

DECLARATION

FOR

ENCORE OF MCLEAN, A CONDOMINIUM

ARTICLE I

CREATION; DEFINED TERMS

Section 1.1. Creation of the Condominium. Pursuant to the provisions of Chapter 4.2 of Title 55 of the Code of Virginia ("Condominium Act"), Regency Phase II, a Virginia Limited Partnership ("Declarant") hereby creates a condominium comprised of the land described in Exhibit A hereto, located within the County of Fairfax, Virginia ("Land"), together with all improvements thereto and all easements, rights and appurtenances thereunto appertaining ("Property"). The name of the condominium is "Encore of McLean, a Condominium" ("Condominium").

Section 1.2. Defined Terms. Except as otherwise defined herein or in Section 1.3 of the Bylaws comprising Exhibit B, all terms used in the condominium instruments shall have the meanings specified in section 55-79.41 of the Condominium Act. All exhibits referred to in the condominium instruments are exhibits to this Declaration.

ARTICLE 2

BUILDING ON THE LAND; UNIT BOUNDARIES

Section 2.1. Location and Dimensions of Building. The location and dimensions of the building on the Land are depicted on the "Plats" attached as Exhibit C hereto.

Section 2.2. Units. The location of units within the building and their dimensions are shown on the "Plans" attached as Exhibit D hereto. The Common Element Interest Table attached as Exhibit E hereto is a list of all units by their identifying number, location (all as shown more fully on the Plats and Plans), type and the Common Element Interest appurtenant to each unit determined on the basis of par value. The par value of each unit is the number of points assigned by the Declarant based upon the approximate relative size of the unit. The size of each unit is the total number of square feet contained therein determined by reference to the dimensions shown on the Plats and Plans. A further discussion of the allocation of par value is set forth in the Notes to Common Element Interest Table attached as Exhibit E hereto.

Section 2.3. Unit Boundaries. The boundaries of each unit are as follows:

STATE TAX \_\_\_\_\_  
COUNTY TAX \_\_\_\_\_  
TRANSFER FEE \_\_\_\_\_  
CLERK'S FEE \_\_\_\_\_  
GRANTOR TAX \_\_\_\_\_  
CONS \_\_\_\_\_

2994 RP 26 C 21

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Vienna, VA 22180

(a) Upper and Lower (horizontal) Boundaries: The upper and lower boundaries of the unit shall be the following boundaries extended to an intersection with the vertical (perimetric) boundaries:

(1) Upper Boundary: The horizontal plane of the bottom surface of the concrete slab of the ceiling except where there is a dropped ceiling in which locations the upper boundary shall be the horizontal plane which includes the top side of the plasterboard of the dropped ceiling.

(2) Lower Boundary: The horizontal plane of the top surface of the undecorated concrete floor slab.

(b) Vertical (perimetric) Boundaries: The vertical boundaries of the unit shall be the vertical plane which includes the back surface of the plasterboard of all walls bounding the unit extended to intersections with each other and with the upper and lower boundaries.

(c) The unit shall include the heating and air-conditioning apparatus serving only that unit (whether or not located within the unit boundaries), which apparatus shall be part of the unit. Any portion of a utility system or other apparatus serving more than one unit (e.g., pipes, conduits, ducts) which is located partially within and partially outside the unit is part of the common elements. Any portion of a utility system other than the heating and airconditioning apertures serving only the unit and which is located outside the unit is a limited common element appurtenant to that unit.

Section 2.4. Maintenance Responsibilities. Notwithstanding the ownership of the various portions of the common elements and the units by virtue of the foregoing boundary description, the provisions of the Bylaws shall govern the division of maintenance and repair responsibilities between the unit owner and the Association.

Section 2.5. Relocation of Unit Boundaries and Subdivision of Units. Relocation of boundaries between units and subdivision of units is permitted subject to compliance with the provisions therefor found in Sections 5.7 and 8.5 of the Bylaws and in sections 55-79.69 and 55-79.70 of the Condominium Act.

### ARTICLE 3

#### COMMON ELEMENTS

##### Section 3.1. Limited Common Elements.

(a) The locations of the common elements to which each unit has direct access are shown on the Plats and Plans; pursuant to section 55-79.50(e) of the Condominium Act, a

balcony or patio, or fence, if any, shown adjacent to a unit is a limited common element appurtenant to that unit.

(b) Portions of the common elements are marked on the Plans as "Common Elements which may be assigned as Limited Common Elements". This portion of the common elements includes all parking spaces located on top, under or in the buildings from the top surface of the concrete floor slab to the underside of the concrete ceiling slab or dropped ceiling, as the case may be directly above it. Pursuant to section 55-79.54(a)(6) of the Condominium Act, the Declarant reserves the exclusive right to assign these parking spaces as limited common elements for the exclusive use of certain unit owners to whose units these parking spaces shall become appurtenant. The Declarant shall assign such a common element as a limited common element parking space pursuant to the provisions of section 55-79.57 of the Condominium Act by causing an appropriate amendment to this Declaration to be executed and recorded. If, prior to settlement on a unit, a person has contracted to acquire the right to the assignment of a limited common element, the Declarant shall evidence the right to such an assignment in the deed to the unit to which such limited common element parking space shall appertain. [If a unit owner acquires the right to the exclusive use of such a limited common element subsequent to settlement on the unit, the Declarant may but need not evidence the unit owner's right to such an assignment in a separate written agreement with the unit owner.]

Section 3.2. Reserved Common Elements. The Board of Directors shall have the power in its discretion from time to time to grant revocable licenses in designated common elements to the Association or to any unit owners and to establish a reasonable charge to such unit owners for the use and maintenance thereof. Such designation by the Board shall not be construed as a sale or disposition of the common elements.

Section 3.3. Alteration of Common Elements by the Declarant. The Declarant reserves the right of access to and the right to modify, alter, remove or improve defective, obsolete or non-functional portions of the common elements, including without limitation any equipment, fixtures and appurtenances, when in the Declarant's judgment it is necessary or desirable to do so, until the expiration of the applicable warranty period.

#### ARTICLE 4

#### EASEMENTS

In addition to the easements created by sections 55-79.60 and 55-79.65 of the Condominium Act, the following easements are hereby granted.

Section 4.1. Easement to Facilitate Sales. All units shall be subject to an easement in favor of the Declarant

pursuant to section 55-79.66 of the Condominium Act. The Declarant reserves the right to use any units owned or leased by the Declarant as models, management offices, sales offices (for this and other projects) or customer service offices. The Declarant reserves the right to relocate the same from time to time within the Property; upon relocation, the furnishings thereof may be removed. The Declarant further reserves the right to maintain on the Property such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the Property and may be relocated or removed, all at the sole discretion of the Declarant. Prior to assignment as limited common elements, the Declarant shall have the right to restrict the use of certain common element parking spaces for sales purposes and to use such spaces for sales purposes. Further, the Declarant shall have the right to erect temporary offices on certain common element parking spaces for models, sales, management, customer service and similar purposes. This easement shall continue until the Declarant has conveyed all units in the Condominium to unit owners other than the Declarant.

**Section 4.2. Easement for Access and Support.**

(a) Access. The Declarant reserves in favor of the Declarant and the managing agent and/or any other person authorized by the Board of Directors the right of access to any unit as provided in section 55-79.79 of the Condominium Act and Section 5.9 of the Bylaws. In case of emergency, such entry shall be immediate whether or not the unit owner is present at the time. Further, until the expiration of the warranty period, such entry shall be permitted to perform warranty-related work (for the benefit of the unit being entered, other units or the limited common or common elements) whether or not the unit owner consents or is present at the time.

(b) Support. Each unit and common element shall have an easement for lateral and subjacent support from every other unit and common element.

**Section 4.3. Declarant's Right to Grant Easements.**

The Declarant shall have the right, prior to the termination of the Declarant Control Period, to grant and reserve easements and rights-of-way through, under, over and across the Property for construction purposes, and for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone, cable television and/or satellite antenna service, and other utilities.

**ARTICLE 5**

**AMENDMENT TO CONDOMINIUM  
INSTRUMENTS; REQUIRED CONSENT**

No amendment of the Declaration may be made without the

prior written approval of the required percentage of Mortgagees where such approval is provided for in Section 8:5 of the Bylaws or where such approval is required elsewhere in the condominium instruments or by the Condominium Act. No amendment shall be made to any condominium instrument during the Declarant Control Period without the prior written consent of the Declarant. No amendment to the condominium instruments shall diminish or impair the rights of Mortgagees under the condominium instruments without the prior written consent of all Mortgagees, nor diminish or impair the rights of the Declarant under the condominium instruments without the prior written consent of the Declarant. No amendment may modify this Article or the rights of any person hereunder. Except as specifically provided in the condominium instruments, no provision of the condominium instruments shall be construed to grant to any unit owner, or to any other person, any priority over any rights of Mortgagees.

ARTICLE 6

RIGHT TO LEASE OR SELL UNITS

The Declarant shall own in fee simple each condominium unit to which legal title is not conveyed or otherwise transferred to another person. The Declarant retains the right to enter into leases with any persons for the occupancy of any of the units owned by the Declarant.

ARTICLE 7

Nothing contained in the condominium instruments shall be deemed to impose upon the Declarant or its successors or assigns any obligation of any nature to build, construct or provide any improvements except to the extent required by the Condominium Act.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by the principal officer of a corporate general partner, this 24<sup>th</sup> day of February, 1986 on behalf of the partnership.

Regency Phase II, a Virginia  
Limited Partnership

By: Regency Investment Corporation  
General Partner

By: Kamp Tabbara  
(Vice) President

*Maryland*  
STATE OF VIRGINIA  
*Prince Georges*  
COUNTY OF ~~FAIRFAX~~

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of February, 1986, by Kamel Tabbar, (Vice) President of Regency Phase II, Inc., a Virginia Corporation, as a partner on behalf of REGENCY PHASE II, a Virginia Limited Partnership.

  
Notary Public

My Commission expires: 7/1/86

EXHIBIT A to  
the Declaration

## ENCORE OF MCLEAN, a CONDOMINIUM

DESCRIPTION OF SUBMITTED LAND

BEGINNING at a pipe on the right-of-way of Route 495, a corner to Ritzenberg; thence curving to the right 250.47' measured along the arc of a circle having a radius of 11,309.16' the chord being N. 05 degrees 08 minutes 58 seconds East 250.45' to a highway monument; thence North 11 degrees 01 minutes 05 seconds East 247.54' to a highway monument; thence North 01 degrees 45 minutes 57 seconds East 197.96' to a highway monument; thence curving to the right 111.10' along the arc of a circle having a radius of 11,309.16' the chord being North 08 degrees 21 minutes 05 seconds East 111.10' to a point; thence through the tract,

South 78 degrees 58 minutes 55 seconds East 292.10',  
 South 11 degrees 01 minutes 05 seconds West 22.00',  
 South 78 degrees 58 minutes 55 seconds East 17.33',  
 South 11 degrees 01 minutes 05 seconds West 24.39',  
 North 79 degrees 04 minutes 18 seconds West 0.17',  
 South 10 degrees 55 minutes 42 seconds West 16.94',  
 North 78 degrees 58 minutes 55 seconds West 1.86',  
 South 11 degrees 01 minutes 05 seconds West 0.36',  
 North 79 degrees 04 minutes 18 seconds West 0.14',  
 South 10 degrees 55 minutes 42 seconds West 18.30',  
 South 79 degrees 04 minutes 18 seconds East 2.00',  
 South 10 degrees 55 minutes 42 seconds West 17.20',  
 South 79 degrees 04 minutes 18 seconds East 4.75',  
 South 11 degrees 01 minutes 05 seconds West 15.81',  
 South 78 degrees 58 minutes 55 seconds East 1.00',  
 South 10 degrees 55 minutes 42 seconds West 9.19',  
 South 79 degrees 04 minutes 18 seconds East 37.98',  
 South 11 degrees 01 minutes 05 seconds West 80.87',  
 South 78 degrees 58 minutes 55 seconds East 35.00',  
 North 56 degrees 01 minutes 05 seconds East 20.00',  
 North 11 degrees 01 minutes 05 seconds East 35.00',  
 South 78 degrees 58 minutes 55 seconds East 34.50',  
 South 11 degrees 01 minutes 05 seconds West 35.00',  
 South 33 degrees 58 minutes 55 seconds East 20.00',  
 South 78 degrees 58 minutes 55 seconds East 71.50' to a point; thence curving to the left 168.57' along the arc of a circle having a radius of 150.00' the chord being, North 68 degrees 49 minutes 23 seconds East 159.84' to a point; thence South 53 degrees 22 minutes 18 seconds East 51.31' to a point in the line of Ritzenberg; thence with Ritzenberg, South 55 degrees 08 minutes 56 seconds West 921.01' to the beginning, containing 5.9325 acres, more or less.