



**DECLARATION OF HORIZONTAL
PROPERTY OWNERSHIP
FOR
THE CASCADE CONDOMINIUMS
CONDOMINIUM PROPERTY REGIME**

CROSS REFERENCE

The Floor Plans and Other Drawings of The Cascade Condominiums have simultaneously been filed (with the recording of this Declaration) with the Office of the Recorder of St. Joseph County, Indiana, as Instrument No. _____ on _____, 201__.

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<u>Exhibit A</u>	-	Legal Description of the Real Estate
<u>Exhibit B</u>	-	Description of the Condominium Units
<u>Exhibit C</u>	-	Code of By-Laws

**DECLARATION OF CONDOMINIUM PROPERTY OWNERSHIP
THE CASCADE CONDOMINIUMS**

This Declaration of Condominium Property Ownership is made effective as of the ___ day of _____, 201__ by Wharf Partners, LLC, an Indiana limited liability company (the “Declarant”). By executing and recording this Declaration, Declarant hereby confirms it (a) is the sole owner of the fee simple title to the real estate described on in Exhibit A attached hereto, and (b) desires to create a Condominium Property Regime upon the Real Estate, subject to the provisions of the Horizontal Property Law of the State of Indiana and the terms and conditions of this Declaration.

NOW, THEREFORE, Declarant hereby makes this Declaration as follows:

1. Definitions. The following terms, as used in this Declaration, shall have the meanings set forth below (unless the context clearly requires otherwise):

(a) “Act” means the Condominium Property Law of the State of Indiana, IND. CODE §§ 32-25-1-1, *et seq.*, as amended. The Act is incorporated herein by reference.

(b) “The Cascade Condominiums” means the name by which the Property and Regime shall be known.

(c) “Applicable Date” means the earliest of (i) fifteen (15) years from the date of recording of this Declaration, or (ii) the first day of the first month following the date (if ever) on which 80% of the Condominium Units have been conveyed by Declarant.

(d) “Assessment” shall have the meaning given such term in the By-Laws.

(e) “Association” means The Cascade Condominiums Owners Association, Inc., an Indiana nonprofit corporation, being the association of Co-owners of The Cascade Condominiums.

(f) “Board of Directors” or “Board” means the governing body of the Association, being the initial Board of Directors referred to in the By-Laws or subsequent Board of Directors elected by the Co-owners in accordance with the By-Laws.

(g) “Building” means the structure on the Real Estate in which the Condominium Units are located, including any additional structures containing one or more Units, Common Area or Limited Common Area which may be submitted and subjected to the Act and this Declaration by a Supplemental Declaration as herein provided. The initial Building is more particularly described and identified on the Plans and in Section 3 of this Declaration.

(h) “By-Laws” means the By-Laws of the Association providing for the administration and management of the Property, a true copy of which is attached to this Declaration as Exhibit C and incorporated herein by reference.

(i) “Common Areas” means the common areas and facilities defined in Section 6 of this Declaration.

(j) “Common Expenses” means expenses of administration of the Association and expenses for the upkeep, maintenance, repair and replacement of the Common Areas and Limited Areas (to the extent not specifically allocated to an Owner) and all sums lawfully assessed against the Owners by the Association or as declared by the Act, this Declaration or the By-Laws.

(k) “Condemnation Award” has the meaning ascribed in Section 11(b) of this Declaration.

(l) “Condominium Unit” means each one of the units in The Cascade Condominiums, each individual unit being more particularly described and identified on the Plans and in Sections 4 and 5 of this Declaration, and each additional unit that may be submitted and subjected to the Act and this Declaration by Supplemental Declarations (if any) as herein provided, together with the undivided interest in the Common Areas and Limited Areas appertaining to each such unit.

(m) “Co-owners” means the Owners of all the Condominium Units.

(n) “Declarant” means Wharf Partners, LLC, an Indiana limited liability company, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant

(o) “Excluded Property” means the first level of the building above the garage level, which is intended by used for commercial purposes.

(p) “Insurance Trustee” means such bank with trust powers authorized to do business in St. Joseph County, Indiana, as the Board of Directors may designate for the custody and disposition, as herein or in the By-Laws provided, of insurance proceeds and condemnation awards.

(q) “Limited Areas” means the limited common areas and facilities defined in Section 7 of this Declaration.

(r) “Majority of Mortgagees” means those Mortgagees who hold first mortgages on Condominium Units to which are allocated at least fifty-one percent (51%) of the Percentage Vote allocated to Mortgaged Units.

(s) “Majority of Owners” and “Majority of the Percentage Vote” means the Owners entitled to cast more than fifty percent (50%) of the Percentage Votes in accordance with the applicable percentages set forth in this Declaration.

(t) “Mortgaged Unit” means a Condominium Unit that is subject to the lien of a mortgage held by a Mortgagee.

(u) “Mortgagee” means the holder of a first mortgage lien on a Condominium Unit who has requested notice in accordance with the provisions of Section 12.01 of the By-Laws.

(v) "Owner" means a Person who or which owns the fee simple title to a Condominium Unit.

(w) "Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas and Limited Areas appertaining to each Condominium Unit as specifically expressed in Section 8 of this Declaration.

(x) "Percentage Vote" means that percentage of the total vote accruing to all of the Condominium Units which is appurtenant to each particular Condominium Unit and accrues to the Owner thereof.

(y) "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

(z) "Plans" means (1) the floor and building plans and elevations of the Building and Condominium Units located on the Real Estate, and (2) a survey or other site plan of the Real Estate and the Building prepared and certified by _____, all of which are incorporated herein by reference.

(aa) "Property" means the Real Estate and appurtenant easements, the Condominium Units, the Building and all other improvements and property of every kind and nature whatsoever, real, personal or mixed, located upon the Real Estate and used in connection with the operation, use and enjoyment of the Regime, excluding the personal property of Owners.

(bb) "Real Estate" means the land described in Exhibit A.

(cc) "Regime" means The Cascade Condominiums condominium property regime created by this Declaration, pursuant to the Act.

(dd) "Restoration" means construction, reconstruction, building or rebuilding of the Building, the Condominium Units, the Common Areas and the Limited Areas to not less than the same condition as they existed immediately prior to any loss, damage or destruction with the same type of architecture and using, where appropriate, new materials of like kind and quality.

(ee) “Supplemental Declaration” means any supplement or amendment to this Declaration that may be recorded by Declarant and that extends the provisions of this Declaration to any property in addition to the Real Estate and/or Building and contains such complementary or supplementary provisions for such part of the additional real estate and/or building as are required or permitted by the Act or this Declaration.

(ff) “Two-Thirds Vote” means those Owners eligible to cast not less than sixty-six percent (66%), in the aggregate, of the Percentage Vote eligible to be cast by the Co-owners.

2. Declaration. Declarant hereby expressly declares that the Property, excepting therefrom Excluded Property, shall be a Condominium Property Regime in accordance with the provisions of the Act.

3. Description of Building. The Building consists of seven (7) stories including a first-floor garage and six (6) stories containing the Condominium Units. A description of the garage and Condominium Units contained in the Building is set forth in Exhibit B, attached hereto and incorporated herein.

4. Legal Description. Each Condominium Unit is described on Exhibit B attached hereto and identified on the Plans by reference to Unit number stated as “Condominium Unit (followed by a number) in The Cascade Condominiums Condominium Property Regime.”

5. Description of Condominium Units.

(a) Appurtenances. Each Condominium Unit shall consist of all space within the boundaries thereof, as hereinafter defined, and all portions of the Building situated within such boundaries, including but not limited to, all fixtures, facilities, utilities, equipment, appliances, and structural components designed and intended solely and exclusively for the enjoyment, use and benefit of the Condominium Unit wherein the same are located, or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety or enjoyment of any other Condominium Unit or which may be

necessary for the safety, support, maintenance, use, and operation of any of the Building or which are normally designed for common use; provided, however, that all fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Condominium Unit shall constitute a part of such Condominium Unit, whether or not the same are located within or partly within the boundaries of such Unit. The interior sides and surfaces of all doors and windows in the perimeter walls of a Condominium Unit, whether or not located within or partly within the boundaries of a Condominium Unit, and all interior walls (except load-bearing walls) and all of the floors and ceilings within the boundaries of a Condominium Unit, are considered part of the Condominium Unit.

(b) Boundaries. The boundaries of each Condominium Unit shall be as shown on the Plans without regard to the existing construction. The (i) vertical boundaries of each Unit shall run from the upper unfinished surface of the lowest floors or subfloors to the interior unfinished surfaces of the highest ceilings of the highest floor within such Unit, and (ii) the horizontal boundaries shall be the interior, unfinished surfaces of the common exterior and interior loadbearing walls (including any dry-wall, windows and doors) of each Condominium Unit. In the event any horizontal, vertical or other boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or ceiling surface of the Condominium Unit because of inexactness of construction, settling after construction, Restoration, or for any other reason, the boundary lines of each Condominium Unit shall be deemed to be and treated for purposes of ownership, occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent appurtenant easements for exclusive use shall exist in favor of the Owner of each Condominium Unit in and to such space lying outside of the actual boundary lines of the Condominium Unit, but within the appropriate wall, floor or ceiling surfaces of the Condominium Unit.

6. Common Area and Facilities. "Common Areas" means (a) the land portion of the Real Estate except as otherwise provided herein, (b) the foundations, columns, girders, beams, supports, roofs and exterior wall surfaces of the Building, elevator shafts and all common fire escapes and emergency stairwells within the Building, except to the extent the same are otherwise classified and defined herein as part of a Condominium Unit or Limited Areas, (c) any landscaping, sidewalks, driveways, and parking areas outside of the Building, except to the extent the same are otherwise classified and defined herein as Limited Areas, (d) central electricity, telephone, gas, water, and sanitary sewer lines or mains serving the Condominium Units, (e) exterior lighting fixtures and electrical service lighting the exterior of the Building and certain of the other Common Areas unless separately metered to a particular Condominium Unit, (f) master television cable or antenna or other telecommunication system with connecting wiring and outlets to each Condominium Unit, if any, (g) pipes, ducts, insulation, electrical wiring and conduits and public utilities lines that serve more than one Condominium Unit, (h) exterior perimeter and other load-bearing walls, and walls between attached Condominium Units, except to the extent the same are otherwise classified and defined herein as part of the Condominium Unit or Limited Areas, and (i) all structures, structural components, facilities and appurtenances located outside of the boundary lines of the Condominium Units, except those areas and facilities expressly classified and defined herein as Limited Areas or as part of the Condominium Unit.

7. Limited Areas and Facilities. Limited Areas and those Condominium Units to which use thereof is limited are as follows:

(a) The entranceways through which access to a Condominium Unit is obtained shall be limited to the use of the Condominium Unit(s) served by such entranceway.

(b) The halls, corridors, common lobbies, entrances and exits of a Building shall be limited to the use of the Condominium Units located in such Building.

(c) The elevators shall be limited to the use of the Condominium Units served by such elevators in the Building.

(d) The stairs connecting any Limited Area to a specific Condominium Unit and specifically serving a particular Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which it provides direct access.

(e) The exterior sides and surfaces of doors, windows and frames surrounding the same in the perimeter walls in each Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which they appertain.

(f) Air condition compressors, if any, attached to, or located within the Building, are limited to the use of the Condominium Unit(s) to which they are connected.

(g) Any other areas designated and shown on the Plans as Limited Areas shall be limited to the Condominium Unit or Condominium Units to which they appertain as shown on the Plans.

Each Limited Area shall be limited in use to the Owner of, and shall be appurtenant to, the Condominium Unit to which it has been assigned, and may not be transferred, in any manner or by any means, separately from an Owner's interest in a Condominium Unit. The Owner to whom the use is limited shall be solely responsible for the costs related to the maintenance, repair and/or replacement of the Limited Area serving their Unit.

8. Ownership of Common Areas and Percentage Interest. Each Owner shall have an undivided interest in the Common Areas and Limited Areas equal to such Owner's Percentage Interest. The Percentage Interest in the Common Areas and Limited Areas appertaining to each Condominium Unit is set forth on Exhibit B attached hereto and made a part hereof. Except as otherwise provided or permitted herein, the Percentage Interest appertaining to each separate Condominium Unit in the Common Areas and Limited Areas shall be of a permanent nature and shall not be altered except in compliance with all requirements of the Act. The Percentage Interest associated with each Condominium Unit shall also be the Percentage Vote allocable to the Owner thereof in all matters with respect to the Regime and the Condominium Association upon which the Co-owners are entitled to vote.

9. Encroachments and Easements for Common and Other Areas. If, by reason of the location, construction, Restoration, settling or shifting of the Building, any Common Area or Limited Area now encroaches or shall hereafter encroach upon any Condominium Unit, then in such event, an easement shall be deemed to exist and run to the Co-owners and the Association for the maintenance, use and enjoyment of such Common Area or Limited Area. Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in any of the other Condominium Units and serving its Condominium Unit. In addition, each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to its Condominium Unit and any Limited Area designated for use in connection therewith. Such rights shall be appurtenant to and pass with the title to each Condominium Unit.

10. Casualty and Restoration. In the event of damage or destruction at the Property by fire or other cause, the following provisions shall be applicable:

- (a) Except as hereinafter provided, damage to or destruction of the Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose; provided, however, that repair and reconstruction shall not be compulsory in the event of "complete destruction of all of the

Building” (hereinafter defined) and shall only be done in accordance with the provisions hereinafter set forth. As used herein, the term “complete destruction of all of the Building” means a determination made by a vote of a Two-Thirds Vote of all Owners at a special meeting of the Association called for the purpose of making such determination, that total destruction of all of the Building has occurred. A special meeting of the Association shall be called and held within ninety (90) days after any fire or any other casualty or disaster damaging or destroying any of the Building for the purpose of making the determination of whether or not there has been a complete destruction of all of the Building.

(b) If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, and if the Property is not to be removed from the Regime, the cost of restoring the damage and repairing and reconstructing the Building so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by all of the Co-owners in proportion to the ratio that the Percentage Interest of such Condominium Unit bears to the total Percentage Interest of all Condominium Units.

(c) For purposes of subparagraphs (a) and (b) above, repair, reconstruction and restoration shall mean construction or rebuilding of the Building, including without limitation, all structural elements and mechanical features of the Building, the Condominium Units and all Common Areas and Limited Areas to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

(d) If, under subparagraph (a) above, it is determined by the Owners at the special meeting of the Association referred to therein that there has been a complete destruction of all of the Building, the Owners shall, at the same special meeting, vote to determine whether or not such complete destruction of the Buildings shall be repaired and reconstructed. The Building shall not be

reconstructed or repaired if it is the determination of the Owners at such special meeting that there has been a complete destruction of all of the Building unless by a vote of a Two-Thirds Vote of the Owners a decision is made to rebuild, reconstruct and repair the Building. If a Two-Thirds Vote of the Owners vote and decide that the Buildings are to be rebuilt, reconstructed and repaired, the insurance proceeds, if any, received by the Association shall be applied and any excess of construction costs over insurance proceeds, if any, received by the Association shall be contributed and paid as hereinabove provided in subparagraphs (a) and (b).

(e) If, in any case of the complete destruction of all of the Buildings, less than a Two-Thirds Vote of the Owners vote in favor of the rebuilding, reconstruction and repair of the Buildings, the Buildings shall not be rebuilt, reconstructed or repaired and, in such event, the Property shall be deemed and considered as to be removed from the provisions of the Act under Section 32-25-8-1 et seq., and:

(i) the Property shall be deemed to be owned in common by the Co-owners;

(ii) the undivided interest in the Property owned in common which shall appertain to each Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Areas;

(iii) any liens affecting any of the Condominium Units shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the Owner in the Property; and

(iv) the Property shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one (1) fund and shall be divided among all the Owners in a percentage equal to the percentage of undivided interest owned by each Owner in the Property, provided that the share of any Owner whose

interest was mortgaged shall be reduced by first paying out of the respective share of such Owner, the amount of any liens on the undivided interest in the Property owned by such Owner.

Comment [A1]: Something to consider here – the statute in question, namely Ind. Code § 2-25-8-10(b), does not indicate that a mortgage holder should be paid first. It seems standard to pay mortgage holders first in other condo declarations, but it's not statutory.

(f) Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors has the responsibility of maintenance and repair, the Board of Directors shall obtain reliable and detailed estimates of the cost to replace the damaged property in condition as good as that before the casualty. Such costs may include the professional fees and premiums for such bonds as the Board of Directors desires.

(g) The proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Directors from collections of assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Buildings are to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:

(i) If the amount of the estimated cost of reconstruction and repair is less than Twenty-Five Thousand Dollars (\$25,000.00), then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors; provided, however, that upon request of a Mortgagee, such fund shall be disbursed in the manner hereinafter provided in the following subparagraph (ii).

(ii) If the estimated cost of reconstruction and repair of the Buildings or other improvement is more than Twenty-Five Thousand Dollars (\$25,000.00) (or if requested by a Mortgagee as noted above), then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Indiana and employed by the Board of Directors to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors,

materialmen, the architect, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (2) that there is not other outstanding indebtedness known to the said architect for the services and materials described; and (3) that the costs as estimated by said architect for the work remaining to be done subsequent to the date of such certificate, does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(h) Encroachments upon or in favor of Condominium Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceedings or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Buildings were originally constructed. Such encroachments shall be allowed to continue in existence.

(i) In the event that there is any surplus of monies in the construction fund after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Board of Directors as a reserve or distributed jointly to the Owners of the Condominium Units affected. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver or any rights against another Owner for committing willful or malicious damage.

11. Condemnation. If at any time or times during the continuance of this Regime, all or a part of the Property shall be taken or condemned by any Person with the power of eminent domain or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall be applicable:

(a) Representation. The Association, or the Insurance Trustee if so appointed by the Association, shall represent the Co-owners in the condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the

condemning authority. Each Owner hereby appoints the Association or its designee as attorney-in-fact for the purposes described in this subparagraph.

(b) Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Association (or the Insurance Trustee if appointed) as trustee for all Owners according to their respective interests therein.

(c) Total Taking. In the event that the entire Property is taken or condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, this Condominium Property Regime shall terminate. The Condemnation Award shall be apportioned among the Co-owners in accordance with their respective Percentage Interests and paid into separate accounts, each such account representing one Condominium Unit held by the Association or Insurance Trustee. From each separate account, sums shall be used, first to the payment of valid tax and special assessment liens on the Condominium Unit in favor of any governmental taxing or assessing authority, next to payment of any Assessments made pursuant to this Declaration or the By-Laws, next to other holders of liens or encumbrances on the Condominium Unit in the order of priority of their liens, and the balance remaining, if any, to each respective Owner.

(d) Partial Taking. In the event that less than the entire Property is taken or condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, this Condominium Property Regime shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner. As soon as practicable the Insurance Trustee shall, reasonably and in good faith, allocate the Condemnation Award among compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners as follows:

(i) the total amount allocated to the taking of or injury to the Common Areas and Limited Areas shall be apportioned among the Owners in proportion to their respective Percentage Interests;

(ii) the total amount allocated to the severance damages shall be apportioned to the Owners of those Condominium Units that were not taken or condemned;

(iii) the respective amounts allocated to the taking of or injury to a particular Condominium Unit and/or improvements an Owner has made within his own Condominium Unit shall be apportioned to the Owner of the particular Condominium Unit involved; and

(iv) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Insurance Trustee determines to be equitable in the circumstances.

If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Insurance Trustee shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by the Insurance Trustee by checks payable jointly to the respective Owners and their respective Mortgagees, provided that, with respect to an Owner whose Condominium Unit was taken or condemned, there shall first be deducted therefrom and paid or applied by the Insurance Trustee as appropriate such Owner's pro-rata share of the expenses of the Insurance Trustee, the amounts of any valid tax or special assessment lien in favor of any governmental taxing or assessing authority and any Assessments made pursuant to this Declaration or the By-Laws.

(e) Reorganization. In the event a partial taking results in the taking of a complete Condominium Unit, the Owner thereof shall automatically cease to be an Owner and a member of the Association. Thereafter, the Board of Directors shall reallocate to the remaining Owners, pro-rata, the Percentage Interest and Percentage Vote of such Owner. Such reallocation shall be submitted by the Board of Directors to the Owners of the remaining Condominium Units for approval by a Two-Thirds Vote thereof and appropriate amendment of this Declaration, but any such amendment to be effective must be approved by a Majority of Mortgagees.

(f) Restoration and Repair. Anything to the contrary in this Section 11 notwithstanding, in the event that less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof and any Condominium Unit, Common Area or Limited Area may reasonably be restored or repaired, as determined by an independent licensed architect or engineer employed by the Board of Directors for making such determination or by a Majority of the Mortgagees, the amount, if any, of the Condemnation Award allocable to the taking of or injury to the Common Areas and Limited Areas and to severance damages shall be applied to the cost of Restoration or repair of such Common Area and/or Limited Area, and the amount, if any, allocable to the taking of or injury to a particular Condominium Unit that may be restored or repaired shall be applied to the cost of such Restoration or repair. If any amount of the Condemnation Award then remains, such amount shall be allocated and disbursed in accordance with the provisions of subparagraph (d) above. If the amount of the Condemnation Award is insufficient to cover the cost of any such Restoration or repair, the provisions of Section 10(b) shall apply.

(g) Alternative Valuation in Event of Total Taking. In the event the amount of the Condemnation Award is determined in negotiation, judicial decree or otherwise according to the value of individual Condominium Units as separately determined, the Condemnation Award shall be apportioned, with respect to such Condominium Units, according to the values so determined and not in accordance with the respective Percentage Interests of the Owners; but if the value of the Common Areas and/or Limited Areas is determined separately, the amount of the Condemnation Award attributable thereto shall be allocated among the Owners in accordance with their respective Percentage Interests.

12. Association of Owners. Subject to the rights of Declarant reserved in Section 18 of this Declaration, the maintenance, repair, upkeep, replacement, administration, management and operation of the Property shall be by the Association when 80% of the units have been acquired by an Owner other than the Declarant. Each Owner shall, automatically upon becoming an Owner of a Condominium Unit, be and

become a member of the Association and shall remain a member until such time as his ownership ceases, but membership shall terminate when such Person ceases to be an Owner, and will be transferred to the new Owner. The Association shall elect a Board of Directors annually (except for the Initial Board as defined in the By-Laws) in accordance with and as prescribed by the By-Laws. Each Owner shall be entitled to cast its Percentage Vote for the election of the Board of Directors, except for the Initial Board who shall serve for the period provided in the By-Laws. The Board of Directors shall be the governing body of the Association, representing all of the Owners in providing for the management, administration, operation, maintenance, repair, replacement and upkeep of the Property (exclusive of the Condominium Units except to the extent herein or in the By-Laws otherwise provided).

13. Covenants and Restrictions. The covenants and restrictions applicable to the use and enjoyment of the Condominium Units (other than Excluded Property), the Common Areas and Limited Areas are set forth herein and in the By-Laws. In addition, the following restrictions on the use and enjoyment of the Condominium Units, Common Areas, Limited Areas and the Property shall be applicable unless otherwise approved by the Declarant and/or Board as the case may be:

(a) No Owner shall permit anything to be done or kept in his Condominium Unit or in the Common Areas or Limited Areas that will result in a cancellation of insurance on any Buildings or any part of the Common Areas or contents thereof, or that would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(b) No nuisance shall be permitted, and no waste shall be committed in any Condominium Unit, Common Areas or Limited Areas.

(c) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls of the Building, and no sign, awning, canopy, shutter, satellite dish or radio or television antenna or other attachment or thing shall be affixed to or be placed upon the exterior wall or roofs or any other parts of the Building without the prior consent of the Board.

However, neither this paragraph nor 13(h) shall be construed to prohibit the rights relating to political signage as set forth in Ind. Code § 32-21-13-4.

(d) Nothing shall be done or permitted in any Condominium Unit that will impair the structural integrity of the Building or that would structurally change any Building or that would affect the exterior appearance of any Condominium Unit, except as otherwise provided in the Declaration or By-Laws. No Condominium Unit shall be used in any unlawful manner.

(e) Except as otherwise specifically provided in this Declaration, no Unit shall be used for any purpose other than that of a residence and purposes customarily incidental to a residence. Notwithstanding the foregoing: (a) professional and quasi-professional occupants may use a Unit as an auxiliary or secondary facility to an office established elsewhere; (b) an occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, conducting personal business, making professional telephone calls or conducting correspondence, in or from a Unit, is engaging in a use expressly declared customarily incidental to principal residential use and is not in violation of these restrictions; (c) it shall be permissible for the Declarant to maintain, during the period of its sale of Units, one or more Units as sales models and office; (d) one or more Units may be maintained for the use of the Association in fulfilling its responsibilities; and (e) units on the second floor are not subject to the declarations, restrictions, by-laws and rules, except as noted, as the second floor is reserved for commercial development.

(f) The Common Areas and Limited Areas shall be kept free and clear of rubbish, debris and other unsightly materials.

(g) All Owners, guests, tenants or invitees, and all occupants of any Condominium Unit or other Persons entitled to use the same and to use and enjoy the Common Areas and Limited Areas or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Condominium Units, the Common Areas and Limited Areas;

including but not limited to rules relating to the keeping of animals, the parking or storage of vehicles and other matters incidental to the use of the Common Areas and Limited Areas.

(h) All garbage, trash and refuse shall be stored in appropriate containers inside the Condominium Unit unless deposited in a trash dumpster maintained by the Association. Garbage, trash and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board for scheduled trash collection and shall be placed at such locations for trash collection as are designated by the Board.

(i) No "for sale," "for rent" or "for lease" signs or other advertising display shall be maintained or permitted in any windows, Common Areas or Limited Common Areas without the prior consent of the Board.

(j) No Owner (other than Declarant) shall have the right to make any alteration to a Condominium Unit that in any way affects the exterior appearance of the Building; or make any structural change to a Condominium Unit; or make other changes to a Condominium Unit that would jeopardize the soundness or safety of the Property.

(k) It shall be the individual responsibility of each Owner to procure and maintain extended insurance coverage on the contents of their Unit, any and all other personal property located within their Unit or within their Limited Common Area.

(l) No animals, rabbits, livestock, fowl or poultry of any kind shall be raised or bred within the Building or upon the Property. Further, the Board of Directors shall have the authority to, and shall order the removal of, any pet that is potentially dangerous or creates a nuisance.

(m) There shall be no obstruction of the Common Areas, nor shall anything be kept or stored on any part of the Common Areas without the prior written consent of Board of Directors.

(n) Any activity occurring on a part of the Common Areas or Limited Common Areas causing or creating a nuisance or unreasonable disturbance shall be immediately and permanently stopped upon notice by Board of Directors.

These covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Association. Present or future Owners and the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation. Notwithstanding anything to the contrary contained herein or in the By-Laws, including but not limited to any covenants and restrictions set forth in the By-Laws, Declarant shall have the right to use and maintain any Condominium Units owned or leased by Declarant and such other portions of the Property (other than individual Condominium Units owned by persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the sale of Condominium Units, or to promote or effect sales of Condominium Units or for the, conduct of any business or activity attendant thereto, including, but not limited to, model Condominium Units, sales offices, management offices and business offices.

14. Amendment of Declaration. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(a) Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.

(b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the Percentage Vote.

(c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.

(d) Adoption. Except as otherwise provided herein, any proposed amendment to this Declaration must be approved by a Majority of Owners (subject, however, to Declarant's powers under the By-Laws).

(e) Restrictions on Amendments. The consent of (i) all of the Owners and approval of all mortgagees shall be required to remove property from the Regime unless in the case of total destruction (notwithstanding anything herein to the contrary), (ii) all of the Owners (notwithstanding Section 3.02 of the By-Laws) and the approval of all Mortgagees shall be required to terminate the Regime unless expressly provided otherwise herein; and (iii) unless required to conform to the Act, the consent of a Two-Thirds Vote of the Owners (notwithstanding Section 3.02 of the By-Laws) and the approval of a Majority of Mortgagees shall be required to materially amend any provisions of the Declaration, By-Laws or equivalent organizational documents of the Regime to:

(A) materially change the voting rights of any Owner or its Percentage Interest;

(B) materially change (or impose disparate increases in) Assessments or modify the provisions included in the Declaration or By-Laws with respect to the subordination of liens for delinquent Assessments to first mortgage liens;

(C) expand or contract the Regime or the add, annex or withdraw property to or from the Regime, except as provided for in Paragraph 29;

(D) partition, subdivide or otherwise change the boundaries of any Condominium Unit;

(E) impose any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her Condominium Unit; or

(F) amend any provision of the Declaration, By-Laws or the equivalent organization documents of the Regime that are expressly stated to be for the benefit of Mortgagees.

(f) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association provided that any amendment requiring the consent of Declarant shall contain Declarant's signed consent. All amendments shall be recorded in the office of the Recorder of St. Joseph County, Indiana, and such amendment shall not become effective until so recorded.

(g) Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have the right acting alone and without the consent or approval of the Co-owners, the Association, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration from time to time (i) if such amendment or supplement is necessary to conform this Declaration to the Act, as amended from time to time, (ii) such amendment or supplement is made to implement expansion of the Property and The Cascade Condominiums, (iii) if such amendment or supplement is made to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (iv) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages, or (v) if such amendment or supplement is made to correct clerical or typographical errors. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Section

14 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage or other instrument affecting a Condominium Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendment, but the right of the Declarant to act pursuant to rights reserved or granted under this Section 14 shall terminate after the Applicable Date. After the Applicable Date, the Association shall have the right to exercise the same powers to amend or supplement the Declaration as granted to Declarant in this Section 14(g).

15. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Condominium Units shall be subject to and shall comply with the provisions of this Declaration, the Act, the By-Laws appended hereto, and the rules and regulations as adopted by the Board of Directors as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Condominium Unit shall constitute an agreement that the provisions of this Declaration, the Act, the By-Laws and rules and regulations as each may be amended or supplemented from time to time are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Condominium Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may occupy, use, enjoy or control a Condominium Unit or Condominium Units or any part of the Property in any manner shall be subject to the Declaration, the Act, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

16. Granting of Easements. Prior to the Applicable Date, the Declarant, and after the Applicable Date, the Board of Directors, are granted the authority to grant such easements and to release, modify and amend easements encumbering the Common Areas and Limited Areas upon such terms and conditions and for such consideration as they deem appropriate.

17. Reservation of Rights to the Use of the Common Areas. Declarant shall have, and hereby reserves, an easement over, across, upon, along, in, through and under the Common Areas, including, to the extent necessary, the Limited Areas, for the purposes of installing, maintaining, repairing, replacing, relocating and otherwise servicing utility and telecommunication equipment, facilities and installations to serve the Property, to provide access to and ingress and egress to and from the Property, to make improvements to and within the Property, and to provide for the rendering of public and quasi-public services to the Property. The foregoing easement shall be a transferable easement and Declarant may at any time and from time to time grant

similar easements, rights or privileges to other Persons for the same purposes. By way of example, but not in limitation of the generality of the foregoing, Declarant, and others to whom Declarant may grant such similar easements, rights or privileges, may so use the Common Areas and, to the extent necessary, the Limited Areas, to supply utility and telecommunication services to the Property and to permit public and quasi-public vehicles, including but not limited to police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles, and their personnel to enter upon and use the drives and streets, the Common Areas and, to the extent necessary, the Limited Areas of the Regime in the performance of their duties.

18. Initial Management. Until 80% of the units are acquired by an owner other than Declarant, the Board of Directors consists and will consist of Persons selected by Declarant. The Board of Directors has entered, or may hereafter enter, into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) for a term which will expire not later than the Applicable Date, under which Declarant (or such affiliate of Declarant, as appropriate) will provide supervision, fiscal and general management and maintenance of the Common Areas and, to the extent the same is not otherwise the responsibility of Owners of individual Condominium Units, the Limited Areas, and, in general, perform all of the duties and obligations of the Association. Such management agreement is or will be subject to termination by Declarant (or its affiliate, as appropriate) without cause and without payment of a termination fee on at least thirty (30) days prior written notice, in which event the Association shall thereupon and thereafter assume or resume performance of all of its duties and obligations and functions. Notwithstanding anything to the contrary contained herein, so long as such management agreement remains in effect, Declarant (or its affiliate, as appropriate) shall have, and Declarant hereby reserves to and for its benefit (or to its affiliate, as appropriate), the exclusive right to manage the Property and to perform all the functions of the Association.

19. Limitation on Declarant's Liability for Assessments. Notwithstanding anything in this Declaration or the By-Laws to the contrary, Declarant is an Owner and is not excused from the payment of Assessments.

20. Sale, Lease or Other Transfer of Condominium Unit by Owners.

(a) Lease of Residential Units. It is in the best interests of all the Owners of the Residential Units that those persons residing in The Cascade Condominiums have similar proprietary interests in their Condominium Units and be Owners. For the purpose of maintaining the character of The Cascade Condominiums, no Owner of a Residential Unit (other than Declarant) shall lease his Residential Unit or enter into any other rental or letting arrangement for his Residential Unit unless such lease is in writing and is for an initial period of at least six (6) months. Any such lease shall be made explicitly subject to the terms of this Declaration and the By-Laws.

(b) Sale. The Association shall have no right of first refusal to purchase any Condominium Unit which an Owner wishes to sell and an Owner may sell his Condominium Unit free of any such restriction.

21. Right to Combine Units. Two or more adjoining Condominium Units may be utilized by the Owner or Owners thereof as if they were one Condominium Unit and any walls, floors or other structural separations between any two such Condominium Units, or any space that would be occupied by such structural separations but for the utilization of the two Condominium Units as one Condominium Unit, may, for as long as the two Condominium Units are utilized as one, be utilized by the Owner or Owners of the adjoining Condominium Units as Limited Areas except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use or enjoyment of other parts of the Building of which they are a part, and provided that the Percentage Interest appertaining to each Condominium Unit shall continue in effect as if such Condominium Units were not combined. At any time, upon request of the Owner of one of such adjoining Condominium Units, any opening between the two Condominium Units that, but for joint utilization of the two Condominium Units, would have been occupied by a structural separation, shall be closed, at the equal expense of

the Owners of each of the two Condominium Units, and the structural separations between the two Condominium Units shall thereupon become Common Areas.

22. Right of Action. Subject to the provisions of Section 28, the Association and any aggrieved Owner shall have a right of action against any Owner or Owners for failure to comply with the provisions of the Declaration, By-Laws or any decision of the Association or its Board of Directors which are made pursuant to authority granted to the Association or its Board of Directors in such documents. Owners shall have a similar right against the Association.

23. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the By-Laws or the Act, or to comply with any provision of the Declaration, the Act, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Declarant or the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

24. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or Limited Areas or by abandonment of his Condominium Unit.

25. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provisions of this Declaration or the By-Laws filed herewith shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration or the attached By-Laws.

26. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include the masculine, feminine and neuter genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

27. Floor Plans. The Plans setting forth the layout, location, identification numbers, and dimensions of the Condominium Units and the Property are incorporated into this Declaration by reference and have been filed in the office of the Recorder of St.

Joseph County, as Instrument No. _____, under the date of _____, 201__.

28. Exculpation. This instrument is executed and delivered on the express condition that anything herein to the contrary notwithstanding, each and all of the representations, covenants, undertakings and agreements herein made on the part of Declarant (“Representations”), while in form purporting to be the Representations of Declarant, are nevertheless each and every one of them, made and intended not as personal Representations by Declarant or for the purpose or with the intention of binding Declarant personally, but are made and intended for the purpose of binding only the Real Estate; and no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against Declarant or any of its managers or members personally, on account of this instrument or on account of, in connection with or arising out of any Representations of Declarant in this instrument contained, either express or implied, all such personal liability, if any, being expressly waived and released by each Person who acquires any interest in a Condominium Unit (including mortgagees) as a condition to the acquisition thereof.

29. Expandable Condominium and Declarant’s Reserved Rights. The Cascade Condominiums is not an “expandable condominium”, as defined in the Act.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first above written.

DECLARANT

WHARF PARTNERS, LLC

By: _____

Printed: _____

Its: _____

STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

Before me, a Notary Public in and for said County and State, personally appeared _____, the _____ of WHARF PARTNERS, LLC, who acknowledged the execution of the foregoing Declaration of Condominium Property Ownership for and on behalf of such company.

Witness my hand and Notarial Seal this _____ day of _____, 2014.

My Commission Expires:

Notary Public Residing in St. Joseph County,
IN

(Printed Name)

I affirm, under penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Peter J. Agostino

This instrument prepared by Peter J. Agostino, Attorney-at-Law
Anderson, Agostino & Keller, P.C., 131 S Taylor St., South Bend, IN 46601

EXHIBIT A
LEGAL DESCRIPTION OF THE REAL ESTATE

EXHIBIT B
DESCRIPTION OF CONDOMINIUM UNITS

EXHIBIT C
THE CASCADE CONDOMINIUMS
OWNERS ASSOCIATION BY-LAWS
[Attached]