner in writing that the Board of Directors has determined that such maintenance, repair, or replacement is the responsibility of such unit owner under this section of this Declaration and Master Deed, the Board of Directors of the Council may undertake such maintenance, repair, or replacement, and the cost thereof shall be a lien on the unit owned by such unit owner until paid by the unit owner, and such lien shall be subject to the same remedies as are provided in this Declaration and Master Déed for nonpayment by a unit owner of common charges and assessments.

(h) No alteration or improvement to the unit which would alter or affect the common elements or any other unit may be made by any unit owner other than the Declarant without the prior written consent of the Board of Directors of the Council. No application shall be filed by any unit owner other than Declarant with any governmental authority for a permit covering an addition, alteration, or improvement to be made in a unit which alters or affects the common elements or other units, unless approved and executed by the Board of Directors of the Council. Such approval and execution shall not evidence any consent to any liability on the part of the Board of Directors of the Council, or any individual member of the Board of Directors, to any contractor, subcontractor, materialman, architect, or engineer by reason of such addition, alteration, or improvement or to any person having any claim for injury to person or damage to property arising therefrom. Consent shall be requested in writing through the manager or the managing agent, if any, or through the president or secretary of the Board of Directors of the Council if no manager or management agent is employed. The Board of Directors of the Council shall have the obligation to answer within 30 days. The Board of Directors of the Council may require that the unit owner making such improvement, alteration, or addition obtain such insurance coverages and in such amounts as the Board of Directors of the Council deems proper.

**4. Description of Common Elements.**

The general common elements shall consist of that property as set forth on the set of floor plans of the building filed simultaneously with the recording of this Declaration and Master Deed or as may be filed with the recording of any amended declaration and master deed, excepting the individual units and fixtures therein and excepting any portion of the property or appurtenances thereto described as limited common elements, and shall include, but not be limited to, the land as set forth in the plat attached hereto as Exhibit B and designated as common area; the foundation; structural columns; exterior walls; floors; roof trusses; roofs of the buildings (other than interior

surfaces thereof located within the boundaries of individual units); structural parts of the buildings; outside retaining walls; pipes, ducts, conduits and electrical wiring constituting part of the overall systems designed for the general service of an entire building; parking areas; sidewalks; landscaping; garbage and refuse areas; and public utility lines. Common elements shall include tangible personal property used for the maintenance and operation of the Condominium Project even though owned by the Council hereinafter described. As the amendments are made pursuant herein, general common elements shall consist of additional land designated as common areas as set forth on any amended plan recorded together with any said amendment thereto. All areas designated as general common elements are to be maintained by the Council.

**5. Definition and Description of Limited Common Elements.**

"Limited common elements" means and includes those common elements that are specifically reserved for the use of a certain unit or a specifically designated number of units to the exclusion of the unit owners or occupants of other units as shown on the set of floor plans of the buildings filed simultaneously with the recording of this Declaration and Master Deed or as may be filed with the recording of an amended declaration and master deed. The limited common elements of the Condominium Project include automobile parking spaces and storage areas that may be designated as being intended for the exclusive use of a unit or units pursuant to the floor plans aforesaid. Limited common elements also means and includes such limited common elements that are agreed upon by the Council, by the Board of Directors of the Council or by the Declarant to be reserved for the use of a particular unit as well as any other limited common elements elsewhere designated in this Declaration and Master Deed. All expenses of maintaining and repairing limited common elements shall be paid by the unit owners benefitted thereby, except that which is covered under Common Expenses.

**6. Percentage Interest in Common Elements.**

(a) Unless otherwise provided herein, the percentage of the undivided interest in the common elements pertaining to each unit and its owner for all purposes is as set forth in Exhibit B attached hereto and made a part hereof, which is calculated by dividing the floor area of a unit by the sum of the floor areas for all units.

(b) Each unit owner shall own an undivided interest in the percentage hereinabove set forth in the common elements as a tenant in common with all the other unit owners, and, except as otherwise limited by this Declaration and Master Deed, shall have the right to use and occupy the common elements for all purposes incident to the use and occupancy of a unit as legally permitted by zoning regulation and approved development plan and binding elements and by this Master Deed and any applicable Rules and Regulations and for such other incidental uses permitted by this Declaration and Master Deed, which right shall be appurtenant to each unit.

Notwithstanding the unit owners' joint title to common elements, no unit owner shall use any common element in any manner calculated to disturb or annoy any other owner in the peaceable possession and enjoyment of a unit. To that end, no unit owner shall be entitled to utilize any of the parking area to an extent greater than the minimum parking requirements as specified in the Land Development Code for Louisville Metro, as in effect on this date but as may be amended from time to time, as applicable to the land use category of such unit owner as found in the Land Development Code. The Board of Directors of the Council shall be entitled to prescribe such rules and regulations as necessary to allocate parking spaces in order to give effect to provisions of this section of this Declaration and Master Deed.

(c) The term "unit" as used herein and throughout this Declaration and Master Deed shall mean a "unit" as defined herein and in KRS 381.810 (1), together with the percentage of undivided ownership interest in the common elements allocated to such unit as hereinabove set out.



Any conveyance of an individual unit shall be deemed also to convey the undivided interest of the owner in the common elements, both general and limited, appertaining to said unit, without specifically or particularly referring to same. Such interest shall remain undivided and shall not be the object of an action for partition or division of the co-ownership, except as provided by the Horizontal Property Law.

**7. Common Expenses and Collection of Assessments.**

a) "Common expenses" of the Condominium Project means all charges, costs and expenses incurred by the Council, the Board of Directors of the Council, and/or the managing agent for and in connection with the operation and administration of the Condominium Project. Common expenses include, but are not necessarily limited to, those expenses for maintenance of the buildings (except to the extent of the units comprising a part of same), including the roofs and all portions of a unit which constitute a part of the exterior of a building, as well as the repair of utility services, the provision of water service, insurance premiums, garbage removal, painting of the common elements, including the exterior of all surfaces, windows and doors, care and replacement of exterior lighting fixtures, asphalt and concrete repair and replacement, costs of Condominium Project materials, supplies, equipment and tools, management, legal, accounting and engineering service fees, repairs and replacements of common element utility lines and equipment, and repayment of any loans obtained to pay for common expenses and to establish reserves to be maintained to cover future replacement costs and contingencies.

(b) The making and collection of assessments against unit owners for common expenses of the Condominium Project, as defined above, shall be pursuant to the bylaws of the Council and subject to the following provisions:

(i) Each unit owner shall be personally liable for the proportionate share of the common expenses and shall share in the common surplus (after due allowance for the retention

of any reserve to cover future common expenses), such shares being the same as the unit owner's undivided share in the common elements. No unit shall be exempt from contribution toward such expenses by waiver of the use or enjoyment of the common elements or by abandonment of the unit owned by such unit owner or by claiming that the quantity or quality of services does not warrant such payment or is not as contemplated by such unit owner as of the time of purchase; provided, however, the Board of Directors of the Council may, but is not required to, abate or reduce a unit owner's contribution for a reasonable period of time during which the unit owned by such unit owner is uninhabitable as the result of damage or destruction.

(ii) Assessments and installments on such assessments paid on or before 10 days after the day when due shall not bear interest, but all sums not paid on or before 10 days after the date when due, including any sums due as a result of acceleration of unpaid assessments as may be provided in the bylaws, shall bear interest from the date when due until paid at the rate of interest per annum provided in the bylaws. All payments upon account shall be first applied to interest and then to the assessment payment first due.

(iii) Except as provided in paragraph (v) of this section of this Declaration and Master Deed, any unpaid common expenses assessed to a unit owner shall constitute a lien against the unit owned by such unit owner and against such unit owner's interest in the Condominium Project prior to all other liens except the lien of a first mortgage on the unit and tax or assessment liens on the unit by the taxing subdivision of any governmental authority, including, but not limited to, state, county, city, and school district taxing agencies. The lien created by this paragraph of this section of the Declaration and Master Deed shall be deemed to be incorporated by reference in and reserved by each deed or the instrument conveying any interest in a unit whether or not such deed or instrument by its express terms refers to said lien. In addition to any other remedies or liens provided by law, if any unit owner is in default in the payment of any common expenses

assessed to such unit owner for 30 days, including any sums due as a result of acceleration of unpaid assessments as may be provided in any of the condominium documents, the Council may bring suit for and on behalf of itself and as representative of all unit owners to enforce collection of the assessment and all costs of collection thereof, including reasonable attorney fees, and to foreclose the aforesaid lien in accordance with the laws of the Commonwealth of Kentucky, in like manner as a mortgage on real property. The lien for unpaid assessments shall also secure legal interest and reasonable attorney fees incurred by the Council incident to the collection of such assessment or enforcement of such lien. In the event the proceeds of the foreclosure sale are not sufficient to pay such unpaid common charges, the unpaid balance shall be charged to all unit owners as common expense.

(iv) A unit owner shall not be liable for any common expenses accruing after the sale of his unit and the recording of a deed to the purchaser. The purchaser of a unit subject to any lien arising under this Declaration and Master Deed prior to the date of purchase and the recording of the deed shall take title to the unit subject to the lien; provided, however, that at the request of any unit owner or a prospective purchaser of the unit, the Board of Directors shall provide a statement disclosing whether the unit owner is then in default under any of the obligations hereunder and whether and in what amount a lien exists against the unit owned by the unit owner as set forth above, which statement shall be conclusive as to the facts stated therein as against the Council and the other unit owners and may be relied upon by a prospective purchaser or mortgagee or assignee of any mortgage upon the unit of such unit owner.

(v) Where the mortgagee of a first mortgage of record or the purchaser of a unit obtains title to the unit as a result of foreclosure of a first mortgage, or by voluntary conveyance in lieu of such foreclosure, said mortgagee or purchaser shall not be liable for the shares of common expenses or assessment by the Council pertaining to such unit or chargeable to a former unit owner

of such unit which became due prior to acquisition of title by said mortgagee or purchaser as a result of the foreclosure or voluntary conveyance in lieu of said foreclosure. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the other unit owners of units, including a successor or assign of the mortgagee. The waiver of liability granted herein for the payment of past due assessments shall not apply to a unit owner who takes back a purchase money mortgage or to any other mortgagee which is not an "institutional mortgagee." The term "institutional mortgagee" herein used shall mean a first mortgage holder which is a bank, savings and loan association, life insurance company, pension fund, trust company, credit union, or other similar institutional lender.

(vi) In any foreclosure of a lien for assessments, the unit owner of the unit subject to the lien shall be required to pay a reasonable rental for the unit, and the Council shall be entitled to the appointment of a receiver to collect the same.

Anything to the contrary contained in this Declaration and Master Deed or in the bylaws of the Council notwithstanding, until the Declarant transfers control and management to the Council, the Declarant shall not be liable for the payment of any assessment, monthly or otherwise, for common expenses, or reserve or contingency accounts or other assessments, and the units owned by the Declarant, prior to the Declarant transferring control to the Council, shall not be subject to any lien therefor; and Declarant shall not have any liabilities of a unit owner. The Declarant shall, however, until the Declarant transfers control to the Council, be responsible for the maintenance costs of the Condominium Project incurred over and above assessments or amounts paid by unit owners for common expenses and other appropriate charges.

#### **8. Administration of the Condominium Project.**

Administration of the project, including the use, maintenance, repair, replacement and restoration of the common elements and any additions and alterations to them, shall be in accordance

with the provisions of the Kentucky Horizontal Property Law, this Declaration and Master Deed, the bylaws of the Council and all rules and regulations adopted by the Board of Directors of the Council.

The maintenance and operation, including landscaping, gardening, snow removal, cleaning, painting and all other repair of the common elements shall be the responsibility and expense of the Council, unless and except as otherwise expressly provided elsewhere in this Declaration and Master Deed or in the bylaws.

Notwithstanding the duty of the Council to manage, operate, maintain, and repair the Condominium Project, subject to and in accordance with the provisions of this Declaration and Master Deed and bylaws, the Council shall not be liable to unit owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the Condominium Project required to be maintained and repaired by the Council, or caused by the weather or other elements, or by other unit owners or persons, including, but not limited to, defects which are the result of characteristics common to the materials used, damage due to ordinary wear and tear and normal use, and damage due to wind, rain, snow, hail, and condensation on or expansion or contraction of materials due to weather.

**9. Use and Occupancy of Units and Common Areas.**

All buildings and the units therein are intended for and restricted exclusively to non-residential uses allowed by applicable zoning regulations and other law, as applicable, and as otherwise approved by the Declarant or the Board of Directors of the Council, and, in any event, the use and occupancy thereof shall be no greater than the present permitted usages under the existing zoning classification. In addition, the following restrictions shall apply:

(a) No "For Sale" or "For Rent" signs, advertising, or other displays shall be maintained or permitted on any part of the property including in the windows of units, except at such location and in such form as shall be determined by the Declarant and/or the Board of Directors of

the Council in its sole discretion. The Board of Directors shall also have the authority to restrict all sales and marketing efforts to one or more sales agents who are selected by the Board of Directors to the exclusion of all others. To the extent that the Board of Directors selects an exclusive sales and marketing agent(s), any other sales and marketing agents acting on behalf of any unit owner shall not be permitted to conduct any business or advertise, in any manner, its sales and marketing efforts on the condominium property.

(b) There shall be no obstruction of the common elements and nothing shall be stored in the common elements without the prior consent of the Declarant and/or the Board of Directors except as herein expressly provided. Each unit owner shall be obligated to maintain and keep his or her own unit, windows and doors in good, clean order and repair.

(c) Nothing shall be done or kept in any unit or in the common elements which will increase the rate of insurance on the building or contents thereof as permitted by referenced law, this Master Deed or any applicable development plan and binding elements without the prior written consent of the Declarant and/or the Board of Directors of the Council. No unit owner shall permit anything to be done or kept in his or her unit or in common elements or limited common elements which will result in the cancellation of insurance on the building or contents thereof or which would be in violation of any law. No waste shall be committed in the common elements or limited common elements.

(d) Unit owners shall not cause or permit anything to be hung or displayed on the outside or inside of the windows or placed on the outside walls of the building, and, except for the name of the unit owner's business which shall be permitted, to the extent allowed by law and as approved by Board of Directors, to be placed on the front exterior of the unit owner's unit in such location and of such size and design as approved by the Declarant, its successors or assigns, or Board of Directors of the Council, as the case may be, no sign or signs, lettering, awning, canopy, shutter,

radio or television antenna shall be affixed to or placed upon the exterior walls, doors, windows, or roof of any part thereof, without the prior written consent of the Declarant and/or Board of Directors of the Council.

(e) No animal or animals of whatever nature shall be raised, bred or kept in any unit or on any part of the property.

(f) No unhealthful, environmentally hazardous, odorous, noxious or offensive activity shall be carried on in any unit or on the property, nor shall anything be done therein, either willfully or negligently, which may be or become harmful or a disturbance or an annoyance or nuisance to the other unit owners or occupants or constitute waste at common law.

(g) Nothing shall be done in any unit or in, on or to the common elements which will impair the structural integrity of the building or which would structurally change the building, except as otherwise provided herein.

(h) No personal property or other articles shall be left out or exposed on any part of the common elements. The common elements and the limited common elements shall be kept free and clear of rubbish, debris and other unsightly materials.

(i) Nothing shall be altered on, constructed in, or removed from the common elements or limited common elements, except upon the written consent of the Developer and/or the Board of Directors of the Council.

(j) No trailer, boat, or any recreational vehicle shall be kept or parked on the premises at any time, except with the express consent of the Declarant and/or Board of Directors of the Council.

(k) Other rules and regulations may be made by the Declarant and/or the Board of Directors of the Council as to the usage of the units.

**10. Violation of Declaration.**

The violation of any restriction or condition or regulation adopted by the Board of Directors of the Council or the breach of any covenant or provision herein contained or contained in the Horizontal Property Law shall give the Board of Directors of the Council the right, in addition to any other rights provided for in this Declaration and Master Deed: (a) to enter upon the unit or any portion of the property upon which, or as to which, such violation or breach exists, and to summarily abate and remove, at the expense of the defaulting unit owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof; and the Council, or its employees or agents, shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach. Should the Council prevail in said legal proceeding, the unit owner in breach shall be liable to the Council for the expenses it incurs to enjoin, abate or remedy said breach including, without limitation, reasonable attorney fees and costs.

Furthermore, if any unit owner (either by his or her own conduct or by the conduct of any other occupant of his unit) shall violate any of the covenants of this Declaration and Master Deed or the bylaws of the Council or regulations adopted by the Council and such violation shall continue for 30 days after notice in writing from the Board of Directors of the Council or shall reoccur more than once thereafter, then the Council shall have the power to issue to the defaulting unit owner a 10 day notice in writing to terminate the rights of the said defaulting unit owner to continue as a unit owner and to continue to occupy, use or control his or her unit; and thereupon an action in equity may be filed by the Council against the defaulting unit owner for a decree of mandatory injunction against the unit owner or occupants, or, in the alternative, a decree declaring the termination of the defaulting unit owner's right to occupy, use or control the unit on account of the breach of covenant and ordering that all the right, title and interest of the unit owner in the property shall be sold (subject



to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting unit owner from reacquiring his interest at such judicial sale or by virtue of the exercise of any right of redemption which may be established. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorney fees, and all other expenses of the proceeding and sale; and all such items shall be taxed against the defaulting unit owner in said decree. Any balance of the proceeds after satisfaction of such charges and any unpaid assessments hereunder or any liens shall be paid to the unit owner. Upon the confirmation of such sale, the purchaser thereof shall thereupon be entitled to a deed to the unit and immediate possession of the unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any sale, and the decree shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration and Master Deed and to the bylaws of the Council.

As an additional means of enforcement of the provisions of this Declaration and Master Deed and the bylaws and regulations of the Council, the Council may issue a fine of up to \$100 per day of violation (each day of a continuing violation being considered a separate violation) for any violation thereof. In order to levy any fine under this provision, the Council must provide five (5) days written notice to the offending Unit owner. If the violation is not remedied or discontinued within the 5-day period following issuance of the notice, then fines may be levied from the issuance of the notice forward until the violation is remedied or discontinued. Any fines levied hereunder shall constitute a lien against the offending unit, collectible as "common expenses" under Paragraph 7 above.

**11. Damage or Destruction.**

The Council, acting by and through its Board of Directors, shall acquire full replacement value insurance protection for the Condominium Project, including but not exclusively, casualty, liability and employee workmen's compensation insurance, if needed, without prejudice to the right

of co-owners to insure their units on their own account and for their own benefit. The premiums on such insurance shall be considered common expenses, enforceable under lien rights, provided that, should the amount of any insurance premium be affected by a particular use of a unit or units, the owners of such units shall be required to pay any increase in premium resulting from such use.

In case of fire or other destruction or damage and the Condominium Project's insurance indemnity is not sufficient to cover the cost of reconstruction or repair, the cost (or added cost) shall be paid by the co-owners as a common expense, and the Council by a majority vote will be authorized to borrow funds therefor and to amortize the repayment of same over a period of time not exceeding the reasonable life of the reconstruction or repairs.

In the event of fire or damage, reconstruction and repairs of the buildings shall be mandatory regardless of the nature and extent of the damage. Reconstruction and repairs shall be made to follow and conform as closely as possible to the original basic architectural design of "Eastgate Business Park", and any mortgage existing prior to damage to the property shall attach and be continuing as a lien on the reconstructed property. All insurance proceeds resulting from said damage or destruction payable to unit owners and first mortgagees (as their interests may appear) shall be deemed assigned to the Board of Directors of the Council (representing the Council), which shall immediately deposit all proceeds in a trust account with a federally insured bank or thrift institution selected by the Board of Directors of the Council. Said trust account shall be entitled "Eastgate Business Park Trust Account for Repairs and Reconstruction". The Board of Directors of the Council, with qualified supervision, shall oversee all repairs and all reconstruction.

**12. Easements and Encroachments.**

(a) Easements are hereby declared and granted by each unit owner in favor of each other unit owner and reserved by Declarant for all utility purposes as they exist on the date of the recording of this Declaration and Master Deed or as are contemplated by the plans, or as may be required to be

incorporated in the final construction of the buildings and the common elements. Each unit owner shall have an easement in common with all other unit owners to use all pipes, wires, ducts, cables, conduits, public utility lines, and other common elements located in any of the other units and serving the unit(s) of such unit owner. Each unit shall be subject to an easement in favor of all other unit owners to use the pipes, ducts, cables, wires, conduits, public utility lines, and other common elements serving such other units and located in such unit. Easements are further declared and granted and reserved for ingress and egress for pedestrian traffic over, through, and across sidewalks, paths, walks, and lanes as are now and from time to time may exist upon the common elements; and for vehicular traffic over, through, and across such driveways, parking areas (subject to the rights of applicable unit owners in parking spaces which are limited common elements), and other portions of the common elements as are now and from time to time may be paved and intended for such purposes. All easements and rights described in this Declaration and Master Deed are easements appurtenant, running with the land, and shall inure to the benefit of and be binding upon the Declarant, unit owners, and any other person having any interest in the Condominium Project, but shall be subject to and limited by the provisions of the condominium documents. The deed of conveyance of any unit, or any mortgage or trust deed or other evidence of obligation shall be subject to the easements and rights described in this Declaration and Master Deed, and reference to this Declaration and Master Deed shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees, and trustees of such units as fully and completely as if such easements and rights had been recited fully and set forth in their entirety in such documents.

(b) The Council may grant further easements for utility purposes for the benefit of the Condominium Project, including, without limitation, the right to install, lay, maintain, repair, and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, cable television wires and equipment, and electrical conduits and wires over, under, along, and on any

portion of the Condominium Project, and each unit owner hereby grants the Declarant, its successors and assigns, or, after control of the Condominium Project is transferred to the Council, the Council (acting through its president) an irrevocable power of attorney coupled with an interest to execute, acknowledge, and record, for and on behalf of each unit owner, such instruments or documents as may be necessary to effectuate such easements; provided, however, that any easement through a unit shall be only according to the plans and specifications for the building in which such unit is located, or as such building is constructed, unless approved in writing by the unit owner. The power of attorney granted by this section of this Declaration and Master Deed shall survive any disability or death of the unit owner and shall be binding on each successive unit owner.

(c) The Council shall have a right of access to each unit upon reasonable prior notice and at reasonable hours: (i) to inspect the same for compliance with the provisions of the condominium documents; (ii) for the maintenance, repair, replacement, or improvement of any portion of the common elements (or any portion of the unit which is the responsibility of the board of directors) including any pipes, wires, ducts, cables, conduits, and public utility lines located in or adjacent to any unit; (iii) to prevent damage to the common elements or any other unit; (iv) to abate any violation of law, order, rules, or regulations of any governmental authority having jurisdiction thereof; and (v) to abate any violation of any provision of any of the condominium documents. The Council shall have such other right of access to each unit as may be provided under any other provisions of the condominium documents. The Council shall be obligated to repair any damage to a unit incurred by reason of exercise of this right of access.

(d) Declarant reserves unto itself, its successors and assigns the right, with respect to its marketing of units, to use the common elements for the ingress and egress of itself and for prospective purchasers and lessees of units, including the right of such prospective purchasers and lessees to park in parking spaces which are not limited common elements. Any damage to the

common elements resulting from this easement shall be repaired by Declarant promptly after the same occurs.

(e) Declarant reserves unto itself, its successors and assigns the right, for the purpose of completing the development of the Condominium Project, including the buildings and units, to have access to the common elements and (but only to the extent reasonably necessary and only upon reasonable prior notice to the applicable unit owner and at reasonable hours) to any units presently existing, for the ingress and egress of itself and its subcontractors, materialmen, and suppliers for the purpose of constructing, installing, maintaining, and repairing equipment and fixtures pursuant to such development, and for other activities reasonably necessary in connection with such development, including the right to use the roadways and to park in those parking spaces which are not limited common elements at the Condominium Project. Declarant agrees to repair any damage which may be caused to the building or to any unit resulting from the actions of Declarant permitted by this section of this Declaration and Master Deed promptly after Declarant is notified that such damage has occurred.

(f) An easement shall exist for any portion of a unit or the common elements which encroaches upon any other unit or the common elements as a result of (i) the original or future construction or settling or shifting of any part of a building, or (ii) any repair or restoration undertaken by the Board of Directors of the Council, or (iii) any construction after a partial or total destruction as a result of a fire or other casualty or as a result of condemnation or eminent domain proceedings. Such easements as provided in this section of this Declaration and Master Deed shall exist so long as the building in which the encroachment exists (or any replacement thereof permitted under any condominium document) shall stand.

(g) The Board of Directors of the Council shall have the right to grant such additional easements burdening the common elements as are reasonably determined by it to be compatible with

the intended uses and future development of the Condominium Project, including, without limitation, additional easements for ingress and egress to and from and over the land.

**13. Sale, Leasing or Other Alienation.**

(a) Any unit owner, other than Declarant, its successors or assigns or a mortgagee of a unit who has acquired title thereto in lieu of or through foreclosure, who wishes to sell or lease the unit (or any lessee of any unit wishing to assign a lease or sublease such unit) to any person (excepting any family member of such unit owner and excepting any corporation, partnership, association, trust or other legal entity to which such unit owner or person controlling such unit owner sold its business or in which such unit owner, or person controlling such unit owner, is actively involved) shall give to the Council, no less than 10 days prior written notice of any such sale, lease, assignment or sublease, setting forth in detail the terms of any contemplated sale, lease, assignment or sublease, which notice shall specify the name and address of the proposed purchaser, assignee or lessee. The Council shall have the first right and option to purchase or lease such unit upon the same terms, which option shall be exercisable for a period of 10 days. The unit owner (or lessor) may, at the expiration of said 10 day period and at any time within 10 days after the expiration of said 10 day period, contract to sell or lease (or sublease or assign) such unit to the proposed purchaser, assignee or lessee named in such notice upon the terms specified therein.

(b) In the event any unit owner shall default in the payment of any monies required to be paid under the provisions of any mortgage or trust deed, the Council shall have the right to cure such default by paying the amount so owing to the party entitled thereto and shall thereupon have a lien therefor against such unit, which lien may be foreclosed in like manner as a lien for unpaid common expenses as provided herein.

(c) The Council shall not exercise any option herein set forth to purchase or lease any unit without the written consent of a majority of all unit owners. The Council, through its duly

authorized representatives, may bid to purchase at any auction or sale, the unit or interest therein of any unit owner, deceased or living, which said sale is held pursuant to an order or direction of a court, upon the prior written consent of the owners of 66.66% of the percentage interest in the general common elements of the Condominium Project as then established, which said consent shall set forth a maximum price which the Council is authorized to bid and pay for said unit or interest therein.

(d) If the Council does not exercise any of the options contained in this section of this Declaration and Master Deed, said options may be deemed to be released and waived and the unit or interest which is subject to an option set forth in this section of this Declaration and Master Deed may be sold, conveyed or leased free and clear of the provisions of this section of this Declaration and Master Deed.

(e) A certificate executed by a majority of the Board of Directors of the Council, stating that the provisions of this section of this Declaration and Master Deed, as herein set forth, have been met by a unit owner or duly waived by the Council, and that the rights of the Council hereunder have terminated, shall be conclusive upon the Council and the unit owners in favor of all persons who rely thereon in good faith; and such certificate shall be furnished to any unit owner who has in fact complied with the provisions of this section of this Declaration and Master Deed and whose unit or interest therein has not been acquired.

(f) In addition to the exceptions of subsection (a) of this section of this Declaration and Master Deed, the terms of this section of this Declaration and Master Deed shall not be applicable to the transfer by gift, testate or intestate succession, or operation of law, or to the sale of the interest of a co-owner of any unit to any other co-owner of the same unit, where such co-owners hold title to such unit as tenants in common or as joint tenants.

(g) Where title to any unit is held by a trust, the assignment, sale, conveyance or other transfer by a beneficiary of such trust of his or her beneficial interest in such trust (other than as security for a bona fide indebtedness) shall be deemed an assignment, sale, conveyance, or other transfer of the unit owned by such trust.

(h) The terms of this section of this Declaration and Master Deed shall not be applicable to the sale, conveyance, or leasing of a unit by any mortgagee if said mortgagee shall acquire title to such unit by foreclosure of a mortgage on the property or any deed in lieu thereof.

(i) Acquisitions of units or interests therein under the provisions of this section of this Declaration and Master Deed shall be made from the maintenance or common expense fund. If said fund is insufficient, the Board of Directors of the Council shall levy a special assessment against each unit owner in the ratio that his percentage of ownership in the common elements as set forth in Exhibit B bears to the total of all such percentages applicable to units subject to said special assessment, which assessment shall become a lien upon each such unit and may be foreclosed in like manner as a mortgage. The Council may borrow money to finance the acquisition of a unit or interest therein, which said acquisition is authorized by this paragraph; provided, however, that no financing may be secured by an encumbrance or hypothecation of any portion of the property other than the unit or interest therein to be acquired.

(j) Units or interests therein acquired pursuant to the terms of this section of this Declaration and Master Deed shall be held of record in the name of the Council or such nominee or entity as it shall designate, for the use and benefit of all unit owners in the same proportion that the Council could levy a special assessment under the terms of the preceding paragraph of this section of this Declaration and Master Deed. Said units or interests therein shall be sold or leased by the Council for the benefit of the unit owners upon such price and terms as the Council shall determine.



All proceeds of such sale and/or leasing shall be deposited in the maintenance or common expense fund and may thereafter be disbursed at such time and in such manner as the Council shall determine.

**14. Bylaws; Initial Authority Vested Exclusively in Declarant or its Assigns.**

The bylaws for "Eastgate Business Park" shall be adopted and exercised initially, as set forth therein, by the Declarant, its successors or assigns in order for the Declarant, its successors or assigns to be able to develop same into the Condominium Project described and to assure the placing of the Council on a sound basis for the protection of all owners in this Condominium Project.

Each unit owner's ownership and use of the unit(s) owned by such unit owner may also be subject to certain rules and regulations promulgated initially by the Declarant, its successors or assigns and ultimately by the Board of Directors of the Council from time to time, which rules and regulations shall be applicable to all unit owners including Declarant, its successors and assigns. A copy of the rules and regulations, including any amendments thereto, shall be furnished initially by the Declarant or its successors or assigns and ultimately by the Board of Directors of the Council to all unit owners and residents of the Condominium Project upon request.

Subsequent to adoption of the bylaws, the administration of this condominium regime shall be governed by the bylaws of the Council, and they may be amended from time to time by amendment procedure set forth therein. The preceding sentence, the above paragraph of this section and anything to the contrary notwithstanding, the administration and control of the condominium regime and the property, including but not limited to the adoption and amendment of the bylaws, adoption of condominium regime rules, assessment of common expenses and all other rights relating to the governing, managing and administration of this condominium regime and the property and all rights and powers which would otherwise be vested in the Council or Board of Directors of the Council shall be all vested in the Declarant or its successors or assigns until 100% of the units to which 100% of the common elements have been sold, transferred and recorded, or 7 years after the

date of the filing of this Declaration and Master Deed, whichever first occurs. Until that time, the Declarant or its successors or assigns shall possess the irrevocable proxy of the unit owners, which proxy each unit owner automatically gives the Declarant, its successors or assigns, upon acceptance of a deed to a unit, and all unit owners agree to such administration by the Declarant or its successors or assigns in accepting unit conveyances. Notwithstanding the foregoing or anything in the bylaws to the contrary, Declarant or its successors or assigns, in their sole discretion, may elect to transfer all or less than all rights and powers which would otherwise be vested in the Council or Board of Directors of the Council, but for this section of this Declaration and Master Deed, to said Council or Board of Directors of the Council when 80% of the units have been sold, transferred and recorded or 3 years after the date of filing of this Declaration and Master Deed, whichever first occurs.

**15. Grantees.**

Each grantee of Declarant, by the acceptance of a deed of conveyance, accepts the same subject to all easements, restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration and Master Deed and the provisions of the Horizontal Property Law, as amended from time to time, and all easements, rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person having, at any time, any interest or estate in said land and shall inure to the benefit of such owner in like manner as though the provisions of this Declaration and Master Deed were recited and stipulated at length in each and every deed of conveyance.

**16. Assignment.**

Declarant shall have the right to assign any or all of its interest and any right, power, duty, privilege and benefit reserved unto it by this Declaration and Master Deed and in the bylaws with respect to the Condominium Project, including, without limitation, the special power of attorney

granted to Declarant pursuant to the authority of this Declaration and Master Deed, to a third party or parties and any such third party or parties shall have and hold such interest with the same power and authority as same are/were held by Declarant.

**17. Incorporation.**

Declarant has or will cause the formation of a Kentucky non-stock, not-for-profit corporation known as "Eastgate Business Park Council of Co-Owners, Inc.", to act as the Council of Co-owners as defined in KRS § 381.810 and governing body for all unit owners in the administration and operation of the property. Each unit owner or owners shall be a member of such corporation, which membership shall terminate upon the sale or other disposition of such member of his or her unit, at which time the new unit owner or owners shall automatically become a member of the corporation.

**18. Failure to Enforce.**

No terms, obligations, covenants, conditions, restrictions or provisions imposed hereby or contained herein shall be abrogated or waived by any failure to enforce the same, no matter how many violations or breaches may occur.

**19. Notices.**

Notices required or permitted to be given to the Council, the Board of Directors of the Council or any unit owner may be delivered, respectively, to any officer of the Council, member of the Board of Directors of the Council or such unit owner at his or her unit or as set forth in the bylaws.

**20. Amendments.**

(a) In addition to the authority of Declarant under section 2 of this Declaration and Master Deed, if, during the construction period or before, Declarant, its successors or assigns relinquishes control of this Condominium Project as set forth in Section 14 of this Declaration and Master Deed, it is found that an error exists on the part of the draftsman of this instrument or on the

part of the surveyor or engineer, an amendment setting forth the error and correction may be filed by the Declarant, its successors or assigns without the consent of any other party thereto, and shall become a part of this Declaration and Master Deed. No further change shall be made except by amendment procedures immediately following.

(b) To the extent authority for amendment to this Declaration and Master Deed does not exist under other applicable provisions of this Declaration and Master Deed and after Declarant, its successors or assigns relinquishes control of this Condominium Project as set forth in Section 14, the provisions of this Declaration and Master Deed may be amended, changed or modified by an *instrument in writing setting forth such amendment, change or modification signed and acknowledged by the owners of units who, in the aggregate, own 66.66% or more of the general common elements of the condominium and by the first mortgagees of same, if any, having bona fide liens of record against said units. The bylaws, unless otherwise provided, shall be amended, changed or modified only in accordance with the procedures governing amendments as set forth in the bylaws.*

(c) Any amendment, change or modification to this Declaration and Master Deed shall conform to the provisions of the Horizontal Property Law and shall be effective upon recordation thereof. Bylaws and any amendments thereto need not be recorded.

## **21. Severability.**

The invalidity of any restriction hereby imposed, or any provision hereof, or of any part of such restriction or provision, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration and Master Deed, and all of the terms hereof are hereby declared to be severable.

**22. Captions.**

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of this Declaration and Master Deed nor the intent of any provision hereof.

**23. Construction.**

The provisions of this Declaration and Master Deed shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a non-residential Condominium Project.

**24. Mortgagee of Declarant.**

Any mortgagee of Declarant which acquires title by foreclosure or by deed in lieu thereof shall enjoy all the rights of the Declarant hereunder and under the bylaws of the Council.

**IN WITNESS WHEREOF**, said Declarant has caused this Declaration and Master Deed to be signed by said Declarant the date first shown above.

PINNACLE PROPERTIES OF LOUISVILLE, LLC  
A Kentucky limited liability company

By: [Signature]  
Name: JOHN J. MIRANDA  
Title: MANAGER/MEMBER

COMMONWEALTH OF KENTUCKY    )  
  ) SS:  
COUNTY OF JEFFERSON            )

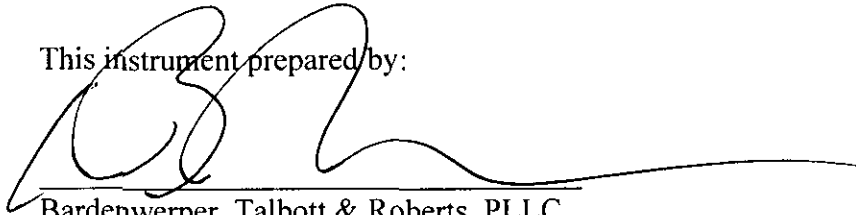
I, a Notary public in and for the State and County aforesaid, do hereby certify that on this 19<sup>th</sup> day of March, 2008, John J. Miranda Manager/Member of Pinnacle Properties of Louisville, LLC, appeared before me and before me acknowledged that he executed and

delivered the foregoing instrument as his free and voluntary act and deed and as the free and voluntary act and deed of Pinnacle Properties of Louisville, LLC, a Kentucky limited liability company.

My Commission expires: Oct 22, 2008

Donna Holliday (Curley)  
Notary Public

This instrument prepared by:



Bardenwerper, Talbott & Roberts, PLLC  
8311 Shelbyville Road  
Louisville, KY 40222  
(502) 426-6688

Exhibit A

Legal Description of Land

**BEING** Tract 2 as set forth on the Minor Subdivision Plat that was approved by the Louisville and Jefferson County Planning Commission on October 3, 2006, Docket No. 181-06; and being the same property acquired by the Declarant by Deed dated August 4, 2006, and of record in Deed Book 8913, Page 822, in the office of the Clerk of Jefferson County, Kentucky.

**EASTGATE BUSINESS PARK**  
**EXHIBIT B**

08 09206PG1002

**Percentage Interest in Common Elements**

<u>Building</u> <u>No.</u>	<u>Area in</u> <u>Square Feet</u>	<u>Percentage</u> <u>Interest</u>
3	14,604	100.00%
<b>Totals</b>	14,604	100.00%

**Recorded In Condo Book**  
No. 123 Page 96-97  
Part No. 2592

Document No.: DN2008050477  
Lodged By: BARDENWERPER  
Recorded On: 04/07/2008 01:50:39  
Total Fees: 124.00  
Transfer Tax: .00  
County Clerk: BOBBIE HOLSCLOW-JEFF CO KY  
Deputy Clerk: TERHIG

**END OF DOCUMENT**