

Harbor East Tower Condominium
Declaration

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Harbor East Tower Condominium

Declaration

THIS DECLARATION OF CONDOMINIUM (“**Declaration**”), made and entered into this ____ day of _____, 20__ by **HARBOR EAST PARCEL D – RESIDENTIAL, LLC**, a Maryland limited liability company, (the “**Developer**”).

RECITALS

A. The Developer is the owner in fee simple of certain real property and the improvements constructed therein and all appurtenances thereto located in Baltimore City, Maryland, and more particularly described in **Exhibit “A”** attached hereto and made a part of this Declaration (the “**Property**”).

B. The Developer desires to establish a Condominium pursuant to the Maryland Condominium Act, Title 11 of the Real Property Article of the *Annotated Code of Maryland 1996*, as amended (the “**Act**”), to divide the Property into condominium units and to sell and convey the same subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens set forth in this Declaration, each of which is for the benefit of the Property and the owners thereof from time to time.

C. Prior to the recordation of this Declaration the Developer filed for record in the Office of the Clerk of the Circuit Court for Baltimore City, Maryland, a certain condominium plat for the Condominium entitled “HARBOR EAST TOWER CONDOMINIUM” (the “**Condominium Plat**”), which Condominium Plat (consisting of _____ (____) sheets) is recorded in Plat Book _____ at Plat Nos. _____ through _____.

D. The Property is part of a master condominium regime known as Harbor East Parcel D Master Condominium (the “**Master Condominium**”) established in accordance with the Act and by a Declaration for Harbor East Parcel D Master Condominium, which included Bylaws as Exhibit B, recorded among the Land Records of Baltimore City, Maryland (“**Land Records**”) in Liber 9640 at Page 458 *et seq.* and amended by the Amendment to Declaration of Condominium for Harbor East Parcel D Master Condominium, which included as Exhibit B an Amendment to Bylaws, recorded among the Land Records in Liber 10656 at page 105 *et seq.* and further amended by Second Amendment to Declaration of Condominium for Harbor East Parcel D Master Condominium recorded among the Land Records in Liber 12212 at page 516 *et seq.* and further amended by Third Amendment to Declaration of Condominium for Harbor East Parcel D Master Condominium recorded among the Land Records in Liber 14021 at page 099 *et seq.* and further amended by Fourth Amendment to Declaration of Condominium for Harbor East Parcel D Master Condominium, which included Second Amendment to Bylaws as Exhibit A, recorded among the Land Records in Liber 15758 at Page 410 *et seq.* and further amended by Fifth Amendment to Declaration of Condominium for Harbor East Parcel D Master Condominium recorded among the Land Records in Liber 16281 at Page 311, *et seq.* and further

amended by Sixth Amendment to Declaration of Condominium for Harbor East Parcel D Master Condominium, which included a Third Amendment to Bylaws as Exhibit B, recorded among the Land Records in Liber ___ at Page ___ *et seq.* and as may be further amended as provided therein (collectively, as amended, referred to as the “**Master Declaration**”) and shown on the Harbor East Parcel D Master Condominium Plat recorded among the Land Records in Condominium Book FMC at page 694 as updated at page 756 and further updated at page 774 and as may be further amended as provided in the Declaration and in the Act (collectively referred to, as amended, as the “**Master Condominium Plat**”). The Master Condominium subdivides the land and building on and in which the Property is located into six (6) master units, which include the following: “Hotel Unit,” “Retail 1 Unit,” Retail 2 Unit,” “Office Unit,” “Garage Unit,” and “Tower Unit” and certain common elements appurtenant to such units of the Master Condominium (as such Master Condominium units and common elements are more specifically defined below and in the Master Condominium Declaration and shown on the Master Condominium Plat). The Condominium under this Declaration is the “Residential Condominium” as contemplated and defined in the Master Condominium Declaration that is a sub-condominium within the Master Condominium and is established in the Tower Unit.

E. The Units and Common Elements within the Condominium established by this Declaration are not units or common elements of the Master Condominium. Similarly, the units and common elements of the Master Condominium are not among the Units and Common Elements established by this Declaration.

NOW, THEREFORE, the Developer hereby submits the Property to the provisions of the Maryland Condominium Act.

ARTICLE 1

EXPLANATORY STATEMENT

The Condominium is created within the Master Condominium and, as such, is subject to the Master Condominium Governing Documents. The Master Condominium is a mixed-use development composed of this residential Condominium, created within the Tower Unit of the Master Condominium, a Hotel Unit (as defined below and in the Master Condominium Declaration), which Hotel Unit is located within the same Building as this Condominium, two (2) retail units (Retail 1 Unit, defined below and in the Master Condominium Declaration, located within the same building as this Condominium, and Retail 2 Unit, also defined below and in the Master Condominium Declaration), the Office Unit, defined below and in the Master Condominium Declaration and the Garage Unit, partially located below the Building in which this Condominium is located and also defined below and in the Master Condominium Declaration and appurtenant Master Condominium common elements. All of these Master Condominium units and common elements are shown on the Master Condominium Plats. As the Condominium is part of the larger mixed-use Master Condominium, the Condominium is subject to certain shared benefits and obligations with respect to the Property and the Master Condominium common elements and with respect to certain services with other Master Condominium units. In addition, as the Condominium is located within the same Building with the Hotel Unit and Retail 1 Unit of the Master Condominium, the Condominium is subject to certain benefits and obligations regarding shared easements and shared services with such other

Master Condominium units relating to both the necessary and beneficial operation and management as well as the maintenance, repair and replacement of the Condominium and its various common element components and services.

ARTICLE 2

DEFINITIONS

Unless the context shall plainly require otherwise, the following words when used in this Declaration and the exhibits attached hereto shall have the following meanings:

Section 2.1. “Act” or “Condominium Act” means and refers to Maryland Condominium Act, Title 11, Section 11-101, et seq., Real Property Article, Annotated Code of Maryland, as amended.

Section 2.2. “Alternative Expense Allocation” means that portion of the Master Condominium Expenses allocated to the Condominium that are subject to a special allocation as provided in Exhibit E to the Master Condominium Declaration, as such Exhibit E has been amended or may be further amended from time to time in accordance with the Master Condominium Declaration and as defined in the Master Condominium Declaration and which Alternative Expense Allocation is included as part of the Common Expenses.

Section 2.3. “Applicable Law” means all laws, rules, statutes, codes, acts, ordinances, zoning conditions and approvals, judgments, decrees, injunctions, permits, licenses, authorizations, directives, requirements or regulations of all federal, city, other governments, departments, commissions, boards, courts, authorities, officials and offices applicable to the Property, the Condominium, the Governing Documents, the Units, the Unit Owners, and the Council of Unit Owners.

Section 2.4. “Board of Directors” or “Board” means and refers to the Board of Directors of the Council of Unit Owners for Harbor East Tower Condominium.

Section 2.5. “Building” means the structure(s) in which the Property described in **Exhibit “A”** is located and as shown on the Condominium Plat.

Section 2.6. “Bylaws” means and refers to the Bylaws of the Council of Unit Owners of Harbor East Tower Condominium which are attached to and made a part of this Declaration as **Exhibit “B”** as the same may be amended from time to time.

Section 2.7. “City” means and refers to the City of Baltimore, Maryland and any office or agency thereof.

Section 2.8. “Common Elements” means all of the Property other than “Units,” and includes both “General Common Elements” and “Limited Common Elements” (as defined in Article 3 of this Declaration).

Section 2.9. “Common Expenses” means all lawful expenditures made or incurred by or on behalf of the Council of Unit Owners, together with all lawful assessments for the creation and maintenance of reserves made pursuant to the provisions of the Governing Documents.

Common Expenses shall include the Master Condominium Expenses and the Shared Building Expenses as defined herein.

Section 2.10. “Condominium” means the condominium regime established on the Property pursuant to this Declaration and the Condominium Plat as provided in the Act.

Section 2.11. “Condominium Plat” has the meaning set forth in Recital C of this Declaration.

Section 2.12. “Council of Unit Owners” means the unincorporated entity comprised of all Unit Owners.

Section 2.13. “Covenants and Restrictions” means the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens set forth in this Declaration and the Bylaws.

Section 2.14. “Declaration” means this Declaration establishing the Harbor East Tower Condominium.

Section 2.15. “Developer” means and refers to Harbor East Parcel D – Residential, LLC, a Maryland limited liability company, and its successors and assigns to whom any of the rights, reservations, easements, interests, exemptions, privileges or powers of the Developer are specifically assigned or transferred in writing. Notwithstanding any assignment of the Developer’s rights under this Declaration or the Bylaws (whether partially or in full), the assignee shall not be deemed to have assumed any of the obligations of the Developer unless, and only to the extent that, it expressly agrees to do so in writing.

Section 2.16. “Director” means and refers to any member of the Board of Directors of the Condominium.

Section 2.17. “Eligible Mortgage Holder” means a holder, insurer, or guarantor of a First Mortgage on a Unit who has submitted a written request for notice from the Council of Unit Owners of amendments to the Condominium Governing Documents or other significant matters which would affect the interests of the mortgagee.

Section 2.18. “Energy Supply Agreement” means the agreement between Trigen-Inner Harbor East, LLC and Harbor East Parcel D – Hotel, LLC (Hotel Unit owner as defined below), whereby Trigen supplies Hot and Chilled Water Service to the Building.

Section 2.19. “Energy Supply Sub-Agreement” means the agreement among Harbor East Parcel D – Hotel, LLC (Hotel Unit owner as defined below) and Harbor East Parcel D – Retail LLC and Developer, which allocates the costs charged by Trigen under the Energy Supply Agreement among the Hotel Unit, Retail 1 Unit and the Condominium (including the individual Units).

Section 2.20. “Expansion Property” means the property that may be annexed to the Condominium pursuant to Article 8 and which is described in **Exhibit “E”**.

Section 2.21. “First Class” means a quality, condition, nature or operation that is consistent with and comparable to the quality, condition, nature or operation found in other substantially similar residential condominiums in the Baltimore, Maryland metropolitan area of comparable age, quality and construction to the Condominium considering normal wear and tear over the life of the improvements and includes inspection, testing, care, maintenance operation repair, alteration, additions, improvements, remodeling restoration and replacement of Units and Common Elements in accordance with standards and requirements set forth in the Condominium Documents and consistent with the standards required to retain the “Four Seasons” brand applicable to the Hotel and the Condominium for so long as the Hotel and Condominium are operated under such brand as authorized by the Four Seasons Hotels, Limited. Subject to other provisions of this Declaration “First Class” is not intended to apply to the quality or economic status of tenants, guests, or owners or to any leasing or marketing program for any Unit but is intended to apply to the maintenance of the Units and Common Elements of the Condominium. There shall be no change to the First Class standard without the prior written consent of all Unit Owners and Developer so long as the Developer owns any Units.

Section 2.22. “First Mortgage” means a mortgage or deed of trust recorded against any Unit that has priority over any other mortgages or deeds of trust recorded against such Unit.

Section 2.23. “First Mortgagee” means a holder or beneficiary under a First Mortgage.

Section 2.24. “Garage Easement” means the Garage Easement Agreement entered into between the Garage Unit Owner and the Developer and recorded or to be recorded among the Land Records and provides the Council of Unit Owners, its agents and employees with certain ingress, egress and access rights with respect to the Garage Unit and certain rights and obligations with respect to the individual exclusive easements for parking and storage purchased by Unit Owners in the Garage Unit.

Section 2.25. “Garage Expenses” means the expenses charged by the Garage Unit Owner to those Unit Owners that purchased Parking/Storage Space Easements (defined below) based upon such Unit Owners’ pro rata share of the Garage Unit’s operating, management, maintenance, repair, replacement, reasonable reserve contribution and taxes of the Garage Unit pursuant to the Parking/Storage Space Easements. Pursuant to the Garage Easement and the Parking/Storage Space Easements, the Council of Unit Owners shall collect the Garage Expenses from those Unit Owners that purchased Parking/Storage Space Easements and remit the same to the Garage Unit Owner.

Section 2.26. “Garage Unit” means and refers to the Garage Unit in the Master Condominium as the same is defined in the Master Condominium Declaration and as shown on the Master Condominium Plats.

Section 2.27. “General Common Elements” means those Common Elements described in Section 4.1 and as shown on the Condominium Plats.

Section 2.28. “Governing Documents” means this Declaration, the Bylaws, the Condominium Plats and any Rules and Regulations and any exhibits, schedules, certificates and amendments to any of such documents.

Section 2.29. “Hot and Chilled Water Service” means the service supplied by Trigen to the Building pursuant to the Energy Supply Agreement and further subcontracted by the Hotel Unit Owner to the Residential Condominium pursuant to the Energy Supply Sub-Agreement whereby capacity shall be charged to the Residential Condominium as a Common Expense and charged to the Unit Owners as a Residential Alternative Expense Allocation and consumption shall be submetered so that individual Unit Owners shall be charged directly based upon usage and all other Common Element consumption costs shall be charged as Common Expenses based upon Percentage Interest.

Section 2.30. “Hotel” refers to the commercial hotel business that is operated in the Hotel Unit.

Section 2.31. “Hotel Tower” means the portion of the Master Condominium comprised of the Hotel Unit, Tower Unit (this Condominium) and the Retail 1 Unit as the same is defined in the Master Condominium Governing Documents.

Section 2.32. “Hotel Unit” means the Hotel Unit in the Master Condominium as the same is defined in the Master Condominium Declaration and as shown on the Master Condominium Plats.

Section 2.33. “Hotel Unit Owner” means Harbor East Parcel D – Hotel, LLC, a Maryland Limited Liability Company, its successors and assigns, that owns the Hotel Unit, defined below.

Section 2.34. “Land Records” means and refers to the office of land records in the Clerk of the Court for the City of Baltimore, Maryland.

Section 2.35. “Limited Common Elements” has the meaning set forth in Section 4.2 of this Declaration.

Section 2.36. “Limited Common Expenses” means those Common Expenses that are charged for the use and maintenance of the Limited Common Elements. Such Limited Common Expenses are only charged to those Units to which the Limited Common are appurtenant in such Unit’s pro rate share. Such Limited Common Expenses are collectible in the same manner as Common Expenses as provided in the Bylaws.

Section 2.37. “Managing Agent” means a person or company with whom the Council of Unit Owners contracts for the management of the Condominium and the Council’s affairs pursuant to Section 3.3 of the Bylaws.

Section 2.38. “Master Condominium” has the meaning set forth in Recital D of this Declaration.

Section 2.39. “Master Condominium Budget” means the budget of the Council of Unit Owners of the Master Condominium as provided in the Master Condominium Governing Documents and to which the Council of Unit Owners contributes in its pro rata share.

Section 2.40. “Master Condominium Bylaws” means the Bylaws of the Master Condominium recorded among the Land Records and to which the Condominium is subject.

Section 2.41. “Master Condominium Declaration” has the meaning set forth in Recital D of this Declaration.

Section 2.42. “Master Condominium Expenses” means the Condominium’s pro rata share of the expenses of the Master Condominium pursuant to the Master Condominium Governing Documents as provided in the Master Condominium Budget, which Master Condominium Expenses shall be included as part of the Common Expenses and shall include all annual and special assessments against the Condominium by the Master Condominium and any Alternative Expense Allocation (as the same is defined above and in the Master Condominium Declaration) assessed against the Condominium as provided in the Master Condominium Governing Documents.

Section 2.43. “Master Condominium Governing Documents” means and refers to collectively the Master Condominium Declaration, Master Condominium Bylaws and Master Condominium Plats.

Section 2.44. “Master Condominium Plats” has the meaning set forth in Recital D of this Declaration.

Section 2.45. “Master Condominium Units” means and collectively refers to the units in the Master Condominium and includes the Hotel Unit, the Garage Unit, the Retail 1 Unit, the Retail 2 Unit, the Office Unit and the Tower Unit within which this Condominium is created.

Section 2.46. “Parking/Storage Space Easement” means the exclusive easement to one (1) or more parking spaces and one (1) storage space in the Garage Unit that may be purchased by a Unit Owner from the Garage Unit Owner. Such Parking/Storage Space Easement shall include the non-exclusive easement over the Garage Unit for ingress, egress and access to the parking space(s) and storage space over which the Unit Owner shall have an exclusive easement. Such Parking/Storage Space Easement shall require the Unit Owner to pay Garage Expenses, which, for convenience purposes, may be collected by the Council of Unit Owners, in conjunction with the Common Expenses, and remitted to the Garage Unit Owner.

Section 2.47. “Par Value” means the number of points assigned to each Unit by this Declaration, as set forth in Exhibit “D” to this Declaration. The allocation of an undivided interest in the Common Elements to each Unit (i.e. its Percentage Interest, as defined below) is a fraction, the numerator of which is the Unit’s Par Value and the denominator of which is the total Par Value of all Units.

Section 2.48. “Percentage Interest” means the undivided interest of each Unit Owner, as set forth in Exhibit “D” with respect to Common Elements of the Condominium and the common profits and common expenses of the Council of Unit Owners.

Section 2.49. “Property” means the real property described in Exhibit “A” to this Declaration and all improvements and appurtenances thereto.

Section 2.50. “Residential Alternative Expense Allocation” means the different allocation of certain costs of the Council of Unit Owners as provided in Article 5 and **Exhibit “D.”**

Section 2.51. “Residential Unit Share” means the individual Unit Owner’s percentage share of the Master Condominium Expenses based upon such Unit Owner’s Percentage Interest payable as part of the such Unit Owner’s Common Expenses as provided in this Declaration and the Bylaws. As provided in the Bylaws and the Master Condominium Governing Documents, the Residential Unit Share shall be separately identified by the Council of Unit Owners and, if unpaid, shall be subject to the right of collection by either the Council of Unit Owners or the Master Condominium Council of Unit Owners as provided in the Condominium Governing Documents and the Master Condominium Governing Documents.

Section 2.52. “Retail 1 Unit” means the Retail 1 Unit in the Master Condominium as the same is defined in the Master Condominium Declaration and shown on the Master Condominium Plat. Retail 1 Unit is the retail unit in the Master Condominium that is located within the Building.

Section 2.53. “Retail 2 Unit” means the Retail 2 Unit in the Master Condominium as the same is defined in the Master Condominium Declaration and shown on the Master Condominium Plat.

Section 2.54. “Rules” means the written rules and regulations of the Condominium, not necessarily recorded in the Land Records, that may be adopted from time to time by the Board of Directors in accordance with the Maryland Condominium Act, this Declaration or the Bylaws.

Section 2.55. “Shared Facilities” is defined in Section 1.1(68) of the Master Condominium Declaration and refers to portions of the Master Condominium shared by one or more of the Master Condominium Units.

Section 2.56. “Shared Building Components” means those shared facilities that are facilities, utilities and other components of the Hotel Tower that are shared by any or all of the Hotel Unit, the Retail 1 Unit and the Condominium as provided in Section 6.3(h) of this Declaration and are defined and addressed in Section 1.1(67a) and Section 4.3(b) of the Master Condominium Declaration, as amended.

Section 2.57. “Shared Building Expenses” means the expenses shared by the Condominium with the Hotel and/or Retail 1 Unit for the Shared Building Components as provided in Section 6.3(h) and are defined and addressed in Section 1.1(67b) and Section 4.3(b) of the Master Condominium Declaration, as amended.

Section 2.58. “Submetering Company” means the company contracted by the Council of Unit Owners to provide submetering services to meter the utilities supplied to and consumed by the individual Units, including, but not necessarily limited to, Hot and Chilled Water Service supplied to the individual Units pursuant to the Energy Supply Sub-Agreement, for purposes of charging the individual Unit Owners separately based upon such consumption. As provided in the Bylaws, the Submetering Company may, pursuant to such authorities granted by the Council

of Unit Owners, install, maintain, operate, repair and replace submetering equipment, as necessary, in the Condominium and may charge the Units and the Unit Owners for utilities based upon consumption, including any administrative costs associated therewith, and collect the same as provided in the Bylaws and in the same manner as Common Expenses.

Section 2.59. “Supplementary Declaration” means a supplement to this Declaration that may from time to time annex any portion of the Expansion Property pursuant to Article 8 of this Declaration.

Section 2.60. “Tower Unit” means the Tower Unit in the Master Condominium as defined in the Master Condominium Declaration and as shown on the Master Condominium Plats. As described in this Declaration and in Article 1 and **Exhibit “A”** the Tower Unit encompasses the Property subjected to this Condominium.

Section 2.61. “Trigen” means Trigen-Inner Harbor East, LLC, which is a private utility company that supplies Hot and Chilled Water Service to the Building pursuant to the Energy Supply Agreement.

Section 2.62. “Unit” means a three-dimensional area, as described below and as shown on the Condominium Plat, and includes all improvements contained within such area (including, without limitation, windows and exterior doors) except for such improvements as are expressly excluded in this Declaration or on the Condominium Plat. The lower boundary of any Unit is a horizontal plane (or planes), the elevation of which coincides with the elevation of the upper surface of the unexposed concrete floor slab located below any finished floor materials, but specifically excluding such concrete floor slab, extended to intersect the lateral or perimetrical boundaries of the Unit. The upper boundary of each Unit is a horizontal (or in some cases inclined) plane (or planes), the elevation of which coincides with the underside of the unexposed surface of the concrete slab that serves as the ceiling of the Unit, but specifically excluding such concrete slab, extended to intersect the lateral or perimetrical boundaries of the Unit. The lateral or perimetrical boundaries of each Unit are vertical planes which coincide with the outermost (unexposed), unfinished surfaces of the perimeter drywall wallboard (or gypsum board) or other finish material facing the wall studs which comprise the perimeter walls enclosing the Unit (i.e., the Unit includes the wallboard or gypsum board), extended to intersect the upper and lower horizontal boundaries thereof and to intersect the other lateral or perimetrical boundaries of the Unit. Unless otherwise designated in this Declaration or on the Condominium Plat as a Common Element, the following shall be considered part of a Unit: (i) any mechanical equipment, fixtures and appurtenances located within or outside of any Unit and designated to serve only that Unit, such as heating, ventilation and air conditioning equipment, pipes, wires, cables, conduits, electrical receptacles and outlets, ducts, flues (including, without limitation, fireplace flues), chutes, appliances and the like; (ii) all windows and exterior doors serving the Unit, including any doors to any patios, terraces, sunrooms and balconies; and (iii) any patios, terraces, sunrooms, decks and balconies designed to serve only that Unit.

Section 2.63. “Unit Owner” means any person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, which owns a Unit; provided, however, that any person, group of persons, corporation, partnership, trust or other legal entity,

or any combination thereof, which holds such interest solely as security for the performance of an obligation shall not be a Unit Owner solely by reason of such interest.

ARTICLE 3

CREATION OF CONDOMINIUM REGIME

Section 3.1. Submission of Property to Act.

(a) The Property and all appurtenances thereto shall be held, conveyed, divided, subdivided, leased, rented, occupied, improved, hypothecated and/or encumbered subject to the Maryland Condominium Act, the Master Condominium Governing Documents and the Covenants and Restrictions of this Declaration and the Bylaws, all of which are declared and agreed to be in aid of a plan for the division of the Property into a condominium pursuant to the Maryland Condominium Act, and all of which shall be deemed to run with and bind the land, and shall inure to the benefit of and be enforceable by the Developer and by any person acquiring or owning an interest in the Property, including, without limitation, any person, group of persons, corporation, partnership, trust or other entity, or any combination thereof, which holds such interest solely as security for the performance of an obligation; *provided, however*, that the rights, reservations, easements, interests, exemptions, privileges and powers of the Developer shall inure to the benefit of and be enforceable by only those successors and assigns of the Developer to whom any of the same have been specifically assigned or transferred in writing.

(b) By the recordation of this Declaration, the Council of Unit Owners hereby assumes all liability, responsibility and duty for the care, operation and maintenance of the Common Elements, and each Unit Owner hereby assumes or agrees to assume all liability and duty for the care, operation and maintenance of their respective Units, subject, however, to any rights and/or obligations the Council of Unit Owners or each Unit Owner may have pursuant to this Declaration and the Bylaws. Further, the Council of Unit Owners and each Unit Owner, on their own behalf, and on behalf of their successors and assigns, hereby agrees to indemnify and hold Developer, its successors and assigns harmless from any loss, liability or damage (including attorneys' fees and court costs) arising out of or resulting from the failure of the Council of Unit Owners or each Unit Owner to care for, maintain or properly operate the Common Elements or Units, as applicable.

Section 3.2. Description of the Units. The general description and number of each Unit, including its area, location and such other data as may be necessary or appropriate for its identification, is set forth on the Condominium Plat. For reference, a copy of the Condominium Plat as recorded among the condominium plat records in the Land Records is attached hereto and made a part hereof as **Exhibit "C"**.

Section 3.3. Name of Condominium. The name by which the Condominium shall be known is **"Harbor East Tower Condominium"**.

ARTICLE 4

COMMON ELEMENTS

Section 4.1. General Common Elements. The “**General Common Elements**” means all of the Common Elements except Limited Common Elements and, unless otherwise specifically designated in this Declaration or on the Condominium Plat, shall include the following:

(a) The Property other than the Units, including, without limitation, the portion of the Building exterior within the boundaries of the Tower Unit, unless specifically included as part of a Unit or identified as a Limited Common Element pursuant to this Declaration or the Condominium Plat; and

(b) The components or installations of central services and utilities serving the General Common Elements or two (2) or more Units including, without limitation, electricity, gas, water, sewer, telephone, internet, broadband, lighting, and master antennae or satellite (if any), including tanks, pumps, motors, fans, compressors, pipes, valves, controls and other similar equipment to be used in common, unless designated as part of a Unit or as a Limited Common Element pursuant to this Declaration or the Condominium Plat or unless such components or installations are owned by another Master Condominium Unit, Trigen or another utility company or other third party; and

(c) The Condominium lobby, corridors and roof and all components thereof, subject to the easements as may be applicable and provided herein; and

(d) The elevators and stairs serving the Condominium and shown on the Condominium Plat as part of the General Common Elements, subject to such easements for the benefit of the Hotel Unit, Retail 1 Unit and the Expansion Property as may be applicable and provided herein and in the Master Condominium Governing Documents, subject to appropriate access control relating to the Condominium Common Elements and the Units; and

(e) The amenities of the Condominium which may include but may not be limited to the pool, deck, fitness center, clubroom and similar common areas of the Condominium, which amenities may be determined by the Developer in its sole discretion; and

(f) All other elements within the Property, other than the Units, of common use or necessary to the Condominium’s existence, upkeep and/or safety or over which the Council has any easement rights.

Section 4.2. Limited Common Elements.

The “**Limited Common Elements**” include those areas and/or items designated as such in this Declaration, a supplementary declaration, or on the Condominium Plat. All areas designated as Limited Common Elements are reserved for the exclusive use of the Unit Owner(s) of the Unit(s) to which they are declared to be appurtenant by appropriate designation in this Declaration, a supplementary declaration, or on the Condominium Plat and subject to transfer to other Unit Owners and Units in accordance with the Maryland Condominium Act. If no such

designation is made in this Declaration, supplementary declaration, or on the Condominium Plat, then the Limited Common Elements shall be deemed to be appurtenant to the Unit(s) to which they are adjacent or which they are rationally intended to serve and benefit. The right of Unit Owners to use and enjoy any Limited Common Elements appurtenant to their Units shall be subject to such reasonable Rules as the Board of Directors may from time to time enact, and are further subject to each Unit Owner's responsibility to pay any charges imposed by the Board of Directors for the use and maintenance of such Limited Common Elements. Pursuant to the Maryland Condominium Act, the Council of Unit Owners may assess the costs incurred in maintaining any Limited Common Elements against the Unit(s) to which such Limited Common Elements are appurtenant and charge the same as Limited Common Expenses, which expenses shall be collectible in the same manner as Common Expenses as provided in the Bylaws.

ARTICLE 5

PERCENTAGE INTEREST AND VOTING RIGHTS

Each Unit has all of the incidents of real property, and the Unit Owner shall hold the same in fee simple and shall have a common right to a share with the other Unit Owners of an undivided fee simple interest in the Common Elements. Each Unit Owner's undivided interest in the Common Elements shall be equal to the Percentage Interest applicable to his or her Unit as set forth in **Exhibit "D"**. The Percentage Interest is calculated based on a fraction, the numerator of which is the Unit's Par Value (as set forth on **Exhibit "D"**) and the denominator of which is the total Par Value of all Units. The Percentage Interest appurtenant to each Unit also represents the share of common profits and Common Expenses of the Council of Unit Owners applicable to such Unit, as more specifically provided in the Bylaws. Additionally, as certain Units have balconies and there is a range of balcony sizes appurtenant to the Units impacting the capacity costs of the Hot and Chilled Water Service supplied to the Residential Condominium attributable to such Units. Therefore, such capacity charges for the Hot and Chilled Water Service supplied to the Residential Condominium is charged to the Units based upon the Residential Alternative Expense Allocation also set forth on **Exhibit "D"**, which allocation is different from the Percentage Interest. The capacity charge applicable to the Residential Condominium is broken down separately in the Energy Supply Sub-Agreement. Each Unit Owner's vote in the Council of Unit Owners shall be based upon such Unit Owner's Percentage Interest as also set forth in **Exhibit "D"**. Except as otherwise specifically provided in this Declaration, the Percentage Interests, the Residential Alternative Expense Allocations and votes established in this Declaration (a) shall not be changed without the unanimous written consent of all of the Unit Owners and the mortgagees (as defined in the Maryland Condominium Act) evidenced by an appropriate amendment to this Declaration recorded among the Land Records, (b) shall not be separated from the Unit to which they appertain, and (c) shall be deemed conveyed or encumbered with the Unit even though such Percentage Interests, Residential Alternative Expense Allocations and/or votes are not expressly mentioned or described in the conveying deed or other instrument. Subject to the provisions of the Bylaws and this Declaration, a Unit Owner may, pursuant to and in accordance with the Maryland Condominium Act, grant a part of his or her Unit to another Unit Owner and the part of the Unit conveyed may be incorporated as part of such other Unit, or a Unit Owner may subdivide his or her Unit, whereupon, in accordance with the Maryland Condominium Act, the Percentage Interest,

Residential Alternative Expense Allocation and vote appurtenant to the original Unit shall be reallocated to the resulting Units.

ARTICLE 6

COVENANT AGAINST PARTITION; ENCROACHMENTS; EASEMENTS

Section 6.1. Covenant Against Partition. The Common Elements, both General Common Elements and Limited Common Elements, shall remain undivided and, except as otherwise provided in this Declaration and in the Maryland Condominium Act, shall remain appurtenant to the designated Units. No Unit Owner or any other person shall bring any action for partition or division of the Common Elements except as may be provided for in this Declaration and in the Maryland Condominium Act.

Section 6.2. Encroachments; Mutual Support. If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, as a result of the construction, reconstruction, repair, shifting, settlement or movement of the Units and/or Common Elements, or if any such encroachment shall occur hereafter as a result of construction, reconstruction, repair, shifting, movement or settlement, or otherwise, a valid easement for the encroachment and for the maintenance of the same exists so long as the encroaching Unit and/or Common Elements shall stand. In the event any Unit, any adjoining Unit, or any adjoining Common Elements shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then constructed, reconstructed or repaired, encroachment of parts of the Common Elements upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Elements resulting from such construction, reconstruction or repair shall be permitted, and valid easements for such encroachment and the maintenance thereof shall exist so long as the encroaching improvements shall stand. An easement for mutual support shall exist in the Units and the Common Elements.

Section 6.3. General Easements.

(a) The Council of Unit Owners, by and through its Board of Directors and the Managing Agent, if applicable, and their agents and employees, shall have the following easement rights. Except in cases involving manifest danger to public safety or property, the Council of Unit Owners, by and through its Board of Directors and the Managing Agent, if applicable, and their agents and employees, shall make a reasonable effort to give notice to the owner of any Unit to be entered for the purposes set forth in this Section 6.3(a).

(i) An irrevocable right and exclusive easement to enter those portions of the Units and Common Elements for which the Council of Unit Owners has exclusive control and/or the right and obligation to maintain and those areas adjacent to such portions of the Units and Common Elements, including, without limitation, the Building exteriors, roof, and components of the Condominium that are deemed by the Board of Directors to be of benefit to or affecting multiple Unit Owners, whether or not they are part of a Unit, including, but not limited to, windows, exterior doors, balconies, terraces, and patios.

(ii) An irrevocable right and a non-exclusive easement to enter Units to make repairs to Units or Common Elements when the repairs reasonably appear necessary for public safety or to prevent damage to other portions of the Condominium. If damage is caused to the Common Elements or any Unit through which access is taken, the Council of Unit Owners, if it is responsible for such damage, is liable for the prompt repair of such damage. An entry by the Council of Unit Owners through its Board of Directors, the Managing Agent, and their agents, and employees for the purposes specified in this Section 6.3(a) shall not be considered a trespass.

(iii) An irrevocable right and an easement to enter a Unit for purposes of inspections and performing any maintenance or repair which the Council of Unit Owners is obligated or elects to perform pursuant to the Bylaws, including, without limitation, inspections, maintenance and repair pursuant to Section 5.14(a) of the Bylaws, and maintenance, repair or replacement of Common Elements located within or adjacent to a Unit and any roof areas above a Unit that are part of or adjacent to a Unit.

(b) The driveways and paved areas within the Condominium, if any, shall be subject to an easement in favor of the Unit Owners for reasonable and necessary pedestrian and vehicular ingress and egress to and from the improvements within the Property and to and from all public and private roadways and streets serving the Property. Each Unit Owner shall have a right of ingress and egress to and from such Unit Owner's Unit. In addition, the Council of Unit Owners and the individual Unit Owners benefit from all easements established for the Tower Unit in the Master Condominium Governing Documents over the Master Condominium common elements, subject to any restrictions contained in the Master Condominium Governing Documents and the payment of the Master Condominium Common Expenses.

(c) There is hereby reserved unto the Developer (and its successors and assigns to whom such easement has been specifically assigned in writing) for the benefit of the Developer and its agents a nonexclusive easement over, across and through all of the Property, except for Units conveyed by the Developer, for the purpose of access, the storage of building supplies and materials and equipment, and, without any limitation, for any and all purposes reasonably related to the completion of the construction, improvement and repair of the Property and the marketing, sales and leasing of Units. Without limiting the generality of the foregoing, for so long as the Developer owns any Units, the Developer may use Common Elements including any lobby areas, management offices and unsold Units in connection with its sales of Units.

(d) There is hereby reserved unto the Developer, and its successors and assigns to whom such easement has been specifically assigned in writing, for the benefit of the Developer and its agents a nonexclusive easement and right of access to the Units and the Common Elements for the purpose of making necessary inspections of the Units and/or Common Elements relative to its responsibilities as the Developer, and for the purpose of performing installations, alterations and/or repairs to the Units and/or the mechanical and electrical services and other Common Elements in the Units or elsewhere in the Condominium relative to its responsibilities as the Developer (including, without limitation, in connection with the Developer's warranty obligations), and to correct any condition which violates the provisions of

any warranty regarding the Units and/or Common Elements, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate, whether the Unit Owner is present at the time or not. The failure of the Council of Unit Owner or any Unit Owner to grant, or any action taken by the Council of Unit Owners or any Unit Owner to interfere with, such access, shall excuse the Developer from having to fulfill its warranty obligations and the costs, expenses, liabilities or damages arising out of any unfulfilled Developer warranty will be the sole obligation and liability of the person or entity who or which impedes the Developer in any way in the Developer's activities described in this subsection. The Board of Directors and/or the Managing Agent shall retain master keys or other copies of keys to the Units for entry to the Units in accordance with this Declaration, the Bylaws, and Rules and each Unit Owner shall, upon request, furnish a copy of their Unit key to the Board or Managing Agent for such purpose. The Board of Directors may from time to time establish or amend Rules relating to key policies.

(e) There is hereby reserved unto the Developer and its successors and assigns to whom such easement has been specifically assigned in writing, for the benefit of the Property and for the benefit of the Developer and its successors and assigns to whom such right has been specifically assigned in writing, a non-exclusive perpetual blanket easement and right of passage on, through, over, under, and across all of the Property, including the Common Elements for ingress, egress, installation, replacement, repair, maintenance and use of all utilities, including, but not limited to, water, sewer, drainage, gas, electricity, cable television, telephones, internet, broadband and other communications lines, and further including the right to connect to and use any such utilities which may exist or be located upon the Property from time to time. By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary utility equipment on the Property, to affix and maintain electrical, telephone and other communications wires and conduits, sewer and water drainage lines, on, above, or below any portion of the Property, including any improvements constructed thereon and to have construction vehicles, personnel, equipment and the like exercise the aforesaid right of ingress and egress over the Property. There is further reserved unto the Developer, and its successors and assigns to whom such right has been specifically assigned in writing, the right to grant specific easements, both temporary and permanent, to any person or entity, including all public authorities and utility companies, over any part of the Property in furtherance of the blanket easement created by this Section 6.3(e). In the exercise of any rights under this Section 6.3(e), there shall be no unreasonable interference with the use of the Property or any Unit for residential purposes, or with the Common Elements for the purposes for which they are reasonably intended. Any person or entity exercising any rights under this Section 6.3(e) shall be obligated to promptly repair, at their own expense, any damage caused by the exercise of such rights and to restore, to the extent practicable, any damaged real or personal property to the condition of such property prior to the exercise of such rights.

(f) There is hereby reserved unto the Developer, and its successors and assigns to whom such easement has been specifically assigned in writing, for the benefit of the Property and for the benefit of the Developer and its successors and assigns to whom such right has been specifically assigned in writing, a non-exclusive perpetual blanket easement and right of passage on, through, over, under and across all of the Property, including the Common Elements, to facilitate and enable the development and construction of that portion of the

Building composing the Condominium, improvements and related facilities upon the Property and to conduct all other development and construction related activities on the Property, the Building and the Master Condominium as are deemed necessary or desirable by the Developer or its successors and assigns to whom such right has been specifically assigned in writing. The Developer, and its successors and assigns to whom such right has been specifically assigned in writing, shall have all rights and privileges reasonably necessary to the exercise of the foregoing easement, including, without limitation, crane swing easements over the Property and a reasonable right of ingress and egress on, over and through the Property and Common Elements by construction equipment and construction personnel. In the exercise of any rights under this Section 6.3(f), there shall be no unreasonable interference with the use of the Property or any Unit for residential purposes, or with the Common Elements for the purposes for which they are reasonably intended. Any person or entity exercising any rights under this Section 6.3(f) shall be obligated to promptly repair, at their own expense, any damage caused by the exercise of such rights and to restore, to the extent practicable, any damaged real or personal property to the condition of such property prior to the exercise of such rights.

(g) The Condominium and the Council of Unit Owners and the individual Unit Owners shall be entitled to those easements and rights over the Hotel Unit, the Garage Unit and the Retail 1 Unit as well as the other Master Condominium Units and Master Condominium common elements as provided in the Master Condominium Governing Documents and in the Garage Easement. Such rights shall be subject to the Council of Unit Owners' obligation to contribute Master Condominium Common Expenses as contemplated in the Master Condominium Governing Documents and the Master Condominium Budget. As provided in the Bylaws, the Master Condominium Common Expenses shall be included as part of the Common Expenses and shall be charged to the Unit Owners as Common Expenses. As provided in the Garage Easement and the individual Parking/Storage Space Easements purchased by Unit Owners, the Council shall, as a convenience, collect the Garage Expenses charged to Unit Owners that have purchased Parking/Storage Space Easements and remit the same to the Garage Unit Owner.

(h) The Expansion Property shall be benefited and burdened by all easements set forth in this Declaration with respect to the Property, the Units and Common Elements to the extent reasonably necessary to promote the development and operation of any portions of the Expansion Property whether or not such Expansion Property is subject to the Condominium Governing Documents and annexed into the Condominium. For purposes of such easements only, the Expansion Property shall be deemed part of the Property, a Unit and/or Common Element as reasonably applicable under the circumstances.

(i) The Condominium is contained within the same Building as the Hotel Unit and the Retail 1 Unit and, as a result, shares certain facilities, utilities and other Building components with the Hotel Unit and Retail 1 Unit and any portion of the Expansion Property not annexed to the Condominium ("**Shared Building Components**"). The Condominium shall have such easements and rights and shall be subject to such easements and rights of the Hotel Unit, Retail 1 Unit and Expansion Property as necessary and as contemplated in the Master Condominium Governing Documents to such Shared Building Components and shall share in

the costs of operation, management, maintenance, repair, replacement, reasonable reserve contributions and insurance based upon the reasonable pro rata share of each of the Master Condominium Units sharing such Shared Building Components. The shared obligations of the Council of Unit Owners for these Shared Building Components shall be included as part of the Common Expenses and reflected in the budget of Condominium as provided in the Bylaws.

ARTICLE 7

DEVELOPER'S RIGHT TO RENT OR SELL UNITS

Section 7.1. General Right. Anything contained in this Declaration or the Bylaws to the contrary notwithstanding, the Developer shall have the right to transact any business on the Property and utilize any portion of the Property (including the Common Elements) necessary or desirable to consummate sales or rentals of Units, including, but not limited to, the right to maintain employees, affiliates and contractors in a sales or rental office within the Property, and to show Units for sale or rent. The sales or rental office, the furniture and furnishings in the model Units, signs and all items pertaining to the sale or rental of Units by the Developer or others shall not be considered Common Elements but shall remain the property of the Developer or its sales affiliate or agent. The right to rent units and to maintain a sales, rental or management office shall extend to any managing agent or rental agents employed by the Developer or by nominees or designees of the Developer. Such sales, rental or management office may also be utilized for the sale, rental or management of other residential units in other condominium regimes or other developments for as long as the Developer desires.

Section 7.2. Limitations on Unit Owners. In furtherance of the rights granted to the Developer in this Article 7, no act of omission or commission shall be taken by any Unit Owner or the Council of Unit Owners which, in the sole determination of the Developer, would infringe upon the Developer's, or its nominees' or designees', ability to sell or rent Units, including, without limitation, altering the design, location or appearance of any of the Common Elements, failing to maintain any portion of the Condominium in accordance with sound property management standards or otherwise detracting from the aesthetic nature of the Condominium established by the Developer.

ARTICLE 8

RIGHT TO EXPAND CONDOMINIUM

Section 8.1. Reservation of Right to Expand Condominium. The Developer hereby reserves the right to expand the Condominium without the consent of the Unit Owners and to annex to the Property additional property and improvements thereon, provided that this reserved right shall terminate on the tenth (10th) anniversary after the date of the recordation of this Declaration and shall otherwise comply with the provisions of Section 11-120 of the Act. Notwithstanding the foregoing, Developer shall be under no obligation to expand the Condominium and any such expansion shall be at Developer's sole discretion.

Section 8.2. Conditions of Right to Expand Condominium.

(a) The land and the improvements now or hereafter to be located thereon which may be annexed to and made a part of the Condominium ("**Expansion Property**") are

described in **Exhibit “E”** attached hereto and made a part hereof. Such Expansion Property includes potential expansion of the Garage Easement as well as additional Units and Common Elements as provided in **Exhibit “E”**.

(b) The total number of Units which may be contained in the Condominium is sixty-two (62); however, such Units and/or any Common Elements and/or Limited Common Elements appurtenant to them may be added in stages.

(c) The Percentage Interest in the Common Elements, in the Common Expenses and common profits of the Council of Unit Owners, the number of votes appurtenant to any Unit and the Residential Alternative Expense Allocation following the addition of any group of Units to the Condominium shall be determined in accordance with the method set forth in **Exhibit “D”** attached hereto and made a part hereof. The Developer shall set forth in a Supplementary Declaration at the time of such expansion the Percentage Interests and votes for all Units following the expansion, said figures to be computed in the manner set forth in **Exhibit “D”**.

(d) The expansion of the Condominium shall not be effective until such time as there has been recorded among the Land Records (i) a Supplementary Declaration setting forth the new Percentage Interest in the Common Elements and Percentage Interest in the common profits and Common Expenses appurtenant to each Unit and the vote appertaining thereto, and (ii) an amendment to the Condominium Plat setting forth with respect to the new property which has been added to the Condominium the information that is required to be shown upon the Condominium Plat, pursuant to Section 11-105 of the Act.

Section 8.3. Effect of Expansion. Upon the recordation of the Supplementary Declaration and amendment to the Condominium Plat, each Unit Owner shall automatically have the Percentage Interest in the Common Elements and Percentage Interest in the common profits and Common Expenses, the vote appurtenant to his Unit and the Residential Alternative Expense Allocation set forth in the Supplementary Declaration. The interest of each Mortgagee shall attach by operation of law to the Percentage Interest in the Common Elements appurtenant to the Unit with respect to which it holds a lien. In addition, the assessments for the Common Expenses of the Condominium on each Unit listed on a Supplementary Declaration shall commence upon the recordation of such Supplementary Declaration.

Section 8.4. Power of Attorney. There is hereby reserved unto the Developer (or such other party as may in writing be designated by the Declarant) an irrevocable Power of Attorney, coupled with an interest, for the purpose of reallocating the Percentage Interests and voting rights appurtenant to each of the Units in the Condominium in accordance with the provisions of this Declaration and to execute, acknowledge and deliver such further instruments as may from time to time be required in order to accomplish the purposes of this Article 8. Each Unit Owner and each Mortgagee of a Unit shall be deemed to have acquiesced in amendments to this Declaration and in amendments to the Condominium Plat for the purpose of adding the aforesaid additional Units and Common Elements to the Condominium, as set forth above, and shall be deemed to have granted unto the Developer (or such other party as may in writing be designated by the Developer), an irrevocable Power of Attorney, coupled with an interest, to effectuate,

execute, acknowledge and deliver any such amendments and each such Unit Owner and Mortgagee shall be deemed to have agreed and covenanted to execute such further assurances and instruments, if any, as may be required by the Developer and its successors or assigns, to properly accomplish such amendments.

Section 8.5. Future Improvements. Any improvements situated on property added to the Condominium in accordance with this Article 8 of the Declaration and the Act will be substantially completed prior to annexation and will be substantially consistent in terms of quality of construction and structure type with the initial improvements of the Condominium, unless otherwise approved by the Federal National Mortgage Association ("FNMA"). The Declarant reserves the right to modify the architectural type, style, size and floor plans of the Units and buildings within any property to be annexed within the Condominium.

ARTICLE 9

UTILITY MAINTENANCE EASEMENT

Each present and future Unit Owner and, if applicable, tenants of each Unit Owner and other occupants of each Unit, shall grant a right of access to his or her Unit to the Managing Agent and/or any other person authorized by the Council of Unit Owners for the purpose of making inspections of the plumbing, electrical, cable TV, telephone, internet, broadband and other communications systems, and any other common utilities system and for the purpose of correcting any problems with any such system in any Unit which might affect that Unit, any other Unit in the building or any of the Common Elements. In the event of an emergency, such entry shall be immediate whether the Unit Owner or occupant is present or not, provided that if such entry is not needed on an emergency basis the Managing Agent or other authorized person shall provide the Unit Owner or occupant with reasonable prior notice of such entry. The Managing Agent or other authorized person may permit employees or agents of the applicable utility company serving the Property to enter the Property to repair, replace or remove equipment owned by or under the control of such utility company. The provisions of this Article shall not be deemed to alter the responsibilities of the Council of Unit Owners and/or any Unit Owner for the maintenance and repair of the Units and/or Common Elements as specified elsewhere in this Declaration or in the Bylaws.

ARTICLE 10

MISCELLANEOUS

Section 10.1. Construction and Enforcement.

(a) The provisions of this Declaration shall be liberally construed to achieve the purpose of creating a uniform plan for the operation of the Property as a condominium. This Declaration, the Bylaws and the Rules may be enforced by the Developer, any Unit Owner and/or the Council of Unit Owners or its Board of Directors by any proceeding at law or in equity against any person or persons violating any of the same, either to restrain or enjoin violation or to recover damages, or both, and against any Unit to enforce any lien created hereby. The failure or forbearance by the Developer, the Council of Unit Owners or any Unit Owner to enforce any of the Covenants and Restrictions in this Declaration, the Bylaws, or the Rules, shall in no event be deemed a waiver of the right to do so thereafter.

(b) There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the provisions of this Declaration, the Bylaws or the Rules, as amended from time to time, cannot be adequately remedied exclusively by action at law or by recovery of damages.

Section 10.2. Severability. Invalidation of any part of this Declaration by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

Section 10.3. Captions; Gender. The captions contained in this Declaration are included only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration, or the intent of any provision of this Declaration. Whenever the context so requires in this Declaration, the use of the masculine, feminine or neuter pronoun shall include the others and the singular shall include the plural, and vice versa.

Section 10.4. Amendments.

(a) Subject to Article 8 and Sections 10.4(b), 10.8, and 10.9, this Declaration may be amended only in accordance with the Maryland Condominium Act and with the written consent of the Developer for so long as the Developer owns any Unit.

(b) Notwithstanding Section 10.4(a) above, the Developer or the Board of Directors may unilaterally amend this Declaration, the Bylaws, and the Condominium Plat to correct or supplement any mathematical mistakes, inconsistencies, or scrivener errors, engineering errors, or any erroneous or incomplete information based upon any objectively verifiable fact.

(c) Any amendment to this Declaration, the Bylaws or the Condominium Plat shall not become effective until such time as it has been recorded among the Land Records.

Section 10.5. Consents. Notwithstanding any other provision of this Declaration, unless otherwise provided by statute, neither the Developer, the Council of Unit Owners nor the Board of Directors shall take any of the following actions unless the approvals indicated have been obtained:

(a) By act or omission, seek to abandon or terminate the Condominium project unless at least eighty percent (80%) of the Unit Owners (except in the case of a taking of all the Units by eminent domain under Section 11-112 of the Maryland Condominium Act) and at least sixty-seven percent (67%) of the Eligible Mortgage Holders (or at least fifty-one percent (51%) of such Eligible Mortgage Holders in the case of the substantial condemnation or substantial destruction of the Property) have given their prior written approval;

(b) Change the pro-rata interest or obligations of any Unit unless all Eligible Mortgage Holders and all Unit Owners have given their prior written approval;

(c) Except as provided pursuant to the Maryland Condominium Act or other applicable law, or in case of condemnation or substantial loss to the Units and/or Common

Elements, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements by act or omission without the prior consent of two-thirds (2/3) of the Eligible Mortgage Holders (based on one (1) vote per First Mortgage owned) or two-thirds (2/3) of the Unit Owners (other than the Developer);

(d) Except as provided in the Master Condominium Declaration, the Maryland Condominium Act or other applicable law, use hazard insurance proceeds for losses to any of the Property (whether Units or Common Elements) for other than the repair, replacement or reconstruction of the Property and the improvements situated thereon without the prior written consent of two-thirds (2/3) of the Eligible Mortgage Holders (based on one (1) vote per First Mortgage owned), or two-thirds (2/3) of the Unit Owners (other than the Developer);

(e) Restore or repair the Condominium after a partial condemnation other than substantially in accordance with the Declaration and the original plans and specifications, unless at least fifty-one percent (51%) of the Eligible Mortgage Holders (based on one (1) vote for each First Mortgage owned) have given their prior written approval;

(f) Reallocate interests in the Common Elements after the partial destruction of the Condominium unless at least fifty-one percent (51%) of the Eligible Mortgage Holders have given their prior written approval; or

(g) Unless the consent of the Unit Owners to which at least sixty-seven percent (67%) of the votes in the Council of Unit Owners are allocated (or such higher percentage as may otherwise be required by this Declaration or the Maryland Condominium Act) and the approval of Eligible Mortgage Holders holding mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to mortgages or deeds of trust held by Eligible Mortgage Holders is obtained, amend any material provision of this Declaration, the Bylaws or Condominium Plat which establishes, provides for, governs or regulates any of the following:

- (i) Voting rights;
- (ii) Assessment liens or the priority of such liens;
- (iii) Reductions in reserves for maintenance, repair and replacement of the Common Elements;
- (iv) Responsibility for maintenance and repairs;
- (v) Reallocation of interests in the Common Elements or rights to their use;
- (vi) Definition of Unit boundaries or the exclusive easement rights appertaining to Units;
- (vii) Convertibility of Units into Common Elements or of Common Elements into Units;

(viii) Expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Condominium except as otherwise authorized in this Declaration;

(ix) Hazard or fidelity insurance requirements;

(x) Imposition of any restrictions on the leasing of Units except as otherwise set forth in this Declaration or the Bylaws;

(xi) Imposition of any restrictions on the right of a Unit Owner to sell or transfer his or her Unit;

(xii) A decision by the Council of Unit Owners to establish self-management if professional management has been required previously by this Declaration, the Bylaws or an Eligible Mortgage Holder;

(xiii) Restoration or repair of the Condominium (after damage or partial condemnation) in a manner other than that specified in the Master Condominium Declaration, this Declaration, the Bylaws or the Maryland Condominium Act;

(xiv) Any action to terminate the Condominium after substantial destruction or condemnation occurs;

(xv) Any provisions that expressly benefit mortgage holders, insurers or guarantors of First Mortgages; or

(xvi) Any provisions regarding the powers and duties of the Board of Directors or the Council of Unit Owners.

An amendment shall not be considered material for purposes of this Section 8.5(g) if such amendment is for purposes of correcting typographical or engineering errors or omissions, or is for purposes of clarification only.

Section 10.6. Successors of Developer. Any and all rights, reservations, easements, interests, exemptions, privileges, powers, obligations, and liabilities of the Developer hereunder, or any part of them, may be assigned or transferred, exclusively or non-exclusively, by the Developer by an instrument in writing that expressly sets forth the matters being assigned or transferred.

Section 10.7. Developer Reserved Rights. No amendment to this Declaration or the Bylaws may remove, revoke, modify or amend any of the rights, reservations, easements, interests, exemptions, privileges or powers of the Developer under this Declaration or the Bylaws or any provision of this Declaration or the Bylaws that otherwise inures to the benefit of the Developer (collectively, the **“Developer’s Rights”**) without the prior written consent of the Developer. The Developer’s Rights may be exercised by the Developer for so long as the Developer or any of its affiliates owns any Units or other portion of the Property or any property adjacent to the Property and for so long as the Developer has any obligations with respect to the

development or repair of the Property. In no event shall any of the Developer's Rights be deemed terminated, waived, transferred or assigned to the Unit Owners or the Council of Unit Owners merely on account of the Developer ceding control of the Board of Directors to the Unit Owners.

Section 10.8. Developer's Power of Attorney to Amend the Condominium Documents.

The Developer hereby reserves for itself, its successors, transferees and assigns, for a period of ten (10) years from the date the first Unit is conveyed to an individual purchaser, or until it conveys title to the last Unit, whichever occurs first, the right to execute on behalf of all contract purchasers, Unit Owners, Eligible Mortgage Holders, mortgagees, and other lienholders or parties claiming a legal or equitable interest in the Condominium, any such agreements, documents, amendments or supplements to this Declaration, the Bylaws or the Condominium Plat which may be so required by Fannie Mae, the Federal Housing Administration ("FHA"), the Department of Veterans Affairs ("VA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Government National Mortgage Association ("GNMA"), or by any governmental or quasi-governmental agency or authority having regulatory jurisdiction over the Condominium, or institutional lender or title insurance company designated by the Developer, or as may be required to comply with the Fair Housing Amendments Act of 1988, as amended from time to time, to comply with the Maryland Condominium Act, or to comply with other applicable laws and regulations.

(a) By acceptance of a deed to any Unit or by the acceptance of any other legal or equitable interest in the Condominium, each and every contract purchaser, Unit Owner, Eligible Mortgage Holder, mortgagee or other lienholder or party having a legal or equitable interest in the Condominium does automatically and irrevocably name, constitute, appoint and confirm the Developer, its successors, transferees and assigns, as attorney-in-fact for the purpose of executing such agreement, document, amendment, supplement and other instrument(s) necessary to effect the foregoing subject to the limitations set forth herein.

(b) No such agreement, document, amendment, supplement or other instrument which adversely affects the value or substantially alters the floor plan of a Unit, or changes the Percentage Interest appurtenant to such Unit, or substantially increases the financial obligations of the Unit Owner, or reserves any additional or special privileges for the Developer not previously reserved, shall be made without the prior written consent of the affected Unit Owner(s) and all owners of any mortgage(s) encumbering the Unit(s) owned by the affected Unit Owner(s). Any such agreement, document, amendment, supplement or instrument which adversely affects the priority or validity of any mortgage which encumbers any Unit shall not be made without the prior written consent of the owners of all such mortgages.

(c) The power of attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to the Units and be binding upon the heirs, personal representatives, successors, transferees and assigns of any of the foregoing parties. Further, said power of attorney shall not be affected by the death or disability of any principal and is intended to deliver all right, title and interest of the principal in and to said power of attorney. Said power of attorney shall be vested in the

Developer, its successors, transferees and assigns until the initial conveyance of all Units planned to be within the Condominium or the expiration of same.

Section 10.9. Developer's Power of Attorney to Facilitate Development. There is hereby reserved unto the Developer (or such other party as may in writing be designated by the Developer) an irrevocable power of attorney, coupled with an interest, for the purpose of executing, acknowledging and delivering on behalf of all contract purchasers, Unit Owners, Eligible Mortgage Holders, mortgagees, and other lienholders or parties claiming a legal or equitable interest in the Condominium, any and all subdivision plats, public works agreements, dedication deeds and agreements, development agreements and such other instruments as may from time to time be required by the City of Baltimore or other governmental authorities in order to complete the development of the Master Condominium, including the Condominium. Each contract purchaser, Unit Owner, Eligible Mortgage Holder, mortgagee, and other lienholder or party claiming a legal or equitable interest in the Condominium shall be deemed to have consented to all such instruments and shall be deemed to have granted unto the Developer (or such other party as may in writing be designated by the Developer), an irrevocable power of attorney, coupled with an interest, to effectuate, execute, acknowledge and deliver any such instruments and each of the foregoing parties shall be deemed to have agreed and covenanted to execute such further assurances and instruments, if any, as may be required by the Developer and its successors or assigns, to properly accomplish such purposes.

Section 10.10. Extraordinary Actions. Although the Board of Directors shall generally have broad powers to regulate, govern and manage the Condominium, the power to approve certain Extraordinary Actions (as defined below) shall remain vested in the Council of Unit Owners. Any provision of this Declaration or the Bylaws to the contrary notwithstanding, the Board of Directors shall not be authorized to take any Extraordinary Actions without the affirmative vote of Unit Owners representing not less than sixty-seven percent (67%) of the total votes entitled to be cast by Unit Owners and voting in person or by proxy at any meeting of the Council of Unit Owners. The term "**Extraordinary Actions**" shall mean any and all legal actions or proceedings taken or pursued by or on behalf of the Council of Unit Owners, including, without limitation, commencing or maintaining any litigation, arbitration or similar proceeding on a contingency fee or payment basis that would reasonably require the expenditure of funds in excess of Twenty-Five Thousand Dollars (\$25,000.00) in the aggregate during any fiscal year of the Council of Unit Owners, except for routine Common Expense or other assessment collection matters, or actions required to enforce the restrictions on use of Units set forth in Article 5 of the Bylaws or in the Rules and subject to such other and additional requirements provided in Article 12 of the Bylaws.

Section 10.11. Limited Warranty. Each Unit shall be warranted by the Developer to the extent required by Section 11-131(c) of the Maryland Condominium Act. The Common Elements shall be warranted by the Developer to the Council of Unit Owners to the extent required by Section 11-131(d) of the Maryland Condominium Act. The limited warranty certificate for the Units and the Common Elements is attached to and made a part of this Declaration as **Exhibit "F"**. In the event of any inconsistency between the limited warranty set forth in **Exhibit "F"** and any other limited warranty given by the Developer to a Unit purchaser, such other limited warranty shall control with respect to such Unit purchaser.

Section 10.12. Non-Merger. Notwithstanding that all or portions of the Property may be owned by the same entity, all of the rights, easements and other provisions of this Declaration shall not be deemed extinguished by merger.

Section 10.13. Consolidation of Units. Upon compliance with the express requirements of the Act, this Declaration, the Bylaws, and all applicable laws, all or part of two or more adjacent Units may be combined into a larger Unit, provided that all Units to be combined are under common ownership at the time of such combination. Upon any such combination of Units, the percentage interests appurtenant to such Units shall be reallocated in accordance with the procedures set forth in the Act. The Board of Directors, through its authorized officer, shall execute such amendments to the Condominium documents on behalf of the Council of Unit Owners as may be required in connection with any combination of Units that is made in accordance with the Act.

IN WITNESS WHEREOF, the Developer has caused this writing to be executed and delivered in its name and on its behalf on the day and year first above written.

**HARBOR EAST PARCEL D – RESIDENTIAL
LLC**, a Maryland limited liability company,

By:

_____ By: _____

* * *

STATE OF MARYLAND

CITY/COUNTY OF _____

*
* to wit:
*

I HEREBY CERTIFY that on this _____ day of _____, 20____,
before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared
_____, known to me (or satisfactorily proven) to be the _____
of _____, and that he, in such capacity and being authorized
to do so, executed the foregoing and annexed instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

* * *

DEVELOPER'S CERTIFICATION

I HEREBY AFFIRM under penalty of perjury that the notice requirements of Section 11-102.1 of the Real Property Article of the Annotated Code of Maryland (2003 Replacement Volume), if applicable, have been fulfilled.

**HARBOR EAST PARCEL D – RESIDENTIAL
LLC**, a Maryland limited liability company,

By:

By: _____

**Mortgagee Consent to
Declaration of Condominium**

The undersigned lender is the mortgagee of the Property described on **Exhibit "A"** hereto. The undersigned mortgagee does hereby consent to this Declaration, the Bylaws, and the Condominium Plat for Harbor East Tower Condominium.

WITNESS:

By: _____ [SEAL]

Name: _____

Title: _____

* * *

STATE/COMMONWEALTH OF _____ *

CITY/COUNTY OF _____ *

*
*
*
to wit:

On this _____ day of _____, 20____, before me, a Notary Public in and for the aforesaid jurisdiction, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of _____, and that such person, in such capacity and being authorized to do so, executed the foregoing Mortgagee Consent for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: _____

Exhibit A

(Description of the Property)

Phase 1 of the Condominium to be determined at the time the Declaration is recorded.

The Tower Unit in the Harbor East Parcel D Master Condominium as shown on the Harbor East Parcel D Master Condominium Plats recorded among the Land Records in Condominium Book FMC at page 694, as amended and updated at page 756 and as further amended and updated at page 774, and identified as Lot 006, Tax Identification No. 03061800 excepting and excluding the Expansion Property described in **Exhibit E** to this Declaration.