

# **DECLARATION OF CONDOMINIUM OF VERONA – MAIN STREET CONDOMINIUM**

**THIS DECLARATION** is made under and pursuant to the Wisconsin Condominium Ownership Act of the State of Wisconsin (hereinafter "**Act**"), Chapter 703, Wisconsin Statutes, by Railroad District LLC, a Wisconsin limited liability company (hereinafter "**Declarant**").

## **ARTICLE I STATEMENT OF PURPOSE**

The purpose of this Declaration is to subject the property hereinafter described and the improvements to be erected thereon (hereinafter collectively "**Condominium**") to the condominium form of ownership in the manner provided by the Act. It is intended that all provisions contained herein shall be deemed to run with the land and shall constitute benefits and burdens to the Declarant and to its successors in interest.

## **ARTICLE II DESCRIPTION, NAME, RESTRICTIONS, AND DEFINITIONS**

2.1 Legal Description. The real estate subject to this Declaration is owned by Declarant and is described on Exhibit "A" attached hereto.

2.2 Name and Address. The name of the Condominium is Verona – Main Street Condominium.

2.3 Covenants, Conditions, Restrictions, and Easements. The Condominium shall be, on the date this Declaration is recorded, subject to:

- A. General taxes and special assessments not yet due and payable.
- B. Easements and rights in favor of gas, electric, telephone, water, sewer, cable television and other utilities and utility providers.
- C. Permanent Storm Sewer Easement to the City of Verona recorded November 4, 1998, as Document No. 3039513.
- D. Easement to Mt. Vernon Telephone Company, d/b/a TDS Telecom dated August 13, 2001, recorded August 23, 2001 as Document No. 3365781.
- E. Building Easement and Agreement by and between the City of Verona, the State of Wisconsin Department of Natural Resources and Railroad District, LLC, dated May 30, 2003, recorded July 1, 2003 as Document No. 3748254. This Easement permits construction of condominium improvements on lands owned by the

State of Wisconsin Department of Natural Resources, as shown on the Condominium Plat.

2.4 Definitions. Except as modified herein, the definitions contained in the Act shall govern the interpretation of this Declaration.

2.5 General Description of Condominium. The Condominium shall consist of two (2) buildings containing a total of twenty-six (26) condominium units (hereinafter “Units”), together with garages, driveways, pedestrian walkways and land. There are two (2) buildings constituting the Condominium. The buildings are two (2) story structures with attached garages. A survey plan of the land and buildings is attached hereto as Exhibit "B" and incorporated herein by reference (“**Condominium Plat**”). The partitioning, fixtures, attachments, and decorations within each Unit will be determined from time to time by each Unit Owner, subject to restrictions in this Declaration and in the rules and regulations adopted by the Association.

### **ARTICLE III UNITS**

3.1 Definition. "Unit" shall mean any part of the Condominium intended for any type of independent use, including one or more cubicles of air at one or more levels of space or one or more rooms of enclosed space located on one or more floors (or parts thereof) in a building.

3.2 Boundaries of Units. A Unit in Verona – Main Street Condominium shall include:

A. One or more contiguous or non-contiguous cubicles of air, including the perpetual right of ingress thereto and egress therefrom. The exterior boundaries of the cubicles shall be the vertical planes, the elevations of which coincide with and include the undecorated finished ceiling, floors and walls of the Unit and the Garage Unit, which shall be considered a part of the Unit for all purposes hereunder, whether or not specifically referenced as such. The foregoing boundaries extended to the intersection with each other shall constitute the Units as shown on Exhibit "B". It is intended that the surface of each plane described above (be it tiled, papered, paneled, painted, carpeted or otherwise covered) is included as a part of each defined Unit. Included within the Unit shall be all windows and doors, (including hardware), which provide direct access to the Unit, including the garage door or doors and associated operating mechanisms. In the case of a Unit with more than one (1) floor level, the boundaries delineated above shall apply to each of said floor levels and shall include all stairways and stairwells situated therein.

B. Any and all appliances and other fixtures contained within or serving an individual Unit, whether they are inside or outside the defined cubicle of air, including, without limitation:

- 1) Interior lights and light fixtures.
- 2) Cabinets.
- 3) All floor, wall, baseboard, or ceiling electrical outlets and switches and the junction boxes serving them.
- 4) All telephone, telefax, cable television, computer, internet, stereo or other sound system, including all outlets, switches, hardware and other appurtenances serving them.
- 5) All plumbing fixtures, hot water heaters, water softeners, if any, and the piping, valves, and other connecting and controlling mechanisms and devices lying between the fixtures and water or sewage lines serving more than one (1) Unit.
- 6) The heating, ventilating and air conditioning system, including the control mechanisms, all vents from the Unit to the exterior of the Condominium, including vents for the furnace, clothes dryer, rangehood, all other exhaust fans, and such other vents appurtenant to each Unit, condensers and all connections, thereto serving each Unit.

Specifically not included as part of the Unit are those structural components of each building and any portion of the plumbing, electrical or mechanical systems of the building serving more than one (1) Unit, even if located within the cubicle or cubicles of air comprising the Unit.

3.3 Legal Description. Units shall be identified as specified on the Condominium Plat, which plat shall be recorded contemporaneously with this Declaration. Each Unit shall be conveyed with the Garage Unit specified in Exhibit "C." A copy of the Condominium Plat is attached hereto as Exhibit "B".

## **ARTICLE IV COMMON ELEMENTS**

4.1 Definition. "Common Elements" shall mean all of the Condominium except the Units.

4.2 Description. The Condominium Common Elements are the following:

- A. The land described in Exhibit "A".
- B. The paved driveways, private streets, pedestrian walkways, surface parking areas and bicycle pathways, if any situated on the land described in Exhibit "A."
- C. Demising walls separating more than one (1) Unit.
- D. Any mechanical or utility mechanism, connection or service that serves more than one (1) Unit.
- E. Any other portion of the improvements to the land described in Exhibit "A" which is not included within the boundary of a Unit as described above.

4.3 Use. Except as otherwise provided herein, and subject to the By-Laws of the Association, as hereinafter defined, and subject to any rules and regulations adopted by the Association, the Common Elements may be used by the Unit Owners for the purposes for which they were intended. The necessary work of maintenance, repair and replacement of the Common Elements and the making of any additions or improvements thereto shall be carried out only as provided in this Declaration, the By-Laws of the Association and rules and regulations adopted pursuant thereto.

4.4 Ownership. There shall be appurtenant to the Units an undivided interest in the Common Elements in the percentages specified in Exhibit "C" attached hereto.

## **ARTICLE V LIMITED COMMON ELEMENTS**

5.1 Definition. "Limited Common Elements" shall mean those Common Elements identified in this Declaration or the Condominium Plat as reserved for the exclusive use of one or more of the Units.

5.2 Description. The Condominium Limited Common Elements are all of those portions of the Condominium designated on the Condominium Plat as a limited common element including but not limited to:

- A. Stoops, patios and decks.

5.3 Use; Maintenance. Except as otherwise provided herein, the manner of use of the Limited Common Elements shall be determined solely by the Unit Owner who has the exclusive use of such Limited Common Elements, except that no use may occur which could damage the structure of any building or otherwise cause harm to the Condominium. In addition, maintenance, repair and replacement of the Limited Common Elements shall

be the responsibility of the Unit Owner to whose use the Limited Common Element is limited, except as provided in Section 9.2, below.

## **ARTICLE VI USES**

6.1 Units, Common Elements and Limited Common Elements. The Units, Limited Common Elements, and Common Elements of the Condominium shall be used for residential occupancy and motor vehicular parking purposes only, and shall not be used for any other purpose. Notwithstanding anything to the contrary contained herein, the use of the Units, Limited Common Elements, and Common Elements shall comply with the City of Verona General Ordinances, any other applicable municipal ordinances, and any other restrictions as contained in the Association's Articles of Incorporation, By-Laws and any rules and regulations adopted by the Association. No use may unreasonably interfere with the use and enjoyment of the Common Elements or other Units by the other Unit Owners. There shall be no storage of material, and there shall be no conduct of any activity, which would materially increase the insurance rates on the Condominium. Any and all attorney fees and other expenses incurred by the Association in the enforcement of this provision shall be reimbursed by the Unit Owner in violation thereof and may be assessed against such Owner's Unit.

## **ARTICLE VII UNIT OWNER**

"Unit Owner" shall mean a person, combination of persons, partnership, limited partnership, limited liability partnership, limited liability company or corporation, who or which holds legal title to a Unit; provided, however, that in the event equitable ownership has been conveyed in the Unit by means of a land contract or other similar document, "Unit Owner" shall mean the land contract purchaser.

## **ARTICLE VIII ASSOCIATION**

8.1 Definition. "Association" shall mean the Verona – Main Street Condominium Association, Inc., a Wisconsin non-stock corporation.

8.2 Duties and Obligations. All Unit Owners shall be members of the Association and subject to its Articles of incorporation, By-Laws, and rules and regulations adopted by it for the use and management of the Condominium.

8.3 Voting. The Owner of each Unit shall be entitled to one (1) vote in the Association, subject however, to suspension as provided herein. Even if a Unit is owned by more than one (1) person, the Unit must cast its vote or votes as a whole. No fractional

voting will be allowed or considered. As provided in Article VII hereof, one who holds a land contract purchaser's interest or any other such equitable interest in a Unit shall be considered the Unit Owner. However, for purposes of being eligible to vote as a member of the Association, the land contract or other document establishing the equitable interest, or an instrument providing constructive notice of such interest, must be recorded in the Dane County Register of Deeds office.

8.4 Declarant Control. Except as otherwise provided in Section 703.15(2)(d), Wisconsin Statutes, or as amended, Declarant reserves the right to appoint and remove officers of the Association or to exercise the powers and responsibilities otherwise assigned by the Declaration or the Act to the Association or its officers (hereinafter "**Declarant Control**"). The period of Declarant Control shall continue until the earlier of either of the following to occur: (i) the expiration of ten (10) years from the date the first unit is conveyed to a person other than Declarant; or (ii) the expiration of thirty (30) days after the conveyance of seventy-five (75%) percent of the Common Element interest (as expanded if permitted herein) to purchasers. During this period, Declarant shall have the full and exclusive right to take all action on behalf of the Association, including but not limited to, the right to (a) enter into leases of Units, (b) make contracts and agreements on behalf of the Association for the maintenance, operation, and management of the Condominium, (c) determine, levy, and collect assessments, (d) grant easements, and (e) enact and enforce rules and regulations for the use of the Condominium. Except for the initial management agreement, any contracts or agreements entered into by the Declarant on behalf of the Association with Declarant or an affiliate of Declarant shall not extend for a period exceeding one (1) year; provided, however, that such contracts or agreements may be automatically renewable if a reasonable period for giving notice of termination is provided at the end of each term. Furthermore, any such contracts or agreements shall provide for termination by either party without cause and without payment of a termination fee upon at least ninety (90) days' prior written notice. Notwithstanding the foregoing, this provision shall not apply to any lease, the termination of which would terminate the Condominium.

8.5 Termination of Control. Upon termination of the above-specified period of Declarant Control, or upon the earlier, voluntary relinquishment of control by Declarant, control of the Association shall be turned over to the Unit Owners; provided, however, Declarant reserves the right to name one member, who need not be a Unit Owner, of the Board of Directors until all Units have been conveyed to Unit Owners (other than Declarant) in fee simple. Notwithstanding any provision to the contrary, Declarant reserves the following rights: (i) to continue any unfinished development work on any unsold Unit and on the Limited Common Elements and Common Elements (including obtaining any necessary easements therefor); (ii) to conduct promotional and sales activities using unsold Units and both Limited Common Elements and Common Elements, which activities shall include but need not be limited to maintaining sales and management offices, model Units, parking areas, and advertising signs; and (iii) to do all other acts Declarant shall deem reasonably necessary in connection with the development and sale

of the remaining Units. However, any such acts shall not violate the rights of the Unit Owners or their Mortgagees or unreasonably interfere with the use and enjoyment of the Units, Limited Common Elements, or Common Elements. Declarant shall also have the right during the period of Declarant Control to grant easements over, through, or under any part of the Condominium for the benefit of the Condominium as a whole or any part thereof.

8.6 Completion of Common Elements. Declarant shall complete the common elements of the Condominium in accordance with the building plans approved by the municipality in which the Condominium is located. Declarant shall have no further obligation with respect to construction of Common Elements, including, but not limited to, the installation of additional walkways, streets, sidewalks, trees or landscaping. All of such Common Elements shall be subject to a one (1) year warranty from Declarant to the Association, which warranty shall commence on the date construction of such Common Element is completed. Declarant's sole warranty with respect to such Common Elements shall be that they shall be constructed in a good and workmanshiplike manner and in accordance with the building plans approved by the municipality in which the Condominium is located. In the event there is any dispute, controversy or claim arising out of the warranty given in this paragraph, such dispute, controversy or claim shall be resolved by arbitration as provided in the Wisconsin Arbitration Act, Chapter 788 of the Wisconsin Statutes (the "**Act**"). Arbitration shall be conducted by Construction Arbitration Services ("**CAS**") or a successor organization, under the rules then in effect. The decision of the arbitrator(s) shall be final and binding and may be enforced by any party in a court of competent jurisdiction in accordance with the provisions of the Act. The cost of the arbitration, including the fee of the arbitrator, shall be paid by the party losing the arbitration. In the event that the arbitrator(s)' decision is a mixed decision, the fees of the arbitration shall be divided equally or as the arbitrator otherwise determines. Arbitration shall be initiated by a written notice by the Declarant or the Association to the other party that a dispute has arisen with respect to a warranty item and the payment of the fee to CAS, which may then be ordered by the arbitrator to be reimbursed by the losing party as provided above.

## **ARTICLE IX REPAIRS AND MAINTENANCE**

9.1 Units. Each Unit Owner shall be responsible for the decoration, furnishing, housekeeping, maintenance and repair and replacement of his, her, its or their Unit.

9.2 Limited Common Elements. Each Unit Owner shall be responsible for the decoration, furnishing, housekeeping, maintenance, repair, replacement, general cleanliness, and presentability of the Limited Common Elements which use is reserved to the Unit or Units.

9.3 Common Elements. Except as provided in Section 9.2 hereof, the Association shall be responsible for the maintenance, repair, replacement, general cleanliness and presentability of the Common Elements. Maintenance of any pedestrian walkways and bicycle pathways, if any, which are identified as Common Elements as described in Section 4.2 above, shall be a Common Expense. Any such pedestrian walkways and bicycle pathways shall be maintained by the Association, which maintenance shall include but not be limited to prompt snow removal and surface repair, maintenance and replacement when deemed necessary by the Association. The Association is not responsible for maintenance, repair or replacement of the Military Ridge Recreation Trail.

9.4 Entry by Association. Provided that twenty-four (24) hours prior notice is given, duly authorized officials or agents of the Association may enter any Unit or Limited Common Element(s) or both at reasonable times and under reasonable conditions when, in the opinion of the said authorized officials or agents, entry is necessary in connection with any maintenance, construction, or repair of public utilities and for any other matter for which the Association is responsible. The entry shall be made with as little inconvenience to the Unit Owner, his, her, its or their tenants, as possible under the circumstances, and during normal business hours, if possible. Any damage caused thereby shall be repaired by the Association and shall be treated as a "Common Expense", as hereinafter defined. Notwithstanding the foregoing, in the event of an emergency, the twenty-four (24) hour notice requirement shall not apply, although, prior notice to the Unit Owner shall be attempted.

## **ARTICLE X UNIT ALTERATIONS**

### 10.1 Within Unit.

A. A Unit Owner may make improvements or alterations within his, her, its or their Unit; provided, however, that such improvement or alteration shall not impair the structural soundness or integrity or lessen the structural support of any portion of the Condominium, and does not impair any easement. A Unit Owner may not change the dimensions of or the exterior appearance of a Unit or any portion of the Common Elements (including Limited Common Elements) without obtaining the prior written permission of the Association's Board of Directors ("**Board**"), which permission may be denied in the sole discretion of the Board;. Any approved improvement or alteration which changes the exterior dimensions of a Unit must be evidenced by the recording of a modification to the Verona – Main Street Condominium Declaration and Plat before it shall be effective and must comply with the then-legal requirements for such amendment or addendum. Furthermore, any approved improvements or alterations must be accomplished in accordance with applicable laws and regulations, must not unreasonably

interfere with the use and enjoyment of the other Units and Limited Common Elements or the Common Elements, and must not be in violation of any underlying mortgage, land contact, or similar security interest.

B. A Unit Owner acquiring an adjoining part of another Unit may remove all or any part of any intervening partition wall or create doorways or other apertures therein. This may be done even if the partition wall may in whole or in part be a Common Element, provided that those acts do not impair the structural integrity or lessen the support of any portion of the Condominium, do not reduce the value of the Condominium, and do not impair any easement. The creation of doorways or other apertures is not deemed an alteration of boundaries.

#### 10.2 Relocation of Boundaries.

A. If the Unit Owners of adjoining Units desire to relocate their mutual boundary, the affected Unit Owners shall prepare and execute appropriate instruments.

B. An amendment to the Declaration and an addendum to the Plat shall identify the Units and shall state that the boundaries between those Units are being relocated by agreement of the Unit Owners thereof. The amendment shall contain words of conveyance between those Unit Owners, and when recorded shall also be indexed in the name of the grantor and grantee, if applicable. The amendment to the Declaration shall also state the reallocation of the aggregate undivided interest in the Common Elements appertaining to the Units. If not stated, the prior allocation shall govern, until such time as the Unit Owners shall record an amendment to that effect in the Dane County Register of Deeds Office.

C. Plats and plans showing the altered boundaries and the dimensions thereof between adjoining Units, and their identifying numbers or letters, shall be prepared. The plats and plans shall be certified as to their accuracy in compliance with Subsection 703.13(6), Wisconsin Statutes, by a civil engineer, architect, or licensed land surveyor authorized to practice his or her profession in the State of Wisconsin.

D. After appropriate instruments have been prepared and executed, those instruments shall become effective when the adjoining Unit Owners and the Association have executed them and they have been recorded in the Dane County Register of Deeds Office. The recording thereof shall be conclusive evidence that the relocation of boundaries did not violate the Condominium instruments.

#### 10.3 Separation of Units.

A. A Unit may be separated into two (2) or more Units upon compliance with the provisions of this section, provided that the Board of Directors of the Association approves (which approval may be denied in the sole discretion of the Board of Directors).

The Association's President, upon written application of a Unit Owner proposing the separation of a Unit (hereinafter the "**Separator**") and after thirty (30) days' written notice to the other Unit Owners shall promptly present the matter to the Association's Board of Directors. If approved, the President of the Association shall promptly prepare and execute appropriate instruments under this section. An amendment or addendum to the Condominium instruments shall assign a new identifying number to each new Unit created by the separation of a Unit, shall allocate to those Units, on a reasonable basis acceptable to the Separator and the other Unit Owners, all of the undivided interest in the Common Elements and rights to use the Limited Common Elements. The vote in the Association formerly appertaining to the separated Unit will be allocated among the resulting Units. For this purpose, a fractional vote shall be permitted. The amendment shall reflect a proportionate allocation to the new Unit(s) of the liability for Common Expenses and right to Common Surpluses formally appertaining to the subdivided Unit.

B. Plats and plans showing the boundaries and dimensions separating the new Units together with their other boundaries and their new identifying numbers or letters shall be prepared. The plat and plans shall be certified as to their accuracy and compliance with Subsection 703.13(7), Wisconsin Statutes, by a civil engineer, architect, or licensed land surveyor authorized to practice his or her profession in the State of Wisconsin.

C. After appropriate instruments have been prepared and executed, they shall be delivered promptly to the Separator upon payment by him, her or it of all reasonable costs for their preparation. Those instruments are effective when the Separator has executed them and they are recorded in the Dane County Register of Deeds Office. The recording of the instruments shall be conclusive evidence that the separation did not violate any restrictions or limitations specified by the Condominium instruments and that any reallocations were reasonable.

10.4 Expenses. All expenses involved in any improvements or alterations approved by the Association or permitted under this Article, whether or not completed, including all expenses to the Association, shall be borne by the Unit Owner or Unit Owners involved and may be charged as a special assessment to the affected Units.

## **ARTICLE XI INSURANCE**

11.1 Property Insurance. The Association shall obtain and maintain insurance for the Units, Limited Common Elements and Common Elements on an "all risk basis" for an amount not less than the full replacement value of the insured property. For purposes of this paragraph, "insured property" shall include all elements of the buildings constituting the Condominium, including without limitation, all interior finishes, built-in cabinets, plumbing fixtures, heating, ventilating and air conditioning equipment, partition walls and

floor coverings, existing as of the most recent date of completion of a Unit (“**Completion Date**”). That is, the Completion Date shall be continually updated to the date coinciding with the completion of the most recent Unit since the Condominium is under construction. The final Completion Date shall occur after all Units have been completed, including Units described in the expansion area as set forth in Article XIX below. The Association shall be the named insured with Unit Owners and the Mortgagees of Units as additional insureds. For purposes of this provision and for the Declaration, "Mortgagee" shall mean the holder of any recorded mortgage encumbering one or more Units or a land contract seller.

11.2 Liability Insurance. The Association shall maintain general liability insurance against all claims commonly insured against and in such amounts as the Association shall deem suitable. The policies may, at the discretion of the Board of Directors of the Association, include standard coverage for the errors and omissions of Association directors and officers. The Association shall be the named insured with Unit Owners and the Mortgagees of Units as additional insureds. Such policies shall also contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligence on the part of the Association or any Unit Owners, their tenants or visitors.

11.3 Fidelity Insurance. If the Board of Directors of the Association affirmatively elects, the Association shall maintain fidelity coverage against dishonest acts by any person responsible for handling the funds belonging to or administered by the Association. The Association shall be the named insured, and the insurance shall be in an amount of not less than fifty (50%) percent of the Association's annual operating expenses and reserves.

11.4 Administration. Any and all premiums associated with the insurance purchased by the Association shall be a Common Expense. The Association shall act as the trustee for the purpose of obtaining insurance coverage and for the receipt, application, and disbursement of proceeds. All insurance shall be obtained from insurance carriers licensed or permitted to do business in the State of Wisconsin.

11.5 Unit Owner's Insurance. Each Unit Owner shall maintain property insurance for the contents, additions and alterations contained within his, her, its or their Unit on an all-risk basis for an amount not less than the full replacement value of the insured property. For the purpose of this paragraph, "insured property" shall mean additions and alterations made to the interior of a Unit by a Unit Owner after the Completion Date, as well as contents which each Unit Owner may elect to insure. The Unit Owner shall be the named insured and the Association shall be named as an additional insured. Each Unit Owner shall also maintain comprehensive general liability coverage at a single limit of not less than Five Hundred Thousand (\$500,000.00) Dollars per incident or such other limits as the Board may, from time to time, prescribe. Unit Owners shall, upon request, provide the Association with certificates of insurance evidencing the required coverage. All policies must be issued by insurance carriers acceptable to the Association and licensed to do

business in the State of Wisconsin. The Association's approval shall not be unreasonably withheld.

11.6 Disbursement. Insurance proceeds shall first be disbursed by the Association for the repair or restoration of the damaged Units, Limited Common Elements and Common Elements. Unit Owners and their Mortgagees shall not be entitled to receive payment of any portion of the insurance proceeds unless the Association has determined not to rebuild, or a court of law has ordered partition of the Condominium property, and the same can be legally accomplished under the City of Verona General Ordinances, or there is a surplus of insurance proceeds after the Common Elements and Limited Common Elements have been completely repaired or restored.

11.7 Commencement. All insurance required by this Declaration shall be purchased and maintained by the Association commencing on or before the date of the sale of the first Unit.

## **ARTICLE XII REPAIR OR RECONSTRUCTION**

In the event the Condominium is damaged or destroyed, in whole or in part, the Association shall promptly undertake to repair or reconstruct the damaged portion of the Condominium to its former condition unless, by the affirmative vote of Unit Owners representing at least seventy-five (75%) percent of the votes in the Association as set forth on Exhibit "C" as amended from time to time and their first Mortgagees, a contrary decision is made. Upon reconstruction, the Association may vary the design, plan, and specifications of the Condominium from that of the original; provided, however, the number of square feet for any Unit may not vary by more than five (5%) percent from the number of square feet for such Unit existing immediately prior to the damage or destruction (unless Unit Owners owning at least eighty (80%) percent of the Units agree otherwise); and provided, further, the location and floor plan of the buildings and Units therein shall be substantially the same as they were prior to the damage. In the event of any variance, an amendment to the Declaration and an addendum to the Condominium Plat shall be recorded. In the event insurance proceeds are insufficient to pay the estimated or actual costs of reconstruction, the shortage shall be considered a Common Expense, and the Association shall have the responsibility and the right to levy assessments against the Unit Owners as provided herein.

## **ARTICLE XIII EMINENT DOMAIN**

In the event of a taking of all or any portion of the Common Elements under the power of eminent domain, the provisions of Section 703.19, Wisconsin Statutes, shall control; provided, however, the affirmative vote of at least fifty-one (51%) percent of the

first Mortgagees, calculated on a per-Unit basis, shall also be required in order to partition the Condominium; and provided, further, if Common or Limited Common Elements are taken, the same shall be reconstructed by the Association if practical to do so.

## **ARTICLE XIV COMMON EXPENSES**

14.1 Liability of Unit Owner. Each Unit Owner (other than the Declarant) shall be liable for the share of expenses of the Association assessed against such Owner's Unit. These expenses (“**Common Expenses**”) shall be allocated among the Units in the percentages specified in Exhibit "C" attached hereto, except that charges may be specifically allocated to particular Units by the Board of the Association, or by separate agreement among the Unit Owners, based on the benefit to the Unit Owner of the cost or expense involved or on the usage, fault or negligence or other factors affecting the deterioration or damage of or to Units, Common Elements, or Limited Common Elements. Notwithstanding anything else set forth herein, the Declarant shall not be liable for the payment of Common Expenses on any Units owned by the Declarant until such time as the Declarant has conveyed 75% of all of the Units in the Condominium to third party purchasers. It is Declarant's intent that Declarant be responsible for the difference between actual Association expenses and assessments collected from Units sold to third parties until the foregoing seventy-five (75%) percent threshold has been met, at which time Declarant shall be responsible for the full amount of assessments due on Declarant owned units. Nothing herein shall be construed as modifying the Declarant's obligation to pay operating expense deficits during the period of time specified in Section 3(C) of the Association's By-Laws.

14.2 Enforcement. The assessments for Common Expenses, together with such interest as the Association may impose pursuant to the By-Laws for delinquencies and the costs of collection and reasonable attorneys fees, constitute a lien on the Units against which they are assessed, except as otherwise provided in Section 14.5 below. Attachment, filing, effectiveness, priority, and enforcement of the lien shall be as provided in Section 703.16, Wisconsin Statutes.

14.3 Suspension of Voting Rights. If any assessment of Common Expenses is delinquent and a "Statement of Condominium Lien" as described in Section 703.16(9), Wisconsin Statutes, has been filed against a Unit, the Association may, upon notice to the Unit Owner, suspend the voting rights of the delinquent Unit Owner.

14.4 Unit Sale; Reserve Fund. Except as otherwise provided herein, unpaid Common Expenses assessed against a Unit shall be a joint and several liability of the seller and purchaser in a voluntary transfer of the Unit if a Statement of Condominium Lien covering the delinquency shall have been recorded prior to the transfer. The reserve fund

shall be used by the Association for capital improvements or extraordinary expenses, as the Board shall determine.

14.5 Lien for Non-Payment. The Association shall have a lien, from the date an assessment is made, upon any Unit for assessments made against that Unit, which assessments remain unpaid. Such lien shall be subordinate to any first (1st) priority mortgage, as described in Section 708.09, Wisconsin Statutes. The lien shall secure payment of the assessment, interest, and costs of collection, including reasonable attorney's fees. The lien may be recorded in the Dane County Clerk of Court's office by an instrument executed by the Association and may be foreclosed. The Unit Owner shall be personally liable for all unpaid assessments, interest, and costs of collection. This liability shall not terminate upon transfer of ownership or upon abandonment by the Unit Owner by disclaiming use of the Common Elements. When any lien is foreclosed, if the Unit Owner remains in possession of the Unit, he, she, it or they shall pay the reasonable rental value of the Unit. The Association shall be entitled to the appointment of a receiver of the Unit, as a matter of strict right. Assessments shall be paid without offset or deduction. No Unit Owner may withhold payment of any assessment or any part thereof because of any dispute which may exist among or between Unit Owners, the Association, the Declarant, or combination thereof. Rather, the Unit Owner shall timely pay all assessments pending resolution of any dispute.

14.6 Installment Payment. Except for items such as insurance premiums which must be prepaid, assessments shall be paid in advance, in the form of a monthly maintenance fee determined by a budget of Common Expenses prepared by the Board, which budget shall include a reserve fund for extraordinary maintenance and replacement items. Special assessments for items not provided for in the budget shall be paid at such time or times, in a lump sum, or in such installments, as the Board may determine.

14.7 Negligence of Owner. If, due to the negligent or intentional act or omission of a Unit Owner, or a member of his family or household pet, or of or to a guest or other authorized occupant or visitor of such Unit Owner, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Board, subject to the rules, regulations and By-Laws of the Association.

## **ARTICLE XV AMENDMENTS**

Except as otherwise provided herein, this Declaration may only be amended with the written consent of the Unit Owners owning at least sixty-six and 2/3rds (66.67%) percent of the Units; provided, however, no such amendment may substantially impair the

security of any mortgagee. No amendment to this Declaration shall be effective until an instrument containing the amendment and stating that the required consents or votes were duly obtained, signed on behalf of the Association, and duly acknowledged or authenticated, is recorded with the Dane County Register of Deeds Office as required by statute.

## **ARTICLE XVI NOTICES**

The person to receive service of process for the Condominium or the Association shall be Randall P. Alexander, c/o The Alexander Company, Inc., 145 East Badger Road, Suite 200, Madison, Wisconsin, 53713 or such other person as may be designated from time to time by the Association, which designation shall be filed with the Wisconsin Department of Financial Institutions .

## **ARTICLE XVII REMEDIES**

If any Unit Owner fails to comply with all provisions of the Act, this Declaration, the Association's By-Laws, the Articles of Incorporation or with any rules and regulations promulgated by the Association, the Unit Owner may be sued for damages caused by such failure or for injunctive relief, or both, by the Association or by any other Unit Owner. In the event no damages are capable of being accurately determined, liquidated damages of One Hundred and no/100ths (\$100.00) may be assessed for each violation. Each day of violation shall constitute a separate violation for purposes of this Article. Any and all reasonable attorneys' fees and other expenses incurred by the Association in enforcing this provision shall be reimbursed by the Unit Owner in violation and may be assessed against such Owner's Unit. Individual Unit Owners shall have similar rights of action, but not reimbursement, against the Association.

## **ARTICLE XVIII EASEMENTS**

Easements are reserved over, through, across and underneath the Common Elements for ingress and egress and for the presence, installation, maintenance, repair and replacement of present and future utility services, including but not limited to, easements for water pipes, sanitary sewer pipes, emergency sewer lines, storm water drainage pipes, electrical wires, television wires, computer cables, security wires, street lights, traffic signals and signs, appurtenances thereto and the like, whether or not shown on the exhibits attached hereto. Easements for such utility services are reserved to the Declarant, the Association and the Unit Owners. Easements for ingress and egress are reserved to the Association in, over, across and under the Units and Limited Common Elements, their ceilings, floors, and walls for the purpose of making any repairs which are

the obligation of the Association. The Association shall be responsible for any damage resulting from the use of such easements. Easements for decoration are reserved to Unit Owners over and into the surfaces of the Common Elements, provided such use does not impair the structural integrity of the Condominium.

## **ARTICLE XIX**

19.1 Expansion of Condominium. Declarant does not reserve the right to expand the Condominium

## **ARTICLE XX GENERAL**

20.1 Utilities. Each Unit Owner shall pay for his, her or its cable television, telephone, electrical, gas, and other utility services which are separately metered or billed to each user by the respective utility company provider. Utilities which are not separately metered or billed shall be treated as part of the Common Expenses except as may be otherwise provided under Section 14.1 hereof.

20.2 Encroachments. If any portion of a Unit, Limited Common Element, or Common Element encroaches upon another, an easement for the encroachment and for its maintenance shall exist. In the event all or a portion of the Condominium is damaged and subsequently reconstructed, the Unit Owners shall allow encroachments on the Units, Limited Common Elements, or Common Elements during construction, and easements for such encroachments and their maintenance shall exist.

20.3 Pet Rules and Regulations.

A. Livestock (including rabbits, poultry, and other animals) shall not be kept in any Unit or any part of the buildings of which the Units are a part, nor on patios, decks or upon any Common Elements or Limited Common Elements, or other part of the Condominium. Pets, including dogs, cats and other household pets (not to exceed two (2) in number and not more than forty (40) pounds in weight individually) may be kept by Unit Owners within each Unit Owner's respective Unit, but shall not be maintained for breeding purposes. For the purposes of keeping pets, the term "Unit" shall not include a patio, deck or other Limited Common Element.

B. Dogs and cats shall be carried or kept on a leash at all times when not in the Units. Household pets shall not be permitted to commit our cause a nuisance or any unreasonable disturbance.

C. Pets shall not be left unattended in any portion of the Common Elements. Unit Owners are responsible for IMMEDIATE clean-up of their pets, regardless of the circumstances.

D. Unit Owners are pecuniarily liable for any damage to the Common Elements and other property of the Association or the property of other Unit Owners and any of their guests or invitees including but not limited to carpeting, doors, walls, plantings or lawns committed or caused by their pets.

20.4 Invalidity of a Provision. If any of the provisions of this Declaration, the Association's Articles of Incorporation, the Association's By-Laws, or of any rules and regulations adopted by the Association, or any portion thereof, shall be determined to be invalid by a court of competent jurisdiction, the remaining provisions and portions thereof shall not be affected thereby.

20.5 Conflict in Condominium Documents. In the event a conflict exists among any provision of this Declaration, the Articles of Incorporation, the By-Laws, the Condominium Plat or any rules and regulations, or between any of them, this Declaration shall be considered the controlling document.

20.6 Lease of Units. As a general rule each Unit shall be occupied by the Unit Owner. No person shall have the right to purchase a Unit with the intent to lease the Unit to third parties unless the same is purchased by a child/(children) for occupancy by a parent(s) for estate planning purposes of the parent(s), and then only to be occupied by such parent(s) providing that the child/(children) so purchasing shall notify the Association in writing of said intended ownership, purpose and occupancy with a certificate stating the name of the parent(s) and that the same is for such estate planning purposes. If, subsequent to a Unit Owner's purchase and occupancy of the Unit, the Unit Owner wishes to lease the Unit as a result of the Unit Owner's illness, temporary relocation for purposes of employment or other similar reason, the Unit Owner may lease the Unit, but only upon compliance with the following conditions:

A. Any lease shall be in writing;

B. Before executing any lease, the Unit Owner shall submit the proposed form of the lease to the Association, together with a written statement to the Association stating the reason why the Unit Owner needs to lease the Unit (the "**Statement**"); and

C. The Unit Owner shall not rent to more than one (1) tenant(s) during any period of twelve (12) consecutive months.

The Association shall approve the lease if the Association, in its reasonable judgment, believes the Unit Owner has an acceptable reason(s) for entering into the lease.

However, if the Association, in its reasonable judgment, does not believe the Unit Owner has an acceptable reason for entering into the lease, the Association shall refuse consent to the leasing of the Unit and the Unit Owner shall not lease the Unit. The Association shall be irrevocably presumed to have consented to any lease if it does not give the Unit Owner written notice of the Association's refusal of consent within ten (10) business days after the Association receives the Unit Owner's proposed lease and Statement. If the Association withholds consent, it shall give the Unit Owner written notice of the reason(s) for the Association's decision.

Any Unit Owner whose leasing of a Unit has been approved shall furnish a true and correct copy of the lease to the Association, and shall inform the Association of the names of all persons who will occupy the Unit under the lease. No lease shall be effective until the Unit Owner furnishes a copy of the lease and the names of all such occupants to the Association.

Notwithstanding the above listed procedure for leasing of Units, the Declarant shall maintain its right to lease unsold Units under Article VIII, Section 8.4 of the Declaration.

20.7 Limitation on Enforcement of Some Conditions. No covenant, condition or restriction set forth in this Declaration and no by-law, rule or regulation adopted by the Association pursuant to the authority granted to the Association pursuant to this Declaration or the Association's Articles of Incorporation, By-Laws or rules and regulations may be applied to discriminate against any individual in any manner described in Section 106.04, Wisconsin Statutes, or as described in any other local, state or federal statutes, ordinances, regulations and rules.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals this \_\_\_\_ day of January, 2004.

**\* DECLARANT \***

**RAILROAD DISTRICT, LLC, a Wisconsin  
limited liability company**

By: \_\_\_\_\_  
Randall P. Alexander, Manager





**ACKNOWLEDGEMENT AND CONSENT  
OF MORTGAGEE**

The City of Verona, as a Mortgagee of the Property described in Exhibit "A," hereby acknowledges the foregoing Declaration of Condominium and expressly consents that said Condominium Declaration may be recorded in the Dane County Register of Deeds Office.

Executed this \_\_\_\_ day of January, 2004.

**CITY OF VERONA**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

**STATE OF WISCONSIN )**  
**)ss>**  
**COUNTY OF DANE         )**

Personally came before me this \_\_\_\_ day of January, 2004, the above named \_\_\_\_\_, to me known to be the person(s) who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission expires:

## **EXHIBIT "A"**

### **Legal Description of Land Subject to Declaration**

Lot 2, CSM No. 10693, and Lot 2, CSM 10694, as recorded in the office of the Dane County Register of Deeds in Volume 63 of Certified Survey Maps, pages 256-257, Document No. 3668789, as to CSM 10693, and pages 258-259, Document No. 3668790, as to CSM 10694, City of Verona, Dane County, Wisconsin, together with and subject to that certain Building Easement and Agreement dated May 20, 2003, and recorded July 1, 2003, as Document No. 3748254.

Parcel Nos. 286-0608-154-9210-5  
286-0608-154-9221-2  
286-0608-154-9240-9  
(Includes additional land)

**EXHIBIT "B"**

**Condominium Plat**

[Attached]

NOTE: Please be advised that the Declarant, Railroad District, LLC, hereby directs viewers to ignore the printed text material on the maps and floor plans attached to this Exhibit "B." Only the spatial relationships of the illustrations on the maps and floor plans are being presented for your information.

**\* DECLARANT \***

**RAILROAD DISTRICT, LLC, a Wisconsin  
limited liability company**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Randall P. Alexander, Manager

## EXHIBIT "C"

### Percentage Interest in Common Elements

<u>UNIT NO.</u>	<u>GARAGE UNIT</u>	<u>UNIT ADDRESS</u>	<u>% INTEREST IN COMMON ELEMENTS</u>	<u>VOTE(S) IN ASSOCIATION</u>
1-101	1-101	110 Depot Drive	3.85%	1
1-102	1-102	122 Depot Drive	3.85%	1
1-103	1-103	134 Depot Drive	3.85%	1
1-104	1-104	146 Depot Drive	3.85%	1
1-105	1-105	158 Depot Drive	3.85%	1
1-106	1-106	170 Depot Drive	3.85%	1
1-107	1-107	182 Depot Drive	3.85%	1
1-201	1-201	116 Depot Drive	3.85%	1
1-202	1-202	128 Depot Drive	3.85%	1
1-203	1-203	140 Depot Drive	3.85%	1
1-204	1-204	152 Depot Drive	3.85%	1
1-205	1-205	164 Depot Drive	3.85%	1
1-206	1-206	176 Depot Drive	3.85%	1
1-207	1-207	188 Depot Drive	3.85%	1
2-101	2-101	101 East Railroad Street	3.85%	1
2-102	2-102	125 East Railroad Street	3.85%	1
2-103	2-103	141 East Railroad Street	3.85%	1
2-104	2-104	165 East Railroad Street	3.85%	1
2-105	2-105	181 East Railroad Street	3.85%	1
2-201	2-201	109 East Railroad Street	3.85%	1
2-202	2-202	117 East Railroad Street	3.85%	1
2-203	2-203	133 East Railroad Street	3.85%	1
2-204	2-204	149 East Railroad Street	3.85%	1
2-205	2-205	157 East Railroad Street	3.85%	1
2-206	2-206	173 East Railroad Street	3.85%	1
2-207	2-207	189 East Railroad Street	<u>3.85%</u>	<u>1</u>
			100%	26