

DRAFT

DECLARATION OF CONDOMINIUM

VIENNA MILL STREET COMMERCIAL CONDOMINIUM

AFTER RECORDING PLEASE RETURN TO:

**HOLLAND & KNIGHT LLP
1650 TYSONS BOULEVARD
SUITE 1700
TYSONS, VIRGINIA 22102
ATTN: CURTIS L. SANO, ESQ.**

[INSERT TOC]

EXHIBITS

- Exhibit A - Description of Property
- Exhibit B - Bylaws of the Unit Owners Association
- Exhibit C - Condominium Plat
- Exhibit D - Common Element Interest Table

DECLARATION OF CONDOMINIUM

VIENNA MILL STREET COMMERCIAL CONDOMINIUM

THIS DECLARATION OF CONDOMINIUM (“Declaration”), is made and entered into on this _____ day of _____, 2018 by **MILL STREET DEVELOPMENT ONE LLC**, a Virginia limited liability company (hereinafter referred to as the “Declarant”), who declares as follows:

WHEREAS, Declarant is the owner of certain land and the improvements constructed or to be constructed thereon, together with all easements, rights and appurtenances belonging thereto (hereinafter called the “Property”), located in the Town of Vienna, Fairfax County, Virginia, and more particularly described in Exhibit A attached to and made a part of this Declaration. The Property is sometimes also referred to as the “Submitted Land” in this Declaration; and,

WHEREAS, Declarant desires to establish a Condominium pursuant to the Virginia Condominium Act, Title 55, Chapter 4.2, Section 79.39 et seq. of the Code of Virginia, 1950 Edition, as amended (hereinafter called the “Act” or the “Condominium Act”), and it is the desire and intention of Declarant to divide the Property into condominium units and to lease, sell and/or convey the same subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens hereinafter set forth, each of which is for the benefit of the Property and the owners thereof from time to time; and,

WHEREAS, prior to the recordation hereof Declarant has filed for record in the Office of the Clerk of the Circuit Court of Fairfax County, Virginia (“Land Records”) certain condominium plats and plans entitled “Vienna Mill Street Commercial Condominium” (hereinafter collectively referred to as the “Condominium Plat”), which Condominium Plat (consisting of _____ (_____) sheets) is dated _____, 201____. A copy of the Condominium Plat is attached as Exhibit C hereto.

NOW, THEREFORE, the Declarant hereby submits the Property to the provisions of the Act.

ARTICLE 1 DEFINITIONS

Except as otherwise defined in this Declaration or in Section 1.3 of the Bylaws attached as Exhibit B hereto, all terms used in the “Condominium Instruments” (as defined below) shall have the meanings specified in §55-79.41 of the Condominium Act. Unless otherwise expressly stated, all Exhibits referred to in the Condominium Instruments are Exhibits to this Declaration.

Section 1.1. “Act” and “Condominium Act” means the Virginia Condominium Act, Title 55, Chapter 4.2, Section 55-79.39, et seq., of the Code of Virginia (1950), as amended, supplemented or replaced from time to time.

Section 1.2. “Affiliate” means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person. For purposes

of this definition, the term “control” (including the terms “controlling,” “controlled by” and “under common control with”) of a Person means the possession, directly or indirectly, of the power: (i) to vote more than fifty percent (50%) of the voting stock of such Person; or (ii) to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting stock, by contract or otherwise.

Section 1.3. “Assessments” shall mean and refer collectively to all annual assessments, special assessments, fines, fees and other charges, including all installments thereof, as may be levied by the Association against the Unit Owners in accordance with the Condominium Instruments to pay the Common Expenses and/or for such other purposes as may be authorized pursuant to the Condominium Instruments. The term Assessments shall be deemed to include, in the event that any Unit Owner shall be delinquent in the payment of any Assessment beyond the date specified for payment by or pursuant to the Condominium Instruments, all applicable interest, costs, late fees and attorneys’ fees.

Section 1.4. “Board of Directors” and “Board” means the Board of Directors of the Unit Owners Association of the Condominium and each member thereof a “member” of the Board of Directors or a “Director.” “Building” means any structure permanently affixed to the real estate comprising the Property, or any portion thereof, designed or built for the enclosure, shelter, protection or occupancy of Persons, chattels or other property of any kind or nature.

Section 1.6. “Bylaws” means the Bylaws of the Unit Owners Association of the Condominium (a copy of which is attached hereto and made a part hereof as Exhibit “B”).

Section 1.7. “Common Elements” means all of the Property other than “Units,” and includes both “General Common Elements” and “Limited Common Elements” (if any).

Section 1.8. “Common Element Interest” means the number assigned to each Unit pursuant to Exhibit D to this Declaration which establishes each Unit’s undivided interest in the common elements, common expenses, surplus and votes in the Unit Owners Association.

Section 1.9. “Common Expenses” means any expenses associated with the maintenance, operation, inspection, administration, repair, or replacement (including, without limitation, any reasonable reserves) of the General Common Elements, except to the extent specifically provided otherwise in this Declaration or the Bylaws, or of the Limited Common Elements that are intended to benefit less than all of the Units and Unit Owners and which may be assessed by the Board of Directors against the Unit or Units to which such Limited Common Elements are appurtenant. The Common Expenses shall also include expenses which may be assessed against a particular Unit as provided in this Declaration and the Bylaws and all expenses designated as such by resolution of the Board of Directors, or by this Declaration or the Bylaws.

Section 1.10. “Condominium” means the Property having the status of a “Condominium” pursuant to and as defined in the Act.

Section 1.11. “Condominium Instruments” shall mean and refer collectively to this Declaration, the Bylaws, any Rules adopted by the Board of Directors, and the Condominium Plat, as the same may be amended from time to time.

Section 1.12. “*Condominium Plat*” means the condominium plats and plans for the Condominium entitled “Vienna Mill Street Commercial Condominium” filed by the Declarant for record in the Land Records.

Section 1.13. “*Covenants and Restrictions*” means the covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens set forth in the Condominium Instruments.

Section 1.14. “*Declarant*” shall mean and refer to Mill Street Development One LLC, a Virginia limited liability company, and its successors and assigns, but only to the extent that all or any portion of the Special Declarant Rights of Declarant are specifically assigned or transferred in writing.

Section 1.15. “*Declarant Control Period*” has the meaning ascribed to such term in Section 1.3 of the Bylaws.

Section 1.16. “*Declaration*” shall refer to this document and all exhibits attached hereto, as amended from time to time.

Section 1.17. “*Development Period*” shall mean and refer to that period of time commencing on the date that this Declaration is recorded among the Land Records and continuing for the period of time that the Declarant is engaged in development, construction, marketing, sales, leasing and/or other related activities anywhere upon the Property, and shall include, without limitation, the period of time that the Declarant is entitled to exercise Special Declarant Rights under the Condominium Instruments. The Development Period shall end on the earlier of (a) the date which is five (5) years after the date of this Declaration, or (c) the date that Declarant, in its sole discretion, expressly and in writing terminates the Development Period. Notwithstanding the foregoing, Declarant may, in its sole discretion at any time and from time to time, expressly and in writing, terminate some but less than all of the rights that may be exercised by Declarant pursuant to the Condominium Instruments during the Development Period.

Section 1.18. “*Development Plan*” shall mean and refer collectively to all proffers, project plans, preliminary plans, site plans, subdivision plats and/or other regulatory plans, as amended, for the Project as may have been or shall be reviewed and approved by the Governmental Authorities, including all amendments, modifications, extensions and supplements thereof as may be made from time to time. The Development Plan and any building permit, site plan covenant or other approval issued by any Governmental Authority with respect to the construction of Improvements within the Property, are sometimes collectively referred to as the “Regulatory Approvals” herein.

Section 1.19. “*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 Unit Owners Association of amendments to the Condominium Instruments or other significant matters which would affect the interests of the Mortgagee.

Section 1.20. “*Extraordinary Actions*” refers to actions taken by or on behalf of the Unit Owners Association as more particularly described in Article 8, Section 8.8 hereof.

Section 1.21. “General Common Elements” means all of the “Common Elements” except “Limited Common Elements.”

Section 1.22. “Governmental Authorities” means all governmental and quasi-governmental officials, agencies, bodies and/or governments with jurisdiction over the Property, including, without limitation, the Commonwealth of Virginia, the County, the Vienna Town Council, the Town of Vienna Department of Planning & Zoning, and their applicable agencies, authorities and representatives.

Section 1.23. “Land Records” means the Clerk’s Office of the Circuit Court of Fairfax County, Virginia.

Section 1.24. “Landlord” has the meaning ascribed to such term in the foregoing recitals.

Section 1.25. “Limited Common Elements” include those designated as such in this Declaration or on the Condominium Plat.

Section 1.26. “Mortgage” has the meaning ascribed to such term in Section 1.3 of the Bylaws.

Section 1.27. “Mortgagee” has the meaning ascribed to such term in Section 1.3 of the Bylaws.

Section 1.28. “Occupant” means any Person legally entitled to occupy and/or use all or any portion of the Property, including, without limitation, the officers, agents, employees, contractors, tenants, subtenants, lessees, sublessees, licensees, invitees, and guests of any Unit Owner.

Section 1.29. “Person” means an individual (and the heirs, executors, administrators, or other legal representatives of an individual), a partnership, a corporation, a limited liability company, a limited liability partnership, a government or any department or agency thereof, a trustee, a trust, an unincorporated association or organization, any other legal entity, and any combination of the foregoing.

Section 1.30. “Property” and “Submitted Land” have the meaning ascribed to such terms in the foregoing recitals to this Declaration.

Section 1.31. “Rules” means the written rules adopted from time to time by the Board of Directors of the Unit Owners Association in accordance with the Act, the Declaration and the Bylaws.

Section 1.32. “Special Declarant Rights” shall mean and refer to any and all rights, reservations, easements, interests, exemptions, privileges and/or powers reserved or given to the Declarant pursuant to the Condominium Instruments, and shall include, without limitation, the following rights: (1) to make repairs and replacements to Units and Common Elements in furtherance of the statutory warranty contained herein (2) to make unilateral amendments to the Condominium Instruments as provided in Article 8 and Article 9 of this Declaration; and (3) to

exercise any other rights granted to the Declarant pursuant to the Condominium Instruments, including, without limitation, Section 9.6 of this Declaration.

Section 1.33. “Town” shall mean and refer to the Town of Vienna, Virginia, and its applicable agencies and authorities, and as applicable with respect to any governmental approvals, the County of Fairfax, Virginia.

Section 1.34. “Unit” means a three-dimensional area, as described below and as shown on the Condominium Plat, and includes all improvements contained within such area except such improvements as are expressly excluded in this Declaration or on the Condominium Plat. Unless otherwise designated on the Condominium Plat, the Unit boundaries shall be as follows:

(a) Unit Boundaries. The vertical boundaries of each Unit shall be the vertical planes located on the lines showing the dimensions and location of such Unit, as indicated on the Condominium Plat, extended to intersections with each other and with the upper and lower horizontal boundaries of that Unit, as indicated on the Condominium Plat. The upper and lower boundaries of each Unit shall be the horizontal planes extended to intersect the vertical boundaries of the Unit, as indicated on the Condominium Plat. The elevations of such horizontal planes shall be as described on the Condominium Plat. **[Note, the boundaries might not be horizontal/vertical and might be irregular shapes as opposed to planes.]**

(b) Unit Components. Unless otherwise designated in this Declaration or on the Condominium Plat as a Common Element, (i) any mechanical equipment, fixtures and appurtenances located within or outside of any Unit that serve or benefit only that Unit, or a Limited Common Element appurtenant to that Unit, such as pipes, wires, cables, conduits, electrical receptacles and outlets, hose bibs, valves, ducts, flues (including, without limitation, fireplace flues), chutes, exterior windows, skylights, appliances, light fixtures and the like, and (ii) any sidewalks or plazas fronting a Unit and designated on the Condominium Plat as being part of the Unit, and decks and balconies that serve or benefit only that Unit, shall be deemed to be a part of that Unit.

(c) Modification of Unit Boundaries. The Declarant reserves the right, in its sole discretion, to designate Unit types, and corresponding Unit boundaries, in addition to those specified above, and to otherwise modify the boundaries of the Units and Common Elements from the descriptions set forth in this Declaration, by appropriate designation on the Condominium Plat.

Section 1.35. “Unit Owner” means any person, group of persons, corporation, partnership, trust, governmental agency or authority, or other legal entity, or any combination thereof, which owns a Unit; provided, however, that any person, group of persons, corporation, partnership, trust, governmental agency or authority, 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.

Section 1.36. “Unit Owners Association” and “Association” have the meanings ascribed to such terms in Section 1.3 of the Bylaws.

ARTICLE 2 CREATION OF CONDOMINIUM REGIME

Section 2.1. 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 Act and the Covenants and Restrictions herein set forth, including the provisions of 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 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 Declarant 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 Declarant shall inure to the benefit of and be enforceable by only those successors and assigns of the Declarant to whom any of the same have been specifically assigned or transferred in writing.

(b) By the recordation of this Declaration, the Unit Owners Association hereby assumes all liability, responsibility and duty for the care, operation and maintenance of the Common Elements except as otherwise provided herein, 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 Unit Owners Association or each Unit Owner may have pursuant to this Declaration and the Bylaws. Further, the Unit Owners Association and each Unit Owner, on their own behalf, and on behalf of their successors and assigns, hereby agrees to indemnify and hold Declarant, 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 Unit Owners Association or each Unit Owner to care for, maintain or properly operate the Common Elements or Units, as applicable.

Section 2.2. 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, a copy of which Condominium Plat is annexed hereto as Exhibit "C" (and by this reference is made a part hereof).

Section 2.3. Name of Condominium. The name by which the Condominium shall be known is "Vienna Mill Street Commercial Condominium."

ARTICLE 3 COMMON ELEMENTS

Section 3.1. General Common Elements. The General Common Elements means all of the Common Elements except Limited Common Elements, and shall (unless otherwise specifically designated herein or on the Condominium Plat), include the following:

(a) The Property (other than Units and the Limited Common Elements, if any), and landscaping; and,

(b) The foundations, bearing walls, perimeter walls, columns, girders, beams, supports, roofs and other structural components of the Building(s) within the Property (unless

designated as part of a Unit or as a Limited Common Element pursuant to this Declaration or the Condominium Plat), and telephone and electric meter rooms; and,

(c) The components or installations of central services and utilities located within the Property such as power, light, gas, water, sewer, telephone, and master antennae, 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); and,

(d) Any areas, facilities and/or improvements specifically designated as part of the General Common Elements on the Condominium Plat, including, without limitation, lobbies, elevators and stairwells, if any, intended to be used in common by the Unit Owners;

(e) Landscaping, if any;

(f) All Units which may hereafter be acquired and held by the Unit Owners Association on behalf of all Unit Owners; and,

(g) All other elements of common use or necessary to the Condominium's existence, upkeep and/or safety.

Section 3.2. Limited Common Elements. The "Limited Common Elements" include only those Common Elements designated as such in this 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 or on the Condominium Plat. If no such designation is made in this Declaration or on the Condominium Plat, then the Limited Common Elements shall be deemed to be appurtenant to Unit(s) to which they are adjacent or which they are rationally intended to serve and benefit. The right of the Unit Owner(s) to whose Unit(s) the Limited Common Elements are appurtenant to use and enjoy the same shall be subject to such Rules as the Board of Directors of the Unit Owners Association 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 maintenance, repair and/or replacement of such Limited Common Elements. Pursuant to the Act, the Unit Owners Association may assess the costs incurred in maintaining, repairing and/or replacing any Limited Common Elements against the Unit(s) to which such Limited Common Elements are appurtenant.

Section 3.3. Assignment of Limited Common Elements. No portions of the General Common Elements are, or may be, assigned as Limited Common Elements.

ARTICLE 4 COMMON ELEMENT INTEREST AND VOTING RIGHTS

Each Unit shall have the same incidents as 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, which shall be known as the Unit Owner's Common Element Interest in the Common Elements. The Common Element Interest Table attached as Exhibit D hereto is a list of all Units, their identifying numbers, location (all as shown more fully on the Condominium Plat), type and Common Element Interest appurtenant to

each Unit determined on the basis of equality. [Need to edit as applicable. - Each Unit has an equal Common Element Interest.] Each Unit shall have one vote in the Unit Owners Association. Except as otherwise specifically provided in this Declaration, the Common Element Interests heretofore described and votes herein established shall not be changed without the unanimous written consent of all of the Unit Owners and the Eligible Mortgage Holders evidenced by an appropriate amendment to this Declaration recorded among the Land Records; shall not be separated from the Unit to which they appertain; and shall be deemed conveyed or encumbered with the Unit even though such Common Element Interests and/or votes are not expressly mentioned or described in the conveying deed or other instrument.

**ARTICLE 5 COVENANT AGAINST PARTITION; ENCROACHMENTS;
EASEMENTS**

Section 5.1. *Covenant Against Partition; Support.* The Common Elements, both General and Limited, shall remain undivided and, except as otherwise provided in the Condominium Instruments and the Act, shall remain appurtenant to the designated Unit. No Unit Owner or any other person shall bring any action for partition or division thereof except as may be provided for herein and in the Act. Each Unit and the Common Elements shall have an easement for lateral and subjacent support from every other Unit and Common Element within the Condominium.

Section 5.2. *Encroachments.* 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.

Section 5.3. *General Easements.* In addition to the easements created by §55-79.60 of the Condominium Act, the following easements are hereby granted and the following rights are hereby reserved:

(a) The Unit Owners Association (through its Board of Directors, if applicable), its agents and employees, shall have an irrevocable right and an 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. Except in cases involving manifest danger to public safety or property, the Unit Owners Association (or the Board of Directors, if applicable) shall make a reasonable effort to give notice to the Owner of any Unit to be entered for the purpose of such maintenance and repair. If damage is inflicted on the

Common Elements or any Unit through which access is taken, the Unit Owners Association, if it is responsible for such damage, is liable for the prompt repair of such damage. An entry by the Unit Owners Association through its Board of Directors, agents, and employees for the purposes specified in this Section 5.3(a) shall not be considered a trespass. An easement for mutual support shall exist in the Units and the Common Elements.

(b) Each of the sidewalks, lanes, driveways, paved areas, and roadways which are part of the General Common Elements, shall be subject to an easement in favor of all 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.

(c) The Storage Unit Owner is hereby granted a blanket right and easement to enter onto the roof of the Building and to install, alter, operate, maintain, repair, remove and replace from time to time, telecommunications, heating, cooling, ventilation and other equipment serving the Storage Unit and to keep for its own account the rents and revenues therefrom, including without limitation, telecommunications and cellular tower equipment serving the Storage Unit or other properties within or outside the Property, as long as such installations do not have a material adverse effect on the roof, its water-tight qualities or warranties therefor, and are not visible from the sidewalks in front of the Building. The Storage Unit Owner may grant licenses to third parties for the installation of such equipment, provided that such licenses do not conflict with the terms of the Condominium Instruments or limit the rights of other Unit Owners to install equipment pursuant to this Section 5.3(c). The Storage Unit Owner shall not unreasonably withhold consent for other Unit Owners to install such equipment serving such Unit Owner's Unit (and not any property outside the Property), provided that such installations do not have a material adverse effect on the roof, its water-tight qualities or warranties therefor, and are not visible from the sidewalks in front of the Building. It shall be unreasonable for the Storage Unit Owner to withhold its consent to an installation on the grounds that the requesting Unit Owner can use an installation made by the Storage Unit Owner. No new installation may be made which causes material interference with installations previously made.

Comment [A1]: If the roof is a common element, shouldn't rental income offset its maintenance and reduce condo fees?

(d) There are hereby granted to each Unit Owner a general utility easement in the areas indicated for such Unit Owner on the Condominium Plat, in which the Unit Owner may install utilities and services serving that Unit Owner's Unit. All installations shall be underground and the surface above such easements shall be maintained in good, level, safe and attractive condition.

(e) Intentionally omitted.

(f) There is hereby reserved unto the Declarant (and its successors and assigns to whom such easement has been specifically assigned in writing) for the benefit of the Declarant 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 Declarant, and for the purpose of performing installations, alterations and/or repairs to the Units and/or the mechanical, electrical and utility services and other Common Elements in the Units or elsewhere in the Condominium relative to its

responsibilities as Declarant, 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 or Occupant is present at the time or not.

(g) An easement over and through all or any portion of the Property is hereby granted to the Town for police, fire, ambulance and other rescue or emergency personnel in the lawful performance of their official duties during emergencies.

ARTICLE 6 INTENTIONALLY OMITTED

ARTICLE 7 WATER AND SEWER UTILITIES

Each present and future Unit Owner and, if applicable, Occupant, shall grant a right of access to his or her Unit, or portion thereof, to the managing agent employed by the Unit Owner or the Unit Owners Association and/or any other person authorized by the Unit Owners Association for the purpose of making inspections of the plumbing system or for the purpose of correcting any plumbing problems 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 water and sewer utility company serving the Property to enter the premises for the purpose of making corrections in order to protect the water and sewer systems serving the Property. The provisions of this Article shall not be deemed to alter the responsibilities of the Association 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 8 DECLARANT DEVELOPMENT; RELOCATION OF UNIT BOUNDARIES AND SUBDIVISION OF UNITS

Section 8.1. Unit Development and Cooperation. Subject to the provisions of this Declaration and the Bylaws, the Unit Owners Association, the Board of Directors, and each Unit Owner and Occupant shall cooperate with Declarant in any construction, reconstruction, improvement and/or subdivision of the Property which is in accordance with the Act, the Condominium Instruments and all other applicable laws and regulations. Any provision of the Condominium Instruments to the contrary notwithstanding, the Development Plan for the Property may only be amended by or with the prior written consent of Declarant, and no Unit Owner shall act or fail to act in a manner that would impair or unreasonably impede the ability of the Declarant to implement the Development Plan or the Regulatory Approvals, or to otherwise exercise or benefit from the density, floor area ratio, parking capacity, open space and other development rights applicable with respect to the Property (collectively, the "Declarant's Development Rights"), including, without limitation, any action or failure to act by any Unit Owner that (i) would constitute or tend to constitute a violation of the Development Plan or the Regulatory Approvals, including, without limitation, any building permit, site plan covenant or

other approval applicable with respect to the construction of the Buildings, Units and other improvements by the Declarant or its Affiliates, or (ii) would cause any Buildings, Units and other improvements owned or under development by Declarant and/or its Affiliates to violate or tend to violate any land use or zoning requirements applicable with respect to the Property or such Buildings, Units and other improvements. No Unit Owner shall seek to utilize or impair, directly or indirectly, any of the Declarant's Development Rights without the express prior written consent of Declarant, which consent may be granted or withheld in the sole and absolute discretion of Declarant.

Section 8.2. Declarant's Power of Attorney. Any provision of the Condominium Instruments to the contrary notwithstanding, but subject to the provisions of §55-79.41:1 of the Condominium Act, there is hereby reserved unto the Declarant (or such other party as may be designated by the Declarant in writing) during the Development Period an irrevocable power of attorney, coupled with an interest, for the purpose of executing, acknowledging and delivering on behalf of all Unit Owners, Occupants, contract purchasers of Units, Mortgagees, other lienholders, and any other parties (other than the Landlord) having any legal or equitable interest in any portion of the Property (collectively "Interested Parties" and individually an "Interested Party"), any and all zoning approvals, preliminary plans, site plans, subdivision plats, public works agreements, dedication deeds and agreements, development agreements, applications, permits, easements, licenses, amendments to the Condominium Instruments, and any other instruments as may from time to time be deemed necessary or desirable by Declarant, in its sole discretion, in connection with (i) any development and/or construction activities undertaken by or at the direction of Declarant with respect to the Property, (ii) any development and/or construction matters relating to the Property, the Development Plan and/or the Regulatory Approvals, (iii) any requirements of any Governmental Authorities or the Condominium Act, (iv) any requirements of any Mortgagee, lender or secondary mortgage agency, (v) any modification or amendment to the boundaries of the Units and/or Common Elements as may be deemed necessary or desirable by the Declarant, in its sole discretion, to properly reflect the as-built location and configuration of the Buildings, Units, Common Elements and other improvements within the Condominium, or (vi) any requirements of the contract purchaser of a Unit or its lender. Each Interested Party shall be deemed to have consented to any and all such instruments and shall be deemed to have granted unto the Declarant (or such other party as may be designated by the Declarant in writing) an irrevocable power of attorney, coupled with an interest, to effectuate, execute, acknowledge and deliver any and all such instruments. Further, each Interested Party shall be deemed to have agreed and covenanted to execute such further assurances and instruments, if any, as may be required by Declarant and its successors or assigns, to properly accomplish such purposes. The foregoing power of attorney is in addition to and not in lieu of any other rights reserved unto Declarant in the Condominium Instruments.

Section 8.3. No Expansion of the Condominium. Notwithstanding anything to the contrary set forth in §55-79.54(c) and §55-79.63 of the Condominium Act, any option to expand the Condominium is hereby relinquished by the Declarant. The Condominium is not subject to expansion.

Section 8.4. No Convertible Land; No Convertible Space. No portion of the Property has been designated as convertible land in accordance with §55-79.61 of the Condominium Act.

None of the Property may be converted to convertible space in accordance with §55-79.62 of the Condominium Act.

Section 8.5. *No Contraction of the Condominium.* Notwithstanding anything to the contrary set forth in §55-79.54(d) and §55-79.64 of the Condominium Act, no portion of the Condominium has been reserved for contraction by the Declarant, and any option to contract the Condominium or to withdraw any portion of the Property from the Condominium is hereby relinquished by the Declarant. The Condominium is not subject to contraction.

Section 8.6. *Relocation of Unit Boundaries and Subdivision of Units.* Relocation of the boundaries between Units and the subdivision of Units is permitted, subject to compliance with the provisions therefor in Sections 5.7 and 8.5 of the Bylaws, and in §55-79.69 and §55-79.70 of the Condominium Act; provided, however, that no such relocation of Unit boundaries or subdivision of Units may be undertaken without the prior written consent of Declarant for the duration of the Development Period.

Section 8.7. *No Obligation to Construct.* Nothing contained in this Declaration or the other Condominium Instruments shall be deemed to impose upon Declarant any obligation whatsoever to construct, build, renovate, or otherwise provide any Buildings or improvements, except to the extent expressly required by the Condominium Act, and Declarant shall have no obligation whatsoever to begin or complete any Buildings or improvements labeled as “(NOT YET BEGUN)” or as “(NOT YET COMPLETED)” on the Condominium Plat.

ARTICLE 9 MISCELLANEOUS

Section 9.1. *Construction and Enforcement.*

(a) The provisions of the Condominium Instruments shall be liberally construed to achieve the purpose of creating a uniform plan for the operation of the Property as a Condominium. Enforcement of the Condominium Instruments shall be by the Declarant, any Unit Owner and/or the Unit Owners Association 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; and the failure or forbearance by the Declarant, the Unit Owners Association or the Unit Owner of any Unit to enforce any of the Covenants and Restrictions herein or in the Bylaws or Rules shall in no event be deemed a waiver of the right to do so thereafter. The Unit Owners shall have the same rights of enforcement against the Unit Owners Association as the Unit Owners Association has against the Unit Owners.

(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 attached hereto or the Rules, as amended from time to time, cannot be adequately remedied by action at law or exclusively by recovery of damages.

Section 9.2. *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 9.3. Captions. The captions contained in this Declaration are for convenience only, are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration.

Section 9.4. Amendments. This Declaration may be amended as provided in the Condominium Act, as amended from time to time. No amendment of the Declaration may be made without the prior written approval of the required percentage of Eligible Mortgage Holders where such approval is provided for in Section 8.5 of the Bylaws, or where such approval is required elsewhere in the Condominium Instruments or by the Condominium Act. No amendment to the Condominium Instruments shall diminish or impair the rights of Declarant without the express prior written approval of Declarant. Any amendment to this Declaration shall not become effective until such time as it has been recorded in the same manner as this Declaration among the Land Records.

Section 9.5. Consents. Notwithstanding any other provision of this Declaration, unless otherwise provided by statute (or in case of condemnation or insurable loss to the Units and/or Common Elements of the Condominium), neither the Declarant, the Unit Owners Association 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 all of the Unit Owners (except in the case of a taking of all the Units by eminent domain under Section 55-79.44 of the Act) and all of the Eligible Mortgage Holders (have given their prior written approval;

(b) change the pro-rata interest or obligations of any Unit unless all of the Eligible Mortgage Holders and all Unit Owners of the Units have given their prior written approval (except in connection with expansion of the condominium pursuant to Article 8 hereof);

(c) except as provided pursuant to the 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 all of the Unit Owners (other than the Declarant) and all of the Eligible Mortgage Holders;

(d) except as provided pursuant to the 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 all of the Unit Owners (other than the Declarant) and all of the Eligible Mortgage Holders;

(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 percent (50%) 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 percent (50%) of the Eligible Mortgage Holders have given their prior written approval; or

(g) unless the consent of all of the Unit Owners and the approval of all Eligible Mortgage Holders, amend any material provision of this Declaration, the Bylaws or Condominium Plat which establishes, provides for, governs or regulates any of the following:

- (1) Voting rights;
- (2) Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens or the priority of such liens;
- (3) Reductions in reserves for maintenance, repair and replacement of the Common Elements;
- (4) Responsibility for maintenance and repairs;
- (5) Reallocation of interests in the Common Elements or rights to their use;
- (6) Definition of Unit boundaries or the exclusive easement rights appertaining to Units;
- (7) Convertibility of Units into Common Elements or of Common Elements into Units;
- (8) Expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Condominium;
- (9) Hazard or fidelity insurance requirements;
- (10) Imposition of any restrictions on the leasing of Units;
- (11) Imposition of any restrictions on the right of a Unit Owner to sell or transfer his or her Unit;
- (12) A decision by the Unit Owners Association to establish self-management if professional management has been required previously by this Declaration, the Bylaws or an Eligible Mortgage Holder;
- (13) Restoration or repair of the Condominium (after damage or partial condemnation) in a manner other than that specified in this Declaration, the Bylaws or the Act;
- (14) Any action to terminate the Condominium after substantial destruction or condemnation occurs;
- (15) Any provisions that expressly benefit mortgage holders, insurers or guarantors of first mortgages; or

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

An amendment shall not be considered material for purposes of this Section 9.5(g) if such amendment is for purposes of correcting typographical errors or omissions, or is for purposes of clarification only.

Section 9.6. Special Declarant Rights.

(a) Generally. Special Declarant Rights are those rights, privileges and benefits reserved for the benefit of the Declarant as provided for in the Condominium Act and the Condominium Instruments, and shall include, without limitation, the following rights, privileges and benefits: (i) to complete improvements indicated on the Condominium Plat filed with this Declaration; and (ii) to use easements through the Common Elements and the Units for the purpose of making improvements or performing repairs within the Condominium.

(b) Transfer of Special Declarant Rights.

(1) The Declarant may, but shall not be obligated to, transfer Special Declarant Rights created or reserved under the Condominium Act or provided for in the Condominium Instruments. Any such transfer shall be by an instrument evidencing the transfer recorded in the Land Records in accordance with § 55-79.74:3 of the Condominium Act. The instrument is not effective unless executed by the transferor and transferee.

(2) Upon transfer of any Special Declarant Right, the liability of a transferor declarant is as follows:

- (i) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for any warranty obligations imposed upon the transferor declarant by the Condominium Act. Lack of privity does not deprive any Unit owner of standing to bring an action to enforce any obligation of the transferor.
- (ii) If the successor to any Special Declarant Right is an "affiliate of a declarant" (hereinafter defined), the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which relates to the Condominium. For purposes of this Section 9.6(b)(2)(ii), the phrase "affiliate of a declarant" shall mean the same as set forth §55-79.74:3G of the Condominium Act.
- (iii) If a transferor retains any Special Declarant Rights, and transfers other Special Declarant Rights to a successor who is not an affiliate of the transferor, the transferor is liable for any obligations or liabilities imposed on a declarant by the Condominium Act or by the Condominium Instruments that relate to the retained Special Declarant Rights and that arise after the transfer.

(iv) A transferor has no liability for any act or omission, or any breach of a contractual or warranty obligation arising from the exercise of a Special Declarant Right by a successor declarant who is not an affiliate of the transferor.

(3) Intentionally omitted.

(4) Upon foreclosure (or deed in lieu of foreclosure), tax sale, judicial sale, sale by a trustee under a Mortgage, or sale under the Bankruptcy Code or receivership proceedings, of all Units in a Condominium owned by Declarant and other real estate in a condominium owned by Declarant: (i) Declarant shall cease to have any Special Declarant Rights, and (ii) the Declarant Control Period, as provided in the Condominium Act, shall terminate unless the judgment or instrument conveying title provides for transfer of all Special Declarant Rights held by the Declarant to a successor declarant.

(5) The liabilities or obligations of Persons who succeed to Special Declarant Rights are as follows:

(i) A successor to any Special Declarant Right who is an affiliate of Declarant is subject to any obligations or liabilities imposed on the transferor by the Condominium Act or by the Condominium Instruments.

(ii) A successor to any Special Declarant Right, other than a successor described in paragraphs (iii) or (iv) of this subsection, who is not an affiliate of the Declarant, is subject to any obligations or liabilities imposed by the Condominium Act or the Condominium Instruments: (A) on a declarant which relates to such declarant's exercise or non-exercise of Special Declarant Rights; or (B) on the transferor, other than: (1) misrepresentations by any previous declarant; (2) warranty obligations on improvements made by any previous declarant, or made before the Condominium was created; (3) breach of a fiduciary obligation by any previous declarant or appointees to the Board of Directors; or (4) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(iii) Intentionally omitted.

(iv) A successor to all Special Declarant Rights held by the transferor who is not an affiliate of the Declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to Units under subsection Section 9.6(b)(3) may declare the intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all Special Declarant Rights to any person acquiring title to any Unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the transferor to control the Board of Directors in accordance

with the provisions of the Condominium Act and the Condominium Instruments for the duration of any period of declarant control, as provided in the Condominium Act. Any attempted exercise of those rights other than a right held by the successor's transferor to control the Board of Directors is void. So long as a successor declarant may not exercise Special Declarant Rights under this subsection, such successor declarant is not subject to any liability or obligation as a declarant.

(6) Nothing in this Section 9.6 shall subject any successor to a Special Declarant Right to any claims against or other obligations of a transferor declarant, other than claims or obligations arising under the Condominium Act or the Condominium Instruments.

Section 9.7. Termination of Special Declarant Rights. No amendment to this Declaration or the Bylaws may remove, revoke, modify or amend any of the Special Declarant Rights of the Declarant under the Condominium Instruments, or any provision of the Condominium Instruments that otherwise inures to the benefit of the Declarant, without the express prior written consent of the Declarant.

Section 9.8. Definition of Units for Statutory Warranty. For purposes of the warranty set out in Section 55-79.79 of the Virginia Code, the structure of the Storage Unit and the Retail Unit was delivered in "cold lit shell condition," with exterior gypsum board and floor slab but without partitions, dropped ceilings or floor coverings.

Section 9.9. Landscaping on Easement Land. The Association shall maintain the landscaping on the land licensed from the Town of Vienna, Virginia pursuant to the License Agreement recorded among the Land Records in Deed Book 8189 at page 724, and the costs thereof shall be included among the Common Expenses.

Section 9.10. Non Merger. Notwithstanding that all or portions of the Property may be owned by the same individual or entity, all of the rights, easements and other provisions of this Declaration shall not be deemed to be extinguished by merger.

Section 9.11. Applicable Law. The Condominium Instruments shall be governed by and construed according to the laws of the Commonwealth of Virginia.

Section 9.12. Effective Date. This Declaration shall become effective when it and the Condominium Plat have been recorded among the Land Records.

Section 9.13. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawfully void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living members of the 115th United States Congress.

Section 9.14. Exhibits. All appendices and exhibits attached to this Declaration are hereby incorporated into and made a part of this Declaration.

Section 9.15. Gender. The use of one gender in this Declaration shall be deemed to include the other gender or an entity, whenever the context so requires, and vice versa. The use

of the singular shall be deemed to include the plural, whenever the context requires, and vice versa.

Section 9.16. Conflict. In the event of any inconsistency or conflict between this Declaration and the Bylaws or the Condominium Plat, the terms and provisions of this Declaration shall control.

[SIGNATURE PAGES FOLLOW]

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

DECLARANT:

MILL STREET DEVELOPMENT ONE LLC,
a Virginia limited liability company

By: _____,
its Managing Member

By: _____

Name: _____

Title: _____

* * *

STATE/Commonwealth of _____ *

*

CITY/COUNTY OF _____ *

I HEREBY CERTIFY that on this ____ day of _____, 201____, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of _____, Managing Member of Mill Street Development One LLC, a Virginia limited liability company, and that such individual in such capacity and being authorized to do so, executed the foregoing and annexed instrument on behalf of such limited liability company for the purposes therein contained.

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

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

CONSENT TO DECLARATION

_____, a _____ banking corporation (the “Beneficiary”), is the beneficiary under that certain Indemnity Deed of Trust and Security Agreement dated _____, 20____, and recorded prior hereto among the Land Records of Fairfax County, Virginia (as the same may be amended, supplemented or otherwise modified from time to time, including any other instruments executed and delivered in renewal, extension, rearrangement or otherwise in replacement of such deed of trust (the “Deed of Trust”). The undersigned trustees (the “Trustees”) are current trustees under the Deed of Trust, with full power and authority to execute and deliver this Consent. The Trustees hereby consent to the terms and provisions of the foregoing Declaration of Condominium for Vienna Mill Street Commercial Condominium (“Declaration”) and agree that the operation, lien and effect of the Deed of Trust shall be subject to the operation, lien and effect of the Declaration, such Deed of Trust to otherwise remain in full force and effect.

TRUSTEE:

_____ [SEAL]

Name: _____
Trustee

TRUSTEE:

_____ [SEAL]

Name: _____
Trustee

* * *

STATE/Commonwealth of _____ *
CITY/COUNTY OF _____ *

I HEREBY CERTIFY that on this ____ day of _____, 20____, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared _____, Trustee, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing Consent as Trustee and acknowledged that he/she executed the same for the purposes therein contained as his/her own free act and deed.

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

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

* * *

STATE/Commonwealth of _____ *
CITY/COUNTY OF _____ *

I HEREBY CERTIFY that on this ____ day of _____, 20____, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared _____, Trustee, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing Consent as Trustee and acknowledged that he/she executed the same for the purposes therein contained as his/her own free act and deed.

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

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

Exhibit A
Description of Property

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Exhibit B

Bylaws of the Unit Owners Association

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Exhibit C
Condominium Plat

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Exhibit D

COMMON ELEMENT INTEREST TABLE

VIENNA MILL STREET COMMERCIAL CONDOMINIUM

<u>Unit</u>	<u>Par Value</u>	<u>Common Element Interests</u>
Storage Unit	_____	_____ %
Retail Unit	_____	_____ %
Garage Unit	_____	_____ %
TOTAL	_____	100%

LIST OF UNITS

<u>Unit</u>	<u>Street Address</u>
Storage Unit	_____
Retail Unit	_____
Garage Unit	_____

[NEXT PAGE]

NOTES TO COMMON ELEMENT INTEREST TABLE

1. The identifying number for each condominium unit consists of the unit number as set forth above on this Exhibit D. The identifying number is a sufficient legal description of the condominium unit for all purposes when set forth together with the name of the condominium, the name of the jurisdiction in which the Condominium is situated, and the deed book and page number where the first page of the Declaration is recorded.
2. The Common Element Interest per unit has been determined on the basis of par values assigned by the Declarants in accordance with the Condominium Act. The Common Element Interest shown for each unit is subject to change in the following circumstances: if the Declarants or the Board of Directors at the request of any unit owner changes the Common Element Interest allocated to a unit pursuant to the procedures set forth in §55-79.69 or §55-79.70 of the Condominium Act as permitted by the Bylaws of the Condominium.
3. The Common Element Interest also is the percentage appurtenant to each unit for votes and common expense liability.